



Guide to Business in Cambodia

February 2010

A No 64, St 111
PO Box 172
Phnom Penh
Cambodia

T +855 23 217 510
+855 23 212 740

F +855 23 212 840

E info@bnglegal.com

W www.bnglegal.com

TABLE OF CONTENTS

Foreword - Cambodia: An Emerging Market

Chapter 1: Legal System.....5

1. History of the Cambodian Legal System
2. Lawmaking & Governance in Cambodia
3. Court Structure
4. Notary Public
5. Alternative Dispute Resolution
6. A Legal System in Transition

Chapter 2: Investment7

1. Overview
2. Reasons to Invest in Cambodia
3. Investment Procedures
4. Change in Ownership of a Qualified Investment Project

Chapter 3: Commercial Law12

1. Overview
2. Nationality & Legal Personality
3. Types of Businesses
4. Foreign Business in Cambodia
5. Taxation
6. Rights & Obligations of Directors & Shareholders

Chapter 4: Land & Construction.....18

1. Overview
2. Legal Ownership of Land in Cambodia
3. Acquisition of Property in Cambodia
4. Potential Risks
5. Enforcement of Property Rights
6. Establishing Control Over Land
7. Land Concessions

Chapter 5: Intellectual Property.....	22
1. Overview	
2. Trademarks	
3. Patents	
4. Utility Models	
5. Industrial Designs	
6. Copyrights	
7. Geographical Indicators	
8. Trade Secrets	
9. Right of Publicity	
 Chapter 6: Banking.....	 46
1. Overview	
2. Types of Banks	
3. Establishing a Bank	
4. Foreign Bank Branches & Representative Offices	
5. Regulatory Compliance	
 Chapter 7: Mining & Energy.....	 50
1. Overview	
2. Mining	
3. Electricity	
4. Oil & Gas	
5. Future of Cambodian Energy	

CAMBODIA: AN EMERGING MARKET

The Kingdom of Cambodia sits at the heart of Southeast Asia, a dynamic region of trade in the world economy. Cambodia's 1999 membership to the Association of Southeast Asian Nations (ASEAN) and 2004 accession to the World Trade Organization (WTO) have opened the country up to the global marketplace. Cambodia's government is business-friendly, offering numerous incentives and tax breaks to start-up companies. While Cambodia is not without the problems of many developing countries, it has many assets that make it attractive to potential investors; tourism, agricultural products and human resources are all valuable assets specific to Cambodia's growing economy.

The aim of this guide is to give investors insight into conducting business in Cambodia. The guide explores various investment opportunities, and focuses on the laws and regulations surrounding company law, intellectual property rights, land law and emerging markets, including energy, mining and telecommunications.

If you would like more information regarding any of the matters discussed in this booklet, please don't hesitate to contact us at info@bnglegal.com.

1. HISTORY OF THE CAMBODIAN LEGAL SYSTEM

Traditionally, Cambodia has followed a system of government that was heavily influenced by Buddhist traditions and rituals. This system changed when Cambodia was colonized by the French, and a Civil Law system was introduced.

Since Independence in 1954, Cambodia's legal history can be divided into six distinct periods. Each phase has contributed significantly to the current make-up of Cambodia's legal infrastructure.

- 1954 to 1975: Before 1975, Cambodia's legal system was modeled after the French system. A comprehensive, legal framework governing commercial, civil and family relationships regulated day-to-day life. There were several court categories, which were responsible for different cases.
- 1975-1979: Khmer Rouge Period. In 1975, the Khmer Rouge took over the country and destroyed Cambodia's entire French-based legal system.
- 1979-1989: Vietnamese-Based Communist Model. The legal system that emerged during these years was heavily influenced by Vietnam, as advisors helped draft Cambodian laws. There was no separation of powers among the executive, judicial and legislative branches of government.
- 1989-1991: Liberalized Communist System. In 1989, the State of Cambodia embarked on a liberalization program that resulted in the promulgation of laws aimed at liberalizing ownership of property and granting greater economic freedoms to Cambodians.
- 1991-1993: UNTAC/SNC Intervention. Following a United Nations-brokered peace agreement in 1991, certain agencies and ministries of the State of Cambodia government came under the supervisory control of the United Nations Transitional Authority in Cambodia (UNTAC). The Supreme National Council (SNC) was created as a new law and policy-making body, which enacted a number of laws, including a criminal and judiciary law.
- 1993 to present: The Royal Government of Cambodia. After democratic elections, the Kingdom of Cambodia and the Royal Government of Cambodia came into being in 1993 in the form of a constitutional monarchy. The Constitution established a judiciary separate and independent from the executive and legislative branches of government. The current system combines aspects of the pre-1975 French Civil Code system with legal principles from common law systems.

After becoming a member of the Association of Southeast Asian Nations (ASEAN) and the World Trade Organization (WTO), Cambodia is particularly interested in ensuring integration of its legal system with other systems in ASEAN member countries. Cambodia is committed to aligning its policies and practices with WTO rules, especially the principles of "most-favored-nation" and "national treatment". Additionally, numerous laws and regulations have been drafted and adopted to ensure compliance with WTO regulations.

2. LAWMAKING AND GOVERNANCE IN CAMBODIA

The rule of law in Cambodia is still young and needs to be strengthened and improved. To attract foreign investors to Cambodia, the Royal Government of Cambodia has undertaken many reforms. The most important reform for investors is the Legal and Judicial Reform.

The Legal and Judicial Reform Strategy (LJR) for Cambodia has been developed to promote the establishment of a framework that is conducive to private sector development and the enforcement of personal property rights and obligations, and to contribute to the establishment of rule of law and good governance.

Under Cambodia's Constitution, power is divided between the legislative branch (the National Assembly and the Senate), the executive branch (the Royal Government) and the judiciary.

LEGISLATIVE BRANCH	EXECUTIVE BRANCH	JUDICIAL BRANCH
National Assembly	The Prime Minister	1 Supreme Court
Senate	The Council of Ministers	1 Appeals Court
Constitutional Council	Various Ministries	19 Provincial Courts
		2 Municipal Courts
		1 Military Court

Legislation is initiated by the National Assembly, the Senate, and from within the various ministries. In cases in which the legislation is initiated at ministerial level, it is sent to the Council of Ministers (COM) for modification and approval. The COM draft then goes to the National Assembly for review and debate. If passed, the draft moves on to the Senate for ratification, and finally, proceeds to the King for his Royal Assent.

If the legislation is initiated by the National Assembly or the Senate, the drafting legislators can present their proposals to the reviewing commission, who can in turn request the National Assembly to either reject their proposals, consider them or treat them as urgent.

The Constitutional Council reviews laws to ensure compliance with the Constitution. Where an issue is not covered by a duly enacted statute, the COM has the authority to promulgate a regulation that has the same effect as a statute. These regulations are known as "Sub-Decrees." The COM has broad discretion to modify or waive any Sub-Decree it has issued.

3. COURT STRUCTURE

The Cambodian judicial system is competent in all civil, criminal, commercial and administrative cases. The court system is composed of the Court of First Instance, Appeals Court and Supreme Court. The government has adopted two important pieces of legislation in relation to court procedure to strengthen effectiveness and transparency: the Code of Civil Procedure and the Code of Criminal Procedure. These two codes reform old court procedures.

The creation of additional specialized courts, pertaining to administrative, family, labor and commercial law, has been proposed and is under consideration.

4. THE NOTARY PUBLIC

The establishment of the Notary Public has been one of the most important developments in the implementation of judicial and administrative reform policies and governance in Cambodia. It is meant to ensure the legality of transactions involving private and official documents in Cambodia. The Notary Public was created on December 4, 2001, and is responsible for authentication of legal papers, such as contracts and agreements related to investment in Cambodia. It also plays a role in providing

legal consultation, drafting and certifying for investors.

5. ALTERNATIVE DISPUTE RESOLUTION

Informal Dispute Resolution

Cambodians often employ traditional methods of dispute resolution. Everyday disputes are often submitted to elderly people or to other respected persons in villages or communes.

Labor Dispute Resolution

The Arbitration Council aims to resolve collective labor disputes. It was established in 2003 and is comprised of 30 independent arbitrators. The Council is transparent, competent and well-respected.

Foreign Arbitration

In 2001 Cambodian law approved the implementation of the “UN Convention on the Recognition of and Enforcement of Foreign Arbitral Awards”. The law empowers Cambodian courts to recognize and enforce foreign arbitral awards.

Future Arbitration

On July 24, 2009, the COM passed a sub-decree establishing the National Arbitration Center. This center will allow businesses to bypass the court system and solve their commercial disputes through mediation in a private and independent environment.

6. A LEGAL SYSTEM IN TRANSITION

As Cambodia transforms into a free-market and democratic society, its legal system has also seen significant change. For an investor seeking to do business in Cambodia, it is important to understand not only the current difficulties of the legal system but also its future opportunities.

The government has committed itself to reforming the legal system. Its priorities are upgrading the legislative process, making the judiciary more transparent and bolstering structures for alternative dispute resolution. Investors must take care in the short term while these improvements in transparency and competence evolve.

Although the legal system in Cambodia shares the challenges common to many developing countries, investors all over the world are discovering that Cambodia is an exciting place to be for investment and new ventures.

1. OVERVIEW

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

2. REASONS TO INVEST IN CAMBODIA

2.1 Location

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

2.2 Membership in International and Regional Organizations

Cambodia is a member of various international and regional organizations that facilitate trade. Among these are the World Trade Organization (WTO), Association of Southeast Asian Nations (ASEAN) and ASEAN-China Free Trade Area (ACFTA), in which Cambodia enjoys duty-free privileges for exports and Most Favored Nation (MFN) treatment. Cambodia also accedes to the ASEAN Free Trade Area, ASEAN-China Comprehensive Economic Cooperation Agreement, ASEAN-Japan Comprehensive Economic Partnership, ASEAN-Korea Comprehensive Economic Cooperation Agreement and a dozen other multilateral agreements. Through this regional integration, there is the potential for investors to reach billions of customers; the population of ASEAN alone is roughly 560 million, while the population of ACFTA consists of approximately 1.7 billion people.

2.3 Investment Incentives

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

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

Cambodian law also offers investors various tax and duty exemptions and employment allowances. With regards to tax exemptions, investors can enjoy a corporate tax exemption for up to

eight years depending on the nature of the project. Additionally, there is a 100% exemption of export tax available for some investors. Cambodia also allows investors to employ foreign nationals if skilled workers, managers or experts are needed to conduct business.

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

3. INVESTMENT PROCEDURES

The MOC and the CDC are the institutions responsible for overseeing foreign direct investment and business development in Cambodia. FDI projects which are eligible for business incentives are called Qualified Investment Projects (QIPs) and must be registered with the CDC. The Law on Investment (2001) awards investment incentives to QIPs unless they are detailed in the Negative List of Sub Decree No. 111.

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

3.1 CDC's Decision Process

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

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

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

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

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

3.2 Final Registration Certificate

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

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

3.3 Prohibited Investment Projects

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

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

3.4 Exceptions

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

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

4. CHANGE IN OWNERSHIP OF A QUALIFIED INVESTMENT PROJECT

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

4.1 Merger

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

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

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

4.2 Acquisition

An investor must notify the CDC within 10 working days of an acquisition of a QIP. The CDC must then review the notification and provide written confirmation of acceptance or refusal to the purchasing investor within 10 working days after the notification has been received.

4.3 Termination of Qualified Investment Project

At the conclusion of investment activities, the investor must inform the CDC by a registered or hand-delivered letter. The investor or his attorney-in-fact must sign the letter. Additionally, the investor must provide proof of all settled debts, including any complaints and claims from the Ministry of Economy and Finance and pay applicable dues if imported machinery and equipment have been used for less than five years.

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

4.4 Revocation by the State

The CDC may withdraw the privileges and incentives granted to a qualified investment project. It may do so when the investor violates or fails to comply with required conditions.

The state may terminate an investment activity by revoking the Final Registration Certificate. The certificate will be revoked if an investor obtains a Final Registration Certificate or a Certificate of Compliance through fraud or misrepresentation; or does not commence the investment activity within six months of receiving the Final Registration Certificate.

The CDC must immediately notify the investor of the revocation in writing. Revocation of the Final Registration Certificate immediately divests the investor of all investment incentives.

An investor may appeal to the Chairman of the CDC in writing. Such an appeal must be made within 20 working days of receipt of the notification of revocation.

1. OVERVIEW

This chapter focuses on Cambodian commercial law and how it relates to establishing a business in Cambodia. There are also a number of incentives available to businesses under Cambodian investment law. Companies wishing to make use of these must register at the Council for Development of Cambodia. These incentives are discussed in Chapter 2.

Commercial law in Cambodia is governed by the Law on Commercial Enterprises (LoCE), which was promulgated on 19th June 2005. Under this law, various businesses are permitted to operate including sole proprietorships, partnerships and limited liability companies, foreign businesses, branch operations and public enterprises. Foreign investors usually choose to register a limited liability company as a subsidiary of the parent company to conduct business in Cambodia. If their activities are more limited, a foreign investor may prefer to open a branch or representative office of the parent company.

Under the LoCE, the investor must register the business and file an annual declaration at the Ministry of Commerce (MOC). A company must also have a legally competent natural person as a registered agent continually maintained in the Kingdom of Cambodia. Additionally, there are a number of corporate records that must be maintained at the company's registered office.

2. NATIONALITY AND LEGAL PERSONALITY

A company is considered to have Cambodian nationality if it has a registered office in Cambodia, and at least 51% of its shares are owned by Cambodian nationals. Only companies with Cambodian nationality will be permitted to register corporate names that imply such nationality. A limited liability company with Cambodian nationality is referred to as a "local company". Under the Constitution of the Kingdom of Cambodia, only a local company is entitled to own land. The chairman of the Board of Directors of a local company must be a Cambodian national. Other directors can be foreigners.

A general partnership that has acquired legal personality is deemed to be of Khmer nationality only if the general partnership has a place of business and a registered office located in the Kingdom of Cambodia, and more than 51% of the record ownership interest is held by natural or legal persons of Khmer nationality.

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

All companies have to conduct a company search with the MOC to determine whether or not the name already exists. The company must write a search letter to the MOC which consists of at least three different names with the signature of the principal. The MOC will issue the result of company search within one day.

3. TYPES OF BUSINESSES

All companies that conduct commercial activities in Cambodia must be registered. The registration must be made by the company's incorporator or director during the month of formation

and within 15 days prior to the commencement of its operations.

A limited liability juristic person must have at least KHR 20 million in capital. Moreover, the company must deposit KHR 4 million into a company bank account to satisfy the Commercial Incorporation's Capital Requirement.

3.1 Sole Proprietorship

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

3.2 Partnership

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

3.3 Private Limited Company

A Private Limited Company is a contract between two or more entities who agree to conduct any commercial activity. Every Private Limited Company is subject to the commercial registration requirements, which must be done at the Ministry of Commerce.

A PLC is managed by officers and directors and funded by capital provided by shareholders. It is the most common legal business form; however, forming one is more complicated and expensive than forming a sole proprietorship or partnership. Companies are constituted through a process that leads to the filing of Articles of Incorporation (AI) to the MOC.

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

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

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

3.4 Public Limited Company

A Public Limited Company (PLC) is a form of limited company that is authorized under the law to issue securities to the public. Unlike private limited companies, it may have more than 30 shareholders. In Cambodia banks are the only type of companies that are allowed to be PLCs. Once the Stock Exchange has been established, this rule will change.

4. FOREIGN BUSINESS IN CAMBODIA

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

4.1 Representative Office

A Representative Office (RO) may be established by an eligible foreign investor to facilitate the sourcing of local goods and services and to collect information for its parent company. They also serve as a channel for promoting and marketing the home company's products and services in the host country. An RO is regarded as a cost center and accordingly should derive no income from its activities and thus is not generally subject to Cambodian tax laws. However, the RO is subject to tax requirements with regard to the withholding tax on salaries paid to employees in Cambodia, a patent tax and an annual business operation tax.

The RO-Agent is subject to a commercial registration requirement, which is handled by the Ministry of Commerce. The words "Representative Office Agent" must be placed before or after the name of the principal enterprise.

4.2 Branch of Foreign Company

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

The Branch Office is also subject to the commercial registration requirement, which is handled by the Ministry of Commerce. Additionally, the word "Branch Office" must be placed before or after the name of the parent company.

4.3 Subsidiary

A subsidiary is a company that is incorporated in the Kingdom of Cambodia and has at least 51% percent of its capital held by a foreign company. Its formation, management, right and other obligations must be detailed in the memorandum and articles of association of the limited company. Each subsidiary is subject to commercial registration requirement, which is handled by the Ministry of Commerce.

5. TAXATION

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

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

5.1 Tax Registration

Once a business is registered with the Ministry of Commerce, it must then register at the Large and Medium Tax Payers Bureau (LMTB) of the Tax Department for a tax identification number (TIN), if the registered address of the business is in Phnom Penh or to the Provincial/Municipal Tax Branch office if the registered address of business is in one of the provinces/municipalities.

5.2 VAT Registration

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

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

VAT registration must be made before the commencement of business operations for investment and import-export businesses, or within 30 days in which the taxpayer becomes a taxable person. However, normally, VAT registration is undertaken at the same time as the registration.

5.3 Patent Tax

When registering for the TIN, the company must also pay a Patent Tax for the first year. This tax is an annual business registration tax. If the registration is in the second half of the calendar and governmental fiscal year (1 July – 31 December) then only half of the annual fee is charged. The first Patent Tax payment must be made within 15 days of business registration. The Patent Tax is payable annually thereafter for each business activity of the business and each location of the business – that is, should the business inform the tax authorities that they will have two or more main business activities, then a Patent Tax is due for each business activity. A company must renew its patent registration before 31 March each year.

5.4 Stamp Duty

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

The rental agreement for the business premises must also be presented together with a copy of the Patent Tax receipts (of the landlord / lessor) on the rental business, if the lessor is a natural person, or a copy of both the Patent Tax certificate and VAT certificate, if the lessor is a company or a registered business within the Real Regime for tax.

Where the premises are the property of the business owner, the family book and a letter from the local authority to certify the ownership of the premises should be presented. Land title documentation is required if the land is also owned. Where another business that has registered, paid the Stamp Duty and has authorized the registering business to use its premises, then the registering business must present a letter / agreement of the use of the premises, a copy of the Patent Tax receipts on the premises rental of the authorizing business (in case they are renting the premises) or evidence of property title where the authorizing company owns the premises.

At this point the business has its Articles of Incorporation, Registration Certificate and Business

License stamped and dated.

5.5 Annual Declaration and Modification

Each company must file an annual declaration with the Ministry of Commerce concerning the status of the partnership or company. Every registered company is obliged to submit an Annual Declaration of the Company's situation at the Business Registration Department of the Ministry of Commerce. Any company that fails to submit this declaration at the end of the year will be fined, and if the company fails to submit a declaration for three consecutive years, it will be rendered an illegal company.

5.6 Tax on Profit

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

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

According to the progressive tax rate by tranche for the table below for the profit realized by the physical person and the distributive share to each member of a pass- through that is not classified as a legal person.

ANNUAL TAXABLE PROFIT	TAX RATE
From 0 to 6,000,000 Riels	0%
From 6,000,001 to 15,000,000 Riels	5%
From 15 000,001 to 102,000,000 Riels	10%
From 102,000,001 to 150,000,000 Riels	15%
Greater than 150,000,000 Riels	20%

For an enterprise having principal activity in the insurance or reinsurance of life, property or other risks, the tax on profit shall be determined as follows:

- 5% of the gross premiums received in the tax year for the insurance or reinsurance of risk in the Kingdom of Cambodia
- For other activities not relating to insurance or reinsurance, the normal tax on profit rates apply

5.7 Minimum Tax

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

5.8 Tax Audits

The Law provides the Tax Department with the power to carry out an audit of a taxpayer's activities and to reassess tax where the taxpayer has not complied with the Law on Taxation and the tax regulations. The Department has a three-year period following the submission of the monthly or annual tax returns in which to raise a tax re-assessment. However, this period is extended to 10 years where there is evidence that the taxpayer has obstructed the implementation of the tax provisions. The definition of obstruction is very broad and includes the failure to submit tax returns within 30 days of the due date.

6. RIGHTS AND OBLIGATIONS OF DIRECTORS AND SHAREHOLDERS

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

A director may be any legally competent person over the age of 18 and does not need to be a shareholder in the company. A private limited company must have one or more directors and a public limited company must have at least three directors. Directors are elected by an ordinary resolution of shareholders who have the right to vote.

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

1. OVERVIEW

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

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

- private ownership for both residential and agricultural holdings;
- private ownership for plots that have been under unconflicted possession for at least five years;
- creation of a land registry and systems for registering titles and encumbrances;
- mechanisms for identifying the boundaries of state land;
- mechanisms for distribution of state land ("social concessions");
- communal tenure for indigenous communities and religious sites; and
- cap on industrial agricultural concessions (10,000 hectare)

It will take a number of years before the new land laws are fully designed, implemented and enforced. Further amendments and sub-decrees are expected. It is important for investors to perform due diligence before acquiring any property interests in land.

2. LEGAL OWNERSHIP OF LAND IN CAMBODIA

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

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

Foreigners cannot own land in Cambodia, under Article 44 of the Constitution. Cambodia's Investment Law of 1994, however, permits investors to use and develop land, and to sign unlimited long-term lease agreements. In February 2008, Prime Minister Hun Sen quashed rumors that the National Assembly planned to introduce a law allowing 100% ownership of land by foreigners.

However, a recent sub-decree passed by the Council of Ministers now allows foreigners to purchase individual apartments within a building creating a form of co-ownership. A foreign title law is expected to follow which would confirm a foreigner's ability to purchase real estate above the ground floor of the building.

3. ACQUISITION OF PROPERTY IN CAMBODIA

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

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

4. POTENTIAL RISKS

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

4.1 Title Search

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

4.2 Background Check

An investor entering into a joint venture should perform a background check on the Cambodian individual or legal entity with whom he will partner.

4.3 Boundary Demarcation

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

4.4 Documentation

The 2001 Land Law provides for issuance of indefeasible right-proving documents for agricultural and residential land. At each step of a land transaction, an investor should acquire strong documentation of property rights, to avoid any land-grabbing and fraudulent claims of others in the future. Long-term leases are only enforceable if written.

5. ENFORCEMENT OF PROPERTY RIGHTS

In the event of a land dispute, parties can seek resolution with the new cadastral commissions. The 2001 Land Law established the commissions at the local and national level. These commissions settle disputes over unregistered immovable property: they hear complaints; survey lands; issue proposed rulings regarding possession and ownership rights; and demarcate boundaries. The commissions are obliged to publicly display the adjudication record, including an index map and list of owners, so that parties have an opportunity to object. When the adjudication record is final, the commission must

register it with the Ministry of Land Management, Urban planning and Construction (MLMUPC), which will then issue certificates of ownership and/or rights of possession.

Disputes about sales contracts or lease agreements can be taken to civil court. In practice, however, decisions in these courts are linked to corruption. Negotiation, mediation and other techniques of alternative dispute resolution typically lead to more just results.

6. ESTABLISHING CONTROL OVER LAND

6.1 Locally Incorporated Land-Holding Company (LHC)

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

6.2 Joint-Venture Companies (JVCs)

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

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

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

6.3 Long-Term Leases

Another option available to foreign investors is a long-term lease. The lease gives the lessor all the necessary rights to develop leased land. Leases can also be assigned, sold or transferred through succession. Additionally, there is no maximum term for which land can be leased from a private owner; however, there is a 40 year maximum lease term on state land which allows the possibility of an extension.

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

Should one choose to obtain a long-term lease, there are contractual safeguards to consider. A forum selection clause enables the parties to resolve contract disputes outside Cambodia. An investor can include restrictions on sale which require that the landowner must obtain the lessee's permission to sell or bar the land owner from selling unless the new owner recognizes the lease. One can also acquire administrative oversight—agreement to register a “block sale notice” with the Land Office,

instructing the office not to sell the land without the lessee's permission.

6.4 Transfer of Title

This option allows foreign nationals to purchase land or property and register the title in the name of a Cambodian citizen. The foreign national and the Cambodian can then enter into a lease agreement (period of 70 to 99 years), whereby the Cambodian citizen leases the land or property back to the foreign national.

In this agreement, the foreign national may sell the land or property and retain 100% of revenue from the sale. To ensure security, after the title is transferred to the Cambodian citizen, the foreign national should retain possession of the original copy of the new land title because the sale of the land is prohibited without the original copy of the land title.

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

7. LAND CONCESSIONS

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

A land concession is a legal right provided in a juridical act under the discretion of the competent authority (granted by the Cambodian government), given to a natural person, legal entity or group of persons to occupy and exercise the rights on a land in accordance with the Land Law. A land concession area must not exceed 10,000 hectares and the maximum duration is limited to 99 years. All public authorities or competent institutions entitled to undertake infrastructure projects (ministries, public institutions, state-owned legal entities, local government) have the power to enter into concession contracts for infrastructure projects falling within their respective sphere of competence and related ancillary agreements.

8. CONSTRUCTION

All individuals or legal entities, either public or private, shall have the right to construct buildings on the land they possess. Obtaining a construction permit, however, is an obligatory first step. In addition, the construction permit must be obtained prior to having the title certificate to the land and the master plan approved by the government. An application for a construction permit must be made and submitted to the provincial office and municipality or to the Royal Government of Cambodia (RGC) depending on the case. The Ministry of Public Works and Transportation will review plan before opening the construction site.

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

1. OVERVIEW

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

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

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

2. TRADEMARKS

Trademarks provide their owners the right to prevent rivals from using identical or confusingly similar marks and trade names on their goods and services. This publication is meant as a straightforward guide to the registration and enforcement of trademarks within the Kingdom of Cambodia. It draws on the Law itself, coupled with advice and interpretation based on professional experience.

In February 2002, the National Assembly adopted the Law on Marks, Trade Names and Acts of Unfair Competition. This was followed in 2006 by a Sub-Decree on its implementation.¹ As the legislation, and indeed much of the Cambodian legal system, is so recent, trademark law is not as developed or sophisticated as in many countries. There remain significant gaps and unresolved questions in the law, as well as many provisions which are not uniformly applied in practice.

2.1 Protectable Subject Matter

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

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

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

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

Geographical Indications ("GI") are registerable under a provisional law, as the National Assembly drafts a full GI bill to comply with Cambodia's TRIPS obligations.

¹ Prakas on the Procedures for the Registration and Protection of Marks of Goods which include a Geographical Indication – Ministry of Commerce No. 105 MOC / SM 2009; 18 May 2009

2.2 Registering a Trademark in Cambodia

Trademarks are registered with the Ministry of Commerce's Department of Intellectual Property (DIP). Cambodia uses a first-to-file system, so the use of a mark is not required when filing an application. Applications and supporting documents may be in either Khmer or English; documents in other languages must be accompanied by a Khmer or English translation. Foreign applicants must be represented by an agent residing and practicing in Cambodia.

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

For priority claims under the Paris Convention², the applicant must include information regarding any previous international registration of the mark, and evidence setting forth such registration (including all registration numbers and priority claim/first use dates).

Although not a signatory, Cambodia follows the Nice Agreement in classifying goods and services.³ The applicant must specify the particular goods or services, as the Nice class heading is not acceptable. Marks with figurative elements must be described using the Vienna Classification.⁴ Marks containing foreign words are registerable, but the applicant must provide a transliteration and translation.

Once complete documentation has been submitted, and unless the DIP rejects the mark, the process of registration typically takes around four months. If the DIP decides that all the legal requirements are fulfilled, they will issue a certificate of registration to the applicant and publish the mark in the Official Gazette of the Ministry of Commerce.

Trademark Official Fees (US\$)	
Official search (Word)	\$30 per mark, per class
Official search (Logo & Word)	\$40 per mark, per class
Application and registration (10-year term)	\$180 per mark, per class
Filing of affidavit of use or non-use	\$85 per mark, per class
Record of mark assignment	\$85 per mark, per class
Record of name change or merger of mark owner	\$85 per mark, per class
Other corrections (applicant's fault)	\$45 per mark, per class
Record of address change	\$85 per mark, per class
Cancellation of mark registration	\$110 per certificate
Renewal Filing	\$180 per mark, per class

² Paris Convention for the Protection of Industrial Property, adopted March 20, 1883.

³ International Classification of Goods and Services for the Purposes of the Registration of Marks, adopted June 15, 1957.

⁴ International Classification of the Figurative Elements of Marks, adopted June 12, 1973.

2.3 Bars to Registration

The Trademark Law sets forth six specific bars to registration. A mark cannot be validly registered, and is subject to opposition and invalidation if it is:

- Incapable of distinguishing the goods or services of one enterprise from those of other enterprises;
- Contrary to public order or good custom;
- Likely to mislead as to the origin of the goods or services concerned or their nature or characteristics;
- Identical with, or is an imitation of or contains as an element, an armorial bearing, flag and other emblem, a name or abbreviation or initials of the name of or official sign or hallmark adopted by any State, intergovernmental organization or organization created by an international convention, unless authorized by the competent authority of that State or organization;
- Identical with, or confusingly similar to, or constitutes a translation of a mark or trade name which is well-known and registered in the Kingdom of Cambodia for goods or services which are not identical or similar to those in respect of which is applied for, provided that use of the mark in relation to those goods or services would indicate a connection between those goods or services and the interests of the owner of the well-known mark are likely to be damaged by such use; or
- If it is identical with a mark belonging to a different proprietor and already on the Register, or with an earlier filing or priority date, in respect of the same goods or services or closely related goods or services, or it is so nearly resembles such mark as to be likely to deceive or cause confusion.

In practice, if the DIP decides that a mark should not be registered, it will inform the applicant via a Notice of Preliminary Rejection. The reason for rejection is typically only a short phrase, and a list of the prior registrations where the DIP finds it would be confusingly similar. The applicant then has sixty days to apply for a hearing or submit written arguments as to why it should be registered. Failure to respond is deemed to constitute an abandonment of the application.

2.4 Maintaining a Trademark

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

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

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

2.5 Publication and Opposition

Once the mark is registered and the certificate issued, the DIP will publish a reference in the Official Gazette of the Ministry of Commerce. The published information contains the filing and

priority date (if any), the mark itself, application and registration numbers, class, names and addresses of the owner and agent (if any). The Official Gazette is available in hard-copy format only, free of charge from the Ministry of Commerce.

Within ninety days of publication, an interested person may give notice of opposition to the DIP. A registration may be opposed on the grounds that it does not meet the definitional requirement for a mark, it is barred under one of the six statutory bars described above, and/or the procedures were improperly followed. The notice of opposition is then forwarded to the applicant, who can choose to submit a counter-statement within ninety days. If no counter-statement is submitted, the registration is deemed abandoned. But if a counter-statement is submitted, following a hearing, the DIP will decide whether the registration should be cancelled. The Law does not provide for any appeal process, and so the DIP's decision is deemed final.

2.6 Invalidation, Removal, and Cancellation

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

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

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

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

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

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

2.7 Collective Marks

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

marks.

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

As for invalidation, the law provides for three grounds in addition to those applicable to regular marks:

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

Finally, applications for and registrations of collective marks may not be licensed. Only the owner of a collective mark has the right to authorize others to use its mark, they may not license others this right. To grant another such authorization must be done through an assignment, where the assignee becomes the new owner of the collective mark.

2.8 Licensing

Both registered marks and pending applications may be the subject of license contracts. Licenses must provide for effective control by the licensor of the quality of the goods or services of the licensee. Further, the licensor must effectively enforce these quality-control provisions. Failure to include or enforce such provisions can lead to the invalidation of the license. Interestingly, the Law does not provide for the invalidation of the registration itself, it simply renders the license contract invalid.

Of particular importance is the requirement that every license contract be submitted to the DIP. Therefore any unrecorded license contract has no effect as against third parties. The DIP will publish a reference to the license in the Official Gazette, while keeping the terms of the contract confidential.

2.9 Infringement

There are two standards for infringement of regular (not well-known) marks – a narrow and strong standard, and a broader and weaker one.

Under the first test, the unauthorized use of the exact registered mark is infringing only if it is used in relation to the exact goods or services for which it has been registered. A slight modification of the mark, or the use of the exact mark but on a slightly different product from that registered, would not be infringing.

Under the second standard, use of a sign similar to the registered mark, on goods or services similar to those for which the mark has been registered, is infringement only if confusion may arise in the public. This second standard broadens the scope of similarity and of the goods or services, but adds the limitation that public confusion must arise.

The Law accords greater protection for well-known marks, though without ever defining the term. Infringement of *unregistered* well-known marks is evaluated using the same two-part test as for regular marks. *Registered* well-known marks use this same standard, but also are protected from use on any good or service which would indicate a connection with the owner, and the owner's interests are likely to be damaged.

A trademark owner has the right to prevent others from infringing their mark, and performing

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

2.10 Civil remedies, customs suspension, and criminal penalties

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

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

Second, a trademark owner can request the customs authorities, or a civil court, to suspend customs clearance and destroy counterfeit goods. As Cambodia’s manufacturing base is relatively narrow, most infringing goods are imported from abroad. Only clear-cut cases of infringement are amenable to this procedure, as the standard for “counterfeit goods”⁵ is significantly higher than that used for civil cases. The process begins with the submission of a statement showing a prima facie case that the goods are counterfeit, a description of the goods, and payment of an official fee. The authorities can require the applicant to provide a security or other assurance. Within ten working days of this submission, the authorities must notify the applicant whether the application has been granted, rejected, or reserved for further consideration. If the application is granted, the customs authority will suspend clearance of the goods for a defined period, extendable for not more than ten working days. The applicant then has ten working days to initiate a civil infringement case, or else the goods will be released from customs. If the authorities deem the applicant’s case to be wrongful, they have the power to order payment of compensatory damages to the importer. Finally, the customs authorities, with court approval, can order the destruction of counterfeit goods. While customs clearance doesn’t offer the trademark owner monetary damages, it can be far quicker than instituting a civil infringement case.

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

⁵ “Counterfeit trademark goods” means any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation.

2.11 Unfair Competition

Acts of unfair competition are also prohibited under the same law that protects trademarks. The unfair competition provisions are short, broad and vague. Any act of competition contrary to “honest practices” in business is prohibited. The Law then lists three types of behavior as specifically, but non-exclusively, forbidden:

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

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

3. PATENTS

Cambodia’s Law on Patents, Utility Models and Industrial Designs provides a set of exclusive rights to an inventor or his assignee for a fixed period of time in exchange for disclosure of an invention, utility model or industrial design. Enacted in 2003 to comply with Cambodia’s WTO obligations, the Law was supplemented in 2006 by a decree detailing procedures.⁶ Although the Law is relatively new and untested, it specifically provides that any international IP treaty to which Cambodia is a party⁷, will trump the national legislation in case of conflict. While Cambodia is not a party to the Patent Cooperation Treaty, the Law provides a procedure for registering foreign applications in Cambodia.

3.1 Patentable Subject Matter

Patents may be granted only for certain types of inventions. The Law defines an invention as “an idea of an inventor which permits in practice the solution to a specific problem in the field of technology”; it may relate to either a product or a process. Six types of inventions are categorically excluded from patent protection :

- Discoveries, scientific theories and mathematical methods;
- Schemes, rules or methods for doing business, performing purely mental acts or playing games;
- Methods for treatment of the human or animal body by surgery or therapy as well as diagnostic methods practiced on the human or animal body, excluding products for use in any of these methods;
- Certain pharmaceutical products (until January 1, 2016)⁸;
- Plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals;

⁶ Prakas No 706 on The Procedure to Issue Patent and Utility Model Certificate

⁷ Cambodia is presently a party to the Paris Convention for the Protection of Industrial Property (1883), the WIPO Convention (1967), Agreement on Trade-Related Aspects of Intellectual Property Rights (1994), and the Convention on Biological Diversity (1992).

⁸ According to the Declaration on Agreement on Trade-Related Aspects of Intellectual Property Rights and Public Health of the Ministerial Conference of the World Trade Organization dated November 14, 2001 in Doha, Qatar; Patent Law, Art. 136; Prakas Rule 45

- Plant varieties.⁹

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

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

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

3.2 Novelty, Inventive Step, and Utility

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

An invention is new if it is not anticipated by prior art. Prior art consists of everything disclosed to the public, anywhere in the world, by publication in tangible form or by oral disclosure, by use or in any other way, prior to the date of filing or the priority date. The only exclusion to this broad definition are disclosures made by the applicant or his predecessor in title, or an abuse by a third party (e.g. divulging the applicant's trade secret), made within twelve months of filing or the priority date.

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

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

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

3.3 Inventor's Right to a Patent

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

⁹ Plant varieties are protected under a separate law, Royal Kram No NS/RKM/0508/015 on Seed Management and Plant Breeder's Right

3.4 Application Procedure

Patent applications are filed with the Department of Industrial Property of the Ministry of Industry, Mines, and Energy (MIME). Foreign applicants must be represented by an agent residing and practicing in Cambodia. The applicant must submit the following documents:

- **Application Form:** Including the name, address, nationality, and residence of each applicant.
- **Statement of Applicant's Right:** Where the applicant is the inventor, the filing must include a statement to that effect. Where the applicant is not the inventor, the filing must indicate each inventor's name and address, and be accompanied by a statement justifying the applicant's right to the patent.
- **Power of Attorney:** Certified by a notary public, granting an agent the authority to act on behalf of the applicant in the registration process.
- **Business License/Certificate of Incorporation:** A certified copy of the applicant's business license or certificate of incorporation, if the applicant is a legal entity;
- **Foreign Filing Information:** Information regarding any previous international registration of the patent, and evidence setting out such registration (including all registration numbers and priority claim/first use dates).

For 2010, subject to change without notice, the official fees are as follows:

Patent Registration - Official Fees (US\$)	
Application (1-10 claims)	\$170
Each claim in excess of 10	\$5/claim
First publication (18 months from filing)	\$30
Second publication (36 months from filing)	\$30
Issuance of the patent certificate of registration	\$150
Change of ownership or licensee	\$60
Official Translation – English to Khmer	\$19/page

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

The application must contain a request, a description of the invention, one or more claims, drawings, and an abstract. The written description must disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person having ordinary skill in the art and must indicate the best mode known to the applicant for carrying out the invention. Claims must be clear and concise, and fully supported by the description. If necessary to understand the invention, drawings must be provided. The abstract merely provides technical information, it does not affect the scope of protection.

Any decision of the Registrar, such as the refusal to grant a patent, may be appealed to the competent court within three months of the decision.

3.5 Rights Conferred by a Patent

The owner of a product patent has the right to exclude others from making, importing, selling, offering for sale, and using the product, and from stocking the product for the purpose of sale or use. As for process patents, the owner has the right to prevent others from using the process and from doing any of the acts covered by a product patent where the product is obtained directly by means of the process. The patent owner may institute court proceedings against anyone who performs such acts, or who makes such acts more likely to occur.

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

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

3.6 Government Exploitation

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

3.7 Non-Voluntary Licenses

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

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

3.8 Invalidation

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

- The invention does not permit in practice the solution to a specific problem in the field of technology;

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

3.9 Assignments & Licenses

Both registered patents and applications may be freely assigned and licensed. All changes in ownership (assignments) must be in writing and must be recorded by the Registrar. Unless recorded, assigned patents are unenforceable against third parties. License contracts, whether oral or written, also need to be registered in order to be enforceable. The Registrar will publish a reference to the recordation, while keeping the license terms confidential.

3.10 Duration & Annual Maintenance Fees

The term of a patent is twenty years from the application's filing date. Although the Law states that payment of an annual maintenance fee begins one year from filing, in practice the Registrar requires payment beginning in the fifth year. A six-month grace period is allowed for the late payment of the annual fee, with an additional surcharge. Failure to pay the annual fee results in the withdrawal of the patent application, or lapse of the granted patent.

For 2010, subject to change without notice, the official fees are as follows:

Patent Annual Maintenance Fees (US\$)	
5th Year	\$120
6th Year	\$160
7th Year	\$200
8th Year	\$240
9th Year	\$280
10th Year	\$320
11th Year	\$370
12th Year	\$420
13th Year	\$470
14th Year	\$520
15th Year	\$570
16th Year	\$630
17th Year	\$690
18th Year	\$760
19th Year	\$830

20th Year	\$910
-----------	-------

3.11 Infringement & Criminal Penalties

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

4. UTILITY MODELS

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

Although the Law concerning utility model certificates was passed in 2003, it has not yet been implemented by the Registrar, and so certificates are not currently granted. In the aim of providing information for when the Law is implemented, this guide will provide a straightforward and comprehensive overview of the matter. Almost all the provisions are identical to the patent articles. Although the law is relatively new and untested, it specifically provides that any international IP treaty to which Cambodia is a party¹⁰, will trump the national legislation in case of conflict. While Cambodia is not a party to the Patent Cooperation Treaty, the Law provides a procedure for registering foreign applications in Cambodia.

4.1 Subject Matter

Utility model certificates may be granted only for certain types of inventions. The Law defines an invention as “an idea of an inventor which permits in practice the solution to a specific problem in the field of technology”, it may relate to either a product or a process. Six types of inventions are categorically excluded from protection :

- Discoveries, scientific theories and mathematical methods;
- Schemes, rules or methods for doing business, performing purely mental acts or playing games;
- Methods for treatment of the human or animal body by surgery or therapy as well as diagnostic methods practiced on the human or animal body, excluding products for use in any of these methods;
- Certain pharmaceutical products (until January 1, 2016);

¹⁰ Cambodia is presently a party to the Paris Convention for the Protection of Industrial Property (1883), the WIPO Convention (1967), Agreement on Trade-Related Aspects of Intellectual Property Rights (1994), and the Convention on Biological Diversity (1992).

- Plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals;
- Plants varieties.¹¹

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

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

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

4.2 Novelty and Utility

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

An invention is new if it is not anticipated by prior art. Prior art consists of everything disclosed to the public, anywhere in the world, by publication in tangible form or by oral disclosure, by use or in any other way, prior to the date of filing or the priority date. The only exclusion to this broad definition of prior art are disclosures made by the applicant or his predecessor in title, or an abuse by a third party (e.g. divulging the applicant's trade secret), made within twelve months of filing or the priority date.

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

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

4.3 Inventor's Right to a Utility Model Certificate

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

¹¹ Plant varieties are protected under a separate law, Royal Kram No NS/RKM/0508/015 on Seed Management and Plant Breeder's Right

certificate, the employee has the right to be named as the inventor on the application.

4.4 Application Procedure

Utility model applications are filed with the Department of Industrial Property of the Ministry of Industry, Mines, and Energy (MIME).. Foreign applicants must be represented by an agent residing and practicing in Cambodia. The applicant must submit:

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

For 2010, subject to change without notice, the official fees are as follows:

Utility Model Certificates - Official Fees (US\$)	
Application (1-10 Claims)	\$150
Each claim in excess of 10	\$5/claim
First publication (18 months from filing)	\$30
Issuance of the certificate of registration	\$120
Second publication (36 months from filing)	\$30
Change of ownership or licensee	\$60
Official Translation – English to Khmer	\$19/page

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

The application must contain a request, a description of the invention, one or more claims and drawings, and an abstract. The written description must disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person having ordinary skill in the art and must indicate the best mode known to the applicant for carrying out the invention. Claims must be clear and concise, and fully supported by the description. If necessary to understand the invention, drawings must be provided. The abstract merely provides technical information, it does not affect the scope of protection.

At any time before the grant or refusal of a utility model certificate, an applicant may convert his

application into a patent application, and vice-versa. The converted application retains the original's filing date. An application may be converted from one to the other only once.

Any decision of the Registrar, and in particular the refusal to grant a utility model certificate, may be appealed to the competent Court within three months of the decision.

4.5 Rights Conferred by a Utility Model Certificate

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

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

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

4.6 Government Exploitation

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

4.7 Non-Voluntary Licenses

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

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

4.8 Invalidation

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

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

4.9 Duration and Annual Maintenance Fees

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

For 2010, subject to change without notice, the annual fees are as follows:

Utility Model Annual Maintenance Fees (US\$)	
2nd Year	\$60
3rd Year	\$80
4th Year	\$100
5th Year	\$120
6th Year	\$140
7th Year	\$170

4.10 Assignments and Licenses

Both registered certificates and applications may be freely assigned and licensed. All changes in ownership (assignments) must be in writing and must be recorded by the Registrar. Unless recorded, assigned utility model certificate are unenforceable against third parties. License contracts, whether oral or written, also need to be registered in order to be enforceable. The Registrar will publish a reference to the recordation, while keeping the license terms confidential.

4.11 Infringement and Criminal Penalties

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

5. INDUSTRIAL DESIGNS

Cambodia's Law on Patents, Utility Models and Industrial Designs provides a set of exclusive rights to a designer or his assignee for a fixed period of time in exchange for disclosure of their industrial design. Enacted in 2003 to comply with Cambodia's WTO obligations, the Law was supplemented in 2006 by a decree detailing procedures¹². Although the Law is relatively new and untested, it specifically provides that any international IP treaty to which Cambodia is a party¹³ will trump the national legislation in case of conflict.

5.1 Protectable Subject Matter

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

5.2 Registrable Industrial Designs

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

5.3 Right to an Industrial Design Registration

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

5.4 Application Procedure

Industrial designs are registered with the Department of Industrial Property of the Ministry of Industry, Mines, and Energy. Foreign applicants must be represented by an agent residing and practicing in Cambodia. An applicant must submit the following documents:

- **Application Form:** including the name, address, nationality, and residence

of each applicant.

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

For 2010, subject to change without notice, the official fees are as follows:

Industrial Design - Official Fees (US\$)	
Application	\$60
Registration (1-5 Years) & Publication	\$135
First Renewal (6-10 Years) & Publication	\$200
Second Renewal (11-15 Years) & Publication	\$250
Late Payment of Renewal Fee	\$20
Ownership and licensee changes	\$40

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

5.5 Rights, Duration, and Renewal

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

Registrations are valid for a period of five years from the filing date, renewable for two further

consecutive five-year terms, for a total of fifteen years. The renewal filing must be accompanied by payment of a renewal fee, which can be paid up to six months late with payment of a surcharge.

5.6 Invalidation

Any interested party may request a competent court to invalidate an industrial design registration on the grounds that:

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

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

5.7 Assignments & Licenses

Both registered industrial designs and applications may be freely assigned and licensed. All changes in ownership (assignments) must be in writing and must be recorded by the Registrar. Unless recorded, assigned registrations are unenforceable against third parties. License contracts, whether oral or written, also need to be registered in order to be enforceable. The Registrar will publish a reference to the recordation, while keeping the license terms confidential.

5.8 Infringement & Criminal Penalties

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

6. COPYRIGHTS

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

6.1 Copyrightable Subject Matter

The Copyright Law protects the following subject matter:

- All kinds of reading books or other literary, scientific, and educational documents,
- Lectures, speeches, sermons, oral or written pleadings and similar works,

- Dramatic works and musical dramas,
- Choreographic works, either modern or adapted from traditional works or folklore,
- Circus performances and pantomimes,
- Musical compositions, with or without words,
- Audio-visual works,
- Works of painting, engraving, sculpture or other works of collages, or applied arts,
- Photographic works, or those realized with the aid of techniques similar to photography,
- Architectural works,
- Maps, plans, sketches or other works pertaining to geography, topography, or other sciences,
- Computer programs and the design, encyclopedia, and documentation relevant to those programs.
- Products of collage work in handicraft, hand-made textile products or other clothing fashions.

The Law specifically excludes from protection all laws, regulations, government circulars, court decisions, and their translations, as well as any idea, formality, method of operation, concept, principle, discovery or mere data, even if expressed, described, explained or embodied in a work. Works are protected whether publicly disclosed or not. A work is deemed created by the sole fact of the realization, even if incomplete, of the author's idea.

6.2 Authorship

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

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

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

6.3 Economic Rights

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

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

6.4 Moral Rights

Authors also enjoy certain moral rights, which are perpetual, inalienable, undistrainable, and imprescriptible. Although moral rights cannot be sold or transferred during the author's lifetime, they are passed to the heirs on the author's death.

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

6.5 Performance Rights

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

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

6.6 Limitations to Rights

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

- Importing a copy of a work by a natural person, for their personal use;
- Privately reproducing a work in a single copy, by a natural person for their own personal purposes, with certain exceptions;

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

6.7 Copyright Duration

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

- Sole author: life of the author plus 50 years after their death;
- Collaborative work (multiple authors): life of the last surviving author plus 50 years after their death;
- Published anonymous, pseudonymous, collective, audiovisual, and posthumous works, published within 50 years of their creation: 75 years from the end of the calendar of the year of publication;
- Anonymous, pseudonymous, collective, audiovisual, and posthumous works which have not been published within 50 years of their creation: 100 years from the end of the calendar year of its creation.

6.8 Transfer & Exploitation of Economic Rights

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

All contracts for the exploitation of economic rights must be in writing. They must separately specify each domain of exploitation of those transferred rights, properly limited in place, objective

and duration. Where an individual author contributes their separate work to a collective work, they retain the right to exploit their own contribution, unless otherwise agreed, provided that the author's exploitation does not damage the collective work. A co-author must have the consent of all co-authors to exploit a work, disagreements must be referred to a court.

6.9 Deposit & Registration

Although every work is automatically protected, authors or their rights-holders may deposit their works at the Ministry of Culture and Fine Arts. The registration requires a record of the author's real name, date of the first publication of work, date of creation of work, as well as the record of the author's right. As of February 2010, the official fee for deposit and registration is a nominal US\$2.50. The Ministry will issue a Certificate of Registration upon proper registration. The Law specifies no particular benefits to registration, it is purely voluntary.

7. GEOGRAPHICAL INDICATORS

A geographical indication is a name or sign used on certain products which corresponds to a specific location, where the quality or reputation of the goods is essentially attributable to its place of origin. Examples of well-known geographical indications include Champagne, Florida Oranges, and Prosciutto di Parma. With a registered GI, regional producers should be better able to distinguish and market their goods from the competition.

Since early 2009, GIs are registrable with the Ministry of Commerce under an interim regulation, as the National Assembly considers a full GI law to comply with its WTO obligations.

As part of the registration procedure, the group of producers must submit a Book of Specifications detailing the geographical area, production conditions, and qualification process for the products. Both domestic and foreign GIs can be registered. The initial term of protection is for ten years, renewable indefinitely.

Thus far, there have been two applications for GI registrations – Kampot Pepper and Palm Sugar from Kompung Speu. Both are still pending and should be issued some time in 2010.

8. TRADE SECRETS

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

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

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

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

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

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

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

9. RIGHT OF PUBLICITY

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

The unauthorized use of someone's identity for commercial purposes may be considered a form of unfair competition, in violation of "honest practice". However, to the author's knowledge, this has never been tested in a Cambodian court of law.

Perhaps the only legal provision treating the right of publicity is Article 26 of the Law on Copyright and Related Rights (2003), which prohibits unauthorized biographies.

1. OVERVIEW

In Cambodia, the supervisory authority in the banking sector is the National Bank of Cambodia (NBC). Currently, the NBC issues licenses, revokes licenses, regulates and supervises banks and financial institutions and other relevant establishments.

The NBC was established in December 1954. Over the last 60 years, the NBC has seen many changes. The country's banking system was completely destroyed in 1975 and did not re-emerge until 1979. Since that time, the country's banking system has transformed dramatically and has emerged into a two-tiered system, while the economy has strengthened after developing into a free-market economy.

2. TYPES OF BANKS

2.1 Commercial Banks

Commercial banks are generally incorporated in accordance with the Law on Commercial Enterprise and engage in banking business after getting the necessary approval and license from the NBC. As of December 2008, there were 24 commercial banks in Cambodia, including 3 foreign branch banks.

Commercial banks' activities fall into three main categories:

- Credit operations for valuable consideration, including leasing, guarantees and commitments under signature;
- The collection of non-earmarked deposits from the public; and
- The provision of means of payment to customers and the processing of said means of payment in national currency or foreign exchange.

New capital requirements require that locally incorporated commercial banks with an "investment grade" rating granted by a reputable rating agency, must have minimum capital of KHR 50 billion. The capital minimum requirement is higher at KHR 150 billion for commercial banks with shareholders who are individuals or companies.

2.2 Specialized Banks

According to the Law on Banking and Financial Institutions (LBFI), a specialized bank is defined as a bank that carries out only one of the three basic activities mentioned above. The establishment of a specialized bank was viewed as an addition to the commercial bank or as a specialist in a particular sector under the priority of the Royal Government of Cambodia (RGC). Investors established a specialized bank as a first step before expanding them into a commercial bank. Cambodia has also introduced rural credit specialized banks.

Capital requirements require that locally incorporated specialized banks with an "investment grade" rating granted by a reputable rating agency, must have minimum capital of KHR 10 billion. Whereas, specialized banks, which have individuals or companies as shareholders, require a minimum capital of KHR 30 billion. There are currently six specialized banks, including the state-owned Rural Development Bank.

2.3 Microfinancial Institutions (“MFI”)

Under Cambodian regulations, micro-finance is defined as “the delivery of financial services such as loans and deposits, to the poor and low income households, and to micro-enterprises.”

A licensed MFI has a limited scope of service. It can only conduct the banking operations mentioned in its definition. Credit services are deemed to be permitted, unless otherwise restricted by a regulation or terms of the license.

In order to offer savings accounts, the microfinancial institution must obtain another license as a microfinance deposit-taking institution.

3. ESTABLISHING A BANK

In order to set up a bank, a company must first be authorized and obtain a license from the NBC. Before obtaining a license, banks must satisfy specific regulations with respect to its structure (e.g. commercial enterprise, cooperatives, or mutual society etc).

Investors normally utilize a public limited company (PLC) to create a bank. However, prior to establishing a PLC, investors should seek an approval in principal (general agreement) from the NBC that would allow them to apply for the banking license. The application for the banking license must be filed with the NBC. BNG Legal can provide model letters to attach to the application that are specific to the applicant’s circumstances.

The bank must be managed by two people with the necessary integrity, qualifications, and relevant banking experience. The shareholders should have proven experience in the areas that the bank intends to develop. Technical resources, including information systems, must be efficient and reliable, particularly in regard to the operational security of its customers. Furthermore, applicants must adhere to laws, regulations and business practice standards regarding operations and organizational procedures in order to ensure compliance and limit risk.

Over the years, the bank’s financial viability will be verified; it must sufficiently prove its competence by means of business plans, market studies, financial simulations, and, where appropriate, stress scenarios. The financial simulations must cover both the customary indicators used in financial analysis and prudential standards.

3.1 Approval and Time Frame

For commercial banks and microfinance institutions, the NBC will provide written notification of its decision within six months from the receipt of the application and all relevant documents. The period of notification is reduced to 3 months for specialized banks. Where appropriate, the approval will set out the specific conditions laid down by the NBC for its entry into force and the timetable for the project. If the project has not been completed upon expiry of the deadline, and if no extension has been requested, the approval becomes void.

3.2 Period of License

The NBC will provide an indefinite license to all commercial banks, specialized banks and microfinance institutions operating in the Kingdom of Cambodia. The NBC will also issue a certificate of registration once the financial operators have met the set standards and criteria and supplied the required information and documents. This certificate can be withdrawn and the registration cancelled if the operators do not comply with conditions set by the NBC.

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

Under the LBFI, a person cannot be member of a board of directors or supervisory board of a

licensed entity, or, either directly or through an intermediary, direct, manage or run a licensed entity in any capacity, or be authorized to sign on behalf of such an institution, if he has any criminal history.

4. FOREIGN BANK BRANCHES & REPRESENTATIVE OFFICES

Cambodia also allows foreign businesses to operate in Cambodia. According to the Law on Commercial Enterprises 2005, a foreign business can exist as a branch, subsidiary or a representative office. In the banking sector, the LBFI states that “a covered entity may be locally incorporated in Cambodia or be a branch of a foreign bank.” Therefore, a foreigner may establish a locally incorporated bank or branch in Cambodia.

Forms other than the branch including an information, liaison or representative office cannot carry out banking operations, financial intermediation or canvassing operations (Article 13 LBFI). In order to open the above-mentioned offices, prior approval from the NBC is required. These establishments may be locally incorporated or created as a simple entity or an office, and it must be entered in the Commercial Registrar. They may use the business name of the foreign bank they represent; however, an authorization is granted for a two-year period, which can only be renewed once.

5. REGULATORY COMPLIANCE

5.1 Management Evaluation System

The management evaluation system is a very useful mechanism to evaluate the management systems of banking and financial institutions. Upon the result of the evaluation, the NBC may require the related bank or financial institution to take certain measures to improve management performance. The CAMELS bank rating system or the ROCA system may perform the evaluation.

5.2 On-Site Examination And Off-Site Surveillance

In supervising and monitoring the banking and financial institutions, the NBC is empowered to conduct any on-site examination/inspection and off-site monitoring on any banking and financial institution. The purpose of this examination is to confirm whether the bank or financial institution is adhering to the applicable laws and regulations, and to verify its management and financial soundness.

The LBFI clearly states that the supervisory authority (NBC) supervises the banking system through permanent off-site monitoring and periodic on-site examinations of each covered entity; if the need arises, on-site examinations may be extended to a subsidiary of a covered entity or to any other related entities, including shareholders.

In accomplishing this duty, the NBC is entitled to require that banking and financial institutions, public offices, auditors and any other individual or legal entity disclose information considered useful to its task (Article 40 of LBFI). Furthermore, the NBC may take disciplinary action against banking and financial institutions that fail to comply with laws and regulations, and any person who hinders these examinations will be punished by the LBFI.

5.3 Corporate Governance

Corporate governance of banks has recently been significantly enhanced with the introduction of outside directors, audit committees, and compliance officers. Financial institutions have revised their articles of incorporation and bylaws to include corporate governance, and banking laws have been revised to enable banks to adopt new corporate governance.

5.4 Activities Barred Under the Banking Act

The following categories of bank lending and investment are prohibited under the Banking Act:

- Loans for the purpose of speculation in commodities or securities;
- Loans made directly or indirectly on the pledge of a bank's own shares or on the pledge of shares in excess of 20% of the outstanding shares of another company;
- Loans made directly or indirectly for purchase of the bank's own shares;
- Loans made directly or indirectly to finance political activities;
- Loans to any of the bank's officers or employees except for small, insignificant loans as determined by the FSC/FSS;

5.5 Supervision of Trust Accounts

Bank trust is a financial arrangement under which the trustor places his assets in a trust account managed by a bank. The bank, acting as a trustee, invests the trustor's assets and distributes the returns it generates in the form of a dividend to the beneficiary. Along with the banking business, domestic banks operate trust accounts. Supervision of the bank trust business is aimed at maintaining orderly trust transactions and promoting prudential management of trust business.

5.6 Protection of Trustors and Beneficiaries

The Trust Business Act requires banks to manage trust properties under separate accounts from others. The Trust Business Act also prohibits the bank from channeling cash from a particular fund into another fund for the purpose of increasing the fund's rate of return.

The FSC/FSS has the authority to review the standard terms and provisions of new trust services offered by banks or revised contract terms of established trust services, and order banks to modify terms that fail to protect the beneficiaries. Banks must also provide reliable information on the status of their trust business with appropriate and timely disclosure of financial statements that include the rate of return on the assets managed by the banks under their trust account.

1. OVERVIEW

In recent years, the development of oil and other natural resources has become important to Cambodia's economic growth. The country's mineral resources have until now been largely left unexplored, because decades of war have prevented technological advancement and specialist training. As a result, numerous regulatory incentives have been introduced to attract investors into the sector.

Cambodia is enriched with natural resources, and due to the country's recent oil discovery, investment in the energy sector has significantly increased. As the mining and energy sectors are in the early stages of development, it is an exciting time for investors seeking expansion. In this section we provide basic information for investors interested in this industry and highlight recent developments.

2. MINING

The Ministry of Industry, Mine and Energy (MIME) regulates mining and energy in Cambodia. In 2001 the Law on Minerals, Management and Mining was promulgated, which was a significant step forward for mining in Cambodia. The law detailed the legal requirements for mining operations and petroleum regulations, and established the Cambodian National Petroleum Authority.

In order to conduct the exploration or exploitation of mineral resources, one must have a mineral resource license. The holder of a mineral license must pay the royalties to the government on the value of minerals extracted at a rate that is regulated by the Inter Ministerial Prakas.

The applicant or the holder of a license must also pay the registration fee, application fee and annual land rental. The tax rate for mineral exploitation currently remains unclear because various laws dictate different percentages. Regulations regarding a special tax for mineral exploitation have not yet been issued.

2.1 Exportation of Mineral Resources

According to the Sub-Decree on Determination of Investment Principles of Mineral Resources (2005), exporting mineral resources is prohibited--only final products of mineral resources can be exported. However, the term 'final product' is not defined by this Sub-Decree.

2.2 Water Resource License

The Law on Water Resources Management (2007) states that company or persons must obtain a water resource license for the activities relating to extracting "soil, sand, rock, pebbles, petroleum and gas from the bottom and the beach of the sea, rivers, lakes, waterways and creeks." The water resource license must be issued by the Ministry of Water Resource and Meteorology.

2.3 Owner Consent

In addition to the mineral resource license, the company must obtain the necessary permission from the relevant authority in order to exploit the minerals on protected or restricted state land or privately-owned land. Should operations damage the land, the license holder must indemnify the land owner.

3. ELECTRICITY

The 2001 Electricity Law and the 1991 Petroleum Regulation have been significant to the energy sector. The Electricity Law established a new independent body, the Electricity Authority of Cambodia (EDC) and introduced a new system that changed licensing and tariff settings and encouraged private sector participation in the electricity sector. The Electricity Law also raised key issues regarding new and existing rural private providers.

According to Article 6 of the 1996 Law on the Environment, an environmental impact assessment must be conducted for all of the environmental effects of all private or public projects and activities that have the potential to “debase the environment”, including that of the “ecological system, health and public welfare”. This assessment must be reviewed and approved by the Ministry of Environment.

The Cambodia Electricity Authority issues the electricity licenses. Applications for distribution licenses, retail licenses or consolidated licenses must be submitted to the Local Authority who then forwards the application to the EDC. In all other cases, applications must be submitted to EDC directly.

Two weeks after submission, the EDC must publicize the summarized contents of the application to the local authorities and the public living in the area where the service is to be provided. The public can then provide written suggestions or comments to EDC.

Should the license be granted, the licensee must send copies of the license within 30 days to the relevant institutions, which include all local authorities concerned with the service areas; all local courts concerned with the service areas; MIME; Office of the licensee ; and the EDC headquarters.

For distribution, retail and consolidated licenses, an area map authorized by the EDC must also be sent to the relevant institutions.

4. OIL & GAS

The 1991 Petroleum Regulation and its 1998 and 1999 amendments detail the state’s role, operational conditions and procedures, financial obligations, and environmental, health and safety standards regarding petroleum development.

In order to carry out petroleum operations in Cambodia, the MIME must first issue an invitation for bid. After evaluating the bids, the MIME can then negotiate with any qualified bidders. Following negotiations, the MIME will forward its recommendation to the Royal Government of Cambodia which issues the Petroleum Agreement. The RGC is advised by the Petroleum Advisory board, comprises of high ranking officials of relevant ministries.

The Petroleum Agreement, also called a Production Sharing Agreement (PSA) must be signed by the MIME on behalf of the RGC. Normally, the bidder is given the right to conduct the exploration in one or two exploration blocks. The Petroleum Agreement details the duration of the exploration and production; the rights and the obligations of the contractor; tax obligations and fiscal stability; and various other provisions.

Contractors are liable for the taxes, duties and charges mentioned in the Petroleum Regulations which include a royalty of 12.5%; an annual service rental; a tax of 25%-50% of income derived from petroleum operations; registration charges and other fees for services rendered by the Cambodian government; and other taxes or charges as specified in a petroleum agreement, if any.

Examples of financial obligations include but are not limited to the following: a signature bonus; production bonus; charges for services rendered by the government at the request of the contractor and an annual administration fee subject to tender.

5. FUTURE OF CAMBODIAN ENERGY

5.1 Hydro-Electricity

A large portion of the country does not have reliable electricity sources. In response to this need, the Cambodian government is focusing its attention on hydro-electric dams. A few dams have already been constructed and are operational, and the government plans to launch several more projects with the help of foreign investors.

5.2 Coal

Investment projects relating to coal power plants are currently emerging. Cambodia does not have any coal power plants, despite charcoal being a popular form of fuel. Reports suggest that the country's first plant will be built in Sihanoukville. In order to comply with World Bank standards, the plant would utilize clean coal technology for production.