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HML LAW FIRM & CONSULTANTS

DOING BUSINESS IN CAMBODIA 2015



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Kaiser-Wilhelm-Ring No. 26 50672 Cologne Germany
P: +49 221 139 900 0 | F: +49 221 139 900 19
E: cambodia@praelegal.com | www.praelegal.com

CONTENTS

ABOUT HML LAW FIRM & CONSULTANTS	01
INTRODUCTION	02
A. Overview of Cambodia	02
1. Country at a Glance	02
2. The Kingdom of Cambodia – Always Positive Economic Perspective	03
I. Preliminary Stage	04
A. Business Structure	04
1. Company Registration	04
2. Investment	08
3. Merger & Acquisition	10
B. Land	11
1. Ownership through Land Holding Company	12
2. Co-owned Building	12
3. Long Term Lease	12
4. Economic Land Concession	13
II. Operational Stage	13
A. Common Operational Matters	13
1. Tax	13
2. Labor	18
3. Intellectual Property	21
4. Stock Exchange	22
III. Dispute Resolution	23
A. Alternative Dispute Resolution	23
1. Labor Arbitration	23
2. Commercial Arbitration	24
B. Judicial System	24
1. Supreme Court	25
2. Appellate Court	25
3. Court of First Instance	25



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ABOUT HML LAW FIRM & CONSULTANTS

HML Law Firm & Consultants (“HML”) was co-founded by partners, **Mrs. Hun Kimleng** (Chairwoman), **Ms. Mao Samvutheary** (Managing Director and Attorney-at-Law) and **Ms. Kang Leap** (Deputy Managing Director).

As a Cambodia’s leading professional legal and consulting service provider, HML has established an excellent reputation with its multinational clients. HML has formed a joint venture with XAT Tax Corporation, one of Japan’s leading tax and accounting firms. The new joint venture, **HML XAT Consulting Co., Ltd.** (“HML XAT”), has been formed to provide comprehensive tax services on the cutting edge of the fast growing Cambodia economy.

HML is a legally independent member firm of **Prae Legal** Network, a global legal and consulting network of more than 100 independent law firms all around the world, which is rapidly growing.

HML’s core team comprises of Cambodian and foreign lawyers and advisers. Centrally located in the Cambodia’s capital- **Phnom Penh**, HML provides a broad range of legal and business services to its clients in Kingdom of Cambodia in the area of Business Development and Planning, Lobbying, Due Diligence, Company and Investment Registration, Licensing and Concession, Mergers and Acquisitions, Taxation*, Property and Land Development, Intellectual Property, Banking & Finance, Insurance, Employment and Immigration, Family and Will, Alternative Dispute Resolution, and Litigation.

** In partnership with HML XAT Consulting Co., Ltd.*

IMPORTANT DISCLAIMER

Doing Business in Cambodia is published to provide an overview of investment guide in the Kingdom of Cambodia to both local and international clients and investors. The contents are of a general nature only. This publication should not be regarded as offering a complete explanation of the legal and taxation matters that are contained within this publication. Prior to taking action on any information contained in this publication, please contact our HML and HML XAT team for consulting and support. HML and HML XAT expressly disclaimed all and any liability and responsibility to any person, who acts or fails to act as a consequence of reliance upon the whole or part of the contents of this publication.



INTRODUCTION

The purpose of this book is to basically provide useful information to both local and international investors as benefits to their investment activities in the Kingdom of Cambodia. This book contains not only Cambodia legal information but also emphasizes the core structures of foreign investment doing business in the Kingdom of Cambodia.

Pursuing an investment, business or charitable venture in the Kingdom of Cambodia requires care and expertise regarding the applicable laws, regulations and rules as well as an understanding of the local context, processes, and parties involved. At HML, we understand investor's business concept that is why we can effectively address these important concerns and deliver clear and comprehensive legal information to match the current business activities to client and investors.

The readers of this book will absorb knowledge about Royal Government of Cambodia ("RGC")'s business incentive, tax exemption, import and export duty, Cambodia's entry visa, labor and employment, Cambodia stock exchange, intellectual property enforcement, secure transaction, merger and acquisition and other key subjects that is being common in Cambodia business market.

A. OVERVIEW OF CAMBODIA

1. Country at a Glance

- **Geographical:** Southern part of the Indochina peninsula in Southeast Asia
- **Area:** 181,035 square kilometers
- **Coastline:** 443 kilometers
- **Border countries:** Laos, Thailand, Vietnam
- **Capital:** Phnom Penh
- **Constitution:** Adopted 21 September 1993
- **Language:** Khmer
- **Main religion:** Buddhism (Theravada)
- **Currency:** Riels
- **Population:** 15.14 million (World Bank, 2013)
- **GDP:** US\$15.25 billion (World Bank, 2013)

2. The Kingdom of Cambodia – Always Positive Economic Perspective

The government's development policy for 2013–2018 targets average annual economic growth at 7% and a reduction in the poverty rate by at least 1% per year. This latest policy framework heightens the emphasis on commercializing agriculture, building urban infrastructure, supporting the development of the private sector, expanding vocational trainings, and strengthening social protection including health and nutrition. Importantly, the government's commitment to economic reform appears to have intensified. More broadly, the government's development policy identifies private sector development as a core objective.

Industry is the primary source of growth, driven mainly by export of garments and footwear to the United States of America (“USA”) and the European Union (“EU”). Garment and footwear will benefit during the next 2 years from economic recovery projected for the EU, which grants Cambodia's exports duty-free access and the USA. For foreign direct investment (“FDI”), Cambodia shifted to a free market economy and welcomed FDI in 1989. Since then, Cambodia has received more than USD25 billion in FDI. While Cambodia has adopted a competitive investment strategy, it still lags behind Asia-Pacific countries in terms of investment facilities and other factors such as roads, ports and other infrastructure developments¹.



¹ National Institute of Statistics; ADB estimates; Asian Development Outlook 2013; Council for Development of Cambodia



I. PRELIMINARY STAGE

A. BUSINESS STRUCTURE

1. Company Registration

The available form of company in Cambodia is defined in the Law on Commercial Enterprises (“**LCE**”) promulgated in 2005. This law applies to a partnership and limited company carrying on business in the Kingdom of Cambodia. All types of company operated in the Kingdom of Cambodia shall incorporate at Ministry of Commerce (“**MOC**”). There are two kinds of company formation:

1.1. Partnership

General Partnership: A partnership is a contract between two or more persons who combine their property, knowledge or activity to carry on business in common with a view to profit. The contract of partnership may be verbal or in writing.

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

1.2. Limited Company

Private Limited Company: A private limited company is a form of limited company with characteristics as following:

- The company may have 2 to 30 shareholders. However, one person may form a company called **single member private limited company**;
- The company may not offer its shares to the public; and
- The company has one or more restrictions on the transfer of each class of its shares.

Public Limited Company: A Public Limited Company (“**PLC**”) is a form of a limited company that is authorized by the LCE to issue securities to the public. PLC may have more than 30 shareholders. This type of company shall be formed to carry on the business of a bank, an insurance company or a finance company.



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1.3. Foreign Business

A foreign business is a legal person formed under the law of a foreign country where it has a place of business and is doing business in Cambodia. It may conduct business in Cambodia in the following forms:

FORM	AUTHORIZED ACTIVITIES
Representative Office (Commercial representative office or commercial relations office)	<ul style="list-style-type: none"> (a) Contact customers for the purpose of introducing customers to its principal; (b) Research commercial information and provide the information to its principal; (c) Conduct market research; (d) Market goods at trade fairs, and exhibit samples and goods in its office or at trade fairs; (e) Purchase and keep a quantity of goods for the purpose of trade fairs; (f) Rent an office and employ local staff; and (g) Enter into contracts with local customers on behalf of its principal. <p>However, a commercial representative office or commercial relations office may not regularly buy or sell goods, perform services, or engage in manufacturing, processing or construction.</p>
Branch	<p>May regularly buy and sell goods and services and engage in manufacturing, processing and construction same as the local company except any acts that prohibited for natural or legal person who is foreigner. The assets of the branch shall be the assets of the principal. The principal shall be liable for any obligations of the branch.</p>
Subsidiary	<p>A subsidiary is a company that incorporated by the foreign company in the Kingdom of Cambodia with at least 51% of its capital that held by the foreign company. A subsidiary has legal personality separate from their principals from the date of its registration pursuant to LCE. A subsidiary may regularly carry on business same as the local company except for any acts that prohibited for natural or legal person who is foreigner.</p>



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2. Investment

After transformation to free market economy at the earliest of 1990, RGC is committed to promote investment sectors by creating attractive investment strategies as following:

- adopt many laws and regulations to encourage the investment.
- enter into Bilateral Agreement on investment with many countries and admit as member of regional and international organizations such as **ASEAN, WTO, WIPO, MIGA** and **ICISD**...etc.
- provide investment guarantees as following:
 - **no discrimination:** A foreign investor shall not be treated in any discriminatory way by reason only because the investor is a foreigner, except in respect of ownership of land as set forth in the Land Law 2001.
 - **no nationalization:** The RGC shall not undertake nationalization policy, which shall adversely affect private properties of investors in the Kingdom of Cambodia.
 - the RGC shall not fix the price or fee of the products or services of a Qualified Investment Project ("**QIP**").
 - free cash flow.

Beside the above favorable policy, the RGC has also provided a various investment incentives to the QIP as well.

• What is QIP?

QIP means a **qualified investment project** which has received a Final Registration Certificate and is entitled to receive the investment incentives provided by the Law on Investment. However, before becoming QIP, investor is required to register their investment project at Council for the Development of Cambodia ("**CDC**") in compliance with the procedure prescribed in the Law on Investment.

QIP approval procedure is divided into two steps. The applicant must submit an investment proposal to CDC which will issue at first the Conditional Registration Certificate and later the Final Registration Certificate:

Conditional Registration Certificate ("CRC"): Within 3 working days after the receipt of investment proposal, CDC shall respond to the applicant whether their proposal has been accepted or rejected by issuing the CRC or Letter of Non-Compliance. If CDC fails to make decision within 3 working days, the CRC shall be considered automatically approved.

Final Registration Certificate (“FRC”): FRC shall be issued within 28 working days from the issuance of the CRC; however, all required approvals from the relevant ministries/entities listed in the CRC shall be obtained by the applicant. The date of issuing the FRC shall be the date of QIP commencement.

2.1. Investment Incentives Granted to QIP

QIP status is entitled the investor to the following incentives:

- Profit Tax Exemption;
- Special Depreciation;
- Customs Duty Exemption;
- Special Promotion Zone or Export Processing Zone; and
- Export Tax Exemption.

The rights, privileges and entitlements of a QIP can be transferred or assigned to a person who has acquired or merged a QIP subject to the approval of the CDC.

2.2. Other Incentives Provided to Specific Field

Besides the incentives granted to QIP under the Law on Investment and Amendment Law on Investment, additional investment incentives have been introduced by the RGC to **Agricultural and Industrial Sectors**.

2.3. The Special Economic Zone

Special Economic Zone (“**SEZ**”) has been introduced to the Kingdom of Cambodia for the first time in Sub-Decree No. 148 dated 29 December 2005 on the Establishment and Management of the Special Economic Zone. Cambodian Special Economic Zone Board (“**CSEZB**”) is considered as the operational arm of CDC created to manage the SEZ scheme.

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





2.4. Incentives for SEZ

The incentives to be granted to the Zone Developers and Zone Investors are as following:

The Beneficiary	Type	Description
Zone Developer	Profit Tax Exemption	9 years
	Import Duties and other Taxes Exemption	The import of equipment and construction materials to be used for infrastructure construction in the zone shall be allowed and exempted of import duties.
	Customs Duty Exemption	The import of machineries, equipment for the construction of the road connecting the town to the zone and so on.
	Temporary Admission	The import of means of transport and machineries used for the construction of the infrastructures.
	Land Concession	May obtain a land concession from the RGC for the establishment of a SEZ in areas along the borders or in isolated regions, in accordance with the Land Law and may lease the land to the Zone Investors.
Zone Investor	Incentives on Customs Duty	Is entitled to the same incentives on customs duty and tax.
	VAT Exemption	0%

Besides the above incentives, both Zone Developer and Zone Investor shall benefit as below:

- The right to transfer all their income generated from the investment and salary received in the zone to bank located in other countries after payment of tax.
- All investment guarantees as stipulated in the Law on Investment.

3. Merger & Acquisition

The merger and acquisition is mainly regulated under the LCE setting out a mandatory to be observed for two or more companies to merge into one company or consolidate to establish a new company.

LCE outlines a mandatory procedure to be followed in the case where two or more companies plan to merge into one company or consolidate to form a new company. The main requirements are as following:

- A merger agreement must be prepared including key points such as the terms and conditions of the merger; the articles of incorporation of the surviving company; the method of converting shares of each constituent company into shares or other securities of the surviving company...etc.;
- A board resolution of each company as well as shareholders resolution adopted by two third of the shareholders of each company shall be obtained;
- The articles of incorporation of the surviving company shall be drafted; and
- All known creditors of the constituent companies must be informed by adequate written notice and show their valid and credible approval to the merge.

Upon approval of the merger by the shareholders, the above mentioned documents and other relevant documents shall be submitted to MOC. MOC will then issue a Certificate of Merger.

B. Land

Since opening to free market economy, the Land Law was first promulgated in 1992 and implemented until the adopted of the new land law in 2001 (the “**Land Law 2001**”). The Land Law 2001 aims to determine the regime of ownership for immoveable properties in Cambodia for the purpose of guaranteeing the right of ownership and other rights related to immoveable properties as provided in the Constitution 1993. It also intends to establish a modern system of land registration that guarantees the rights of people to own land.

The Constitution of the Kingdom of Cambodia stipulates that “*All persons, individual or collectively, shall have right to ownership. Only Khmer legal entities and citizens of Khmer nationality shall have the right to own land.*” Thus, foreigner is restricted to own land in the Kingdom of Cambodia. However, foreigner still accesses to ownership of land through the common structures such as Land Holding Company, Co-owned Building, Long Term Lease and Economic Land Concession.





1. Ownership through Land Holding Company

Since, there is a restriction by Cambodian Law to foreigner, either a natural person or legal entity, to own land in Cambodia. Land Holding Company (“LHC”) is one of the main structures of foreign company that wishes to acquire the land and operates a business in Cambodia. Its structure is not complicated but requires a 51% Cambodian shareholder holding a majority shares in the company.

2. Co-owned Building

According to Article 8 of the Land Law 2001, foreigner has no right to hold the land in the Kingdom of Cambodia. However, in order to facilitate foreign investors as well as to respond to the expansion of the land market in the Kingdom of Cambodia, Law on Providing Foreigners with Ownership Rights in Private Units of Co-owned Building was adopted.

Even though the ownership right of legally qualified foreigner in co-owned building is recognized, there are some restrictions as following:

- Foreigner has ownership rights in private units of co-owned buildings only from the 1st floor up. The ground floor and underground floor cannot be owned by foreigners.
- Legally qualified foreigner has ownership rights in private units of a co-owned building not exceeding 70% of the total surface-size of all private of the co-owned building.

3. Long Term Lease

Many provisions of the Land Law 2001 have been modified or nullified by Civil Code which came into effect on 20 December 2011 following the implementation of the Law on the Implementation of Civil Code. It became very vital for the investors to refer the provisions of Civil Code regarding the sale, purchase, transfer of ownership, land lease right, and/or setting of mortgage on land.

According to Article 244 of the Civil Code of Cambodia, **“Perpetual Lease** refers to a long term lease of immovable for a term of not less than 15 years” and Article 247 “(1) The term of a perpetual lease may not exceed 50 years. If a perpetual lease is established with a term exceeding 50 years, it shall be shortened to 50 years. (2) A perpetual lease may be renewed; provided that the renewed term may not exceed 50 years counting from the date of renewal.”

4. Economic Land Concession

Economic Land Concession (“**ELC**”) refers to a mechanism to grant private state land through a specific economic land concession contract to a concessionaire to use for agricultural and industrial-agricultural exploitation. The maximum duration of a land concession may be extended from 30 years to 99 years and the land concessions areas shall not be more than 10,000 hectares (Land Law 2001).

The right of ELC can be mortgaged and transferred as defined in the Sub-Decree No.114 ANK/BK dated 29 August 2007 on the Mortgage and Transfer of the Right over a Long Term Lease or an Economic Land Concession.

II. OPERATIONAL STAGE

A. COMMON OPERATIONAL MATTERS

1. Tax

The first comprehensive of Cambodian Law on Taxation was introduced in 1997 and substantial amended in 2003.

All taxpayers in Cambodia are required to register with the tax administration within 15 working days after economic activity begins or after the enterprise is registered with the MOC. The tax registration can be processed via a paper form at the tax administration or online (E-registration) via the GDT's website at www.tax.gov.kh. The E-registration takes about 1 to 7 working days to get the registration certificate and ID registration card from the tax administration and the paper registration takes from 7 to 10 working days.

One of the business representatives is required to present at the tax administration to take a photo and scan the thumbprint. This representative can be the chairperson of the Board of Director, the Director, the Owner or the Shareholder of the company.

Practically, the taxpayers in Cambodia are divided into 2 regimes: Real Regime and Estimated Regime.

Real Regime system is based on self-declaration/self-assessment which means that taxpayers are obliged to file monthly and annually tax returns and pay tax by themselves. While, Estimated Regime, the tax amount shall be determined by tax administration in the period of 3 or 6 months or 1 year as agreed between taxpayers and the tax officials.



1.1. Annual Tax Compliance

1.1.1. Tax on Profit

Tax on Profit (“**TOP**”) is the debt of a resident person on income from Cambodian and foreign sources. For a non-resident person, this tax is assessed on income from Cambodian sources only.

Taxable profit is calculated from the accounting profit or loss after making adjustments for various non-deductible expenses and non-taxable income items.

Tax rate of the TOP:

- Standard tax rate is 20% for legal person;
- 30% for the profit from exploitation of natural resources (oil & gas, mining);
- TOP exemption period of QIP determined by the CDC;
- 5% on gross premiums for insurance/reinsurance of risk and 20% for non-insurance income; and
- The due date is 3 months following financial year.

1.1.2. Minimum Tax

Minimum Tax (“**MT**”) is a separate and distinct tax from the TOP and is calculated at 1% of turnover. The MT is only payable if it is greater than the TOP. In this case, an enterprise will either pay TOP or MT.

1.1.3. Patent Tax

Patent Tax is business registration tax which shall be required to pay on annual basis on the flat fee of Riels 1,140,000 (~USD285). If the enterprise carries out different types of business activities, a separate patent tax payable is required to pay for each business activity.

1.2. Monthly Tax Compliance

1.2.1. Prepayment of Profit Tax

Taxpayers are subjected to a Prepayment of Profit Tax (“**PPT**”) calculated at 1% of monthly turnover inclusive of all taxes, with the exception of Value Added Tax (“**VAT**”). The PPT payment is made monthly and is offset against either TOP or MT at the annual tax liquidation.

1.2.2. Tax on Salary

Tax on Salary (“**TOS**”) is a monthly tax imposed on salary that employee receives within the framework of fulfilling employment activities in Cambodia.

Taxpayers are liable to deduct salary tax from payments of salaries, wages and other remuneration that are made to all employees.

Residents of Cambodia are subject to TOS on their Cambodian and foreign sources salary income, whereas non-residents are taxed only on their Cambodian sources salary income.

Residents are taxed on an incremental scale from 0% to 20% where Non-residents are taxed at a flat rate of 20%. The TOS for resident details are provided in the following table:

TAXABLE MONTHLY SALARY				Incremental Tax rate
Riels		Approx. USD equivalent		
From	To	From	To	
0	500,000	0	123	0%
500,001	1,250,000	125	313	5%
1,250,001	8,500,000	313	2,125	10%
8,500,001	12,500,000	2,125	3,125	15%
Over 12,500,000		Over 3,125		20%

1.2.3. Withholding Tax

Withholding Tax (“**WHT**”) is a monthly tax that is withheld before making certain payments in cash or in kind. WHT imposes in Cambodia comprised of resident WHT and non-resident WHT.



Resident WHT

- 15%: Services provided by a resident person
- 15% : Royalties
- 15% : Interest payments to a non-financial institution
- 10%: Rent of movable and immovable properties
- 6% : Interest paid by a domestic bank or savings institute to a resident physical person having a fixed term deposit account
- 4% : Interest paid by a domestic bank or savings institute to a resident physical person having a non-fixed term savings account

Non-Resident WHT

A rate of 14% shall be deducted from the following payments to non-residents:

- Royalties, rent and other income related to the use of property;
- Interest;
- Management and technical services; and
- Dividends.

1.2.4. Value Added Tax

There are 2 rates of VAT in Cambodia – 10% on taxable supplies in Cambodia and 0% on taxable supplies exported out of Cambodia.

An enterprise registered under the real regime is required to charge VAT at 10% on supplies of goods (other than land and money) and/or services and at 0% on the sale of taxable supplies exported from Cambodia. Such entity can offset input VAT charged on purchases against the output VAT.

1.2.5. Other Monthly Tax Returns

- Specific Tax on Certain Merchandise and Services is a form of excise tax imposed on a number of local and imported products and services. This tax is levied on vary rate of 3% to 25%;
- Public Lighting Tax is imposed on all chains of supplies of all kinds of local produced and import of alcohol and cigarettes at rate of 3%; and
- Accommodation Tax is an indirect tax imposed on the supply of accommodation services at a rate of 2%.

1.3. Deadline for Tax Returns

TYPE OF TAX RETURN	DEADLINE
Prepayment of Profit Tax	15 th of the following month
Tax on Salary and Fringe Benefit Tax	
Withholding Tax	
Specific Tax on Certain Merchandise and Services	
Public Lighting Tax	
Accommodation Tax	20 th of the following month
Value Added Tax	
Annual Tax on Profit	3 rd months of the following financial year
Patent Tax	31 st March every year

1.4. Other Taxes and Requirements

1.4.1.Registration Tax

Registration tax (stamp duty) applies to the below transactions:

- 0.1% for the transfer of a company's shares, either in whole or in part;
- 0.1% of the contract price for government contracts related to the supply of goods or services that are used under budget state; and
- Flat rate of Riels1,000,000 (~USD250) for 3 types of legal document: business incorporation, merger and liquidation.

1.4.2. Property Tax

This tax is levied annually at a rate of 0.1% on the value of all property that exceeds Riels100,000,000 (~USD25,000).

The due date is 30th September of the year.

1.4.3. Amend of Tax Declaration

On the basis of an error or an oversight in the original tax declaration, the taxpayers can request to amend a tax declaration within 3 years from filling date. If the amended tax declaration results in a refund or credit of tax, the tax administration has the right to verify under the established tax verification procedures.



1.4.4. Tax Audit

There are 3 types of tax audit in Cambodia: i) limited tax audit, ii) desk tax audit and iii) comprehensive/final tax audit.

Limited tax audit and desk tax audit are very similar and these types of tax audit are conducted on certain documents being required in the tax audit notice. Comprehensive tax audit is conducted to review the detail of the company's transactions and to close off the tax year.

1.4.5. Penalties and Interest Charge on Late Payment

- 10%: where there is a less than 10% differential between the amount of tax originally paid and the amount of tax reassessed;
- 25%: where the differential between the tax paid and tax reassessed exceeds 10% or the taxpayer has failed to settle tax liabilities by the due date; and
- 40%: where the taxpayer or withholding agent receives an unilateral tax assessment.

In addition, there are penalties imposed for late payment of taxes and late lodgment of returns, together with interest that is charged at 2% per month.

1.4.6. Appeal

There is no Independent Tax Court or Tribunal to hear tax disputes between the taxpayer and the tax administration in Cambodia; hence, all appeals are decided by the Cambodian General Department of Taxation.

2. Labor

Relations between employers and workers/employees resulting from employment contracts to be performed within Cambodia's territory are governed by the Labor Law 1997 ("**Labor Law**") of the Kingdom of Cambodia.

2.1. Overview of Basic Requirement under Labor Law

Workers of all establishments of all natures are required to work at the maximum of 8 hours per day or 48 hours per week.

The work schedule can be set by the employer according to the nature of their enterprise. If the work schedule consists of split shifts, employer can only divide into morning and afternoon shifts.

If workers are required to work overtime for exceptional and urgent work, the overtime hours shall be paid at a rate of 50% higher than normal hours. If the overtime hours are at night the interval from 22:00 to 05:00 or during weekly time off, the rate of increase shall be 100%.

Though there is no clear boundary specified for overall workers' minimum wage, the Labor Law has set the minimum wage at least equal to the guaranteed wage which can ensure every workers of a descent standard of living compatible with human dignity. As of 01 February 2014, the minimum wage for the garment and footwear industry is USD 100 per month. However, according to the *Prakas* of Ministry of Labor and Vocational Training dated 12 November 2014, the minimum wage will be increased to USD 128 effective from 01 January 2015.

2.2. Labor Contract

Labor Contract refers to the written or verbal agreement which establishes relations between the worker/employee and employer. Labor Contract is divided into two types based on duration: Fixed Duration Contract ("**FDC**") and Undetermined Duration Contract ("**UDC**"). Any written labor contract signed under specific duration for a period of less than 2 years is called FDC. It can be renewed one or more times, as long as the renewal does not surpass the maximum duration of 2 years. Any employment contract, which is formed verbally (without written form) is considered as UDC.

2.3. Labor Registration

All employers shall make a declaration to the Ministry of Labor and Vocational Training ("**MOLVT**") when opening an enterprise or establishment. This declaration shall be made in writing and be submitted to MOLVT before the actual opening of the enterprise or establishment. Employers who employ fewer than 8 workers/employees on a permanent basis and who do not use machinery, shall make and submit this declaration to MOLVT within 30 days following the actual opening of the enterprise or establishment. For the closing of enterprise, employers shall also make a declaration to MOLVT within 30 days following the closing of the enterprise.



2.4. Foreign Employment

Only foreigners satisfying the following conditions may be lawfully employed:

- hold a Labor Book and Work Permit issued by MOLVT;
- lawfully enter Cambodia;
- possess a valid passport and residency permit;
- be physically fit for the particular job; and
- have no contagious diseases.

All enterprises that employed 8 or more workers/employees are required to register their organization together with their workers/employees and pay the contribution of occupational risk to National Social Security Fund (“**NSSF**”).

2.5. Visa for Foreign Employees

There are 7 categories of visa in Cambodia.

TYPE	VALIDITY OF VISA
Diplomatic Visa	3 months
Official Visa	3 months
Courtesy Visa	3 months
Tourist Visa	3 months
Transit Visa	3 months
Business Visa	3 months
Special Visa	Unlimited

The Business Visa is issued to individuals who enter into Cambodia for employment purpose. Foreign employees should not constitute more than 10% of the total employees of any corporate entity. However, any corporate entity that wishes to employ foreign employees more than 10%, they are required to fill application to MOLVT for additional approval.

3. Intellectual Property

With a membership in World Intellectual Property Organization (“WIPO”) in 1995 and World Trade Organization (“WTO”) in 2004, Intellectual Property (“IP”) becomes more and more crucial in the business development and gets much attention from the RGC. IP is now considered as one of key



business success factors of many major local and international companies. Within the framework of Cambodian IP, there are many laws and regulations promulgated and implemented in the country; many offices and specialized departments of state are established for the registration and protection.

Actually, IP is regulated under main laws and regulations as following:

- Law on Marks, Trade Names and Acts of Unfair Competition adopted in 2002;
- Law on Patents, Utility Model Certificates and Industrial Designs adopted in 2003;
- Law on Copyright and Related Rights adopted in 2003; and
- Law on Geographical Indication adopted in 2014.

3.1. Summary of IP Element and its Protection

IP Areas	Protectable Period	Extension	Authorities
Trademarks and Service Marks	10 years	renewable for consecutive period of 10 years	Ministry of Commerce
Patents	20 years	No	Ministry of Industry and Handicraft
Utility Model Certificate	7 years	No	Ministry of Industry and Handicraft
Industrial Design	5 years	two further consecutive periods of 5 years	Ministry of Industry and Handicraft
Copyright	life of the author and 50 years following his/her decease	No	Ministry of Culture and Fine Arts
Geographical Indication	unlimited if there is no any cancellation or nullification	No	Ministry of Commerce



3.2. Acts of Unfair Competition

Acts of unfair competition are defined as any act of competition contrary to honest practices in industrial, commercial and service matters. Under Cambodian law, acts of unfair competition including:

- a. All acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial, commercial or service activities of a competitor;
- b. False allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial, commercial or service activities of a competitor;
- c. Indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity of the goods.

3.3. Enforcement Agencies

The enforcement agencies in Cambodia are CAMCONTROL, Economic Police, Inter-Ministerial Committee on Suppression of Movie and Video Infringement, Litigation Bureau, Customs and Court.

4. Stock Exchange

This is relatively new in the Kingdom of Cambodia starting in November 2006 when RGC and Korea Exchange entered into a Memorandum of Understanding to develop the securities market in Cambodia. Later in March 2009, RGC and Korea Exchange signed a “**Joint-Venture Agreement**” to establish a stock market (“**The Cambodia Securities Exchange Co., Ltd**” or “**CSX**”). CSX, the national stock exchange, was then incorporated on 23 February 2010 where RGC owns 55% and Korea Exchange owns the remaining 45%.

Securities and Exchange Commission of Cambodia (“**SECC**”) regulates the securities industry in Cambodia to contribute to socio-economic development through capital mobilization from public/securities investors to meet the demand of financing for investors.

First trading at the stock exchange on 18 April 2012 was ended successfully by Phnom Penh Water Supply Authority shares rose 49% at the closing stock.



III. DISPUTE RESOLUTION

There are two common ways for dispute settlement.

Alternative Dispute Resolution			Judicial System	
Labor Arbitration		Commercial Arbitration	Supreme Court	
Individual Dispute	Collective Dispute		Appellate Court	
			Provincial/ Municipal Court	Military Court

A. Alternative Dispute Resolution

Alternative Dispute Resolution (“**ADR**”) refers to the various ways of negotiation and settlement. Settlement through arbitration is one of the most common mechanisms besides judicial system in Cambodia.

1. Labor Arbitration

The Arbitration Council (“**AC**”) is one part of alternative system for the amicable resolution of labor dispute established under Chapter XII of the Labor Law. This law allows unions and employers to include procedures for the resolution of disputes in their collective bargaining agreements. Where this does not occur, the Labor Law provides such procedures. Some of these processes are voluntary and other such as the arbitration procedures are mandatory. There are two kinds of dispute to be heard by AC.

- (1) Dispute is an individual dispute or a collective dispute; and
- (2) Dispute is a right dispute or an interest dispute.

1.1. Individual Dispute

According to Article 300 of the Labor Law “*an individual dispute is a dispute that occurs between an employer and one or more if their workers individually and related to the interpretation or the enforcement of the term of a labor contract, a collective bargaining agreement or laws and regulations in effect*”. The Labor Law only recognizes Individual Disputes that are related to existing rights.



1.2. Collective Dispute

The criteria for a Collective Dispute are set out in Article 302 of the Labor Law. Three conditions must be satisfied in order for a dispute to be a Collective Dispute.

- a. There is a dispute that arises between one or more employers and a group of workers;
- b. The subject matter of dispute is related to working conditions, the exercise of the right of professional organizations, the recognition of professional organizations or problems in the relationship between employers and workers employees; and
- c. The dispute could lead to the disruption of the enterprise or threaten social peace.

AC may also have a role to play in considering whether a dispute referred to it is properly classified as a Collective Dispute. Under the Labor Law, AC is only involved in the resolution of Collective Disputes. Therefore, if a party to a dispute questions the classification of a dispute as collective before AC, AC will need to consider whether it has jurisdiction to hear that case.

2. Commercial Arbitration

As part of its WTO accession negotiations in 2003, Cambodia agreed to put in place a number of new laws in line with its commitment to provide an improved regulatory environment for trade and investment. In acknowledgment of the important role that dispute resolution plays in the development of a modern trading economy, the Law on Commercial Arbitration has been included as a priority in this package of reforms. The Law on Commercial Arbitration was passed by National Assembly in 2006; establishing a framework for the private arbitration of business disputes that follows international practices.

Following consultations with representatives of the business communities and development partners, a Sub-Decree on the Organization and Functioning of a National Arbitration Center was promulgated in August 2009.

B. Judicial System

The Cambodian judicial system is divided into three levels: the Supreme Court, Appellate Court and Court of First Instance.

1. Supreme Court

It is the highest court in the Kingdom of Cambodia and its jurisdiction covers the whole territory of Cambodia. A case may be heard twice by the Supreme Court. The Supreme Court will hear the interpretation of the law at the first purview, while at the second purview it will hear both law and fact.

2. Appellate Court

It hears all cases appealed from a court of first instance (municipal, provincial and military). The Appellate Court reviews both questions of law and fact. Thus, if a party is not satisfied with the judgment or a decision rendered by the court of first instance, that party may file an appeal to the Appellate Court. Currently, there is only one Appellate Court located in Phnom Penh.

3. Court of First Instance

It is the lowest court, which includes the provincial, municipal, and military courts. Each court's jurisdiction covers a particular geographical area where the court is located. An exception to this is the military court, which has jurisdiction over the entire territory of Cambodia.

3.1. The Provincial and Municipal Court

This is the lowest trial court. In principle, the Provincial and Municipal Court are composed of two departments: civil and criminal departments. However, in practice, as the number of judges is very limited, there is still no clear separation between the departments. A judge may handle both civil and criminal cases.

3.2. The Military Court

It is a court of first instance that has exclusive jurisdiction over cases dealing with the cases of military offenses, any offenses committed by military personnel that involves military discipline or harms military property. Ordinary offences committed by military personnel are under the jurisdiction of the provincial/municipal courts.

Note: The Commercial Court, Labor Court and Administrative Court have not yet been created. It is currently under the jurisdiction of the Provincial and Municipal Court of First Instance.

THANK YOU



ក្រុមហ៊ុន អេច.អ៊ីម.អិល & ខន់សាន់ទីន
HML LAW FIRM & CONSULTANTS

CONTACT PERSON

Ms. Samvutheary MAO

Partner / Managing Director (Attorney-at-Law / Trademark Agent)
Mobile: +855 16 919415 | E-mail: samvutheary.mao@hmllawfirm.com

Ms. Leap KANG

Partner / Deputy Managing Director (Legal / Tax / Trademark Agent)
Mobile: +855 16 666338 | E-mail: leap.kang@hmllawfirm.com

HEAD OFFICE

#11, Mao Tse Tung Blvd., Sangkat BKK1, Khan Chamkarmorn, Phnom Penh, Cambodia.

 +855 23 220 900  info@hmllawfirm.com  +855 23 220 100  www.hmllawfirm.com