

# 캄보디아 구매 및 계약 관련 법령 조사 보고서

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용어의 정의

| 용어/약칭       | 정 의   |
|-------------|---|
| 경제재무부       | 캄보디아 Ministry of Economy and Finance  |
| 국토관리도시계획건설부 | 캄보디아 Ministry of Land Management, Urban Planning and Construction                             |
| 리엘          | 캄보디아 법정통화인 Khmer Riel   |
| DIMDM       | 경제재무부 내에 토지 수용 및 이주보상에 대한 내부 모니터링을 담당하는 Department of Internal Monitoring and Data Management |
| EDCF        | Economic Development Cooperation Fund(대외경제협력기금)   |
| GDICDM      | 경제재무부 내 General Department of International Cooperation and Debt Management                   |
| GDR         | 경제재무부 내에 토지 수용 및 이주보상 계획 실행을 담당하는 General Department of Resettlement                          |
| KEXIM       | The Export-Import Bank of Korea(한국수출입은행)  |
| ODA         | Official Development Assistance(공적개발원조)   |
| Prakas      | 캄보디아 각 정부부처(Ministry)가 자체적인 규제권한을 행사하기 위하여 공포하는 령   |

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## I. 본건 조사 용역의 목표

캄보디아는 한국수출입은행의 대외경제협력기금(Economic Development Cooperation Fund, 이하 ‘EDCF’) 주요 수원국입니다. 캄보디아 입장에서도 대한민국은 중요한 차관공여국 중 한 곳입니다. 캄보디아 EDCF 사업은 주로 도로 개보수, 다리 건설, 하수처리시설 구축 및 개선, 병원 건립, 농촌 인프라 개발 분야에서 진행되고 있는데, 2022년 12월 9일 대한민국 정부와 캄보디아 정부 간에 체결한 ‘EDCF 차관에 대한 기본약정’에 따르면 대한민국 정부는 2026년까지 캄보디아에 총 15억 달러 한도 내에서 다양한 EDCF 사업을 지원할 계획입니다. 캄보디아 EDCF 사업의 규모는 계속해서 증가할 것으로 전망되는바, 한국수출입은행은 캄보디아에서 EDCF 사업을 진행할 때 적용되는 캄보디아 관련 법령에 대한 업무참고용 자료를 마련해두기 위하여 본건 조사 용역을 발주하였습니다.

캄보디아의 경우 ODA에 대한 기본 법률은 별도로 마련되어 있지 않으나, 캄보디아 정부 발주사업 및 공공차관사업을 규율하는 공공조달법, 건설법, 재정제도에 관한 법 등이 제정되어 있습니다. 특히 캄보디아정부는 2019~2025년 Strategy for the Reformation of the Public Procurement System(공공조달 체계 개선 전략)에 따른 정책의 일환으로 최근 공공조달법을 새로 제정하였습니다. 신 공공조달법에는 공공조달 사업에 대한 모니터링 및 감사에 관한 규정이 일부 보완되었고, 캄보디아 경제재무부의 조사권한이 강화되었으며, 법률 위반 시 적용되는 벌칙의 수위도 상향되었습니다. 한편, 캄보디아가 정부발주사업 및 공공차관사업 관련 법률 선진화를 위해 상당한 노력을 하고는 있는데, 우리나라와 같은 차관공여국 관점에서는 캄보디아 법률에 미비한 사항이 많고, 현지 실정상 실무가 법률과 다르게 진행되는 경우도 빈번하게 발생한다는 점을 유의하여야 합니다.

본 조사보고서에는 캄보디아 EDCF 사업 관계자들에게 실질적인 도움을 제공하고자, 캄보디아 정부발주사업 및 공공차관사업에 관한 기본 법령뿐만 아니라 캄보디아에서 실제 진행되고 있는 도로 개발 사업 및 상하수도 관련 사업에 적용되는 법령까지 조사의 범위에 포함하였습니다.

## II. 캄보디아법 개요

### 1. 캄보디아 법령 체계

캄보디아는 정치체도로써 입헌군주제를 채택하고 있는 국가입니다. 캄보디아는 「Constitution(이하 ‘헌법’)」 상 자유민주주의와 복수 정당제도를 채택하고 있고, 입법부, 행정부 및 사법부의 삼권 분립이 되어 있습니다. 입법부는 국회(National Assembly)와 상원(Senate)으로 이루어진 양원제를 채택하고 있습니다.

캄보디아의 법 체계를 그 층위에 따라 구분하면 다음과 같습니다.

| No. | 구분                          | 내용   |
|-----|-----------------------------|--|
| 1   | 헌법(Constitution)            | 캄보디아의 최고법  |
| 2   | 조약과 협정                      | 캄보디아 헌법에 따라 국회와 상원이 승인하고, 국왕이 서명, 비준한 다자간 또는 양자간 국제조약 및 협정       |
| 3   | 법령(Chhbab)                  | 캄보디아 국회에서 채택한 법  |
| 4   | 왕실 칙령<br>(Preah Reach Kret) | 캄보디아 국왕이 헌법에 따른 권한을 행사하기 위하여 국왕의 이름으로 공포하는 령                     |
| 5   | 시행령(Annukret)               | 캄보디아 내각에서 채택된 후 총리가 자신의 규제권한을 행사하기 위하여 공포하는 령                    |
| 6   | 부령(Prakas)                  | 캄보디아 각 정부부처(Ministry)가 자체적인 규제권한을 행사하기 위하여 공포하는 령                |
| 7   | 결정문(Sechkdei Samrach)       | 총리, 장관 또는 행정기관장이 자기 자신의 규제 권한을 개별적으로 행사하기 위하여 발표하는 결정사항          |
| 8   | 시행세칙(Sarachor)              | 총리 또는 장관이 특정한 규제조치를 설명하거나 명확히 하기 위하여 또는 구체적인 지시를 내리기 위하여 공포하는 규칙 |

캄보디아의 법 체계상 상위규범이 그 하위규범보다 효력이 더 우선합니다. 캄보디아 헌법 제150조에 따르면 헌법이 캄보디아의 최고법(Supreme Law)이고, 모든 법령은 헌법을 준수해야 합니다. 또한 캄보디아 정부부처의 부령 및 결정문 제정 및 공포 권한에 대해 규율하고 있는 「Law on the Organization and Functioning of the Council of Ministers(캄보디아 각료회의의 구성 및 기능에 관한 법)」 제29조에 따르면 정부부처의 부령 및 결정문에는 그 상위규범인 시행령(Annukret) 및 왕실 칙령(Preah Reach Kret)에 상충되는 내용이 없어야 합니다.

## 2. 본건 조사 대상 캄보디아 법령

본건 조사의 목적은 EDCF 주요 수원국인 캄보디아에서 EDCF 사업을 진행할 때 적용되는 캄보디아 관련 법령을 조사하여 한국수출입은행의 업무참고용 자료를 만드는 것입니다.

캄보디아에는 ODA에 대한 기본 법률은 별도로 존재하지 않으므로, 상기 목적을 이루기 위해 캄보디아 정부발주사업, 공공차관사업을 규율하는 법령, 즉 공공조달법 및 건설 관련 법령의 주요 내용, 사업 승인 및 변경, 예산집행 및 감독 절차 등에 대한 조사를 진행하였습니다. 또한 캄보디아에서 진행되고 있는 EDCF 사업이 대부분 토목(도로) 공사 또는 상하수도 개선을 위한 개발사업차관이라는 점, 현재 특정 사업에서 이주보상에 관한 애로사항을 경험하였다는 점 등을 고려하여 관련 법률에 대한 분석도 포함하였습니다.

본 보고서에 정리된 조사 대상 캄보디아 법령은 아래와 같습니다.

| No. | 조사 대상법령  | 주요내용 요약  |
|-----|--|--|
| 1   | 구매(공공조달) 관련  |  |
| 1.1 | Law on Public Procurement  | 공공조달 관련 감독당국, 담당기관의 의무사항, 공공조달 방식, 절차, 입찰 요건, 구매계약, 분쟁/민원 해결 절차, 처벌에 관한 법률   |
| 1.2 | Sub-Decree on Formalities and Procedures for Lodging and Addressing Procurement Complaints | 공공조달사업 관련 민원 제기 및 민원 해결 방식, 절차 및 메커니즘에 대한 규정                                 |
| 1.3 | Prakas on the Management of Performance of Public Procurement Contract                     | 구매계약에 대한 관리, 검토, 조사, 해지 및 평가에 관한 규정  |
| 1.4 | Prakas on Procurement Code of Ethics   | 공공조달사업에 대한 윤리 규범   |
| 1.5 | SOP on Procurement for all Externally Financed Projects in Cambodia                        | 캄보디아 외자구매사업에 대한 관리운영규정   |
| 2   | PPP 관련   |  |
| 2.1 | Law on Public Private Partnerships   | 민관협력사업 감독당국, PPP 절차, 요건 및 계약, 자금지원, 인센티브, 사업 실행 및 모니터링, 분쟁해결 및 처벌사항 등에 관한 법률 |
| 3   | 건설(건물 건축) 관련   |  |
| 3.1 | Law on Construction  | 캄보디아 내 건설사업 관련 원칙, 규율, 인허가 및 절차 등에 대한 법률                                     |
| 3.2 | Prakas on Procedures and Formalities of Construction Inspection                            | 건설사업 관련 조사, 절차 및 처벌에 관한 규정   |
| 3.3 | Prakas on Formalities and Procedures for Issuance of Construction Permit                   | 건축허가 요건 및 절차에 관한 규정  |
| 4   | 토목(도로) 공사 관련   |  |

| No.               | 조사 대상법령   | 주요내용 요약  |
|-------------------|---|--|
| 4.1               | Law on Road   | 캄보디아 도로 공사 및 관리에 관한 법률   |
| 4.2               | Sub-Decree on Conditions and Procedures for License for Conducting Business on Sectors of Road Infrastructure and Road Maintenance  | 도로 관련 사업자에 대한 인허가 절차 및 요건에 관한 시행령  |
| 4.3               | Prakas on Official Application of Technical Standards for Road Construction and Restoration   | 도로 공사 및 복구작업에 적용되는 기술표준에 관한 규정   |
| <b>5 상하수도 관련</b>  |   |  |
| 5.1               | Law on Management of Clean Water  | 상수도 관리에 관한 법률  |
| 5.2               | Sub-Decree on the Management of Drainage and Wastewater Treatment System  | 하수도 관리 체계에 관한 시행령  |
| 5.3               | Decision on the Adjustment to Cost of Selling Clean Water Produced and Supplied by PPWSA  | 프놈펜수도청이 부과할 수 있는 수도세에 대한 캄보디아 산업부의 결정문   |
| <b>6 이주보상 관련</b>  |   |  |
| 6.1               | Constitution  | 캄보디아 헌법<br>(국민의 사택 및 사적재산에 대한 권리, 손해배상 청구 권리 등에 대한 법률 포함)                      |
| 6.2               | Land Law  | 캄보디아 토지에 대한 소유권, 사용권에 대한 법률  |
| 6.3               | Law on Expropriation  | 공공사업을 위한 캄보디아 정부의 수용 권한, 절차/요건, 보상의무, 보상가격 등에 대한 법률                            |
| 6.4               | Sub-Decree on the Promulgation of the Standard Operating Procedures for Land Acquisition and Involuntary Resettlement for Externally Financed Projects in Cambodia                                      | 캄보디아 정부가 역외 차입을 통해 실시하는 공공 인프라 개선 및 경제 개발 프로젝트로 인한 토지 수용 필요시 적용되는 이주보상에 관한 시행령 |
| <b>7 정부 예산 관련</b> |   |  |
| 7.1               | Law on Public Financial System  | 캄보디아 재정제도에 관한 법  |
| 7.2               | Prakas on Establishment of Procurement Group under the Budget Unit  | 정부 예산부서의 공공조달사업 실행 및 운영 관련 규정, 재화 및 용역 구매 관련 담당 그룹 구성에 관한 규정                   |
| 7.3               | Prakas on Organization and Functioning of Departments and Units under the Supervision of the General Department of International Cooperation and Debt Management of the Ministry of Economy and Finance | 캄보디아 경제재무부 산하 국제협력 및 채무 관리 부서의 구성, 역할/책임, 기능에 대한 규정                            |

### III. 캄보디아 구매 관련 법률

#### 1. 공공조달법 체계

캄보디아에서 구매 관련 원칙, 방법, 절차 및 관리 등에 사항을 규율하는 주요 법령은 2023년 5월 16일 제정된 「(New) Law on Public Procurement(이하 ‘신 공공조달법’)」입니다.

신 공공조달법이 제정되기 이전에는 2012년 1월 14일 제정된 「(Old) Law on Public Procurement(이하 ‘구 공공조달법’)」이 적용되었는데, 신 공공조달법이 제정됨에 따라 구 공공조달법은 폐지(abrogate)되었습니다(신 공공조달법 제86조). 따라서 구 공공조달법의 적용을 받아오던 캄보디아 내 기존 모든 공공조달 관련 사업은 신 공공조달법의 적용을 받습니다.

##### 가. 신 공공조달법과 구 공공조달법의 차이점

신 공공조달법은 캄보디아 정부의 2019~2025년 Strategy for the Reformation of the Public Procurement System(공공조달 체계 개선 전략)에 따라 기존 공공조달법을 일부 보완하기 위하여 제정된 것인데, 구 공공조달법의 내용 중 신 공공조달법에 따라 폐지된 내용은 없고, 신 공공조달법에 따라 신설된 내용은 있습니다.

구 공공조달법은 14장(Chapter)으로 구성되어 있었는데, 신 공공조달법은 15장(Chapter) 내에 87개의 조항(Article)으로 구성되어 있습니다. 신 공공조달법에 신설된 주요 내용은 다음과 같습니다:

- 공공조달사업에 대한 경제재무부의 모니터링, 감사 및 조사 권한 강화
- 공공조달 절차에 대한 규정 중 Tender Document 관련 준비사항, 공고, 입찰서류 심사 등에 대한 내용 구체화
- 벌칙 규정 강화

한편, 신 공공조달법에 따른 하위규범은 아직 공포되지 않았는데, 현재로서는 구 공공조달법에 따라 제정되었던 하위규범이 신 공공조달법과 상충되는 내용이 있지 않는 한 그대로 적용되고 있습니다.

**나. 신 공공조달법의 적용 범위**

캄보디아 신 공공조달법 제2조에 따르면 다음 3가지 경우만을 제외하고 캄보디아 내 모든 공공조달 관련 사안에는 동 법령이 적용됩니다(제2조).

- 1) 차관공여국이 금융을 제공하여 해당 금융계약에 따른 절차를 준수해야 하는 조달 사업(캄보디아 정부기관과 차관공여국 간의 계약자유원칙이 인정되므로 해당 당사자들 간에 합의하여 정한 공공조달사업 관련 절차가 있다면 그 합의내용을 우선적으로 준수하여야 하고, 계약상 합의된 바가 없는 사항에 대해서만 캄보디아 신 공공조달법이 적용됨)
- 2) Law on Public Private Partnership이 적용되는 조달 사업
- 3) 국방의 기밀 또는 공공질서에 영향을 미치고 캄보디아 총리의 승인을 요하는 조달 사업

캄보디아 신 공공조달법의 목적은 공공조달에 관한 규칙, 방법, 절차 및 관리·실행 구조를 규정하여 재화 및 용역의 구매가 적시에 투명 및 공정하고, 효과적이고 효율적이며, 경제적이고, 지속 가능하며 경쟁력 있게 이루어지도록 하고, 캄보디아가 통일된 공공조달 체계를 갖출 수 있도록 하기 위함입니다(제1조).

**다. 신 공공조달법의 구성**

캄보디아 신 공공조달법에는 총 87개의 조항이 있고, 아래와 같이 15개의 Chapter(장)으로 나뉘어져 있습니다.

| No. | 제 목           | 주요 내용   |
|-----|---------------|---|
| 1장  | 일반 조항         | 캄보디아 구매법의 목적, 적용 범위 및 구매법에서 사용되는 용어에 대한 정의                                |
| 2장  | 감독기관          | 캄보디아 경제재무부의 역할 및 권한   |
| 3장  | 구매 주체         | 발주처의 구성 및 역할  |
| 4장  | 재화 및 용역 구매 방법 | 경쟁입찰, 제한적입찰, 쇼핑, 직접계약 등 구매 방법, 절차, 요건 및 전제 조건 등                           |
| 5장  | 컨설팅 서비스 구매    | 컨설턴트 선정 방법 및 절차, 자격 및 제한사항  |
| 6장  | 입찰참가자의 자격     | 입찰 참가 원칙, 경제재무부 등록 의무, 경제재무부의 블랙리스트 관리 등<br>* 경제재무부 블랙리스트에 등재되어 있거나 법원 명령 |

| No. | 제 목        | 주요 내용                                |
|-----|------------|--------------------------------------|
|     |            | 에 따라 입찰이 불가한 자를 제외하고는 입찰 참여 가능함.     |
| 7장  | 구매 계획      | 발주처의 구매 계획 수립 및 제출 의무, 계획 변경 사유 및 절차 |
| 8장  | 구매 절차      | 구매 단계별 절차, 요건                        |
| 9장  | 구매 계약      | 계약의 필수 내용 및 요건                       |
| 10장 | 감사 및 재무 조사 | 담당기관의 권한 및 역할, 감사 절차 및 규칙            |
| 11장 | 윤리규범       | 윤리규범 준수 의무 및 감독기관                    |
| 12장 | 민원 및 분쟁 해결 | 민원 제기 절차 및 기한, 분쟁 해결 방법 및 감독당국       |
| 13장 | 벌칙         | 벌칙 유형, 위반사항별 적용 벌칙                   |
| 14장 | 경과규정       | 본 법령과 상충되지 않는 기존 하위규정의 효력 인정         |
| 15장 | 최종 조항      | 본 법령의 제정 및 발효                        |

## 2. EDCF 사업 단계별 주요 승인, 허가사항 주요 절차

한국수출입은행이 캄보디아에서 실행하고 있는 EDCF는 대부분 Development Project Loan(개발사업차관)에 속하며, 캄보디아 신 공공조달법 및 「Standard Operating Procedures on Procurement for All Externally Financed Projects in Cambodia(이하 ‘공공조달사업 SOP’)」 등 캄보디아 관련 법률 관점에서 필요한 각 단계별 주요 승인, 허가사항 주요 절차는 다음과 같습니다.

| No. | 구 분                                 | 내 용   | 비 고  |
|-----|-------------------------------------|---|--|
| 1   | 사업 선정                               | 캄보디아에서 진행하고자 하는 EDCF 사업은 캄보디아 국가 개발전략계획에 부합해야 합니다.  |  |
| 2   | 타당성조사(F/S) 및 Implementation Plan 수립 | <p>발주처가 Project Procurement Plan(공공조달사업계획)을 수립한 후, 이 계획서를 캄보디아 경제재무부에 제출합니다.</p> <p>공공조달사업계획서는 캄보디아 경제재무부 내 GDICDM의 승인이 필요합니다.</p> <p>위 공공조달사업계획에 포함되어야 할 사항들은 다음과 같습니다:</p> <ul style="list-style-type: none"> <li>- 사업 실행을 위해 필요한 계약</li> <li>- 공공조달 방법</li> <li>- 예상 비용 및 일정</li> <li>- 입찰에 사용될 또는 필요한 서류</li> <li>- 관련 심사 절차 등</li> </ul> | <p>공공조달사업 SOP 10.1</p> <p>GDICDM Prakas 제16조</p> |

| No. | 구분                      | 내용   | 비고                   |
|-----|-------------------------|--|----------------------|
|     |                         | 캄보디아 경제재무부 내 GDICDM은 공공조달사업계획서를 승인한 이후 대상 프로젝트/프로그램에 대한 타당성조사를 실시합니다.  |                      |
| 3   | 차관 요청                   | 캄보디아 경제재무부는 차관공여국의 현지 주재 대사관을 통해 대상 프로젝트/프로그램에 대한 타당성조사 결과 및 실행계획과 함께 차관공여국 측에 차관을 요청합니다.  |                      |
| 4   | 차관계약 검토 및 협상            | 캄보디아 경제재무부 내 GDICDM이 차관계약에 대한 검토 및 협상을 진행합니다.  | GDICDM Prakas 제16조   |
| 5   | 실행단계:<br>컨설턴트 고용        | <p>발주처는 공공조달사업의 관리 및 계약실행에 대한 자문 등 전문적 서비스가 필요한 경우 컨설턴트를 선정 및 고용할 수 있습니다.</p> <p>컨설턴트 선정방법은 품질기반 선정, 품질 및 비용기반 선정, 예산범위 내 선정, 최저비용선정, 자격 기준 선정, 단일 제공자 선정, 개인 컨설턴트 선정으로 나뉩니다.</p> <p>발주처의 컨설턴트 제안요청서에 따라 컨설턴트들의 제안서가 접수되면, 발주처 측 담당자 및 GDICDM 공무원들로 구성된 Consultants Evaluation Committee(“CEC”)가 제안서에 대한 심사를 진행합니다.</p> <p>CEC는 위 심사절차를 완료한 후 평가보고서(컨설턴트 우선순위 지정)를 작성하여 이를 Procurement Review Committee(“PRC”)에 제출합니다. 컨설턴트는 PRC가 승인한 업체로 선정되어야 합니다.</p> <p>PRC 또한 발주처 측 담당자 및 GDICDM 공무원들로 구성되는데, CEC의 구성원들과 중복되지 않는 것을 원칙으로 합니다.</p> | 공공조달사업 SOP 7.2 및 7.5 |
| 6   | 실행단계:<br>본 구매(시공) 계약 체결 | <p>구매(시공) 입찰 서류에 대한 심사는 발주처 측 담당자 및 GDICDM 공무원들로 구성된 Bid Evaluation Committee(“BEC”)가 합니다.</p> <p>BEC는 심사를 완료한 후 평가보고서를 작성하여 이를 PRC에 제출합니다. PRC의 승인이 나면 구매(시공)계약이 체결됩니다.</p>   | 공공조달사업 SOP 6.3       |
| 7   | 구매계약 체결 이후 변경 (필요시)     | 구매계약 체결 이후 계약 변경사항(용역범위가 늘어나거나 가격이 증가하는 변경사항) 발생시에는 발주처가 해당 변경사항에 대한 PRC의 승인을 득하여야 합니다.  | 공공조달사업 SOP 6.3       |

### 3. 공공조달법 주요 내용

#### 가. 구매 방법

캄보디아 내 공공조달사업은 캄보디아 신 공공조달법상 경쟁입찰을 통해 진행되어야 하는 것이 기본 원칙입니다. 캄보디아 신 공공조달법 제12조에 따르면 모든 공공조달사업에는 투명성이 보장되는 경쟁입찰을 우선적으로 고려해야 하는데, 규모가 크고 많은 전문성이 요구되는 구매사업의 경우 국제경쟁입찰을 해야 하고, 자국(즉, 캄보디아) 내에 생산, 서비스 또는 공사 역량이 충분한 경우에는 국내경쟁입찰을 선택할 수 있습니다. 한편, 경우에 따라서는 **Restricted Competitive Bidding(제한경쟁입찰)** 또는 **Competitive Shopping** 또는 **Direct Contracting(직접계약)**의 방법도 가능한 한데, 각각 다음과 같은 전제사항이 있습니다.

**Restricted Competitive Bidding(제한경쟁입찰):** 특정 요건을 갖춘 입찰자를 필요로 하고 기술적으로 복잡한 사업에 사용되는 방법인데, 이 방법을 선택하려면 캄보디아 경제재무부의 사전승인을 득한 후 잠재적 입찰참가자들의 경력, 재정상태, 기술능력 등에 대한 사전적격성 검토를 거쳐야 합니다(공공조달사업 SOP 8.5.1. 및 8.5.2.)

**Competitive Shopping:** 구매 대상이 국내(캄보디아) 시장에서 쉽게 조달할 수 있고, 가격이 높지 않은 사업에서 사용되는 방법입니다.

**Direct Contracting(직접계약):** 입찰 없이 가격, 기술규격 등을 직접 협상하여 공급자 또는 서비스 제공자를 선정하는 방법인데, 이는 다음 중 하나에 해당되어야 하고, 캄보디아 경제재무부의 사전승인(prior approval)이 있어야 합니다(신 공공조달법 제14조).

- 구매 대상의 원천이 한 개(한 곳)인 경우
- 경쟁입찰에서 1회 유찰된 이후, 긴급한 상황이어서 재입찰을 하기에는 시간이 충분하지 않은 경우
- 경쟁입찰에서 2회 유찰된 경우
- 자연재해 기타 응급상황 등 긴급해서 다른 구매방법을 기다릴 수 있는 시간이 없는 경우
- 리서치, 실험 목적으로 필요한 경우

#### 나. 구매 절차

캄보디아 신 공공조달법에 따른 구매절차는 Chapter 8(제8장)에 상세히 규정되어 있는데, 그 주요 내용은 다음과 같습니다.

| No. | 구분                  | 내용  | 비고         |
|-----|---------------------|---|------------|
| 1   | 입찰 준비               | 발주처의 입찰담당부서에서 입찰안내서를 준비합니다. 입찰안내서에는 낙찰자 결정방법 및 심사기준이 명확히 기재되어야 합니다. 금액이 높고 전략적 요소가 있거나 민감한 사업에 대한 입찰안내서의 경우 입찰 공고가 나가기 전에 발주처가 입찰안내서의 내용에 대해 경제재무부의 승인을 득하여야 합니다.   | 제40조       |
| 2   | 입찰 공고               | 발주처가 입찰 공고를 합니다. 입찰 공고는 경제재무부의 홈페이지, 발주처의 홈페이지 및 게시판, 신문에 게재하는 방식으로 합니다.<br><br>입찰 공고에는 다음과 같은 내용이 포함되어야 합니다.<br>- 대상 재화, 용역의 종류 및 물량에 대한 설명<br>- 발주처 담당자의 이름, 주소, 이메일, 전화번호 및 팩스번호<br>- 구매방법<br>- 입찰 참가자에 대한 요건<br>- 입찰서류 제출기한 및 개찰일시<br>- 입찰보증금 및 계약이행보증금 요건에 관한 상세 내용      | 제43조, 제44조 |
| 3   | 입찰 참가(예정)자의 문의사항 대응 | 입찰 참가(예정)자는 입찰안내서에 대한 의문점이 있을 경우, 발주처에게 문의를 할 수 있습니다. 발주처는 입찰 참가(예정)자의 문의가 있을 경우 해당 참가(예정)자에게 서면으로 답변해야 하고, 필요시에는 입찰서류 제출기한 전에 입찰안내서를 수정한 모든 입찰 참가(예정)자를 초청하여 설명회를 개최하여야 합니다.   | 제45조       |
| 4   | 서류 접수               | 발주처의 입찰담당부서는 입찰서류가 접수되면 그 사실을 기록한 후, 입찰서류를 정해진 제출기한까지 밀봉된 채로 안전한 곳에 보관하여야 합니다.  | 제46조       |
| 5   | 열람                  | 모든 입찰서류는 입찰서류 제출기한이 도래한 이후 정해진 개찰일에 발주처가 공개적으로 개찰해야 합니다. 입찰서류상의 주요내용을 개찰장소에 방문한 모든 방문객들 앞에서 발표해야 하고, 이에 대한 의사록을 작성하여야 합니다.<br><br>입찰 참가자가 3인 미만인 경우(즉, 입찰 참가자가 2인 또는 1인이거나 또는 참가자가 없을 경우), 개찰절차를 거치지 않고 재입찰을 해야 합니다.<br><br>재입찰의 경우, 입찰참가자의 수와 상관없이, 정해진 개찰일에 개찰을 반드시 해야 합니다. | 제47조       |
| 6   | 심사                  | 입찰안내서에 명시된 요건 및 기준에 따라 입찰서류에 대한 심사가 진행되는데, 이와 관련된 내용은 II. 2. 6.을 참조하시기 바랍니다. 심사원들은 심사를 진행하기 이전에 Statement on the Code of Professional Ethics(직업윤리규칙 진술서)에 서명하여야 합니다.  | 제48조       |

| No. | 구분         | 내용  | 비고   |
|-----|------------|---|------|
| 7   | 결과 공개      | 발주처는 심사를 마친 이후 낙찰자를 결정하여 낙찰결과에 대한 공문을 모든 입찰참가자들에게 송부해야 합니다. 낙찰받지 못한 입찰참가자들 중 낙찰자에 대한 이견이 있을 경우, 낙찰결과에 대한 공문이 발표된 날로부터 10 영업일 이내에 민원을 제기할 수 있고, 발주처는 그 민원을 수령한 날로부터 5 영업일 이내에 회신하여야 합니다. | 제51조 |
| 8   | 계약 체결 및 감독 | 낙찰통지서가 송부된 날로부터 10 영업일 이내에 민원이 제기되지 않을 경우(또는 민원이 모두 해결된 이후), 발주처는 구매계약(안)을 낙찰자에게 교부하고, 구매계약에 대한 서명 및 입찰이행보증금을 요청합니다.  | 제52조 |

**다. 구매계약(Procurement Contract) 요건 및 절차**

구매계약을 감독 총괄하는 정부부처는 캄보디아 경제재무부입니다.

구매계약은 캄보디아 신 공공조달법, 발주처의 입찰안내서 및 캄보디아 경제재무부가 제공하는 기본 양식에 따라 작성, 체결되어야 하는데(제58조), 신 공공조달법상 요구되는 구매계약의 기본 요건은 다음과 같습니다.

| 구분         | 요건  | 비고   |
|------------|---|------|
| 언어         | 크메르어(필요시 타국어로 번역본을 만들 수 있는데, 크메르어가 우선함)   | 제59조 |
| 통화         | 캄보디아 리엘(단, 외국에서 조달하는 계약의 경우에는 외국통화를 사용할 수 있음)   | 제60조 |
| 제화 및 용역 규격 | 입찰서류에 기재된 내용과 유사해야 함  | 제61조 |
| 계약가격       | 조정사항이 반영된 낙찰가(winning bid)를 초과할 수 없음.<br>계약 실행 과정에 가격은 원칙적으로 변동될 수 없음. 불가항력적 사유 또는 인플레이션을 초래하는 경제적 위기 등 경제재무부장관이 허용하는 특수한 상황에만 변동이 가능함. | 제62조 |
| 계약이행 보증금   | 보증금은 낙찰자가 계약 이행을 거부하거나 계약 조건을 위반한 경우 몰취되어 캄보디아 국고로 입고됨. 보증금은 구매계약의 계약 기간이 종료될 때까지 유효하게 유지되어야 함.   | 제63조 |
| 하도급        | 낙찰자는 수주한 사업의 일부를 제3자에게 하도급 줄 수 있는데, 발주처의 사전 서면 승인이 필요함. 하도급과 관련하여 구매계약에서 필요로 하는 경우, 낙찰  | 제66조 |

| 구분 | 요건  | 비고 |
|----|---|----|
|    | 자는 발주처를 통해 캄보디아 경제재무부의 승인도 득하여야 함. 낙찰자가 위 승인을 득하여 사업의 일부를 제3자에게 하도급을 준 경우에도 사업 전반에 대한 책임은 낙찰자에게 있음. |    |

#### 4. 기승인 구매계약 변경사항 발생시 승인, 허가사항

기승인된 구매계약을 변경하는 것에 대한 법률적 근거는 캄보디아 경제재무부가 공표한 「Prakas on the Management of Performance of Public Procurement Contract(이하 ‘구매계약 이행의 관리에 관한 경제재무부령’)」에 있습니다. 동 경제재무부령에 따르면 발주처 및 공급자/도급업자는 구매계약에 합의된 바에 따라 계약을 이행해야 할 기본적인 의무가 있는데, 아래와 같은 상황이 발생하여 기승인된 구매계약의 내용을 변경해야 할 때에는 발주처가 캄보디아 경제재무부에 구매계약에 대한 변경승인을 요청해야 하고, 캄보디아 경제재무부가 검토 후 승인을 하면 기승인된 구매계약이 변경될 수 있습니다(구매계약 이행의 관리에 관한 경제재무부령 제6조 및 제9조).

- 구매계약의 가격을 변경해야 하는 특별한 사유가 있는 경우
- 구매계약의 가격은 변경되지 않으나 계약 이행 기한(완공일정)이 늦춰질 경우

구매계약의 변경이 필요한 경우, 발주처의 담당자(Procurement Officer 또는 Project Manager)는 해당 변경사항으로 인한 계약의 가격 또는 완공일정에 대한 영향을 검토해본 후 다음과 같은 일련의 절차를 거쳐야 합니다(캄보디아 공공조달사업 SOP 20.1.5).

- 구매계약의 내용 중 변경이 필요한 조항에 대하여 공급자/도급업자와 합의를 합니다.
- 발주처의 담당자가 계약 개정(안)과 개정사유 및 근거에 대한 보고서를 준비하여 Procurement Review Committee(구매계약의 가격이 변경되거나 완공일정이 지연될 경우) 또는 Project Director(구매계약의 가격 변경 또는 완공일정 지연 이외의 변동사항의 경우)에 제출합니다.
- Procurement Review Committee 또는 Project Director의 승인을 득한 이후 해당 차관공여국의 구매 관련 규정상 요구되는 경우, 차관공여국의 “no objection(이견 없음)”에 대한 확인을 요청합니다.
- 상기 관련 승인절차가 전부 완료되면 변경계약서 2부에 서명, 날인합니다. 날인본 원본은 발주처와 공급자/도급업자 각각 1부씩 보관하고, 날인본 사본이

캄보디아 경제재무부 내 General Department of International Cooperation and Debt Management(GDICDM) 및 차관공여국에 송부되어야 합니다.

- 변경계약 서명, 날인이 완료되면 발주처 담당자는 변경사항을 계약기록부에 기록하고, 계약가격이 증감하여 필요한 경우 공급자/도급업자로부터 계약이행 보증금을 추가로 지급받습니다.

한편, 구매계약의 가격 변경 또는 완공일정 지연 외 변동사항시 거쳐야 할 절차에 대해서는 위 경제재무부령에 명문 규정이 없습니다. 캄보디아 공공조달사업 SOP 20.1.3.에 따르면 해당 변동사항에 대한 발주처의 Project Director의 승인만 있으면 족하고, 변경계약 체결일로부터 10 영업일 이내에 Project Director가 캄보디아 경제재무부 내 GDICDM에 사후보고를 하면 됩니다.

## 5. Procurement Activity(공공조달)에 대한 감사 및 조사

캄보디아에서 이뤄지는 공공조달 사업에 대한 감사 및 조사 권한은 캄보디아 경제재무부에 있습니다(신 공공조달법 제10장). 캄보디아 경제재무부는 공공조달 사업에 대한 법률 위반이 의심되는 행위를 발견하거나 민원이 접수된 경우, 사전통지를 하지 않고도 대상 사업장에 대한 현장조사를 실시할 수 있는 권한이 있습니다(신 공공조달법 제69조). 또한 캄보디아에서 이뤄지는 공공조달 사업은 캄보디아 경제재무부가 사후적으로 검토를 하게 됩니다(신 공공조달법 제68조). 캄보디아 경제재무부의 사후검토에 대한 세부규칙 및 절차는 캄보디아 경제재무부령으로 정하게 되어 있는데, 이 경제재무부령은 아직 공표되지 않았습니니다.

## 6. 공공조달 관련 분쟁 발생시 처리 관련 주요 절차

### 가. 발주처에 대한 민원 제기

캄보디아 공공조달 사업 관련하여 입찰참가자(Bidder) 또는 잠재적 입찰참가자(Potential Bidder) 관점에서 민원을 제기하는 절차 및 요건은 「Sub-Decree on Formality and Procedures for Lodging and Addressing Procurement Compliant(이하 ‘공공조달 관련 민원 제기 절차에 관한 시행령’)」에 규정되어 있습니다.

다음과 같은 공공조달 절차 및 과정에 비정상적인 사항이 있었다고 보는 입찰참가자

(Bidders) 또는 잠재적 입찰참가자(Potential Bidders)는 발주처 또는 캄보디아 경제재무부 또는 캄보디아 법원에 문제를 제기할 권리가 있습니다(제5조).

- 입찰참가자의 자격 요건 설정 관련
- 입찰 공고 관련
- 입찰참가서 접수 또는 개찰 관련
- 공공조달절차 참여 금지, 제한사항 관련
- 낙찰자 및 계약에 대한 의사결정 관련

민원을 제기하기 위해서는 각 구매 관련 주요절차가 완료된 날로부터 5 영업일 이내에 (단, 낙찰자 선정에 대한 의사결정에 관한 민원에 한해서는 결과가 공지된 날로부터 10 영업일 이내에) 다음 사항들을 제출하여야 합니다.

- 민원인이 이름, 주소 및 서명(sign)
- 민원의 주제
- 사업 명칭
- 비정상적인 사항에 대한 설명 및 구매 관련 법률 조항 위반사항
- 민원 해결방안

발주처는 민원이 접수되면 다음과 같은 절차를 통해 민원에 대응하여야 합니다.

- 발주처는 민원을 수령한 날로부터 3 영업일 이내에 민원 수용 여부를 판단하여 민원인에게 서면으로 통지하여야 합니다(제13조).
- 민원 서류에 정보 또는 증빙이 부족할 경우, 발주처는 위 기간 내에 민원인에게 추가 자료를 요청할 수 있습니다.
- 민원인은 위 통지서를 수령한 날로부터 5영업일 이내에 발주처가 요구하는 보완자료를 제출하여야 합니다. 이 기한을 준수하지 못할 경우, 민원은 무효 처리 됩니다(제15조).
- 발주처는 민원을 수용하기로 결정한 경우, 그 날로부터 15일 이내에 민원 해결안을 민원에게 통보하여야 합니다(제16조).

발주처의 민원 해결안에 이의가 있는 민원인은 캄보디아 경제재무부에 민원을 제기할 수 있습니다(제18조).

**나. 캄보디아 경제재무부에 대한 민원 제기**

캄보디아 경제재무부는 민원이 접수되면 ‘민원 해결 위원회’를 구성하여야 하고(제19조), 동 위원회는 필요시 관련 부처, 기관, 당사자들을 초청하여 설명 및 의견을 개진할 기회를 제공할 수 있습니다(제20조)

위 위원회는 민원이 접수된 날로부터 3 영업일 이내에 민원 수용 여부를 결정하여 민원인에게 통지해야 합니다(제22조). 민원을 수용하지 않을 경우, 민원인은 캄보디아 법원에 소를 제기할 수 있습니다(제23조). 민원을 수용한 경우, 위원회는 그 날로부터 15 영업일 이내에 조사를 마치고 민원에 대한 결정문을 민원인에게 통지해야 합니다(제25조 및 제27조)

캄보디아 경제재무부의 ‘민원 해결 위원회’의 결정에 이의가 있는 민원인은 결정문이 발급된 날로부터 10 영업일 이내에 캄보디아 법원에 소를 제기할 수 있습니다(제28조). 한편, 위 기한 내에 캄보디아 법원에 소를 제기하지 않을 경우, 민원인은 캄보디아 법원에 소를 제기할 권리를 포기한 것으로 간주됩니다.

**다. 공공조달 계약 당사자들 간의 분쟁 관련**

공공조달 계약이 체결된 이후 계약 당사자들 간에 발생하는 분쟁은 그 계약에서 정한 방법에 따라 해결해야 합니다(공공조달 관련 민원 제기 절차에 관한 시행령 제5조)

**라. 캄보디아 법원 소송절차 개관**

캄보디아 「Law on the Organization of the Courts(이하 ‘법원 구성에 관한 법’)」 제3조에 따르면 캄보디아 사법부는 3심제(1심법원, 항소법원 및 대법원)를 채택하고 있고, 행정법원은 따로 존재하지 않습니다. 이에 민원인은 발주처나 캄보디아 경제재무부 등 정부부처를 상대로 캄보디아 「Code of Civil Procedure(이하 ‘민사소송법’)」에 따라 관할 1심법원에 소를 제기할 수 있습니다. 캄보디아 민사소송법에 따른 통상적인 소송절차는 다음과 같습니다.

| 구분    | 내용   | 비고                              |
|-------|--|---------------------------------|
| 소장 제출 | 민원인이 원고로서 해당 법원에 소장을 제출합니다. 소장이 접수되면 법원은 형식적 하자 등에 대한 심사 이후 상대방(피고)에게 소장을 송달합니다. | 민사소송법 제8조 내지 제10조, 제78조 내지 제79조 |

| 구분      | 내용  | 비고                                 |
|---------|---|------------------------------------|
| 변론 준비절차 | 법원은 소장이 접수된 날로부터 보통 30일 이내에 변론준비기일을 정하여 당사자들의 법원 출석을 요구합니다. 법원은 변론준비절차를 통해 쟁점을 파악하고 당사자들의 주장과 증거를 확인합니다. 법원이 요구하는 경우 당사자들은 준비서면을 제출하여야 합니다. | 민사소송법 제80조, 제101조, 제103조           |
| 변론기일    | 변론 준비절차가 끝나면 변론기일이 정해집니다. 당사자들은 변론기일에 변론준비기일의 결과를 진술하고, 법원은 변론준비절차에서 정리된 결과에 따라 증거조사를 실시합니다.  | 민사소송법 제113조, 제116조,                |
| 판결      | 법원은 변론이 종결된 날로부터 1개월 이내에 판결을 선고해야 합니다. 판결은 선고로 효력이 생깁니다. 판결문은 판결이 선고된 날로부터 2주 이내에 당사자들에게 송달되어야 합니다. 항소기한 내에 항소장이 접수되지 않을 경우, 판결이 확정됩니다.     | 민사소송법 제186조 내지 제187조, 제190조, 제193조 |

## 7. 공공조달 관련 윤리규범

신 공공조달법 제71조에 따르면 공공조달 사업이 진행되는 과정에 모든 관계자(발주처, 공무원, 입찰참가자 등)는 2016년 8월 31일 캄보디아 경제재무부가 공포한 「Procurement Code of Ethics(이하 ‘공공조달 윤리규범’)」을 따라야 합니다. 예컨대 공공조달 사업 관련 민원을 수령한 발주처는 해당 민원을 해결하는 데에 있어 공공조달 윤리규범에 따른 각종 원칙을 준수해야 합니다(공공조달 관련 민원 제기 절차에 관한 시행령 제12조).

공공조달 윤리규범에 규정되어 있는 기본원칙의 주요 내용은 다음과 같습니다.

- 공공조달 이행과정에 이해 상충 관계가 없을 것
- 공공조달 절차 진행 과정에 부패, 공모, 사기, 협박이 없을 것
- 공공조달 절차에 참여하는 컨설턴트, 임직원, 공무원 등에 향응을 제공하지 않을 것
- 공공조달사업 입찰참가자에게 공정하고 동등한 기회 및 정보를 제공하고, 특정인을 차별하지 않을 것
- 감독기관의 감사, 조사에 응할 것

위와 같은 기본원칙이 적용, 준수될 수 있도록 마련되어 있는 법률상의 장치는 다음과 같습니다.

- 공공조달사업 관계자들이 공공조달 윤리규범을 제대로 준수하고 있는지에 대하여

- 캄보디아 경제재무부가 조사 및 모니터링을 해야 합니다(공공조달 윤리규범 제6조)
- 경제재무부는 공공조달에 관여하는 공무원들에게 필요한 교육, 훈련을 제공해야 합니다(공공조달 윤리규범 제6조)
- 발주처는 입찰참가자들과 특별한 관계가 없고 공모를 하지 않았다는 점에 대하여 진술(declare)을 해야 합니다(공공조달 윤리규범 제9조)
- Procurement Review Committee는 그 역할을 독립적으로 수행해야 하고(공공조달 윤리규범 제7조), 내부정보를 유출하여서는 아니되며, 입찰 심사 과정에 공공조달 윤리규범을 준수하였다는 진술서에 서명해야 합니다(공공조달 윤리규범 제8조)
- 공공조달 윤리규범 위반시에는 관련 법에 따른 행정처분 및 형사처벌을 받게 될 수 있습니다(공공조달 윤리규범 제13조)

## 8. 캄보디아 공공조달법 위반시 적용되는 벌칙규정

### 가. 벌칙 세부내용

캄보디아 신 공공조달법 위반시 적용되는 벌칙규정은 동 법령의 제32조 및 제75조 내지 제84조에 나와 있습니다. 캄보디아 신 공공조달법상 부과될 수 있는 벌칙은 다음과 같이 행정(administrative) 조치와 형사(criminal) 처벌로 나뉩니다.

- 행정조치: 경고장, 중단 명령, 계약 무효 조치, 경제재무부 블랙리스트 등재
- 형사처벌: 벌금형 및 징역형

특히 구매 과정에 저지른 행위에 대한 벌칙은 다음과 같이 명시적으로 규정되어 있습니다.

| 위반 사항  | 벌 칩   | 비 고  |
|--|---|--|
| 공공조달 과정에 허위내용을 제출하거나 공공조달법 기타 관련 법률을 위반한 입찰참가자, 공급자/도급업자 | 캄보디아 경제재무부가 관리, 공시하는 블랙리스트에 등재됨   | 위반자가 ‘법인’인 경우, 40,000,000 리엘에서 200,000,000 리엘 이하의 벌금이 부과될 수 있고, 캄보디아 형법 제168조에 따라 추가 벌금이 부과될 수도 있음 |
| 구매 과정에 기부, 서약, 합의, 혜택 또는 부정한 방식으로 입찰을 낭비하거나 망친 자         | 1년에서 3년 이하의 징역형 및 4,000,000 리엘(약 USD 1,000)에서 10,000,000 리엘(약 USD 2,500) 이하의 벌금이 부과될 수 있음 |  |
| 구매 과정에 폭력, 위압 또는 입찰참가자/공급자/도급업자와 공모하여 구매 자유원칙을 방해한 자     | 2년에서 5년 이하의 징역형 및 8,000,000 리엘(약 USD 2,000)에서 20,000,000 리엘(약 USD 5,000) 이하의 벌금이 부과될 수 있음 |  |

캄보디아 신 공공조달법을 위반한 자는 위에 열거된 벌칙 외에 캄보디아 형법에 따라 추가 처벌 대상이 될 수 있습니다(신 공공조달법 제84조)

#### 나. 캄보디아 Anti-Corruption Unit(부패방지조직)의 역할

캄보디아 신 공공조달법 제80조에 따르면 공공조달사업을 방해하는 행위에 대한 조사 및 법적조치를 담당하는 정부기관은 부패방지조직입니다. 부패방지조직은 2010년 4월 19일 제정된 「Law on Anti-Corruption(이하 ‘부패방지법’)」에 따라 구성된 특수조직인데, 캄보디아 공공조달법 또는 관련 규정에서 정하고 있는 사안과 관련하여 부패행위가 의심되면 부패방지조직에 신고를 할 수 있습니다. 캄보디아 부패방지법은 공무원뿐만 아니라 비공무원에게도 적용이 되기 때문에 공공조달사업 과정에 부패행위를 저지른 자는 누구든 부패방지조직의 조사 대상이 될 수 있고, 캄보디아 구매법 뿐만 아니라 캄보디아 부패방지법에 따른 처벌도 받게 될 수 있습니다.

캄보디아 현지에 공개된 사례 중 2015년 부패방지조직이 Telecom Cambodia(캄보디아 텔레콤), Phnom Penh Autonomous Port(프놈펜항만청), Ministry of Health(캄보디아 보건부) 및 Cambodia Post(캄보디아 우체국)에 공공조달법을 위반한 것에 대한 경고장(warning letter)을 보낸 사례가 있습니다. Telecom Cambodia에 대한 경고 사례(2015년 9월 9일 부패방지조직이 Telecom Cambodia 대표이사 앞으로 보낸 경고문 No. 031/15 Ror.Bor.Kor/ACU 참조)를 보면, 부패방지조직이 Telecom Cambodia의 여러 재화 및 용역 공공조달사업을 조사하는 과정에서 다음 사항들에 대한 지적을 하였고, 앞으로는 미준수사항이 없도록 내부체계가 개선되어야 한다는 경고를 하였습니다.

- 입찰참가자들이 제출한 입찰서류에 이행보증금액이 명시되지 않은 점.
- 유효기간이 지난 회사설립증서를 제출한 입찰참가자가 있었던 점.
- 입찰참가자들 중 제대로 된 서류인증절차를 거치지 않았고, 사업자등록증이 유효하지 않았던 점.
- Procurement Review Committee의 심사 과정에 서류가 미비했던 업체에 대해서도 우수한 평가를 한 점.

한편, 부패방지조직이 Telecom Cambodia에 경고장을 보낸 이후, 그에 대한 사후 모니터링 조치가 있었는지에 대해서는 확인되지 않았습니다.

## IV. 캄보디아 건설법

### 1. 건설법 체계

캄보디아의 건설 관련 주요 법령은 2019년 11월 2일 제정된 「Law on Construction(이하 ‘건설법’)」입니다. 캄보디아 건설법 대신 다른 법률이 명시적으로 적용되는 건설 유형을 제외하고, 캄보디아 내에서 이뤄지는 건설 관련 사항은 캄보디아 건설법이 적용됩니다(캄보디아 건설법 제3조). 예컨대 도로 공사에 관한 사항은 「Law on Roads(이하 ‘도로에 관한 법’)」 및 그 하위법령에 따라 규율되는데, 해당 내용은 이하 「IV. 캄보디아 도로 공사 관련 법률」 부문을 참고하시기 바랍니다.

캄보디아 건설법에는 건물의 건축 및 철거에 관한 허가 및 신고사항, 시공 및 설계 관계자의 권리 및 의무사항, 건설 사업 관련 분쟁 해결절차, 건설법 위반시 부과되는 벌칙 등에 관한 사항이 규정되어 있습니다.

### 2. 건설사업 단계별 승인 및 허가사항 주요 절차

#### 가. 건축허가

캄보디아에서 모든 건물 건축 작업은 캄보디아 국토관리도시계획건설부의 사전 허가를 받아야 합니다(건설법 제26조).

#### 나. 건설 장비에 관한 사전 통지

건설장비의 수리·개조 또는 설치의 경우, 하중 지지 구조, 외관, 건물 전체 또는 일부의 기능에 영향을 미치지 아니하고 공공의 보안, 안전 및 질서에 영향을 미치지 않는 경우에는 허가(permission)까지는 필요 없고, 관할 관청에 사전통지만 하면 됩니다(건설법 제 29조). 즉, 하중 지지 구조, 외관, 건물 전체 또는 일부의 기능에 영향을 미치거나 공공의 보안, 안전 및 질서에 영향을 미치는 건설장비의 수리·개조 또는 설치의 사전에 국토관리도시계획건설부의 허가를 받아야 합니다.

#### 다. 공사현장 개설에 관한 사전 허가

허가를 요하는 모든 건축 공사는 사전에 국토관리도시계획건설부로부터 공사현장 개설에 대한 허가를 받아야 합니다(건설법 제38조).

#### 라. 인증전문가의 인증 및 인증서 발급

허가를 요하는 모든 건축 또는 해체 공사는 국토관리도시계획건설부장관이 부여하는 면허를 소지한 건축 또는 해체 공사 인증전문가가 점검하고 인증해야 합니다(건설법 제41조 제1문). 건축 또는 해체 공사 인증전문가는 공사 완료시에 관할 관청이 승인한 설계도서 및 건축기술규정에 따라 공사가 준수되었음을 증명하는 보고서를 작성하고 인증서를 발급해야 합니다(건설법 제41조 제2문).

#### 마. 점유허가

건축허가를 요하는 건축물을 점유하게 되는 경우 관할 관청으로부터 점유허가서를 취득해야 합니다(건설법 제44조 제1문). 건축주 본인 또는 타인이 건축물을 사용하기 이전에 점유허가를 신청해야 하는데(건설법 제44조 제2문), 점유허가를 신청하기에 앞서 인증전문가로부터 건축기술규정의 준수 여부를 확인 및 인증 받아야 합니다(건설법 제44조 제3문).

#### 바. 품질 및 안전 점검

감보디아 건설법상 요구되는 정기적 품질 및 안전 관련 점검의무는 다음과 같습니다.

- 품질 및 안전관리: 비거주용 건축물은 점유허가서를 발급받은 날로부터 5년 이내에 품질 및 안전관리 점검을 실시해야 하며, 그 후 5년에 한 번씩 정기적으로 점검을 해야 합니다(건설법 제47조 제1문). 한편, 거주용 건축물은 점유허가서를 발급받은 날로부터 10년 이내에 품질 및 안전관리 점검을 실시해야 하며, 그 후 10년에 한 번씩 정기적으로 점검을 해야 합니다(건설법 제47조 제2문).
- 화재 예방: 건축물의 화재 예방 및 소화 시스템 점검은 2년에 한 번씩 실시해야 합니다(건설법 제47조 제3문).
- 위험 건설장비: 건축물 내 위험 건설장비에 대한 점검은 매년 해야 합니다(건설법 제47조 제4문).

건축주 또는 건물 관리자는 건축물의 품질 및 안전관리 점검 기한이 도래한 날로부터 1개월 이내에 관리 점검 결과를 관할 당국에 제출할 의무가 있습니다(건설법 제47조 제5문). 한편, 관할 당국의 판단 하에 생명 또는 재산에 위함이 있거나 공공의 안전 또는 질서에 영향이 있다고 판단되는 경우, 품질 및 안전관리를 요구할 수 있습니다. 건축물에 대한 품질 및 안전관리 점검은 국토관리도시계획건설부의 면허를 보유한 건설관리자 또는 인증인이 실시해야 하고, 이에 소요되는 비용은 건물 소유주가 부담해야 합니다(건설법, 제49조).

### 3. 건축허가 취득 요건 및 절차

캄보디아에서 건설되는 공공 건축물은 캄보디아 국토관리도시계획건설부의 건축허가(Construction Permit)가 필요합니다(건설법 제26조). 캄보디아 국토관리도시계획건설부의 건축허가 발급 및 재발급/갱신에 관한 요건 및 절차는 「Prakas on Formalities and Procedures for the Issuance of Construction Permit(이하 ‘건축허가 발급 요건 및 절차에 관한 국토관리도시계획건설부령’)」에 규정되어 있습니다.

캄보디아에서 건축허가를 신청하기 위해서는 국토관리도시계획건설부의 One Window Service(단일창구서비스)에 다음 사항들을 제출하여야 합니다(건축허가 발급 요건 및 절차에 관한 국토관리도시계획건설부령 제4조).

- 건축허가 신청서
- 건축주의 신분증(건축주가 법인인 경우, 법인의 정관)
- 토지소유권증서(또는 점유권증서)
- 지적도
- 건축설계도(기술설명서 포함)
- 건축설계보고서 및 건축설계증서

건축설계도(기술설명서 포함)는 영어로 작성, 제출할 수 있는데, 그 밖의 모든 건축허가 신청 관련 서류는 크메르어로 작성, 제출되어야 합니다. 타국어로 되어 있는 원본서류는 크메르어 번역 후 번역공증이 필요합니다(건축허가 발급 요건 및 절차에 관한 국토관리도시계획건설부령 제6조)

국토관리도시계획건설부는 건축허가 신청서류에 대한 심사를 진행하고, 건축허가 신청서

류가 단일창구서비스(One Window Service)에 접수되고 신청 수수료가 납부된 날로부터 45 영업일 이내에 건축허가 발급여부를 결정합니다.

건축허가가 발급된 이후, 건축허가 신청 서류 기재사항에 변경사항이 생겼을 경우 건축허가를 재발급 받아야 합니다(건축허가 발급 요건 및 절차에 관한 국토관리도시계획건설부령 제17조). 또한 이미 시공된 건축물에 변경작업이 필요한 경우에도 건축허가를 새로 신청해야 하는데, 이 경우에는 앞서 열거된 건축허가 신청서류와 더불어 기존 건축설계도에 대한 변경안을 제출하여야 합니다. 변경작업으로 인해 건축허가를 재발급 받아야 하는 경우에도 신규 건축허가 때와 동일하게 재발급 신청 수수료가 납부된 날로부터 45 영업일 이내에 건축허가 발급여부가 결정됩니다(건축허가 발급 요건 및 절차에 관한 국토관리도시계획건설부령 제18조).

#### 4. 설계 변경사항 발생시 승인 및 허가사항 주요 절차

건축 설계 변경사항 발생시 필요한 승인, 허가사항은 건설법 제9장(제32조 내지 제35조)에 규정되어 있는데, 그 주요 내용은 아래와 같습니다.

캄보디아에서 건축물을 시공하려면 설계도서가 필요한데, 모든 설계도서는 캄보디아 국토관리도시계획건설부장관이 부여한 면허를 보유하고 있는 설계사가 책임지고 준비해야 합니다(건설법 제32조). 또한 설계도서는 건축기술규정과 공간(spatial) 및 도시(urban) 관련 규정을 준수해야 하는데, 그 준수여부를 국토관리도시계획건설부장관이 부여한 면허를 보유하고 있는 인증인(certifier)이 인증해야 합니다(건설법 제33조).

한편, 건축 설계도서를 변경하기 위해서는 토지 소유자 또는 시공사가 국토관리도시계획 건설부 단일창구서비스(One Window Service)에 아래의 서류를 제출하고 국토관리도시계획 건설부의 설계도서 변경허가를 득해야 합니다(건설법 제34조).

- 설계도서 변경 신청서
- 기존 건축 설계도서
- 건축 설계도서 변경안
- 건축허가 사본
- 토지 소유권리증서 사본
- 신청인이 법인인 경우, 해당 법인의 설립증서 및 정관

## 5. 관할 관청의 의사결정에 대한 분쟁 해결 절차

건축 설계, 시공방법에 대한 변경사항은 결국 관할 관청의 허가가 필요한데, 건설분야 (construction sector)에서 관할 관청의 의사결정에 이견이 있는 이해관계자는 법원에 소를 제기하기 이전에 민원제기절차를 먼저 거쳐야 합니다(건설법 제83조). 캄보디아 건설법상 건설분야 관련 민원을 제기하는 경로는 다음과 같이 두 가지 방법이 있습니다.

### 가. 관할 관청에 먼저 민원을 제기하는 방법(건설법, 제83조):

이는 캄보디아 국토관리도시계획건설부(중앙 정부부처)가 아닌 해당 건축물(또는 건설 사업장)이 소재해 있는 관할 시청(City Hall Administration) 또는 도청(Provincial Authority)에 먼저 민원을 제기하는 방법을 의미하는데, 그 상세 절차는 다음과 같습니다.

- 관할 관청의 의사결정에 이견이 있는 이해관계자는 결정문을 통지받은 날로부터 60일 이내에 그 관할 관청에 서면으로 민원을 제기할 수 있습니다.
- 관할 관청은 민원이 접수된 날로부터 30 영업일 이내에 의사결정에 대한 명확한 사유가 명시된 결정문을 발표해야 합니다.
- 민원이 접수된 날로부터 30 영업일 이내에 관할 관청이 결정을 내리지 않을 경우, 민원인은 그 기한이 종료된 날로부터 60일 이내에 캄보디아 국토관리도시계획건설부에 민원을 제기할 수 있습니다.
- 국토관리도시계획건설부장관은 민원을 접수한 날로부터 30 영업일(국토관리도시계획건설부장관 결정 기한) 이내에 의사결정에 대한 명확한 사유가 명시된 결정문을 발표해야 합니다.
- 국토관리도시계획건설부장관의 결정에 불복하는 민원인은 결정문을 수령한 날로부터 30일 이내에 캄보디아 법원에 소를 제기할 수 있습니다. 또한 국토관리도시계획건설부장관이 위 국토관리도시계획건설부장관 결정 기한 내에 결정문을 발표하지 않을 경우에는 그 기한이 종료된 날로부터 30일 이내에 캄보디아 법원에 제소할 수 있습니다.

### 나. 캄보디아 국토관리도시계획건설부에 즉각 민원을 제기하는 방법(건설법, 제84조):

관할 시청(City Hall Administration) 또는 도청(Provincial Authority)에 민원을 제기하지 않고, 곧바로 캄보디아 국토관리도시계획건설부에 민원을 제기하는 방법인데, 그 상세 절차는

다음과 같습니다.

- 관할 관청의 의사결정에 이견이 있는 이해관계자는 결정문을 통지받은 날로부터 60일 이내에 국토관리도시계획건설부에 서면으로 민원을 제기할 수 있습니다.
- 국토관리도시계획건설부는 민원을 접수한 날로부터 30 영업일 이내에 의사결정에 대한 명확한 사유가 명시된 결정문을 발표해야 합니다.
- 국토관리도시계획건설부장관의 결정에 불복하는 민원인은 결정문을 수령한 날로부터 30일 이내에 캄보디아 법원에 제소할 수 있습니다.

민원인이 캄보디아 국토관리도시계획건설부를 상대로 캄보디아 법원에 소를 제기하는 절차는 본 조사보고서 ‘II. 6. 4)’를 참고하시기 바랍니다.

## 6. 건설 관련 계약 분쟁 해결절차

건설 관련 계약을 체결한 당사자들 간에 분쟁이 발생한 경우 당사자들은 합의 하에 캄보디아 건설법 제87조에 근거하여 캄보디아 Commission for Construction Dispute Resolution(건설분쟁해결위원회)에 Mediation(조정) 절차를 신청할 수 있습니다. 캄보디아 건설분쟁해결위원회의 조정절차는 분쟁이 발생한 날로부터 30일 이내에 신청해야 하는데, 건설분쟁해결위원회는 조정 신청서가 접수된 날로부터 30 영업일 이내에 해당 당사자들 간의 분쟁을 조정하여 조정안을 발표해야 합니다. 건설분쟁해결위원회의 조정안에 불복하는 당사자는 법원에 소를 제기할 수 있습니다(건설법 제86조)

한편, 분쟁 당사자들이 캄보디아 건설분쟁해결위원회의 조정절차를 원치 않는 경우에는 해당 계약에서 합의해 놓은 분쟁해결관할에서 분쟁을 해결해야 합니다. 분쟁해결관할을 특정하지 않은 경우에는 캄보디아 법원에 소를 제기할 수 있습니다.

건설 관련 계약의 일방 당사자가 상대방 당사자를 상대로 캄보디아 법원에 소를 제기하는 절차는 본 조사보고서 ‘II. 6. 4)’를 참고하시기 바랍니다.

## 7. 캄보디아 건설법 위반시 적용되는 벌칙 규정

### 가. 건설공사 조사

캄보디아 건설법 위반사실은 보통 Construction Inspection(건설조사)를 통해 적발되는데, 건설조사 담당기관, 건설조사 담당기관의 역할 및 권한, 건설조사 절차 등은 캄보디아 국토관리도시계획건설부와 법무부가 공동으로 공표한 Inter-Ministerial Prakas on Procedures and Formalities of Construction Inspection(건설조사 절차에 관한 국토관리도시계획건설부 및 법무부령)에 상세히 규정되어 있습니다.

건설공사에 대한 조사를 감독, 총괄하는 정부부처는 국토관리도시계획건설부입니다. 실무적으로 건설공사 조사를 실시하게 될 조사관(팀)은 국토관리도시계획건설부 소속 엔지니어, 건축사, 기술사 등으로 구성되는데(제4조), 이 조사관(팀)이 건설공사에 대한 조사를 실시하기 위하여 충족되어야 할 요건은 다음과 같습니다.

- 조사 대상 사업장 소유주의 동의를 있어야 함.
- 조사의 대상은 건설공사가 진행 중인 사업장이어야 함.
- 공공 시설/건물을 건설하는 사업장의 경우 일반 일과 시간 중에만 조사를 진행할 수 있음. 사업장이 사유지인 경우에는 오전 6시 이후부터 오후 6시 사이에만 가능함.

현장조사에서 조사의 대상이 되는 주요 항목들은 다음과 같습니다.

- 부지 개발 및/또는 건설공사에 대한 건축허가, 기술규정 기타 관련 법률 준수 여부
- 대상 사업자, 설계사, 시공사 등의 사업 운영
- 사업장 실내외 업무 안전사항
- 부지 개발 및/또는 건설공사 관련 소유/점유권증서, 인허가, 건축설계, 착공 또는 준공 관련 허가, 건설 기기장비, 기술서류, 시공계약 등에 대한 검토
- 기타 국토관리도시계획건설부가 조사 대상자에게 요구한 역할 및 업무 이행 여부

현장조사를 실시한 조사관(팀)은 조사결과에 대한 보고서를 작성하여 조사를 착수한 날로부터 5 영업일 이내에 내부적으로 보고를 해야 합니다(제11조). 조사관(팀)의 현장조사 결과에 대한 보고서에는 다음 사항들이 포함되어야 합니다(제13조).

- 관계자들(시행사/소유주, 시공사, 건축사 등)에 대한 정보
- 해당 건설/철거 사업에 대한 정보
- 인허가 준수여부에 대한 검토 결과
- 조사에 대한 결론

- 시정 요구사항 및 벌칙(경고장, 건설공사 중단 명령, 인허가 정지 또는 취소, 사업 운영 금지명령, 기기장비 압류, 벌금 등) 관련 의사결정이 필요한 사항  
 →예컨대 벌금을 제언할 경우, 해당 위반사유 및 귀책당사자에 대한 정보, 근거 법률, 벌금액 등도 함께 기재가 되어야 함
- 조사관(팀)의 서명 및 날인

국토관리도시계획건설부는 현장조사를 실시한 조사관(팀)의 조사보고서가 서명(sign)된 날로부터 15 영업일 이내에 필요 조치사항(이행 명령, 벌금 부과 등)에 대한 의사결정을 하고, 결정문을 대상자에게 발송합니다. 대상자가 국토관리도시계획건설부의 의사결정을 이행, 준수하지 않을 경우, 국토관리도시계획건설부는 법원을 통해 강제집행절차를 개시할 수 있습니다(제15조)

**나. 건설법 위반에 대한 벌칙**

캄보디아 건설법 위반시에는 서면경고, 면허 또는 허가의 정지·취소 조치, 이행강제금, 업무 금지 명령, 강제철거(또는 원상복구) 명령, 벌금 및/또는 징역형으로 처벌될 수 있습니다(건설법 제90조). 벌칙은 위반사항의 유형, 위반 횟수 및 위반사항이 초래한 결과에 따라 달라지는데, 캄보디아 건설법 제97조 내지 제101조에 따른 벌칙규정을 요약하면 다음과 같습니다.

| 위반사항  | 벌칙   | 가중 처벌  |
|---|--|--|
| 관할 관청의 건설 중단/시정/철거 명령을 위반한 경우   | 1회 위반시, 20,000,000 리엘 이상 40,000,000 리엘 이하의 벌금<br><br>2회 위반시, 1회 위반으로 부과된 벌금의 2배 및 1개월에서 3개월 이하의 징역 | 건설법 위반으로 인하여 피해자의 팔 또는 다리가 절단되거나 피해자가 영구적 장애를 얻게 되는 경우, 5년에서 10년 이하의 징역<br><br>건설법 위반으로 인하여 사망자가 발생한 경우, 7년에서 15년 이하의 징역 |
| 건설공사에 품질 및 안전 관련 건축기술규정을 준수하지 않은 건축 자재, 장비 등을 사용 또는 설치하여 타인에게 부상 또는 건강상의 피해를 가한 자 | 1년에서 3년 이하의 징역형 및 20,000,000 리엘에서 40,000,000 리엘 이하의 벌금   |  |
| 건축기술규정을 준수하지 않은 채로 설계도서를 만들고, 이로 인하여 타인에게 부상 또는 건강상의 피해를 가한 설계사                   | 1년에서 3년 이하의 징역 및 20,000,000 리엘에서 40,000,000 리엘 이하의 벌금  |  |
| 설계도서 및 건축기술규정을 준수하지 않은 채로 건축물을 공사 또는 철거하여 타인에게 부상 또는                              | 1년에서 3년 이하의 징역 및 20,000,000 리엘에서 40,000,000 리엘 이하의 벌금  |  |

| 위반사항   | 벌칙  | 가중 처벌 |
|--|---|-------|
| 는 건강상의 피해를 가한 시공사  |   |       |
| 건축기술규정을 준수하지 못한 설계도서 또는 건축물을 인증하였고, 그 설계도서 또는 건축물로 인해 타인에게 부상 또는 건강상의 피해를 가한 인증인 | 2년에서 5년 이하의 징역 및 30,000,000 리엘에서 60,000,000 리엘 이하의 벌금 |       |

## V. 캄보디아 도로 공사 관련 법률

캄보디아에서 이뤄지는 토목공사 중 도로 공사와 관련된 법률은 ‘도로에 관한 법’입니다. 도로의 개념에는 교량도로(다리), 고가도로, 터널도 포함되며, 이러한 도로의 건설, 확장, 유지보수 및 사용에 관한 사항이 도로에 관한 법에 따라 규율됩니다.

### 1. 도로 공사 관련 유관 부서

유관 부서는 기본적으로 도로의 소재지에 따라 정해지는데, 농촌으로 분류된 지역에서의 도로 관련 사항은 캄보디아 Ministry of Rural Development(이하 ‘농촌개발부’)에서 관장하고, 그 외 나머지 지역의 국도, 고속도로, 지방도로는 캄보디아 Ministry of Public Works and Transport(이하 ‘공공사업교통부’)에서 관장합니다.

### 2. 도로 공사 사업자 인허가 요건

캄보디아 농촌지역으로 분류된 지역에서의 도로 공사 및 유지보수 사업은 유관 부서인 농촌개발부가 직접 실시하거나, 농촌개발부가 캄보디아 공공조달법에 따라 선정한 민간업체가 실시할 수 있습니다(도로에 관한 법 제18조). 농촌지역을 제외한 나머지 지역에서의 도로 공사 및 유지보수 사업은 유관 부서인 공공사업교통부가 직접 실시하거나, 공공사업교통부가 캄보디아 공공조달법에 따라 선정한 민간업체가 실시할 수 있습니다(도로에 관한 법 제18조).

2015년 7월 22일 공포된 「Sub-Decree on Conditions and Procedures for License for Conducting Business on Sectors of Road Infrastructure and Road Maintenance(도로 인프라 및 유지보수 사업 인허가 관련 요건 및 절차에 관한 시행령, 이하 ‘도로 사업 인허가 시행령’)」에 따르면 도로 공사를 수행하고자 하는 사업자는 캄보디아 공공사업교통부의 도로 사업 인허가가 필요한데(동 시행령 제5조), 이를 발급받기 위해서는 다음과 같은 요건이 충족되어야 합니다(동 시행령 제9조).

- 인허가 신청인의 등기부등본 및 납세자번호 증명서
- 인허가 신청인이 보유하고 있는 전문인력(캄보디아 Board of Engineers에 등록된 토목 엔지니어, 도로 공사 기술사 등)의 유사업무 경력에 대한 증빙
- 캄보디아 공공사업교통부가 요구하는 도로 사업 유형별 기술표준을 준수할 수 있음을 입증하는 서류(유사 업무 실적, 내부지침, 인력 등)

상기 요건을 갖추어 캄보디아 공공사업교통부에 도로 사업 인허가를 신청하면 공공사업 교통부는 신청서를 접수한 날로부터 30 영업일 내에 인허가 발급여부에 대한 심사를 완료해야 합니다(도로 사업 인허가 시행령 제13조). 캄보디아 공공사업교통부가 발급한 도로 사업 인허가는 발급일로부터 5년간 유효한데, 유효기간이 종료되면 갱신을 할 수 있습니다(도로 사업 인허가 시행령 제10조 및 제12조). 도로 사업 인허가를 보유하지 않은 자가 도로 관련 공사를 할 경우, 도로에 관한 법에 따라 벌금이 부과될 수 있습니다(도로 사업 인허가 시행령 제19조).

### 3. 도로 공사 관련 국가계획 및 자금조달

캄보디아 내 도로 개발, 복구, 개선, 확장, 유지보수 등 도로 인프라에 관한 모든 공사 사업과 그 우선순위에 대한 계획(Master Plan)은 캄보디아 공공사업교통부와 농촌개발부가 공동으로 수립합니다(도로에 관한 법 제10조).

캄보디아 도로 공사 및 유지보수에 필요한 연간 예산은 캄보디아 공공사업교통부와 농촌 개발부가 매년 연말에 요청하게 되고, 이에 필요한 자금은 캄보디아 경제재무부가 「Law on Annual Finance(이하 ‘예산법’)」에 따라 캄보디아 국가 예산, 차관공여국의 협력자금, 국내·외 비정부기구의 기부금, 캄보디아 정부의 도로 사업 운영으로 수거한 수익금 및 벌칙금을 통해 배정합니다(도로에 관한 법 제41조 내지 제42조).

### 4. 도로 공사 관련 적용 기술표준

캄보디아 내 모든 도로 인프라 관련 사업은 캄보디아 공공사업교통부가 제정, 공표한 아래의 기술표준을 준수해야 합니다(도로에 관한 법 제15조 및 제23조, 2011년 12월 29일 공공사업교통부가 공표한 Prakas on Official Application of Technical Standards for Road Construction and Restoration 참조).

- 도로 및 다리 공사에 관한 기술표준
- 도로 사업 관련 시설, 장비에 관한 기술표준
- 도로 사업 장비 및 인력에 대한 안전 관련 기술표준
- 도로 유지보수 절차 및 기술표준
- 기타 도로 인프라 관련 공공사업에 적용되는 기술표준

## 5. 도로 사업 관련 보상 및 민원 제도

캄보디아 도로에 관한 법 제11조에 따르면 도로 공사 또는 도로 확장 등으로 인해 피해를 입게 되는 해당 지역의 토지 소유자는 캄보디아 「Law on Expropriation(이하 ‘수용법’)」에 따라 공정하고 적절한 보상을 받을 수 있습니다. 보상에 대한 이의가 있는 토지 소유자는 캄보디아 수용법상의 절차에 따라 민원을 제기할 수 있습니다.

한편, 도로 공사 사업자의 도로에 관한 법 준수여부 등 도로 공사에 대한 모니터링 및 감사는 캄보디아 공공사업교통부가 지정한 조사역(Inspector)을 통해 이뤄지는데, 해당 조사역은 다음과 같은 조치를 취할 수 있는 권한이 있습니다(도로에 관한 법 제43조 및 제46조):

- 도로 공사 현장 및 해당 사업장에 대한 정기적 모니터링 및 감사를 실시할 수 있는 권한
- 도로 인프라에 부정적인 영향을 미칠 수 있는 행위를 중단하도록 하거나 그에 대한 벌칙을 부과할 수 있는 권한
- 도로에 관한 법을 위반한 자의 인허가를 철회할 수 있는 권한

캄보디아 도로 공사에 대한 공공사업교통부 조사역의 법적조치에 이의가 있는 자는 2022년 2월 11일 공공사업교통부 및 농촌개발부가 공동으로 공표한 「Inter-Ministerial Prakas on Procedures of Inspection of Road Infrastructure(도로 인프라 조사 절차에 관한 공공사업교통부 및 농촌개발부령)」에 따라 다음과 같은 절차를 통해 민원을 제기할 수 있습니다.

- 공공사업교통부 조사역의 법적조치(통지)를 받은 날로부터 30 영업일 이내에 캄보디아 공공사업교통부에 민원 제출(제25조)
- 공공사업교통부는 민원을 수령한 날로부터 45 영업일 이내에 결정문 고지(제26조)
- 공공사업교통부가 위 기한(45 영업일) 내에 결정문을 고지하지 않거나, 공공사업교통부의 결정에 이견이 있는 경우, 위 기한이 도래한 날(또는 결정문을 수령한 날)로부터 30 영업일 이내에 법원에 소 제기(제26조)

## 6. 도로 관련 법률 위반시 벌칙

캄보디아 도로에 관한 법 위반시에는 위반사항의 유형, 수위 등에 따라 경고장, 사업 인허가 취소 명령, 벌금형, 징역형이 내려질 수 있습니다.

| 위반사항   | 벌칙  | 비고           |
|--|---|--------------|
| 도로 관련 공사 시 기술 요건/기준을 준수하지 않은 경우                          | 개인의 경우, 벌금 5,000,000 리엘 및 위반사항에 대한 치유 명령<br>법인의 경우, 벌금 10,000,000 리엘 및 위반사항에 대한 치유 명령   | 제54조 내지 제55조 |
| 도로 공사를 수행하는 과정에 감독당국(공공사업교통부 또는 농촌개발부)의 요구사항을 준수하지 않은 경우 | 개인의 경우, 벌금 2,000,000 리엘(위반 계속시 벌금이 2배로 증액됨)<br>법인의 경우, 벌금 5,000,000 리엘(위반 계속시 벌금이 2배로 증액됨)  | 제58조 내지 제59조 |
| 인허가 없이 도로 인프라 관련 사업을 영위한 경우                              | 벌금 5,000,000 리엘(위반 계속시 벌금이 2배로 증액됨)   | 제69조         |
| 인허가 없이 도로 공사를 하여 도로, 통행로 등에 손해를 입힌 경우                    | 개인인 경우, 징역형 2년에서 5년 이하 및 벌금 4000,000 리엘에서 10,000,000 리엘 이하<br>법인인 경우, 벌금 10,000,000 리엘에서 20,000,000 리엘 이하 및 다음 중 하나 이상의 조치 명령: 청산, 법원 감시, 사업 금지, 공공거래 금지, 벌칙 부과 사실에 대한 공고 | 제77조 내지 제78조 |

## VI. 캄보디아 상수도 관련 법률

### 1. 상수도 관련

#### 가. 상수도관리법 개요

캄보디아 상수도에 관한 법률은 「Law on Management of Clean Water(이하 ‘상수도관리법’)」에 규정되어 있습니다. 상수도관리법에 따르면 캄보디아에서 수돗물을 공급하는 책임은 정부에 있고, 상수도관리법 준수여부에 대한 감독은 캄보디아 산업과학기술혁신부(이하 ‘산업부’)가 관장합니다. 캄보디아 산업부는 물 공급 시스템을 효율적이고 지속 가능하게 개발 및 개선하기 위해 펀드를 조성할 수 있고, 국가예산 또는 협력 파트너(국가)들로부터 원조, 기부금 및 기여금을 받는 방법으로 펀드 자금을 조달할 수 있습니다(상수도관리법 제7조). 캄보디아 산업부는 특정 공기업 또는 민간기업에게 인허가를 발급하는 방식으로 수돗물 공급 사업을 영위할 수 있는 권한을 부여할 수 있습니다(상수도관리법 제4조)

#### 나. 상수도 요금 체계

캄보디아 상수도관리법 제26조에 따르면 수도세는 캄보디아 정부 정책에 따라, 각 지역별 상황(지역의 수원, 상수도 처리 시스템 및 기술, 인프라 등)과 생산비용 등을 고려하여 캄보디아 산업부가 책정 및 변경할 수 있습니다. 캄보디아 산업부는 수도세를 장관령(Prakas) 또는 결정문(Decision)을 통해 공표하는데, 캄보디아 상수도관리법 제26조의 취지상 캄보디아 산업부는 지역 또는 공급자 별로 수도세율을 달리 정할 수 있는 것으로 보입니다. 상수도관리법 제27조에 따르면 수도세에 대한 재검토는 원칙적으로 매 5년마다 하는데, 필요한 경우 공급자와의 협의를 통해 5년이 도래하기 전에도 재검토를 할 수 있습니다. 또한 다음과 같이 특수한 상황이 발생되면 공급자는 수도세율에 대한 재검토를 요청할 수 있습니다.

- 불가항력적사유
- 정치, 경제, 재정적 위기가 있는 상황
- 해당 산업계의 불황
- 자재, 장비, 인력의 부족 또는 사용에 대한 제한
- 물 공급사업 운영에 중대한 영향을 미치는 기타 사유

캄보디아의 수도 프놈펜을 예로 들면, 프놈펜에 공급되는 수도물은 대부분 Phnom Penh

Water Supply Authority(이하 ‘프놈펜수도청’)이 생산 및 공급하는데, 프놈펜수도청이 부과할 수 있는 수도세는 캄보디아 산업부가 프놈펜수도청에 고지한 결정문을 통해 정해집니다. 2019년 8월 16일 캄보디아 산업부가 프놈펜수도청에 고지한 결정문(Decision on the Adjustment of Cost of Selling Clean Water Produced and Supplied by the Phnom Penh Water Supply Authority)의 내용은 아래와 같습니다.

| 소비자 구분     | 용 량  | 가 격                      |
|------------|--|--------------------------|
| 가정용        | 월 7 M <sup>3</sup> 미만                        | 400 Riel/M <sup>3</sup>  |
|            | 월 8 M <sup>3</sup> ~ 15 M <sup>3</sup> 이하    | 720 Riel/M <sup>3</sup>  |
|            | 월 16 M <sup>3</sup> ~ 25 M <sup>3</sup> 이하   | 960 Riel/M <sup>3</sup>  |
|            | 월 26 M <sup>3</sup> ~ 50 M <sup>3</sup> 이하   | 1250 Riel/M <sup>3</sup> |
|            | 월 51M <sup>3</sup> ~ 100 M <sup>3</sup> 이하   | 1900 Riel/M <sup>3</sup> |
|            | 월 101 M <sup>3</sup> 초과                      | 2200 Riel/M <sup>3</sup> |
| 비즈니스용      | 월 15 M <sup>3</sup> 미만                       | 950 Riel/M <sup>3</sup>  |
|            | 월 16 M <sup>3</sup> ~ 45 M <sup>3</sup> 이하   | 1100 Riel/M <sup>3</sup> |
|            | 월 46 M <sup>3</sup> ~ 100 M <sup>3</sup> 이하  | 1400 Riel/M <sup>3</sup> |
|            | 월 101 M <sup>3</sup> ~ 200 M <sup>3</sup> 이하 | 1700 Riel/M <sup>3</sup> |
|            | 월 201 M <sup>3</sup> ~ 500 M <sup>3</sup> 이하 | 2100 Riel/M <sup>3</sup> |
|            | 월 501 M <sup>3</sup> 초과                      | 2400 Riel/M <sup>3</sup> |
| 정부기관 및 대사관 | 제한 없음  | 2500 Riel/M <sup>3</sup> |

상기 수도세는 2020년 1월 1일부터 적용되었는데(동 결정문 제2조), 프놈펜수도청이 공지한 자료에 따르면 현재까지도 동일한 금액이 유지되고 있습니다.

**다. 벌칙**

캄보디아 상수도관리법 제39조에 따르면 캄보디아 산업부가 지정한 조사관(inspection officer)가 언제든지 현장을 방문하여 동 법령의 준수여부에 대한 조사를 실시하고, 위반사항 적발시에는 각종 벌칙(경고, 사업정지명령, 벌금 등)을 부과할 수 있습니다. 한편, 상수도 공급 및 사용 관련 부정행위에 대한 벌칙은 각 유형별로 동 법령에 상세히 규정되어 있는데, 그 주요 내용은 다음과 같습니다.

| 구 분                 | 벌 칙                         | 참 조    |
|---------------------|-----------------------------|--------|
| 수돗물 공급 사업자가 다음 중 하나 | 개인사업자의 경우, 위반행위 당 2,000,000 | 상수도관리법 |

| 구 분   | 벌 칙  | 참 조                             |
|---|--|---------------------------------|
| <p>에 해당될 경우:</p> <ul style="list-style-type: none"> <li>- 유효기간이 만료된 인허가로 물 공급사업을 영위한 경우</li> <li>- 상수도관리법에서 요구되는 물 품질 및 안전 요건, 기준을 준수하지 못한 경우</li> <li>- 캄보디아 산업부가 관리하는 시스템에 물 생산 및 공급사업 관련 데이터를 제대로 제출, 기록하지 않은 경우</li> <li>- 캄보디아 산업부가 정한 기한까지 산업부가 정한 요건, 기준에 따른 수질 검사 및 모니터링을 하지 않은 경우</li> <li>- 상수도관리법에서 요구되는 물 소독 및 위생처리를 하지 않은 경우</li> </ul>  | <p>리엘에서 5,000,000 리엘 이하의 벌금</p> <p>법인사업자의 경우, 위반행위 당 4,000,000 리엘에서 10,000,000 리엘 이하의 벌금</p> <p>적발 후 시정조치 없이 위반행위가 계속되거나 재범할 경우, 기존에 부과된 벌금의 2배에 해당하는 벌금 부과됨</p>                               | <p>제49조, 제50조 및 제52조</p>        |
| <p>수돗물 공급 사업자가 다음 중 하나에 해당될 경우:</p> <ul style="list-style-type: none"> <li>- 캄보디아 산업부의 승인 없이 제3자에게 물 공급사업 관련 기술적 업무의 전부 또는 일부를 이행하도록 한 경우</li> <li>- 캄보디아 산업부의 승인 없이 물 공급사업 영위 지역을 확장한 경우</li> <li>- 캄보디아 산업부가 정한 기준에 따라 수질을 검사하기 위한 실험실 또는 장비를 갖추지 못한 경우</li> <li>- 수도세가 캄보디아 산업부에서 정한 기준과 다를 경우</li> <li>- 물 공급 시스템을 구성, 준비하는데 상수도관리법에서 정한 기술적 규정을 준수하지 않은 경우</li> <li>- 캄보디아 산업부에 고의적으로 허위 또는 틀린 정보 및 데이터를 제출한 경우</li> </ul> | <p>개인사업자의 경우, 위반행위 당 5,000,000 리엘에서 10,000,000 리엘 이하의 벌금</p> <p>법인사업자의 경우, 위반행위 당 10,000,000 리엘에서 20,000,000 리엘 이하의 벌금</p> <p>적발 후 시정조치 없이 위반행위가 계속되거나 재범할 경우, 기존에 부과된 벌금의 2배에 해당하는 벌금 부과됨</p> | <p>상수도관리법 제49조, 제50조 및 제52조</p> |
| <p>물 공급업체의 사전승인 없이 수도계량기를 변경 또는 교체할 경우</p>  | <p>1개월에서 6개월 이하의 징역형 및 2,000,000 리엘에서 10,000,000 리엘 이하의 벌금</p>   | <p>상수도관리법 제56조</p>              |
| <p>물 공급업체의 사전승인 없이 수도물을 무단으로 가져가거나 사용한 경우</p>   | <p>6개월에서 3년 이하의 징역형 및 10,000,000 리엘에서 60,000,000 리엘 이하의 벌금</p>   | <p>상수도관리법 제57조</p>              |

2. 하수도 관련

가. 관련 법률 및 유관부서

캄보디아 하수도에 관한 법률은 「Sub-Decree on the Management of Drainage and Wastewater Treatment System(이하 ‘하수도 처리 시스템에 관한 시행령’)」에 규정되어 있습니다. 동 시행령에 따르면 캄보디아 배수시설 및 하수도 처리 시스템의 운영 및 개선을 담당하는 부서는 캄보디아 공공사업교통부이고, 아래와 같이 캄보디아 Ministry of Environment(환경부) 및 Ministry of Interior(내무부)가 일정한 역할을 분담하여 공공사업교통부를 지원합니다.

| 관련 부서   | 역할   | 참조                     |
|---------|--|------------------------|
| 공공사업교통부 | 캄보디아 하수도 처리 시스템 개발 계획, 전략 및 정책 수립 총괄; 하수도 처리 시스템 건설, 관리 및 운영에 관한 기준 및 규정 제정, 모니터링 및 감독 | 하수도 처리 시스템에 관한 시행령 제5조 |
| 환경부     | 폐수 배출 기준 및 관리 정책 수립; 하수도 처리 절차에 대한 환경적 영향 평가 및 모니터링                                    | 동 시행령 제6조              |
| 내무부     | 각 지역별 지방자치단체의 하수도 처리 시스템 관리 및 모니터링 지원  | 동 시행령 제7조              |
| 경제재무부   | 각 지역별 지방자치단체의 배수 시설 및 하수도 처리 시스템 관리, 운영에 필요한 국가 지원금 및 예산 배정                            | 동 시행령 제30조             |

캄보디아 하수도 처리 시스템에 관한 시행령에 따르면 하수처리업자는 각 지역별로 정해 지는데, 관할 지방자치단체가 특정 전문업체(공기업 또는 민간기업)에게 관련 업무를 위탁할 수 있습니다. 한편, 민간기업에게 업무위탁을 주는 경우에는 캄보디아 공공조달법에 따른 절차를 준수해야 합니다(하수도 처리 시스템에 관한 시행령 제26조 내지 제27조).

나. 하수도 요금 체계

캄보디아에서 배수시설 및 하수도 처리 시스템을 사용하는 것에 대한 요금(하수도 요금)의 책정 및 부과 방법에 대한 규정은 경제재무부, 공공사업교통부 및 환경부가 공동으로 제정 및 공표하는데, 현재 하수도 요금은 상수도 요금을 기준으로 상수도 요금의 10%에 상응하는 금액이 부과됩니다. 예를 들어, 상수도 사용량에 해당 단가를 곱한 상수도 요금이 USD 10 발생한 가정 또는 사업장의 경우, 하수도 요금은 그 상수도 요금(USD 10)의 10%인 USD 1이 부과됩니다.

다. 벌칙

하수도 관련 부정행위에 대한 벌칙은 각 유형별로 하수도법에 상세히 규정되어 있는데, 그 주요 내용은 다음과 같습니다.

| 구 분  | 벌 칙  | 참 조  |
|--|--|------|
| 하수관을 무단으로 공영 배수시설로 연결한 가정                    | 경고 후 10,000 리엘에서 100,000 리엘 이하의 벌금   | 제40조 |
| 하수도 사용요금을 납부하지 않은 가정                         | 경고 후 30,000 리엘에서 100,000 리엘 이하의 벌금   | 제41조 |
| 하수관을 무단으로 공영 배수시설로 연결하거나, 폐수를 무단으로 배출한 주거용건물 | 경고 후 100,000 리엘에서 2,000,000 리엘 이하의 벌금(위반사항이 지속될 경우, 500,000 리엘에서 5,000,000 리엘 이하의 벌금)    | 제42조 |
| 하수도 사용요금을 납부하지 않은 상가건물 또는 주거용건물              | 경고 및 100,000 리엘에서 2,000,000 리엘 이하의 벌금  | 제43조 |
| 폐수 처리시설을 갖추고 있지 않거나 폐수를 불법으로 배출한 사업장         | 경고 후 200,000 리엘에서 5,000,000 리엘 이하의 벌금(위반사항이 지속될 경우, 1,000,000 리엘에서 10,000,000 리엘 이하의 벌금) | 제44조 |
| 하수처리시설을 파손하거나 중앙하수처리절차를 방해한 자                | 경고, 100,000 리엘에서 10,000,000 리엘 이하의 벌금, 파손된 시설에 대한 수리비 및 손해배상                             | 제49조 |

## VII. 이주 보상 관련 법률

### 1. 관련 법률 개관

캄보디아의 토지 수용 및 이주보상에 관한 주요 법률은 다음과 같습니다.

#### 가. Constitution(이하 ‘헌법’)

캄보디아 국민들은 캄보디아 「Constitution(이하 ‘헌법’)」 상 각자의 사유권을 보호받을 수 있는 기본적 권리가 있습니다. 캄보디아 헌법 제44조에 따르면 모든 국민은 재산을 소유할 수 있는 권리가 있고, 국민들의 사유권은 법에서 보호되어야 합니다. 이에 사유재산을 정부가 수용하는 것은 법에 따라 공공의 이익(public interest)을 위해 필요한 경우에 한해서만 가능하고, 수용에 대한 대가로 공평하고 정당한 보상이 있어야 합니다.

#### 나. Land Law(이하 ‘토지법’)

토지에 대한 캄보디아 국민의 소유권에 대하여 규율하고 있습니다. 토지법 제5조에 따르면 토지에 대한 개인의 권리는 공공의 이익을 위한 경우만을 제외하고 침해될 수 없고, 침해가 되는 경우에는 관련 법률(수용법)에 따라 정당한 보상이 사전에 이뤄져야 합니다.

#### 다. Expropriation Law(이하 ‘수용법’)

캄보디아 정부가 캄보디아 국민(들)의 사유재산을 수용하는 것에 대한 법률적 근거, 원칙, 관계 기관, 보상 의무, 절차 및 제한사항은 캄보디아 「Law on Expropriation(이하 ‘수용법’)」에 규정되어 있습니다. 캄보디아 수용법 제3조에 따르면 캄보디아 정부와 차관공여국 간의 계약자유원칙이 인정됩니다.

#### 라. Sub-Decree on the Promulgation of the Standard Operating Procedures for Land Acquisition and Involuntary Resettlement for Externally Financed Projects in Cambodia(이하 ‘토지 수용에 관한 SOP 시행령’)

본 시행령은 캄보디아 헌법, 토지법 및 수용법에 기초하여 제정된 시행령인데, 캄보디아 정부가 역외 차입을 통해 실시하는 공공 인프라 개선 및 경제 개발 관련 프로젝트로 인한 토

지 수용 및 이주보상에 관한 세부적인 사항을 규정하고 있습니다. 동 시행령에 따른 이주보상계획의 준비 및 실행 과정에 차관공여국의 정책에 따른 요건도 충족되어야 합니다.

마. 유관 부서

‘캄보디아 토지 수용에 관한 SOP 시행령’에 따르면 토지 수용 과정에 캄보디아의 여러 정부부처가 관여하게 되는데, 각각의 주요 역할은 다음과 같습니다.

| 구 분  | 역 할   | 비 고          |
|--|---|--------------|
| 경제재무부  | 토지수용 및 이주의 효과적 관리 및 운영에 대한 총책임을 맡음. 토지수용 및 이주 관련 규정, 지침 및 정책을 승인하고, 이주계획 실행 비용 등 토지수용 및 이주 관련 예산에 대한 검토, 승인 및 배정을 총괄함.  | SOP 7항 내지 8항 |
| Inter-Ministerial Resettlement Committee (이주보상위원회)                           | 총리실 결정에 따라 만들어진 기구임. 캄보디아 수용법에 따른 수용위원회의 권한을 행사함. 위원장은 경제재무부 관계자가 맡고, 각 관련 부처 관계자들이 위원으로 선임됨. 캄보디아에서 이뤄지는 공공투자 프로젝트 별로 위원회 Working Group이 구성되어 토지수용 및 이주 관련 법률 준수 여부에 대한 감독 및 가이드라인을 제시하고, 이주보상계획 등에 대한 승인 등을 담당함.                | SOP 9항       |
| General Department of Resettlement (GDR)                                     | 이주보상위원회의 사무국 역할을 수행하는 부서임. GDR은 관련 법에 따라 이주보상계획의 준비, 실행, 모니터링 및 보고를 책임지고, 차관공여국의 정책에 따른 요건이 준수될 수 있도록 하여야 함. 특히 차관공여국이 타당성 조사, 차관계약 협상 단계에서 필요로 하는 캄보디아 토지수용 및 이주 관련 사항에 대한 검토 및 동의 여부를 결정하고, 이주보상계획에 따른 보상 계약 및 보상금 산출, 집행을 책임짐. | SOP 10항      |
| General Department of International Cooperation and Debt Management (GDICDM) | 토지수용 및 이주계획 수립/실행에 직접적으로 관여하지는 않으나 캄보디아 차관사업을 관장하는 부서로서 GDR과 차관공여국 사이에서 코디네이터 역할을 수행함.  | SOP 11항      |

2. 캄보디아 수용법에 따른 수용 및 보상 절차

가. 수용 절차

캄보디아 정부가 차관을 받아 실시하는 공공투자 프로젝트 등을 이유로 캄보디아 국민(들)이 소유하고 있는 토지 기타 사유재산을 수용하고자 할 경우 캄보디아 수용법 및 ‘토지 수용에 관한 SOP 시행령’상 다음과 같은 절차를 거쳐야 합니다.

| No. | 구분                       | 내용  | 비고   |
|-----|--------------------------|---|--|
| 1   | 타당성조사 및 피해 주민들과의 협상절차 개시 | <p>발주처가 이주보상계획을 수립하기에 앞서 지방자치단체 및 GDR과 함께 수용 대상지역 및 주민들에 대한 조사를 실시하고, 대상 사업 관련 이슈 및 수용이 필요한 이유, 이주보상 정책 등에 대한 설명회를 개최합니다.</p> <p>해당 주민들과의 협상절차는 토지 수용 Project Cycle 내 수시로 진행됩니다. 예컨대 보상계약이 체결되기 전, 보상계약에 따른 보상금이 집행되기 이전에도 진행되어야 합니다.</p> <p>이주보상위원회(IRC)는 타당성조사가 완료된 날로부터 30 영업일 이내에 수용 관련 제안사항들에 대한 보고서를 작성하여 캄보디아 중앙 정부에 제출합니다. 캄보디아 중앙 정부에서 수용 제안 보고서를 채택하면, 이주보상위원회(IRC)는 ‘수용 선언서’를 공고합니다.</p> | <p>캄보디아 수용법 제16조 내지 제18조</p> <p>SOP 61항 및 127항 내지 135항</p> |
| 2   | 기초 이주보상 계획 수립            | <p>발주처가 GDR과 긴밀히 협의하여 다음 사항들에 대한 기초 이주보상계획을 수립하고, 이주보상위원회(IRC) 및 차관공여국의 승인을 득합니다.</p> <ul style="list-style-type: none"> <li>- 수용 대상지역 주민들과의 초기 협상 내용</li> <li>- 보상 대상자 선정 기준일(Cut-off Date)</li> <li>- 사회적영향평가</li> <li>- 이주 필요여부</li> <li>- 보상(안)</li> <li>- 비용 예산</li> </ul> <p>기초 이주보상계획에 대한 이주보상위원회(IRC) 및 차관공여국의 승인 이후, 그 계획을 발주처 홈페이지, 관할 구/시청 게시판 등에 게재합니다.</p>                             | SOP 61항 내지 68항   |
| 3   | 차관공여국과의 차관계약 협상          | GDR이 차관계약상의 ‘토지 수용 및 이주보상’ 관련 조항에 대한 검토 및 합의 절차를 진행합니다.   | SOP 61항  |
| 4   | 상세 이주보상 계획 수립            | <p>해당 프로젝트에 대한 이주보상위원회(IRC) 내 Working Group가 구성됩니다.</p> <p>GDR은 다음 사항들에 대한 상세 계획을 수립하여 이주보상위원회(IRC) 및 차관공여국의 승인을 득합니다.</p> <ul style="list-style-type: none"> <li>- 정밀 측량 및 조사 결과</li> <li>- 이주 및 보상(보상 대상자, 보상금액, 보상 일정 포함)에 대한 상세 내용</li> </ul>   | SOP 61항, 73항 내지 76항 및 118항                                 |

| No. | 구분        | 내용   | 비고                      |
|-----|-----------|--|-------------------------|
|     |           | <ul style="list-style-type: none"> <li>- 생계지원 프로그램</li> <li>- 예산 산출(타당성 조사 및 이주계획 준비 비용, 보상금, 이주비용, 공시/자문 및 민원대응 등에 대한 행정비용, 모니터링 비용, 예비금 등 감안)</li> <li>- 민원 및 고충처리 방법</li> <li>- 세부 집행 절차</li> <li>- 모니터링 방법</li> </ul> <p>예산의 경우, 이주보상위원회(IRC) 승인 이후, 경제재무부의 승인도 필요합니다. 상세 이주보상계획이 정해지면 발주처 홈페이지, 관할 구/시청 게시판 등에 게재됩니다.</p> |                         |
| 5   | 이주보상계획 실행 | <p>예산 승인 이후 GDR 감독 하에 다음 사항들이 진행됩니다.</p> <ul style="list-style-type: none"> <li>- 개별 보상계약의 체결</li> <li>- 이주지역 개발 및 시공</li> <li>- 이주보상금 지급(수용 대상토지에 대한 수용(명의 이전) 절차가 진행되기 이전에 해당 주민들에게 보상금이 지급되어야 합니다)</li> <li>- 생계지원프로그램 실행</li> <li>- 각종 민원 대응</li> </ul>  |                         |
| 6   | 모니터링      | <p>GDR 내 DIMDM이 상세 이주보상계획 실행 진행상황을 월별로 모니터링하고, 분기별 보고서를 GDR 국장에게 제출합니다. GDR 국장이 분기별 보고서를 결재한 후 필요시 차관공여국에도 공유가 됩니다. 상세 이주보상계획 실행과정에 문제가 발견된 경우, DIMDM이 현장 실사를 하고 GDR 국장에게 보고를 한 후 필요한 조치를 취하게 됩니다.</p> <p>보상 대상자가 200인을 초과하는 대규모 프로젝트의 경우, GDR이 외부자문사를 선임하여 이주보상계획 실행 절차에 대한 외부 모니터링도 실시해야 합니다.</p>                            | SOP 253항 내지 255항 및 259항 |

나. 수용에 대한 보상금 산출 기준

토지 수용에 대한 보상을 받을 수 있는 대상자는 기본적으로 수용 대상지역에서 합법적으로 토지를 소유하고 있거나 임차하고 있는 자를 의미합니다. 캄보디아 수용법 제22조에 따르면 수용 대상토지의 소유자를 위한 보상금은 이주보상위원회가 해당 사업에서 수용을 하기로 선언한 시점(위 1) 수용 절차, 1.번 참조)을 기준으로 대상토지의 시장가격 (market value) 또는 대체비용(replacement cost)을 고려하여 산출되어야 합니다. 시장가격 및 대체비용은 이주보상위원회가 선임한 외부기관이 평가하여야 합니다. 보상 대상자는 아래와 같이 수용 대상토지에 대한 보상금, 이주 관련 비용(수용에 따른 각종 시설 철거

비용, 이사비 등), 경제적 손실 등에 대한 보상을 받을 수 있습니다.

| 구 분      | 주요 내용  |
|----------|--|
| 시장가격     | 수용 대상토지에 대한 시장가액   |
| 거래비용     | 이주시 발생하는 거래 관련 세금, 취득등록세 기타 공과금은 피해자에 부과되지 않음. 단, 피해자가 기존에 납부하지 않은 세금은 피해자가 납부해야 함(보상금에서 공제됨). |
| 정착 지원금   | 이주 및 정착시까지 단기적으로 요구되는 생계지원금  |
| 이주 관련 비용 | 이주시 발생하는 교통비 및 이사비용  |
| 경제적 손실   | 대상토지에서 영위하던 사업을 중단함으로써 발생하는 수익손실   |

보상은 현금 또는 현물 또는 교체권(replacement right) 중 실제 상황에 따라 이주보상위원회와 수용 대상토지의 소유자가 합의한 방식으로 이루어져야 합니다(캄보디아 수용법 제24조)

보상금이 지급되고 나면, 소유자들은 이주보상위원회가 대상토지를 수용할 때 까지만 대상 토지를 점유 및 사용할 수 있고, 보상금 전액을 지급받은 날로부터 1개월 이내에는 퇴거를 해야 합니다. 위 기한 내에 퇴거를 하지 않을 경우, 수용위원회는 공권력을 행사하여 강제퇴거절차를 개시할 수 있습니다(캄보디아 수용법 제31조).

### 3. 수용 대상토지 등록 절차

#### 가. 토지 등기제도 및 토지 거래 실무에 따른 문제점

토지 수용 과정에 보상협상을 위한 대상지역의 실소유자(토지등기 현황) 및 토지 경계선 등을 정확히 파악하는 데에 시간이 많이 소요될 수 있습니다. 위와 같은 문제점이 발생하는 이유는 캄보디아 현지 실정상 토지등기제도가 전국적으로 일괄 도입 및 실행되지 않고, 여러 유형의 토지 소유권리증서가 공존하고 있는 상황 때문인 것으로 추측됩니다. 우선 캄보디아 토지 소유권리증서 유형에 대한 이해가 필요한데, 캄보디아에서 현재 볼 수 있는 토지에 대한 소유권리증서의 유형은 다음과 같이 3가지로 구분됩니다.

| 구 분   | 설 명   |
|---|---|
| Letter of Possessory Rights<br>(현지 토지거래 실무상 ‘Soft Title’로 칭함) | 캄보디아 국토관리도시계획건설부 중앙 토지등기시스템이 도입되기 이전에 존재하던 토지에 대한 권리증서임. 토지가 소재해 있는 관할 마을 또는 구역의 장(Chief of Sangkat/Khan)이 관리함. |
| Land Title  | 일반  |
|   | 캄보디아 국토관리도시계획건설부가 관리하는 중앙 토지등기시스템   |

| 구 분                                   |       | 설 명   |
|---------------------------------------|-------|---|
| Certificate<br>(‘Hard Title’<br>로 불림) |       | 에 등재된 토지에 대한 소유권리증서임.   |
|                                       | L-Map | 캄보디아 국토관리도시계획건설부가 관리하는 중앙 토지등기시스템에 등재가 되어 있고, GPS로 측량된 지적도까지 부착된 토지에 대한 소유권리증서임(즉, 일반 Hard Title에서 L-Map Hard Title로 전환을 하려면 대상토지에 대한 측량을 다시 해야 함). |

캄보디아 토지등기제도 및 토지거래에 대한 현지 실정상 다음과 같은 문제점들이 있습니다.

- 캄보디아 내 모든 토지가 L-Map Hard Title로 되어 있는 것이 아닙니다. 일반 Hard Title과 Soft Title로 남아있는 토지들도 있습니다. 그 이유는 L-Map Hard Title 등기시스템을 지역별로 점진적으로 도입하고 있기 때문에 아직 L-Map Hard Title 등기시스템 도입 대상이 아닌 지역들이 있고, 대상 지역임에도 불구하고 해당 소유자가 본인이 소유하고 있는 토지에 대한 Title의 형태를 전환하지 않은 경우도 많습니다.
- 토지에 대한 Title의 형태를 Soft Title에서 Hard Title로 전환을 하려면 측량을 다시 해야 하기 때문에 그 과정에서 대상토지의 면적이 축소될 수 있고, 이웃주민과 경계선에 대한 분쟁도 발생할 가능성이 있습니다. 측량을 다시 하고 토지에 대한 Title의 형태를 전환하는 데에는 비용과 시간이 소요됩니다. 또한 Hard Title은 캄보디아 국토관리도시계획건설부가 관리하는 중앙 토지등기시스템에 등록이 되기 때문에 토지 거래시 거래내역이 추적되고 그에 대한 거래 관련 세금이 부과됩니다. 때문에 Soft Title을 굳이 Hard Title로 전환하지 않는 현지인 소유자들도 많이 있고, Soft Title이 익숙한 현지인들 간에는 Soft Title의 실물을 교부하는 방식으로 토지 매매 또는 담보거래를 하는 경우가 있습니다. 특히 Soft Title의 명의자가 본인의 토지를 담보로 제공할 때 Soft Title 증서의 실물을 채권자에게 맡겨 놓는 방식의 담보거래가 흔히 이루어지는데, 그 거래내역을 관할 마을/구역장에게 통지하지 않고 Soft Title의 명의자의 행방을 모르면 Soft Title 증서의 실물을 추적하기가 상당히 어려울 수 있습니다. 따라서 토지가 대부분 Soft Title의 형태로 되어 있는 지역의 경우, 대상토지에 대한 권리를 가진 이해관계자를 정확히 파악하는 데에 상당한 시간이 소요될 수 있습니다.

**나. Hard Title 전환 및 등록 절차**

캄보디아 토지거래 실무상 Soft Title을 Hard Title로 전환, 등록하기 위하여 거쳐야 할 주요 절차는 아래와 같습니다.

| No. | 구분                         | 내용  | 예상 소요시간 <sup>1</sup> |
|-----|----------------------------|---|----------------------|
| 1   | Title 전환, 등록 신청            | 대상토지의 소유자가 대상토지의 Title 증서의 형태를 Soft Title에서 Hard Title로 전환(convert)하는 것에 대한 신청서를 작성하여 관할 토지국(Land Office)에 제출합니다.   | -                    |
| 2   | 현장 실사 및 측량                 | 관할 토지국에 Title 전환 신청서가 접수되면 관할 토지국은 그 사실을 해당 시/구/도청에 통보하고, Working Group을 구성하여 대상토지에 대한 현장실사 및 측량을 실시합니다.  | 3~4개월                |
| 3   | 공고                         | 대상토지의 Title 전환 및 등록에 대한 공고(public announcement)가 진행됩니다.<br><br>대상토지에 대한 측량 결과에 따라 대상토지의 면적 또는 경계선에 변동사항이 있을 수 있고, 이 경우 주변 토지들의 면적 및 경계선에도 영향을 미칠 수 있는데, 이웃 주민(들)과의 분쟁이 발생할 경우 분쟁이 전부 해결되어야 다음 단계로 넘어갈 수 있습니다.<br><br>공고 기간 내에 민원이 접수되지 않으면 관할 토지국이 해당 사건을 국토관리도시계획건설부로 이관합니다. |                      |
| 4   | 국토관리도시계획 건설부의 심사 및 미납세금 납부 | 국토관리도시계획건설부가 기존의 Soft Title을 Hard Title로 전환, 등록하는 것에 대한 심사를 진행합니다. 대상토지의 소유자는 대상토지와 관련된 미납세금(재산세, 공한지세, 취득등록인지세 등)이 없다는 증빙(감보디아 국세청의 영수증)을 국토관리도시계획건설부에 제출하여야 합니다. 대상토지와 관련된 미납세금이 있을 경우, 국토관리도시계획건설부는 미납세금이 완납될 때까지 Title 전환절차를 진행시키지 않습니다.                                  |                      |
| 5   | Hard Title 증서 발급           | 국토관리도시계획건설부는 세금 완납사실을 확인한 이후 Hard Title 증서를 제작, 발급합니다. Hard Title 증서 원본이 토지 소유주에게 교부되기 이전에 기존에 존재하던 Soft Title 증서 원본이 관할 토지국에 반납되어야 합니다.  | 1~2개월                |

#### 4. 수용 관련 민원 해결 절차

캄보디아 수용위원회(이주보상위원회 또는 GDR 등)의 결정에 이견이 있는 자는 고충처

<sup>1</sup> 본 법무법인의 현지 실무 경험에 따른 대략적인 소요시간을 의미합니다. 현지 실정상 대상 토지의 소재지(관할 토지국의 업무 및 인력 현황), 면적 및 경계선 분쟁 존재 여부, 소유주의 의지 등에 따라 소요시간이 달라질 수 있고, 캄보디아 정부 차원에서 대대적으로 이뤄지는 수용 과정에서 진행되는 전환절차인 경우 소요시간이 다를 수 있습니다.

리위원회에 민원을 제기할 수 있습니다(캄보디아 수용법 제33조). ‘토지 수용에 관한 SOP 시행령’에 따르면 고충처리위원회에 정식으로 민원을 제기하는 절차는 아래와 같이 단계별로 진행됩니다.

| 구분                        | 설명   | 참조       |
|---------------------------|--|----------|
| 1단계:<br>관할 구청에 문제 제기      | 토지 수용 및 이주보상에 관한 문제를 관할 구청에 제기하면 구청에서 중재(mediation)를 시도합니다. 민원인이 중재 결과에 만족할 경우, DIMDM이 GDR 국장의 승인을 득한 후 중재결과에 따른 조치를 취하게 됩니다.  | SOP 148항 |
| 2단계:<br>GDR에 민원 제기        | 관할 구청에서의 중재결과에 이견이 있는 민원인은 GDR에 민원을 제기할 수 있습니다. GDR에 민원이 접수되면 DIMDM이 30 영업일 이내에 조사를 마친 후 보고서를 작성하여 GDR 국장에게 보고를 합니다. GDR 국장은 DIMDM 보고서를 수령한 날로부터 5 영업일 이내에 민원 해결안에 대한 결정을 내려야 합니다. | SOP 151항 |
| 3단계:<br>고충처리위원회에 정식 민원 제기 | GDR 국장의 결정에 이견이 있는 민원인은 고충처리위원회에 정식으로 민원을 제기할 수 있습니다. 고충처리위원회는 민원이 접수된 날로부터 40 영업일 이내에 민원 해결안을 결정해야 합니다.<br><br>민원인이 고충처리위원회의 결정문에 이견이 없으면 이주보상위원회를 거쳐 결정문에 따른 보상조치가 취해집니다.        | SOP 154항 |

고충처리위원회의 결정에도 이견이 있는 민원인은 캄보디아 법원에 소를 제기할 수 있습니다(캄보디아 수용법 제34조).

민원인이 캄보디아 법원에 소를 제기하는 절차는 본 조사보고서 ‘II. 6. 4’를 참고하시기 바랍니다.

## 5. 수용 관련 법률 위반시 벌칙

캄보디아 수용법을 위반하였을 경우 적용되는 벌칙은 제35조 내지 제37조에 규정되어 있습니다. 캄보디아 수용법을 위반한 자가 공무원인 경우에는 ‘관련 법률에 따른 벌칙과 더불어 행정처벌의 대상이 될 수도 있다’는 기초적인 수준의 선언적인 규정만 있습니다.

반면, 대상 사업의 진행을 방해하기 위한 나쁜 의도로 수용 절차에 저항하는 자는 1개월에서 1년 이하의 징역형 및 20,000 리엘에서 2,000,000 리엘 이하의 벌금형이 내려질 수 있다고 명시적으로 규정하고 있습니다(캄보디아 수용법 제36조).

## VIII. 캄보디아 정부 발주사업 예산집행 절차

### 1. 관련 법령

캄보디아 정부의 예산 구성 및 집행에 관한 사항은 2023년 3월 10일 제정된 「Law on Public Financial System(이하 ‘신 공공재정제도법’)」이 적용됩니다.

신 공공재정제도법이 제정되기 이전에는 2008년 5월 13일 제정된 「(Old) Law on Public Financial System(이하 ‘구 공공재정제도법’)」이 적용되었는데, 신 공공재정제도법이 제정됨에 따라 구 공공재정제도법은 폐지(abrogate)되었습니다(신 공공재정제도법 제109조).

캄보디아 공공재정제도법은 캄보디아의 재정제도를 관리하고 재정에 관한 법률(특히 예산 준비 및 집행, 예산 관계 기관의 역할 및 책임 등에 관한 법률) 등 기본 원칙을 정하는 것에 목적을 두고 있고, 캄보디아 내 정부부처 및 기관, 지방자치단체, 공기업, 공공기관 및 공공재정의 혜택을 받는 모든 법인에게 적용됩니다(신 공공재정제도법 제1조 내지 제2조).

캄보디아 공공재정제도법의 집행을 관장하는 정부 부처는 총리실과 경제재무부입니다(신 공공재정제도법 제9조)

### 2. 연간 예산 제정

캄보디아 정부는 신 공공재정제도법 제5조에 근거하여 정부의 연간 예산에 관한 Budget Law(동 법령에 대한 번역주체에 따라 Law on Annual Finance로 불리는 경우도 있는데, 이하 ‘예산법’이라 칭함)를 매년 제정, 공표합니다. 예산법에서 규정해 놓은 연간 예산이 변경될 수 있는 사유는 재난·재해, 미시경제적(micro-economic) 상황의 급격한 변화 또는 국가의 이익(또는 이해관계)상 예산 변경이 즉각 필요한 경우로 국한되어 있는데(신 공공재정제도법 제7조), 예산의 변경은 Amended Law(개정법)의 형태로 제정, 공표되어야 합니다.

캄보디아 신 공공재정제도법 제51조, 제(4)항에 따르면 예산법(안)은 매년 10월 중에 캄보디아 각료회의(Council of Ministers)의 검토 및 승인을 거친 이후 다음과 같은 절차로 제정, 공표됩니다.

- 10월 네 번째 주까지 예산법(안) 국회(National Assembly) 제출

- 12월 첫 번째 주까지 예산법(안) 상원(Senate) 제출
- 12월 31일에 국왕(King)의 칙령으로 예산법 공포
- 다음 해 1~2월에 경제재무부가 관보(Official Gazette)에 예산법 게재

### 3. 정부예산 배정, 집행 및 처리 주체/절차

#### 가. 예산 배정

캄보디아 정부 예산은 캄보디아 정부 부처·기관, 공기업, 도지사 및 시장이 경제재무부에 제출한 수입(예상 수입) 수치, 캄보디아 정부가 발행한 국채, 캄보디아 정부가 받은 차관 및 캄보디아 정부의 예금 등을 토대로 국가 정책 등을 고려하여 캄보디아 경제재무부 장관이 배정안을 승인하고, Budget Law(예산법)을 통해 배정됩니다(신 공공재정제도법 제38조 및 제54조).

캄보디아 예산법은 매년 제정 공포되는데, 만일 당해 예산법이 정해진 기한(매년 1월 1일) 내에 제정되지 않을 경우에는 당해 예산법이 제정될 때까지 그 전년도 예산법에 준하여 예산이 배정 및 집행됩니다(신 공공재정제도법 제61조)

#### 나. 예산 집행

매년 캄보디아 예산법으로 각 정부부처, 정부기관, 공기업, 도/시청 등에 배정된 예산은 해당 기관의 장이 직접 또는 그로부터 권한을 위임받은 해당 기관 내 담당자가 집행합니다(신 공공재정제도법 제74조)

#### 다. 예산 집행 감독 기관 및 역할

캄보디아 국가 예산 집행에 대한 감독은 캄보디아 경제재무부가 총괄합니다(신 공공재정제도법 제75조).

캄보디아 국가 예산의 수입 출처, 집행 기관 등에 따라 예산집행을 감독하는 경제재무부 내 부서가 달라지는데, 캄보디아 정부가 타 국가 또는 역외기관으로부터 차입한 자금에 대한 관리 및 집행 감독은 경제재무부가 공포한 「Prakas on the Organization and Functioning of Departments and Units under the Supervision of the General Department of International Cooperation and Debt Management of the Ministry of Economy and Finance(이하 ‘**GDICDM Prakas**’)」에 근거하여 경제재무부 내 General Department of International Cooperation and Debt

Management(국제협력 및 부채관리부서 이하, ‘GDICDM’)가 합니다.

GDICDM의 주요 역할은 다음과 같습니다.

- 캄보디아 정부의 차입계약 작성 및 협상
- 캄보디아 정부가 차관받은 사업·프로그램 관리, 조율 및 실행
- 예산법 제·개정 및 예산결산법(Budget Settlement Law) 작성
- 국제금융기관 및 파트너 국가들과의 국제 경제·재무적 협력
- 기타 캄보디아 경제재무부가 맡긴 역할 수행

GDICDM은 아래와 같이 5개의 부서(Department)로 나뉘어져 있습니다.

- 1) Department of General Affairs
- 2) Department of Bilateral Cooperation
- 3) Department of Multilateral Cooperation
- 4) Department of Debt Management
- 5) Department of Project Implementation Monitoring and Supervision

위 부서들 중 한국수출입은행의 EDCF 사업 관점에서 중요한 부서는 Department of Bilateral Cooperation(양국협력부서)와 Department of Project Implementation Monitoring and Supervision(프로젝트 모니터링 및 감독 부서), 각각의 주요 역할은 다음과 같습니다.

#### Department of Bilateral Cooperation

Department of Bilateral Cooperation은 캄보디아와 특정 협력 파트너국가 간의 경제적, 재무적 및 기술적 협력사항을 집행하는 부서인데, 3개의 Office로 나뉘어져 있고, 각 Office가 담당하는 국가들이 정해져 있습니다. 한국과 일본은 Bilateral Cooperation Office 1에서 담당합니다.

캄보디아 정부가 한국으로부터 차관받은 사업에 대한 Bilateral Cooperation Office 1의 역할은 다음과 같습니다(GDICDM Prakas 제16조):

- 수입-지출 계획 수립
- 차관공여국으로부터 차관을 받기 위한 프로젝트 제안 준비 및 타당성조사 실시
- 차관사업 실행에 대한 관리 및 모니터링을 위한 관련 부처·기관들과의 협력
- 자금 사용(use)에 대한 정기적 모니터링 및 조사

- 캄보디아 정부의 차관계약 작성, 협상 및 조율
- 차관사업 실행에 대한 관리 및 모니터링을 위한 SOP 검토

### Department of Project Implementation Monitoring and Supervision

Department of Project Implementation Monitoring and Supervision는 캄보디아 정부가 차관받은 모든 프로젝트 및 금융 프로그램의 이행에 대한 전체적인 모니터링 및 감독을 담당합니다. 이에 Department of Project Implementation Monitoring and Supervision는 Department of Bilateral Cooperation(양국협력부서)가 담당하는 프로젝트뿐만 아니라 Department of Multilateral Cooperation(다자간협력부서)가 담당하는 프로젝트에 대한 모니터링도 수행합니다(GDICDM Prakas 제29조). 구체적으로는 차관공여국(들)이 제공한 금융 프로그램에 대한 연간 재무감사를 조율하고, 외부감사인의 권장사항 준수여부 및 진척사항에 대한 심사를 담당하며, 추가적인 필요절차를 구축합니다(GDICDM Prakas 제33조).

#### 4. 사업계획 변경시 기배정 예산 변경(증감) 절차

캄보디아 신 공공재정제도법 제66조에 따르면 캄보디아 경제재무부는 특정 정부 부처·기관에 기배정된 총 예산 내에서 특정 사업 또는 프로그램에 대한 예산의 일부를 타 사업 또는 프로그램으로 이관(transfer)할 수 있는데, 그 비율이 5%를 초과할 수 없습니다.

한편, 특정 정부 부처·기관에 배정된 예산을 타 정부 부처·기관에 이관하거나 특정 정부 부처·기관에 기배정된 예산을 증감하는 것은 재난 재해나 긴급한 사유로 개입 또는 해결책이 필요한 경우에 한해서 경제재무부의 제안에 따라 총리실의 승인이 필요합니다(신 공공재정제도법 제71조). 또한 이는 캄보디아 예산법이 개정되어야 하는 사유에 해당되므로 캄보디아 국회 및 상원의 승인도 필요합니다.

#### 5. 정부 예산 집행 절차 등 위반시 적용되는 벌칙규정

정부 예산 집행 관련 벌칙규정은 신 공공재정제도법 제104조 내지 제106조에 기초적인 수준에서 규정되어 있는데, 그 주요내용은 다음과 같습니다.

- 1) 본 법령 또는 관련 규정을 위반한 정부 부처·기관, 지방자치단체, 공기업 기타 법인은 캄보디아 경제재무부의 시행령(Sub-Decree)으로 정한 재무적 조치

(제재)의 대상이 될 수 있고, 이 재무적 조치(제재) 외에 캄보디아 관련 법률에 따른 형사처벌 또는 민사책임의 대상도 될 수 있음.

- 2) 공무원 또는 공무를 위임받은 자 중 본인의 역할 내지 직무를 이행하는 과정에 본 법령 또는 관련 규정을 위반한 자는 관련 법률에 따라 행정적 제재의 대상이 될 수 있고, 이 행정적 제재와는 별개로 타 관련 법률에 따른 형사처벌 또는 민사책임의 대상도 될 수 있음.
- 3) 캄보디아 국유재산(State Property)를 훼손하거나 공금에 금전적 손실을 끼친 공무원(또는 공무를 위임받은 자)는 그에 상응하는 금액을 책임지고 국가예산(State Budget)에 납부하여야 함. 이 지급의무와는 별개로 타 관련 법률에 따른 형사처벌 또는 민사책임의 대상도 될 수 있음. 지급의무에 대한 세부 규칙 및 절차는 경제재무부의 시행령을 준수하여야 함.

## [별첨 1] 캄보디아 조사 대상법률(일부)

\* 캄보디아 법률 영어본은 전부 비공식적 번역본(*unofficial translation*)인데, 본건 조사 대상법률 중에는 영어번역본이 존재하지 않는 법률이 많습니다. 본 보고서에는 캄보디아 정부 또는 공공기관이 제공하는 법률 영어번역본 중 일부를 첨부하였습니다.

### 1.1 Law on Public Procurement

# LAW ON PUBLIC PROCUREMENT

## CHAPTER 1

### GENERAL PROVISIONS

#### Article 1:

The objective of this Law is to prescribe the rules, methods, procedures, and structures for governing and implementing all public procurements to ensure the process of public procurement for purchasing goods, building works, repair work, renting of services, and renting of consultation services to be proceeded in a transparent, accountable, integrity, competitive, just, effective, efficient, sustainable, economical, and timely manner and to ensure a unified public procurement system in the Kingdom of Cambodia.

#### Article 2:

This Law has its scope that is applicable for all public procurements in the Kingdom of Cambodia irrespective of the source of funds, except for:

1. Any procurement that is financed by development partners and that needs to comply with the procedures specified under financing agreement. If the financing agreement has not defined any other procurement procedure, the procurement process shall abide by the provisions of this Law.
2. Procurement that needs to comply with Law on Public Private Partnership.
3. Any procurement that impacts on confidential information of the National Defense and Public Order, that needs approvals from the Prime Minister.

#### Article 3:

The definition of terminologies being used under this Law is defined by a lexicon attached to this Law as an appendix.

## CHAPTER 2

### INSTITUTION GOVERNING PUBLIC PROCUREMENT

#### Article 4:

The Ministry of Economy and Finance is the competent institution that governs public procurement and shall perform as the regulator and monitor the implementation of public procurement within the Kingdom of Cambodia and shall have the following duties:

- Develop and publicize the policy, law and regulations in relation to public procurement;
- Examine, analyze, monitor and assess on the enforcement of the law and regulations relating to public procurement;
- Organize training on procurement specialization to procurement officials and other related persons;

- Manage the list of bidders;
- Examine the post procurement;
- Resolve complaint related to implementation of public procurement;
- Impose reasonable action against any breach of law and regulation relating to public procurement;
- Manage the data, establish and publicize the report on public procurement.

**Article 5:**

Minister of Economy and Finance has the authority to issue legal instruments to instruct on implementation of public procurement to Procuring Entity. On the other hand, for Procuring Entity as a public enterprise, the Minister of Economy and Finance may issue additional legal instruments for implementing public procurement in order to ensure the efficiency, effectiveness and competition.

**Article 6:**

The General Department of Public Procurement shall perform as the executive body to the Ministry of Economy and Finance in managing public procurement in the Kingdom of Cambodia.

Roles and duties of General Department of Public Procurement shall be determined by a Sub-Decree.

**CHAPTER 3****PROCURING ENTITY****Article 7:**

The Procuring Entity shall be responsible on the proper implementation of public procurement pursuant to this law and other relevant legal documents.

**Article 8:**

All Procuring Entities shall establish a Procurement Committee to take charge in reviewing Procurement Plans and Bid, assessing and awarding contracts, supervising contract implementation, and addressing procurement complaints based on their competencies. A Procurement Committee shall be chaired by an acting leader pursuant to an authorization from the Head of a Procuring Entity. The Head of a Procuring Entity shall approve on the decision of contract awarding and contract signing. The Head of a Procuring Entity has the discretion to delegate the power to its subordination to approve and sign the contract on behalf on the Head of a Procuring Entity.

The organization and functioning of a Procurement Committee shall be determined by a Sub-Decree.

**Article 9:**

A Procuring Entity shall establish a Procurement Unit with clear structure and shall be staffed with officers of adequate public procurement qualifications, and who are given appropriate authority to be responsible for undertaking all public procurement activities.

The Procurement Unit has its structure that is under the direct supervision of the Head of Procuring Entity and serves as executive body to the Procurement Committee. The Procurement Unit shall be led by a Unit Head who shall not hold any positions and responsibilities related to other financial aspect of his/her entity. The Head of the Procurement Unit is the Secretary of the Procurement Committee.

The organization and functioning of the Procurement Unit shall be determined by a Sub-Decree.

**Article 10:**

A Procuring Entity as a Fully Authorized Budgeting Unit may be established a Procurement Group for implementing procurement in substitution of an establishment of a Procurement Committee and a Procurement Unit.

Judgment criteria, organization and functioning of a Procurement Group shall be determined by the Prakas of Minister of Economy and Finance.

## CHAPTER 4

### METHODS OF PROCUREMENT OF GOODS, WORKS AND SERVICES

**Article 11:**

The procurement methods of goods, works and services shall be conducted in compliance with Articles 12, 13 and Article 14 of this Law.

The conditions, thresholds, procedure and granting of preferential treatment for implementing each procurement method shall be determined by a Prakas of the Minister of Economy and Finance.

**Article 12:**

Public Competitive Bidding is the method for selecting suppliers, contractors or service providers opening to domestic and international bidders. This method is highly transparent and is preferred for all public procurements. This method consists of:

- a. International Competitive Bidding: This method is used for procurement project with large value and highly technical.
- b. Domestic Competitive Bidding: This method is used in cases where there are sufficient domestic products, production, services or construction capabilities.

**Article 13:**

Other Competitive Bidding Methods are methods of procurement of non-public competitive bidding, includes:

- a. **Restricted Competitive Bidding:** is a procurement method shall use for procurement project having complicated technical nature and is required bidder with specific qualification for implementation. This method requires pre-qualification exercises.
- b. **Competitive Shopping:** is a procurement method used when existing procurement targets are readily available in local markets and of medium value.
- c. **Canvassing:** is a method used when procurement targets are readily available in local markets and of low value.

#### Article 14:

Non-Competitive Bidding Method is used for selecting suppliers, contractors, or service providers without bidding. This method can be used unless there is prior approval from the Ministry of Economy and Finance. This method includes:

- A. **Direct Contracting:** is a procurement method that requires price and technical specifications negotiation directly with the suppliers, contractors, or service providers in one of the following circumstances, where:
  - Procurement target is single sourced;
  - Procurement target that has been competitively and publicly tendered once and it is urgently needed with no sufficient time for competitive and public tender for the second time.
  - Competitive and public tender for the second time is not successful though upon the revision of Tender Document after the failure of the first bidding.
  - Urgent need at times of natural disasters or other emergencies and there is limited time, cannot wait to use other methods, or
  - For the purpose of research, experimentation, or development.
- B. **Repeat Order:** is a procurement method that requires negotiation directly with suppliers, contractors, or service providers in circumstances, where:
  - The procurement target is the same as the one in the initial contract obtained through bidding.
  - The duration is not exceeding 6 (six) months after the initial contracts become effective and is within the same budget year.
  - The unit price is equal or less than the unit price of the initial contract, and
  - The total contract price is not exceeding 25% (twenty five percent) of the initial contract price.
- C. **Contracting with Expertise Unit of State Agencies:** is a procurement method that requires negotiation directly with the expertise unit of state agencies that are equipped with sufficient

resources, machinery, tools, materials, and labor force for executing the contract.

- D. **Contracting with Communities:** is a procurement method that is allowed negotiation directly with communities to encourage local communities for utilization of local labor force, knowledge and materials to contribute to community development.

## CHAPTER 5

### PROCUREMENT OF CONSULTING SERVICES

#### Article 15:

Consultants may be selected to render specialized services for project management, implementing major contracts, or to provide expert advice for institutional expansion and strengthening or increasing capacity. Consultants may either be consulting firms or individual consultants.

#### Article 16:

Consulting firms shall be selected when the Procuring Entity requires relevant multi-consultancy services at the same time. The selection of consulting firms shall be undertaken based upon technical and financial proposals of each consulting firm.

#### Article 17:

Individual consultants shall be selected based on their qualifications for providing services to the Procuring Entity.

#### Article 18:

The methods for selecting consultants shall include:

- Quality Based Selection;
- Quality and Cost Based Selection;
- Budget Based Selection;
- Least Cost Based Selection;
- Qualifications Based Selection;
- Single Source Based Selection;
- Individual Consultant Based Selection.

#### Article 19:

Quality Based Selection is used for selecting consulting firms. This method shall implement for work with relevant multi-disciplinary expert services at the same time and focuses primarily on the technical levels of those services and shall be reasonably used for the following work:

- Highly technical expertise or complex work which is difficult to determine accurate term of reference and work result and such work may be conducted in different form;
- Work which highly affected on social, economy and/or environment that requires consulting firms with high expertise and capacity for implementation.

**Article 20:**

The method of Quality and Cost Based Selection is used for selecting consulting firms. This method shall be implemented for major works and work that can be clearly determined scope of work, term reference, time and work result. The use of this method shall consider on quality and cost by focusing on quality rather than cost pursuant to technical complexity of service.

**Article 21:**

The method of Budget Based Selection is used for selecting consulting firms. This method shall use for work having simplicity and measurable scope of work with limited budget. The use of this method shall confirm amount of available budget so that consulting firms would submit their technical proposals in line with the size of the budget.

**Article 22:**

The method of Least Cost Based Selection is used for selecting consulting firms. This method is used for implementing work that is regularly well implemented and standard consulting services.

**Article 23:**

The method of Qualification Based Selection of a consultant shall use for selecting consulting firms. This method shall apply to minor works or technical work which requires the capable and expertise consultants for implementing a contract.

**Article 24:**

The Single Source Based Selection shall use for selecting consulting firms or an individual consultant in special circumstances. This method may be implemented only if there is prior approval from Ministry of Economy and Finance.

The special circumstances that are appropriate to this method include:

1. The continuation of previous work carried out by the consulting firm or the individual consultant;
2. In the most emergency cases where responses are required to be made immediately; or
3. When only one consulting firm or an individual is qualified and has experiences for implementing the project.

**Article 25:**

The method of selecting individual consultant is used for selecting personal individual consultant. This method of selection shall be based on the knowledge, level of professional expertise, experience and other relevant skills of the consultant.

**Article 26:**

Notification on the application of interest for all methods of procurement consultancy shall be publicly advertised, so that expressions of interest from domestic and international consultants can be broadly submitted, except the method of Single Source Based Selection.

**Article 27:**

The conditions and procedures for selecting consultants under methods specified under Article 18 of this Law shall be determined by a Prakas of the Minister of Economy and Finance.

## CHAPTER 6

### QUALIFICATIONS OF BIDDERS

**Article 28:**

All bidders are given fair and equal chances to participate in all public procurements pursuant to each specified conditions of each method except those who are in the blacklist of the Ministry of Economy and Finance, or is forbidden by the courts.

**Article 29:**

Bidders shall register their types and levels of classification at the Ministry of Economy and Finance to be eligible to participate in public procurement.

The Ministry of Economy and Finance shall classify the types and levels of bidders in accordance to their capacities to ensure the implementation of contracts.

The procedures of classifying the type and level of bidders shall be determined by a Prakas of the Minister of Economy and Finance.

**Article 30:**

Prequalification of bidders shall be made by the Procuring Entity and is only for projects with complex technical specifications.

The procedures for prequalification of bidders shall be determined by a Prakas of the Minister of Economy and Finance.

**Article 31:**

The Procuring Entity shall assess and conduct post-qualification of the lead bidders prior to decision to award the contract.

The procedures for post-qualification of bidders shall be determined by a Prakas of the Minister of Economy and Finance.

**Article 32:**

The Ministry of Economy and Finance shall blacklist the bidders, suppliers, or contractors after finding that they submit false or fake evidences or during the submission of complaint in public procurement process or breach the provisions of this law and other relevant provision to public procurement.

The Ministry of Economy and Finance shall clear the blacklists of any bidders, suppliers, or contractors who should no longer be blacklisted.

Blacklisting and de-blacklisting of bidders shall be publicly disseminated and be copied to all Procuring Entities in the Kingdom of Cambodia.

The procedures of blacklisting, de-blacklisting, and dissemination of blacklists of bidders shall be determined by a Prakas of the Minister of Economy and Finance.

## **CHAPTER 7**

### **PROCUREMENT PLAN**

**Article 33:**

All Procuring Entities shall develop annual procurement plan. The procurement plan shall be consistent with the annual approved budget package.

All spending projects that implementing procurements shall be recorded in the procurement plan. In case of failing to record in procurement plan, spending will not be permitted.

The procedure for developing, examine and approving a procurement plan shall be determined by a Prakas of the Minister of Economy and Finance.

**Article 34:**

The Procuring Entities shall bind into a procurement package any procurement target of the same type, feature, or of similar characteristic in conformity to the practical needs for single bid in order to increase the quality of competition, cost cutting, and time saving.

**Article 35:**

It is prohibited to disaggregate into small projects with ill-will to offend procurement methods.

**Article 36:**

A procurement plan is authorized to be adjusted in case of necessity. Any adjustment to the procurement plan due to insufficient time to execute the procurement or to adjust to the completed

procurements is prohibited. Adjustment to procurement plan shall request for review and approval from the Ministry of Economy and Finance. Minister of Economy and Finance may issue legal instrument to set out condition requirement allowing a Procuring Entity has the right to adjust a Procurement Plan without seeking for review and approval from the Ministry of Economy and Finance.

**Article 37:**

The Procuring Entities shall submit their annual procurement plans to the Ministry of Economy and Finance for review and approval prior to 31st of December prior to budget executing year.

**Article 38:**

The Procuring Entities shall strictly implement their annual procurement plans which have been approved by the Ministry of Economy and Finance and shall regularly send the procurement report to the Ministry of Economy and Finance.

## CHAPTER 8

### PROCUREMENT IMPLEMENTATION PROCEDURES

**Article 39:**

Implementation of Procurement shall comply with the following phases:

- Organization of Bid;
- Advertisement the notification of bidding;
- Selling of tender document and receipt and filing of bidding documents;
- Opening of bidding document;
- Assessment of bidding document;
- Awarding the contract;
- Supervising the contract.

**Article 40:**

The procurement units of the Procuring Entities shall prepare bidding documents pursuant to the provisions of this Law by accurately indicate the condition requirement and judgement criteria for selecting bidder which is verifiable and shall relating to procurement target. Tender document shall submit to the Head of Procurement Committee for review and signing. The Procuring Entity shall request for approval on tender document from the Ministry of Economy and Finance for procurement project with large value, strategic characteristic and have separate technical specification for management, and project having high sensitivity.

Sample of tender document shall be determined by the Prakas of Minister of Economy and Finance.

**Article 41:**

All bidding documents shall attach with bidding security deposit except the bidding documents of procurement that use the method of canvassing and method of selecting consultant.

The condition and procedure for depositing the bidding security shall be determined by Prakas of Minister of Economy and Finance.

**Article 42:**

The Procurement Unit of a Procuring Entity shall prepare notification for bidding advertisements for selecting bidders. The notification shall consist of the key information as follows:

- Description of the type and quantity of goods, building works, repair work or services;
- Name, address, e-mail, phone, and faxes of Procurement Unit under the Procuring Entity;
- Method of procurement to be implemented;
- Requirements condition of bidder qualifications;
- Date of selling tender documents, receiving and opening of bidding document;
- Specification of the requirement for bidding security deposit and contract performing security deposit.

**Article 43:**

Notification of bid and any amendment shall be publicized on the Website of public procurement of Ministry of Economy and Finance, Website of in charge Procuring Entity and on newspapers, and to be posted on the bulletin boards of Procuring Entities.

**Article 44:**

The Procuring Entities under Procurement Unit shall develop sufficient tender documents for selling to those who want to bid. The selling of tender document shall be comprehensively made at the specific place in the Procuring Entity and via electronical system of Procuring Entity.

The arrangement and price fixing of tender documents shall be determined by a Prakas of the Minister of Economy and Finance.

**Article 45:**

If any bidders request for clarification about the tender documents, the Procuring Entities shall response in writing to all bidders who have requested and shall copy to all bidders who have received tender documents. In case of necessity, the Procuring Entities shall conduct a meeting prior to the deadline of bidding documents submission in order to provide clarifications by inviting all bidders who received tender documents to participate.

**Article 46:**

The Procurement Unit under the Procuring Entity shall receive, record, and keep the bidding documents in sealed envelopes in a secure place and avoid damaging the original form of the envelopes that contain the bids prior to the deadline for bids opening.

**Article 47:**

All bidding document shall be opened in public immediately following the deadline for receiving bidding documents. The important details of each bidding documents shall be announced in front of the participants who attended bidding documents opening and be recorded in the minutes of bidding document opening, then make copies to all bidders and participants attending the opening of bidding document.

In case of receiving less than three bidding documents in the initial bidding, the Procurement Committee shall not open those bidding documents and shall return them over to the bidders.

If less than three bidding documents are received from the initial bidding as specified under the above paragraph 2, or no bidding documents was received, or no bidding documents was responded to the bidding requirements, re-bidding process shall take place.

In the re-bidding process, no matter how many bidding documents are received, they have to be opened at the specified date.

**Article 48:**

The Procurement Committee of the Procuring Entity shall review and evaluate all bidding documents confidentially pursuant to the conditions and criteria as stated in the tender documents. Any additional conditions and criteria that are not set forth in the tender documents shall not permit to be used for the evaluation.

The bidding document evaluation procedures shall be determined by a Prakas of the Minister of Economy and Finance.

**Article 49:**

The contract awarding is made to bidder who have submitted the bids:

- Have comprehensive or more responding to the conditions stipulated in tender document;
- Have the lowest price after evaluation; and
- Shall have proper qualification after post-qualification examination.

**Article 50:**

Before beginning to review and evaluate the bidding documents for each procurement, head, deputy head, members of the Procurement Committee, Procurement Group who are supposed to participate in evaluating and awarding a contract shall sign the Statement on the Code of Professional Ethics as specified in Chapter 11 of this Law.

**Article 51:**

After finalizing an evaluation to select appropriate bidders, the Procuring Entity shall issue notification on the decision to award contract to the successful bidder by copying it to all the failed bidders. The Procuring Entity shall provide the period of 10 (ten) working days after the announcement of notification on contract awarding for the failed bidder who may request for clarification or file complaint on bid result.

If there is written request for clarification from the failed bidders on the reason of their failure, the Procuring Entity shall make a written response within 5 (five) working days upon receiving the request.

For procurement project with large value, strategic characteristic and have separate technical specification for management, and project having high sensitivity, the notification on contract awarding shall be made after there is approval from the Ministry of Economy and Finance.

**Article 52:**

After 10 (ten) working days of the issuance of notification on contract awarding, if there is no complaint is received or after all complaint has resolved, Procurement Unit under the Procuring Entity shall establish procurement contract as stipulated under Chapter 9 of this Law and shall invite all the successful bidder to sign on the contract and shall bring together the documents of contract performing security deposit.

In case there is complaint received within the specified period in paragraph above, the Procuring Entity shall take immediate action. If the complaint cannot be resolved, the Procuring Entity shall request for approval from Ministry of Economy and Finance.

**Article 53:**

The procurement contract shall be signed by the Head of the Procuring Entity or the acting leader and the successful bidder through the authorization according to Article 8 of this Law.

**Article 54:**

The Procuring Entities shall strictly administer the contract to ensure its implementation to comply with the conditions stated in the contract.

**Article 55:**

The type of procurement project with large value, strategic characteristic and have separate technical specification for management, and project having high sensitivity that shall request for review and approval from Ministry of Economy and Finance shall be determined by a Sub-decree.

**Article 56:**

Implementation of procurement shall comply with formality of sustainable procurement. Sustainable procurement requires technical specification, requirement conditions and criteria by giving priority to environmental protection and management on economic and social impact.

Condition, rule and procedure for sustainable implementation of procurement shall be determined by a Sub-Decree.

**Article 57:**

Procurement via electronical system shall be formed as a tool for system development and to ease the procurement implementation.

Main principles of electronical procurement system include:

- An electronical communication has equal value as communication using hard document;
- Any requirements to ensure sustainability and linkage between soft and hard part used to support electronical procurement system;
- Any requirements to ensure the proper, integrity and confidentiality relating to the submission and maintaining of relevant documents.

Rule and procedure of implementing procurement via electronical system shall be determined by the Prakas of Minister of Economy and Finance.

## **CHAPTER 9**

### **THE PROCUREMENT CONTRACT**

**Article 58:**

The procurement contract preparation shall comply with the provisions of this law and other conditions stated in the tender documents and the contract template that shall be determined by a Prakas of the Minister of Economy and Finance.

**Article 59:**

The procurement contract shall be written in Khmer language. In case of necessity, the contract may be written in foreign language by translating from the Khmer version. In case of contradiction between the Khmer and the foreign languages, the contract in Khmer is the official document.

**Article 60:**

All procurement contracts shall be paid in Cambodian Riel, except the contract for carrying out procurement abroad where the payments can be made in foreign currencies.

**Article 61:**

The technical specifications of goods, works, services and conditions as works reference of consulting service which are stated in the contracts shall be of similar specifications set forth in tender documents.

**Article 62:**

The contract price shall not exceed the amount of the winning bids after adjustment of computation. The contract price is fixed over the period of contract implementation, except there is crisis with economy and finance which would cause high inflation and force majeure. The special circumstances that lead to the adjustment of contract price shall be determined by a Prakas of the Minister of Economy and Finance.

**Article 63:**

All contracts must be accompanied with security deposit, except those contracts that are obtained through canvassing method, contract with consulting firms or individual consultant, and the contracts with expertise unit of state agencies and contract with communities. Successful bidder shall deposit the required contract performance security before the contract becomes effective. The amount of the deposit to secure the performance of the contract shall be equal to the amount specified under the tender documents.

Contract performance security deposit shall be confiscated and paid into the national budget if the winning bidder refuses to implement the contract that has become effective or violates contract conditions and Procuring Entity force to stop procurement contract prior its termination.

The contract performance security deposit shall be valid until the end of period for guarantee on goods quality, constructions, or services.

Formality and procedure of contract performance security deposit shall be determined by Prakas of the Minister of Economy and Finance.

**Article 64:**

The delivery and acceptance shall be appropriately made in accordance with the size, quantity, quality, technical specifications and in compliance with the schedule of delivery and acceptance set forth in the contract and shall be under the supervision of the Committee for Delivery and Acceptance.

The procedure for establishment on the Committee for Delivery and Acceptance shall be determined by a Prakas of the Minister of Economy and Finance.

**Article 65:**

The Procuring Entity shall make payments of the contract price to the suppliers or the contractors based on the conditions for payment as stipulated under the contract.

**Article 66:**

The winning bidder can partially sub contract a project to a third party, but prior written approval from the Procuring Entity is required. If a procurement contract required the review and approval by the Ministry of Economy and Finance, the Procuring Entity shall seek approval from the Minister of Economy and Finance.

If the winning bidder is permitted to sub contract with a third party, the winning bidder shall be accountable to the Procuring Entity on the implementation of the Project as a whole.

**Article 67:**

All operations on public procurements shall be under joint provisions of applicable of taxation and receiving encouragement and other preferential treatment in accordance with applicable laws and provisions.

## **CHAPTER 10**

### **EXAMINATION ON PROCUREMENT ACTIVITY, AUDIT AND FINANCIAL INSPECTION**

**Article 68:**

Public procurement is the subject of post examination on procurement works by Ministry of Economy and Finance in accordance with provisions of this Law and other relevant applicable legal instruments.

Rules and procedures of post examination on procurement activity shall be determined by Prakas of the Minister of Economy and Finance.

**Article 69:**

Ministry of Economy and Finance has the right to conduct on-site inspection by not giving notice during the implementation on procurement, in case during the inspection and finding that there is an abnormal event happened such as any suspicious act or complaint with specific basis in any stage of implementation on public procurement to assure the compliance and effectiveness of implementation on procurement activity.

The formality and procedure of on-site inspection without prior notice shall be determined by Prakas of the Minister of Economy and Finance.

**Article 70:**

Public procurement works of Procuring Entity is the subject of audit and financial inspection pursuant to the applicable laws and legal instrument.

## **CHAPTER 11**

### **PROCUREMENT CODE OF ETHICS**

**Article 71:**

In the process of procurement works, the head, deputy head, and members of Procurement Committee, Procurement Group, Procurement Official, Bidders, including officials and other person who are related with procurement activity shall comply with the Procurement Code of Ethics.

The Procurement Code of Ethics shall be determined by the Minister of Ministry of Economy and Finance.

## CHAPTER 12

### RESOLUTION OF COMPLAINT AND DISPUTES

#### Article 72:

Bidder has the right to file complaint to Procuring Entity by submission complaint in written on any abnormal event happened in any stage of the procurement activities process before signing contract.

Procuring Entity has the authority to examine and resolve on bidder complaint.

Complainant who disagrees with the decision of Procuring Entity can lodge his/her complaint to Ministry of Economy and Finance for considerations and seeking solutions.

The formality and procedure for lodging and addressing complaints at the Procuring Entities and Ministry of Economy and Finance shall be determined by a Sub-decree.

#### Article 73:

A complainant who dissatisfied with a decision of the Ministry of Economy and Finance can lodge his/her complaint to the competent courts of the Kingdom of Cambodia.

#### Article 74:

Any dispute is happening during the implementation on procurement contract, parties in contract may resolve the dispute in accordance with regulations and mechanism which is stipulated in the contract.

## CHAPTER 13

### PENALTY PROVISION

#### Article 75:

Penalties under this Law includes administrative punishment and criminal penalty.

- a. Administrative punishment includes:
  - Warning letter;
  - Immediately force to stop from public procurement;
  - Postpone action, suspension, revoke, or contract rescission;
  - Remove the name from the list of bidders;
  - Register in the black list of bidders.

Warning letter, removal the name from the list of bidders, immediately force to stop from public procurement, and postpone action, suspension, revoke, or contract rescission are under the competent authority of Procuring Entity.

Register in the black list of bidders is under the competent authority of Ministry of Economy and Finance.

Offenses are constituted under administrative fine shall be determined by Prakas of the Minister of Economy and Finance.

In case the person who disagrees with the decision on administrative punishment as stipulated under this Law has the right to file complaint to the court with duration no longer than 30 (Thirty) days commencing from the date obtaining letter of notification on this decision.

b. Criminal penalty includes:

- Monetary Fines;
- Imprisonment;

#### **Article 76:**

Public servants of all levels, citizen who are under the public mandate by election who have committed in breach with provisions under this Law or have found that they are involved with the any abnormal act in the process of public procurement shall be responsible for administrative fine in accordance with applicable laws and regulations. This administrative punishment is not an obstacle for criminal prosecution and conviction in accordance with the effective rules and regulations of the Kingdom of Cambodia.

#### **Article 77:**

Bidder, contractor, or supplier who is found to have been involved with corruption, fraudulent, collusive or coercive practices or providing fake or false evidence in filing complaint during the process of procurement, shall be immediately revoke from the implementing public procurement or rescission of contract that are being implementing immediately by Procuring Entity. This penalty is not the obstacle for other administrative punishment that is the competent authority of Ministry of Economy and Finance, and it is also not an obstacle for criminal prosecution and conviction in accordance with the effective rules and regulations of the Kingdom of Cambodia.

#### **Article 78:**

Person who, during the process of public procurement through bidding, has dissipate bidders, or destroy bidding, either through donations, pledge, agreement, any benefits or through all other dishonest means shall be subject to 1 (one) year to 3 (three) years imprisonment and fine of 4,000,000 (four million) Riels to 10,000,000 (ten million) Riels.

#### **Article 79:**

Person who commits during the process of public procurement through bidding to be an

obstacle to the freedom of bidding by violence, coercion, or collusion to bidders, suppliers, or contractors shall be imprisoned from 2 (two) years to 5 (five) years and shall be subject to fine from 8,000,000 (eight million) Riels to 20,000,000 (twenty million) Riels.

**Article 80:**

For the offenses as stated in Article 78 and 79 of this Law is a corruption act that is under an exclusive authority of Anti-Corruption Unit to investigate and file corruption case to the court.

Any unit or other person who have aware of any corrupt practices stipulated under this Law and in other law and regulations that are in effective in the Kingdom of Cambodia shall lodge complaint to the Anti-Corruption Unit or the Municipal/Provincial Anti – Corruption Offices of the matter of offenses.

**Article 81:**

An attempt to commit misdemeanor as stated in Article 78 and 79 of this Law shall be similarly convicted as a successful committed misdemeanor.

**Article 82:**

For the misdemeanor as stated in Article 78 and 79 of this Law, one or more additional charge as stated in Article 53 (type of additional charge) of the Criminal Code may be declared.

**Article 83:**

A legal person may declare for criminal liability in respect to conditions state under Article 42 (Criminal Responsibility of a Legal Person) of the Criminal Code for misdemeanor that is specified under Articles 78 and 79 of this Law.

A legal person committed offense as stipulated under Articles 78 and 79 of this Law shall be fine from 40,000,000 (forty million) Riels to 200,000,000 (two hundred million) Riels and additional charge as specified under Article 168 (additional charge applied to legal person) of the Criminal Code.

**Article 84:**

Implementation on provisions under Chapter 13 of this Law is not an obstacle to implement on other criminal laws in case the offenses as stipulated under this Law are also the offense stated in other provision of criminal laws.

## CHAPTER 14

### TRANSITIONAL PROVISION

**Article 85:**

Any legal regulation that is related with the implementation on the Law on Public Procurement promulgated by Royal Kram No. NS/RKM/0112/004, dated 14 January 2012, and

other relevant and effective legal documents of Public Procurement are still valid until new legal documents are in place to substitute them in accordance with the spirit of this Law.

## CHAPTER 15

### FINAL PROVISIONS

#### Article 86:

Law on Public Procurement is promulgated by Royal Kram No. NS/RKM/0112/004, dated 14 January 2012, and other relevant regulations are contradicted to this Law shall be abrogated.

#### Article 87:

This Law shall be declared as a matter of urgency

Made in the Royal Palace, on 16 May 2023

**His Majesty Signature**

**Norodom Sihamoni**

*Por.Lor.Ror.2305.895*

Have Submitted to His Majesty the King

for Royal Signature

**Prime Minister**

**Signature**

**Samdech Akka Moha Sena Padei Thecho Hun Sen**

Have informed to Samdech Akka Moha Sena Padei

Thecho **Prime Minister**

**Deputy Prime Minister, Minister of Economy and Finance**

**Signature**

Truly copied from the original

**Aun Pornmoniroth**

**Permanent Deputy Prime Minister**

**Minister in Charge of Office of the Council  
of Minister**

*Unofficial Translation*

**Signed and Sealed**

**Bin Chhin**

## Appendix to the Law on Public Procurement

### Lexicon

**Procurement Package** means a combination of procurement targets which are of identical or similar nature and included into one group for single procurement.

**Bidding** means a procurement process whereby a bid is submitted, received, and evaluated for awarding contract.

**Post Procurement Examination** means the examination of Ministry of Economy and Finance on the compliance of implemented procurement of a Procuring Entity for monitoring and evaluating the procurement practice and the need for improving and enhancing the efficiency and capacity of relevant laws and regulations.

**Competition** refers to the use of procurement procedure that involved by bidder in order to select the fully responsive or appropriate bidding documents and the best value.

**Savings** means the most appropriate use of budget for expenditure that shall also consider on relevant factors in the implementation of procurement procedure in order to select the supplier or contractor.

**Procurement Activities** means the public procurement process started from the preparation of bidding documents until when the goods, works, services, or consulting services are acquired.

**Code of Procurement Ethics** means a code whereby those who are involved in public procurement shall comprehend and implement with honesty pursuant to the effective legal regulations and appropriately implement their roles and functions.

**Accountability** mean the responsibilities of procurement entities in the decision making and taking any action within public procurement process.

**Sustainability** refers to reduction of potential impacts on the environment, ecosystems and the continuation of socio-economic development.

**Transparency** refers to the access of information related to public procurement openly and the right to participate in public procurement process through the public procurement methods and procedures.

**Consultant** means consulting firm or individual consultant whose job is to provide intellectual services. Consulting firms can be trading companies or other legal persons.

**Goods** means the liquid, solid, and gaseous substances with value or economic benefits, such as machinery, tools, materials, equipment, consumption goods, medicines, other products including electrical appliances.

**Black List** means the list of debarments of bidders into public procurement process that is decided by Ministry of Economy and Finance.

**Efficiency** means targeted cost incurred on the expenditure for implementing of procurement procedure.

**Procurement Plan** means the determining the requirements of procuring entity within a specific period and setting the time and procedure for implementing the procurement activities for purpose of fulfilling the requirement of use when needed.

**Procurement Officials** means the Head, Deputy Head and all staff of the Procurement Unit of a Procuring Entity.

**Procurement Target** means goods, works, services and consulting services that are subject of bidding, competitive shopping, canvassing, or price negotiation.

**Procurement** means any purchase or acquisition of goods, works, services, or consulting services using the methods specified under this Law.

**Sustainable Procurement** means the procurement process with regard to deduction of potential impacts on the environment, ecosystem and community development sustainably.

**Public Procurement** means the procurement implemented by Procuring Entity/Fully Authorized Budgeting Unit.

**Procuring Entities** means ministries, institutions, fully authorized budget unit, administration of Capital/ Provinces/Municipality/Districts/Khan/Communes/Sangkats, public enterprises, public administrative enterprises, other financial autonomous entities that implement public procurement activities.

**Integrity** means the implementation of basic principle and professional code of ethic that could not be violated by both legal and institutional framework to public procurement.

**Services** means any activity associated with the use of human labor, equipment, or technology that bring about the benefits to public institutions, but does not include construction works and consulting services.

**Consulting Service** means advisory service provided by consulting firms or individual consultants associated with any project or for institutional strengthening or capacity development.

**Works** means any activity associated with construction, repair, renovation, installation, digging, dredging and the like leading to the use of labor force, machineries, equipments and technologies.

**Bidding Document** means a set of tender documents prepared by the Procurement Unit and initially provided to bidders, so that bid can be initiated, including Bidding Application, Invitation for Bidding, or request of expression of interest, invitation to participate in defining pre-qualifications, guidelines for bidders, details of technical specifications, scope of work, terms of reference, and terms of contract.

**Effectiveness** means the scope or capability that can be achieved the final result responding to core purpose of implementing procurement.

**Fully Authorized Budgeting Unit** means the Budgeting Unit that original institution has fully

authorized to administer the profit and expense of the Unit by not having to seeking for comment from Unit in charge of Finance and the review and approval from original institution.

**Collusive Practice** means a scheme or an arrangement between two or more bidders, designed to establish artificial bid prices without true competition or to influence an action of any party in the procurement process or impact the execution of a contract.

**Coercive Practice** means prohibition of direct or indirect threat to harm, to individuals or their properties to influence their participation in public procurement process, or affect the execution of a contract.

**Fraudulent Practice** means a misrepresentation of facts in order to influence public procurement process.

**Bidder** means individuals or firms who intend to participate in public procurement and have submitted their bids or Letter of intent.

**Lead Bidder** means bidder who have participated in bidding and his/her bid has been assessed by the procurement committee to be the most appropriate bid before making post qualification.

**Contractor** means the individual, company, or the consultant who entered into a construction, repair, service, or consulting service contract with a Procuring Entity.

**Supplier** means the individual or the company who entered into a contract for selling goods to a Procuring Entity.

**Tender Documents** means a set of documents including Bidding Documents completed by bidder attached with a number of other documents as required by bidding documents and submitted to Procuring Entity for supplying goods, undertaking construction work, providing services, or consulting services.

**1.2 Sub-Decree on Formalities and Procedures for Lodging and Addressing Procurement Complaints****Kingdom of Cambodia****Nation Religion King****Royal Government of Cambodia****No. 21 ANK.BK****Sub-Decree****On****Formality and Procedures for Lodging and Addressing Procurement Complaint****Royal Government of Cambodia**

- Have seen the Constitution of the Kingdom of Cambodia;
- Have seen Royal Decree No. NS/RKT/0913/903, dated 24 September 2013 on the Appointment of the Royal Government of Cambodia;
- Have seen Royal Decree No. NS/RKT/1213/1393, dated 21 December 2013 on the Amendment and Supplement to the Composition of the Royal Government of Cambodia;
- Have Seen Royal Decree No. NS/RKT/0816/368, dated 04 April 2016 Amendment and Supplement to the Composition of the Royal Government of Cambodia;
- Have seen Royal Kram No. 02/NS/94, dated 20 July 1994 promulgating the Law on Organization and Functioning of the Council of Ministers;
- Have seen Royal Kram No. NS/RKM/0196/18, dated 24 January 1996 promulgating the Law on Establishment of Ministry of Economy and Finance;
- Have seen Royal Kram No. NS/RKM/0196/27, dated 26 January 1996 on the Organization and Function of the National Bank of Cambodia;
- Have seen Royal Kram No. NS/RKM/0508/016, dated 13 May 2008 promulgating the Law on Public Financial System;
- Have seen Royal Kram No. NS/RKM/0112/004, dated 14 January 2012 promulgating the Law on Public Procurement;
- Have seen Sub-Decree No. 488/Or.Nor.Kro/Bor.Kor, dated 16 October 2013 on the Organization and Functioning of the Ministry of Economy and Finance;
- Have seen Sub-Decree No. 75/Or.Nor.Kro/Bor.Kor, dated 25 May 2017 on the Amendment to Sub-Decree No. 488/Or.Nor.Kro/Bor.Kor, dated 16 October 2013 on the Organization and Functioning of the Ministry of Economy and Finance;

- Pursuant to the request made by Minister of Economy and Finance.

## **Hereby Decides**

### **Chapter 1**

#### **General Provision**

##### **Article 1.**

The purpose of this Sub-Decree is to ensure the resolution of complaint related to public procurement proceed with integrity, fair, impartial and non-discrimination in order to encourage the process of public procurement be conducted smoothly with transparent, accountable, fair, efficient, qualitative, equity, saving and in a timely manner.

##### **Article 2.**

This Sub-Decree aims at setting the formality, procedure and mechanism for lodging and addressing complaint related to procurement in the Kingdom of Cambodia.

##### **Article 3.**

The scope of this Sub-Decree is applicable to every complaint related to public procurement in the Kingdom of Cambodia except the complaint listed below:

- Any procurement that is financed by development partners which has already set forth the formality, procedures, and mechanism for resolution of complaint as stipulated under financing agreement. If the financing agreement has not defined the formality, procedures and mechanism for resolution of complaint, shall comply with formality, procedures and mechanism specified under this Sub-Decree.
- Any procurement that impacts on confidential information if the national defense and public security which require the approval from the Prime Minister.
- Other procurement in the form of concessions by the Government that shall comply with a separate laws and regulations.

##### **Article 4.**

Definition of terminologies use in this Sub-Decree are defined below:

- **Bidder** refers to individual or legal entity who intend to participate in public procurement and have submitted their bids or letter of intent.
- **Potential Bidder** refers to individual or legal entity who intend to participate in public procurement.
- **Complaint** refers to claim or complaint from bidder on the process of public procurement which is abnormal before entering into procurement contract.

- **Fraudulent Practice** refers to a misrepresentation of facts in order to influence public procurement process.
- **Conspiracy Practice** refers to a scheme or an arrangement between two or more bidders, designed to establish artificial bid prices without true competition or to influence an action of any party in the procurement process or impact the execution of a contract.
- **Coercive Practice** refers to prohibition or direct or indirect threat that harm individual or their properties to influence their participation in public procurement process or affect the execution of a contract.

## Chapter 2

### Formality and Procedures of Lodging a Complaint

#### Article 5.

Bidders and Potential Bidders who participated in public procurement has the right to lodge complaint on any abnormal which may occur in public procurement process following its order to procuring entity that directly implement procurement, Ministry of Economy and Finance and the competent court of the Kingdom of Cambodia. Potential Bidders has the right to lodge complaint during the phase of bidding announcement and selling or submitting bids. Bidders who participated in public procurement has the right to lodge complaint in every stage of public bidding prior to execution of contract.

Any complaint made after contract execution shall be made by the parties to contract and shall comply with conditions set forth in the contract.

#### Article 6.

Bidders may lodge complaint on any abnormal activities related to following cases:

- Establishment of Bidders' qualifications;
- Announcement on bidding notification;
- Selling or submitting of bids;
- Acceptance of bids request and opening of bids request;
- Prohibition to bidders participating in public procurement process;
- Decision on granting contract.

#### Article 7.

Bidders may not lodge complaint relating to the following cases:

- Complaint for explanation on the reason selecting each procurement method or procurement plan;

- Complaint made for the purpose of amendment or irritation or suspension or delay the process of procurement;
- Complaint without proper legal basis.

**Article 8.**

Complaint shall be made in writing and with signature and seal or thumbprint, name, address of complainant. Complainant shall attach with the information or document evidence in writing and other necessary documents. Complaint shall indicate the following main points:

- Subject of complaint;
- Name of project;
- Owner of project;
- Any abnormal occurred in any phase of public procurement;
- Any violation on laws and regulation related to public procurement; and
- Propose resolution.

**Article 9.**

Bidder shall lodge complaint to procurement entity who directly enforce procurement within the period of each stage of procurement or not exceeding 5 (five) working days after completion of each stage of procurement, except complaint relating to the assessment result of selecting bidders which, in this case, grant bidder the right to file complaint within 10 (ten) working days after the issuance date of notice of contract delivering. Complaint that submits or send to procuring entity who directly implementing procurement after this date shall be invalid.

**Article 10.**

Complaint shall be properly recorded and kept for resolution. The process of complaint resolution is confident.

**Chapter 3****Formality and Procedure for Complaint Resolution****Section 1****Formality and Procedure for Complaint by Procurement Entity who directly Implementing Procurement****Article 11.**

Procuring entity who directly implementing procurement shall in the normal manner implement public procurement though there is complaint relating to any abnormal event occurred

in pre-execution stage, except where the complaint is made relating to assessing and awarding contract in which a procuring entity who directly implementing procurement shall extend the execution schedule on procurement contract until such complaint have been successfully resolved at the Ministry of Economy and Finance.

**Article 12.**

Procuring entity who directly implementing procurement shall resolve Bidder's complaint through Procurement Committee/Procurement Team. In necessary case, head of procuring unit who directly implementing procurement may establish a commission for an affair by inviting the skilled official of relevant unit under its supervisory to share the comment in resolution of Bidder's complaint.

Head, deputy head and member who participate in complaint resolution shall strictly respect Procurement Code of Ethics. In the case deputy head or member of Procurement Committee/Procurement Team, or member of a commission who has a conflict of interest with any complaint shall remove himself from the complaint resolution process; and if the head of committee has a conflicting interest, such head shall appoint a deputy head or a member of Procurement Committee/Procurement Team to be its representative in complaint resolution.

**Article 13.**

Procuring entity who directly implementing procurement has the right to reject or accept complaint by giving notice to complainant within 3 (three) working days after the date of receipt of complaint and shall clearly indicate the reason through a posted letter or a hand delivery letter.

**Article 14.**

For complaint with insufficient information or documents attached, Procurement Committee/Procurement Team shall inform to complainant to submits further supporting documents on complaint within 5 (five) working day after complainant has received the notice on acceptance of complaint. In case exceeding this duration, complaint shall be considered void.

**Article 15.**

Complaint resolution shall be made in respect to the principle of independent, fair, loyal, and shall not influenced or by any order of any party. Complaint resolution shall accurately indicate the subject of complaint and its resolution including the following information:

- Reason for objection complaint;
- Relevant evidence in reviewing and resolving complaint;
- Legal basis of relevant law and regulations for decision making;
- Decision and rules for further implementation.

**Article 16.**

Procuring entity who directly implementing procurement shall review and resolve complaint within 15 (fifteen) days commencing from the date receiving notice on acceptance of complaint. Within this period, procuring entity who directly implementing procurement shall arrange meeting for resolving complaint with the record of meeting minutes. Meeting minutes shall be copied to all member presented at the meeting. In necessary case, procuring entity who directly implementing procurement may invite complainant and related parties to provide additional statements.

**Article 17.**

Decision on complaint shall be made in writing based on the applicable laws and regulations. Decision shall indicate the relevant rules includes:

- Revision of bidding documents, setting of pre-qualification of bidders, announcement of bidding, selling or granting bidding documents, acceptance of bidding proposal, opening of bidding proposal and assessing of bidding proposal;
- Changing the decision to allow or to not allow bidders, consultants participate in public procurement;
- Changing the decision on awarding contract to bidders or consultants.

**Article 18.**

Complainant who objects with decision of procuring entity who directly implementing procurement pursuant to Article 17 of this Sub-Decree has 5 (five) working days after the issuance date of decision of procuring entity in order to lodge complaint to Ministry of Economy and Finance.

**Section 2**

**Formality and Procedure for Complaint Resolution by Ministry of Economy and Finance**

**Article 19.**

Ministry of Economy and Finance shall establish a committee to resolve procurement related complaint of bidders.

A committee for resolving procurement related complaint shall be composed of:

- |   |                  |
|---|------------------|
| 1- Minister of Economy and Finance  | Head             |
| 2- A Secretary of State of Ministry of Economy and Finance                                    | Deputy Head      |
| 3- General Director of General Department of Public Procurement                               | Permanent Member |
| 4- General Director of General Department of International<br>Cooperation and Debt Management | Member           |
| 5- General Director of General Department of Internal Audit                                   | Member           |

6- Representative of Secretariat of Legislative Council Member.

Actual compositions of Committee for Resolution of Procurement Complaint shall be determined by Prakas of Minister of Economy and Finance.

**Article 20.**

Committee for Resolution of Procurement Complaint of General Department of Public Procurement has the right to invite relevant skilled official of ministries, institutions, representatives from relevant private sectors, complainant or other related parties to give more clarification or comments as necessary.

**Article 21.**

Department of Dispute Inspection and Resolution of General Department of Public Procurement shall be functioned as the secretariat of Committee for Resolution of Procurement Complaint shall having the following duties:

- Facilitate administrative works and ensure the the process of Committee for Resolution of Procurement Complaint;
- Receipt, record and properly keep bidder's complaint;
- Inspect and make due diligence on complaint, documents, information and related evidences;
- Pursuant to invitation of Committee for Resolution of Procurement Complaint cooperate with relevant skilled officials from ministries, institutions or representatives from related private sectors, complainant or other related parties, in order to obtained clarification or additional evidences for the basis of organizing report submit to Committee for Resolution of Procurement Complaint;
- Submit request for complaint resolution submit to Committee for Resolution of Procurement Complaint for consideration and decision;
- Establish report every time the Committee for Resolution of Procurement Complaint organize a meeting to resolve bidder's complaint.

**Article 22.**

Committee for Resolution of Procurement Complaint has the right to object or accept to resolve or transfer the complaint to procuring entity who directly implementing procurement by giving notice to complainant through registered post or a hand delivery letter with clear reason indicated, within 3 (three) working days after the acceptance of complaint.

**Article 23.**

In case Committee for Resolution of Procurement Complaint objects to resolve a complaint or fails to give notice to complainant within determined timeframe stipulated in Article 22 of this

Sub-Decree, complainant has the right to submit complaint to the competent court of the Kingdom of Cambodia.

**Article 24.**

For complaint has no sufficient information or evidence, Committee for Resolution of Procurement Complaint shall inform to complainant to provide additional information or evidence within 5 (five) working days after the date of notification on acceptance of complaint resolution. Failure to submit within this period, Committee for Resolution of Procurement Complaint will not resolve such complaint.

**Article 25.**

Committee for Resolution of Procurement Complaint shall inspect and resolve complaint within 15 (fifteen) working days commencing from the date granting notice on complaint acceptance or 10 (ten) working days commencing from the date the complainant provided full information or documents.

**Article 26.**

Complaint resolution shall strictly follow the principles and shall indicate clearly on subject of complaint and result of complaint resolution as per stipulation in Article 15 of this Sub-Decree. Decision of complaint shall comply with Article 17 of this Sub-Decree.

**Article 27.**

Ministry of Economy and Finance shall send decision of resolution to complainant and shall make a copy to procuring entity.

**Article 28.**

Complainant who objects with the decision of Ministry of Economy and Finance shall in accordance with Article 27 of this Sub-Decree shall has 10 (ten) working days after the issuance date of decision of Ministry of Economy and Finance for lodging complaint to the competent court of the Kingdom of Cambodia. Failure to submit within this provided period, complainant shall loss the right to submit complain to the competent court.

**Chapter 4****Other Provision****Article 29.**

In necessary case, Minister of Economy and Finance may issue Prakas or circulation for strengthening and ensuring the efficiency in the enforcement of this Sub-Decree.

**Chapter 5****Penalty Provisions**

**Article 30.**

If found that complainant has purpose to disturb aiming for any changes or delay the process of public procurement by submitting complaint that lack of legal basis or has attached fraudulent evidence or incorrect, complainant shall be liable to penalty as stipulated in Article 66, Chapter 12 “Penalty Provisions” of the Law on Public Procurement promulgated by Royal Kram No. NS/RKM/0112/004, dated 14 January 2012.

**Article 31.**

Public Servant in every level who has committed in violation to provisions of this Sub-Decree or has found relating to any abnormal act in the process of resolution of procurement complaint shall be responsible for administrative penalty according to applicable law. This administrative penalty is not an obstacle for any criminal offence and sanction pursuant to applicable law of the Kingdom of Cambodia.

**Article 32.**

Complainant and related parties who found committed corruption, fraudulent practice, conspiracy practice, or coercive practice in the process of resolution of procurement complaint shall be punished in accordance with the provisions of Criminal Code and other applicable provisions in the Kingdom of Cambodia.

Any corruption offense as stipulated in paragraph 1 above shall be under the authority of Anti Corruption Unit according to Article 73 of the Law on Public Procurement promulgated by Royal Kram No. NS/RKM/0112/004, dated 14 January 2012.

**Chapter 6****Final Provision****Article 33.**

Any provisions contrary to this Sub-Decree shall be abrogated.

**Article 34.**

Minister in charge of the Council of Ministers, Minister of Economy and Finance, Ministers of all Ministries, Head of relevant institutions, Head of all national administration unit and sub national administration shall implement this Sub-Decree as per its authority from this signing date.

Made in Phnom Penh, 21 February 2018

**Signed and Sealed**

**Samdech Akka Moha Sena Padei Techo Hun Sen**

Have submitted to

Samdech Akka Moha Sena Padei Techo Hun Sen, for signature

**Senior Minister**

**Minister of Ministry of Economy and Finance**

**Signed**

**Aun Pornmoniroth**

Copied to:

- Ministry of Royal Palace
- Secretary General of the Constitutional Council
- Council of Ministers
- Secretariat General of the Senate
- Secretariat General of the National Assembly
- Cabinet of Samdech Akka Moha Sena Padei Techo, Prime Minister
- Cabinets of Samdech, His Excellency/Her Excellency, Deputy Prime Ministers
- As in Article 34
- Royal Gazette
- Archives-chronology

### 1.3 Prakas on the Management of Performance of Public Procurement Contract

**KINGDOM OF CAMBODIA**

**NATION RELIGION KING**

**Ministry of Economy and Finance**

No. 1613 Sor.Hor.Vor. Pro.Kor

**Prakas**

**On the Management of Performance of Public Procurement Contract**

**Deputy Prime Minister,  
Minister of Economy and Finance**

- Have seen the Constitution of the Kingdom of Cambodia;
- Have seen Royal Decree No. NS/RKT/0918/925, dated 06 September 2018 on the Appointment of the Royal Government of the Kingdom of Cambodia;
- Have seen Royal Kram No. NS/RKM/0618/012, dated 28 June 2018, promulgating the Law on Organization and Functioning of the Council of Ministers;
- Have seen Royal Kram No. NS/RKM/0196/18, dated 24 January 1996 promulgating the Law on Establishment of Ministry of Economy and Finance;
- Have seen Royal Kram No. NS/RKM/0508/016, dated 13 May 2008 promulgating the Law on Public Financial System.
- Have seen Royal Kram No. NS/RKM/0112/004, dated 14 January 2012 promulgating the Law on Public Procurement.
- Have seen Sub-Decree No. 488 Or.Nor.Kro/Bor.Kor, dated 16 October 2013 on the Organization and Functioning of the Ministry of Economy and Finance;
- Have seen Sub-Decree No. 75/Or.Nor.Kro/Bor.Kor, dated 25 May 2017 on the Amendment on Sub-Decree No. 488/Or.Nor.Kro/Bor.Kor, dated 16 October 2013 on Organization and Functioning of the Ministry of Economy and Finance;
- Have seen Sub-Decree No. 105 Or.Nor.Kro/Bor.Kor, dated 18 October 2006 on Public Procurement;
- Have seen Sub-Decree No. 13 Or.Nor.Kro/Bor.Kor; dated 23 February 2015 on the Procedure on the Establishment, Organization and Functioning of the Procurement Committee and Procurement Unit;
- Have seen Inter-Ministerial Prakas No. 324 Sor.Hor.Vor/Pro.Kor; dated 03 April 2013 on Procedure of the Establishment, Organization and Functioning of Procurement Committee and

Procurement Unit of Capital, Provincial, District, Khan Administrations;

- Have seen Inter-Ministerial Prakas No. 325 Sor.Hor.Vor/Pro.Kor; dated 27 March 2014 on the Deployment Document Template of Auction Consultation and Estimation Cost on Goods and Construction Procurement;
- Have seen Prakas No. 249 Sor.Hor.Vor/Pro.Kor; dated 03 March 2015 on the Establishment of Procurement Team under the Budget Unit;
- Pursuant to the request made by Minister of Economy and Finance.

### **Hereby Decides**

### **Chapter 1 General Provision**

#### **Article 1.-**

This Prakas aims to ensure the performance of obligation under public procurement contract be conducted with transparent, efficient, fair and accountable.

#### **Article 2.-**

This Prakas aims to set out the procedures on management, reviewing, inspection, and evaluation on the implementation of procurement contract that is performed by supplier and contractor with institution implement on procurement and Budgeting Unit.

#### **Article 3.-**

The scope of this Prakas applies to all institutions implement in procurement, Budgeting Units, suppliers, and contractors who are been participated with public procurement works in the Kingdom of Cambodia.

### **Chapter 2 Competent Authority Governing on the Implementation of Procurement Contract**

#### **Section 1 Responsibility of Institution Governing on Public Procurement**

#### **Article 4.-**

Ministry of Economy and Finance is the institution governs on public procurement, having General Department of Public Procurement as its executive body to oversee all public procurement contract. General Department of Public Procurement has the following duties:

- Provide technical supports to Procurement Committee of institution governing on procurement and procurement group of Budgeting Unit about the management on implementation of procurement contract;
- Inspection, observe and evaluated on performance of obligation under procurement contract at institution governing on procurement and Budgeting Unit;
- Instruct and encourage for implementation on procurement contract at institution governing on

procurement and Budgeting Unit properly and effectively;

- Request for solution concerning on any challenges and rules in connection with procurement contract performance at institution governing on procurement and Budgeting Unit to managements of Ministry of Economy and Finance for review and approval;
- Prepare report on the outcome of examination on the implementation of the performance obligation under procurement contract quarterly, semesterly, and annually to management of Ministry of Economy and Finance.

## **Section 2**

### **Responsibilities of Procuring Entity and Budgeting Unit**

#### **Article 5.-**

Procuring Entity and Budgeting Unit shall manage on performance of the obligation under procurement contract to ensure that it conducts properly in accordance with its conditions as stipulated in the agreement. The procurement committee of Procuring Entity and procurement group of Budgeting Unit has directly responsible for management on implementation of procurement contract.

#### **Article 6.-**

Procurement Committee of Procuring Entity and procurement group of Budgeting Unit has main responsibilities to manage on performance of obligation under procurement contract as the following:

- Planning and reviewing on performance of obligations quarterly, semester, and annually and send such report to Ministry of Economy and Finance;
- Observing and examination on performance of obligations each of executed procurement contract;
- Collaborate with General Department of Public Procurement in order to inspect on performance of obligations under procurement contract;
- Regularly examination on implementation of procurement contract to insure that all obligation, terms and conditions of procurement contract shall be fully performed and effective implemented by supplier/contractor;
- Sending related documents and settlement to unit which is in charge of financial to ensure on payment process to supplier /contractor timely manner in accordance with terms and conditions of the agreement;
- Request to delay for perform or rescind agreement (For procurement works on approval) timely to Ministry of Economy and Finance to review and approve;
- Resolve with the problems that are happening during the contract performance timely manner or pre-taking measurement mechanism to prevent the issues that would happen.

## **Section 3**

### **Responsibilities on Performance of Obligations under Contract of Supplier and Contractor**

#### **Article 7.-**

Supplier and contractor are responsible to perform procurement contract as the following:

- To manage, organize, and implement the obligations effectively in accordance with terms and conditions of contract;
- Properly implement by its quantity, quality, technical, design and calendar working days.
- Begin and finish procurement works with timely manner;
- Shall not sign on the entire sub-contract to third party;
- Responsible for damages that incurred by procurement performance;
- To ensure that the implementation of contract does not affect to public interest;
- Collaborate with Procuring Entity and Budgeting Unit when there is inspection on procurement performance works;
- Preparing on report on implementation on procurement work progress until completion of work and submit to Procuring Entity and Budgeting Unit.

#### **Section 4**

#### **Responsibilities on Performance of Contract of Engineer**

##### **Article 8.-**

Implementation on construction procurement contract, Procuring Entity and Budgeting Unit shall have engineer or at least a specialist technician (one). Engineer or specialist technician has following duties:

- Examination on technical works, design, and calendar working days effectively;
- Examine, inspect, and assess on technical work on progress and work quality;
- Preparing report on work progress and quality of construction work to procurement committee/procurement group;
- Give instruction on construction technic to contractor for effective implementation;
- Perform on construction works effectively;
- Sign to certify on the letter of work completion.

#### **Chapter 3**

#### **Amendment on the Value of Agreement**

##### **Article 9.-**

Procuring Entity, Budgeting Unit, supplier, and contractor may request for amendment on the value of contract for procurement works of goods, construction, service, and consultation service during the implementation of agreement in the especial circumstances. Any requests for amendment on the value of procurement contract shall review and approve from Ministry of Economy and Finance.

#### **Chapter 4**

#### **Contract Termination**

##### **Article 10.-**

Contract shall be cancelled or terminated in case of Procuring Entity and Budgeting Unit have found that during the performance of obligation under contract or may cause inconsistency against political situation of the Royal Government or cause consequences or lose of public interest.

**Article 11.-**

Procuring Entity and Budgeting Unit may terminate contract based on the following reasons:

- Supplier/contractor cannot fulfill its obligations in accordance terms and conditions of contract;
- Supplier/contractor are unable to continue procurement work;
- Supplier/contractor may not take corrective measure to adjust its mistake after receiving notification on mistake of its implementation on the contract;
- Supplier/contractor is being bankrupt.

**Article 12.-**

If supplier/contractor cannot perform its obligations under contract based on force majeure, supplier/contractor shall immediately inform to Procuring Entity and Budgeting Unit. Supplier/contractor shall immediately suspend or postpone its procurement work after having consent from Procuring Entity and Budgeting Unit. If the situation of force majeure continues to happen within the duration of 84 (Eighty-Four) days, the procurement contract shall be finally terminated.

**Chapter 5  
Final Provisions**

**Article 13.-**

Any Prakas contradict to this Prakas shall be abrogated.

**Article 14.-**

Minister of all Ministries, Director of all Institutions, Governor of the Provincial Board of Governors Municipal/Provincial/District/Commune, Director of Public Enterprise, Director of Public Institution of Administration, Director of Budgeting Unit, and Head of Unit under the supervisory of the Ministry of Economy and Finance shall undertake to implement this Prakas as per their respective duties from the date of signature onwards.

Phnom Penh, dated on 24 December 2018

**Deputy Prime Minister,**

**Minister of Economy and Finance**

*[signed and Seal]*

**AUN PORNMONIROTH**

**Copied to:**

- Ministry of Royal Palace
- Council of Ministers
- Secretary General of the Constitutional Council
- Secretariat General of the Senate
- Secretariat General of the National Assembly
- Cabinet of Samdech Akka Moha Sena Padei Techo, Prime Minister
- Cabinets of Samdech, His Excellency/Her Excellency, Deputy Prime Ministers
- “To be informed”
- As in Article 14 “To be implemented”;
- Royal Gazette
- Archives-chronology

**3.1 Law on Construction**



**Kingdom of Cambodia  
Nation Religion King**

**LAW  
ON  
CONSTRUCTION**

Promulgated by the Royal Kram No NS/RKM/1119/019 dated 02 November 2019

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## ROYAL KRAM

NS/RKM/1119/019

### WE

Preah Karuna Preah Bat Sâmdach Preah Bâromneath Norodom Sihamoni Saman Bhumichat  
 Sasana Rakkhata Khattiya Khmerararat Putthintra Mohaksat Khemareacheana Samuhobhas  
 Kampuchea Ekareacharath Bureanasanti Subheamagala Sirivibunla Khmera Sri Bireat  
 Preah Chao Krung Kampuchea Dhibodi

- Having seen the Constitution of the Kingdom of Cambodia;
- Having seen the Royal Decree No NS/RKT/0918/925 dated 6 September 2018 on the appointment of the Royal Government of Kingdom of Cambodia;
- Having seen the Royal Kram No NS/RKM/0618/012 dated 28 June 2018 promulgating the Law on the Organization and the Functioning of the Council of Ministers;
- Having seen the Royal Kram No NS/RKM/0699/09 dated 23 June 1999 promulgating the Law on the Establishment of the Ministry of Land Management, Urban Planning and Construction;
- Having seen the Request of Samdech Akka Moha Sena Padei Techo Hun Sen, Prime Minister of the Kingdom of Cambodia;

### PROMULGATE

The Law on Construction which was enacted by the National Assembly on 7 October 2019 at its third plenary session of the sixth legislature, and entirely reviewed and approved on its form and legal concept on 18 October 2019 at its extraordinary session of the fourth legislature with the following content:

### Chapter 1 General Provisions

#### Article 1

This law is intended to ensure:

- construction quality, security, and safety; the protection of property and well-being of construction owners, construction users and the public;
- aesthetics and good environment for sustainable living in order to promote public well-being;
- accountability for and efficiency in working and practicing professions in the construction sector;
- an increase in investors' confidence in the construction sector and the promotion of the

economically and socially efficient real estate market.

## **Article 2**

This law aims to establish principles, building technical regulations, rules and procedures for construction sector management in the Kingdom of Cambodia.

## **Article 3**

This law applies to the construction sector in the Kingdom of Cambodia except for the types of construction that are governed by separate legal instruments.

## **Article 4**

Key terms used in this law have been defined in the glossary as an annex of this law.

## **Chapter 2 Competence**

### **Article 5**

The Minister of Land Management, Urban Planning and Construction has the competence to manage the construction sector.

The Minister of Land Management, Urban Planning and Construction can assign or delegate the competence to manage the construction sector to the Capital, provincial, municipal, district, and Khan administrations.

## **Chapter 3 Principles**

### **Article 6**

All construction work shall adhere to these principles:

- the protection of public interest and individual rights;
- efficiency, sustainability and inclusiveness;
- spatial management and urban planning;
- green development, natural resource and environmental protection;
- preservation and promotion of the national identity.

## **Chapter 4 Building Technical Regulations**

### **Article 7**

All construction work shall comply with the building technical regulations.

Compliance with the building technical regulations shall be certified by a certifier who has

a license or a permit granted by the Ministry of Land Management, Urban Planning and Construction.

The conditions and procedure for the construction certification shall be determined by a sub-decree.

### **Article 8**

Every construction shall have a structure that can safely carry all load, according to the function of the construction, as determined in the building technical regulations.

The classifications, types, and sizes of construction that requires structural safety certification shall be determined by a Prakas of the Minister of Land Management, Urban Planning and Construction.

### **Article 9**

Every construction shall comply with the fire safety regulations, as determined in the building technical regulations and provisions of fire prevention and extinguishment.

The classifications, types, and sizes of construction that requires fire safety certification shall be determined by an inter-ministerial Prakas by the Minister of Land Management, Urban Planning and Construction and the Minister of Interior.

### **Article 10**

National building technical regulations shall be promulgated by sub-decree at the request of the National Council for Building Technical Regulations.

Other building technical regulations besides the national building technical regulations shall be promulgated by Prakas of the Minister of Land Management, Urban Planning and Construction.

Technical regulations for construction materials, equipment and products that are required to adhere to any specific standard shall be promulgated by Prakas of the Minister in charge of the industry sector at the request of the Minister of Land Management, Urban Planning and Construction and in accordance with the decision of National Standards Council.

Other technical regulations for construction materials, equipment and products that have not been set as Cambodia standards shall be promulgated by Prakas of the Minister of Land Management, Urban Planning and Construction.

### **Article 11**

Is created The National Council for Building Technical Regulations comprising the Minister of Land Management, Urban Planning and Construction as Chairperson and representatives of relevant ministries/institutions and the private sector as members.

The National Council for Building Technical Regulations has a Secretariat General as an operating body.

The organization and functioning of the National Council for Building Technical

Regulations shall be determined by a sub-decree.

## **Chapter 5 Management of Construction Professionals**

### **Article 12**

A physical person who may function as a construction professional shall be registered at each relevant professional board of the construction sector.

The organization and functioning of each professional board related to the construction sector shall be determined by a Royal Decree.

### **Article 13**

Construction professionals shall strictly follow their professional codes of conduct.

The code of conduct for each category of construction professionals shall be determined by a sub-decree.

### **Article 14**

The management of other construction tradespersons whose professional boards have not yet been established shall be determined by a sub-decree.

## **Chapter 6 Management of the Professional and Business Practices in the Construction Sector**

### **Article 15**

Any construction professional allowed to practice a construction profession independently shall have a license granted by the Minister of Land Management, Urban Planning and Construction.

Any construction professional who functions as a technical director of a construction business company is not required to have a license granted by the Minister of Land Management, Urban Planning and Construction.

The technical director of a construction business company shall carry out his/her function independently in accordance with the existing professional code of conduct and technical regulations.

### **Article 16**

A construction professional shall be disqualified from professional practice in any of the following cases:

- S/he no longer fulfills the required conditions related to the professional practice;
- S/he has committed a professional wrongdoing which leads to the suspension or revocation of the professional practice license;

- S/he has a health problem(s) that potentially affects his/her professional practice, as certified by a specialized doctor; or has received a declaration of commencement of general guardianship or a declaration of commencement of curatorship by the court;
- S/he has been declared bankrupt by the court;
- S/he has been convicted of a felony in the Kingdom of Cambodia or in any country where he/she had resided.

Suspension of a license for construction-sector professional practice must not exceed 6 (six) months, starting from the day of license suspension.

Rehabilitation of construction-sector professional practice may be provided after 5 years, starting from the day of the license revocation.

In the case of disqualification for professional practice because of a felony in the Kingdom of Cambodia or in any country he/she had resided, the rehabilitation of professional practice may be granted after s/he has received rehabilitation pursuant to the provisions of the Criminal Procedure Code.

#### **Article 17**

Every construction business practice shall have a license granted by the Minister of Land Management, Urban Planning and Construction or a permit from capital/provincial administration, according to the type of business.

#### **Article 18**

A construction business company shall be disqualified from professional practice in any of the following cases :

- It no longer fulfills any of the required conditions which permits a company to get a business license;
- It has been removed from the commercial register;
- It has been dissolved or nullified by the court;
- It has been declared bankrupt or liquidated by the court;
- It has a governor or a technical director has received a declaration of commencement of general guardianship or a declaration of commencement of curatorship by the court, except when the governor or the technical director is replaced within 30 (thirty) days, from the day of declaration by the court.
- It has a governor or a technical director has been declared bankrupt or liquidated by the court, except when the governor or the technical director is replaced within 30 (thirty) days, from the day of declaration by the court.
- It has a governor or a technical director who has been convicted of a felony in the Kingdom of Cambodia or in any country where he/she has resided, except when the governor or the technical director is replaced within 30 (thirty) days, starting from the day of final judgment of a trial court or a court of appeals.

Suspension of a license for construction-sector professional practice must not exceed 1 (one)

year, starting from the day of license suspension.

Rehabilitation of construction-sector professional practice may be provided after 5 years, starting from the day of license revocation.

Any person or professional who has been declared bankrupt or whose company has been liquidated by the court can receive rehabilitation as a governor or a technical director of a construction business company after 5 (five) years, starting from the day of judicial declaration of bankruptcy or judicial liquidation.

Any person or professional who has been convicted of a felony in the Kingdom of Cambodia or any country s/he has resided may be rehabilitated as a governor or a technical director of a construction business company after s/he has received a rehabilitation pursuant to the provisions of the Criminal Procedure Code.

#### **Article 19**

Any person who holds a license for construction professional or business practice shall enter into an insurance contract with an insurance company operating in the Kingdom of Cambodia and have an insurance certificate to assure liability for his/her professional or business practice.

The object of an insurance contract guarantees the fulfillment of the obligations stipulated in a contract between a professional or businessperson and his/her customers.

The minimum amount of money for guaranteeing liability for construction professional or business practice shall be determined by a sub-decree.

#### **Article 20**

The terms and conditions and procedure for granting, suspending and revoking licenses for professional practice and other licenses or permits for construction business practice shall be determined by a sub-decree.

#### **Article 21**

Application for licenses or other permits for construction professional or business practice shall incur service fees.

Service fees for licenses or other permits for construction professional or business practice shall be determined by an inter-ministerial Prakas between the Minister of Economy and Finance and the Minister of Land Management, Urban Planning and Construction.

Service fees for licenses or other permits for construction professional or business practice shall go to the national and sub-national coffers.

### **Chapter 7**

#### **Use of Construction Material, Equipment and Product and Construction Laboratory**

#### **Article 22**

Construction material, equipment, and product required to assure construction quality and

construction users' safety shall be accredited or certified for compliance with the building technical regulations by the Ministry of Land Management, Urban Planning and Construction or with Cambodian Standard by the National Standards Council by having the Cambodian Standard Mark affixed or printed on them and by having a license to use the Cambodian Standard Mark.

The formality and procedure for compliance certification and the types of construction material, equipment, and products required to assure construction quality and construction users' safety shall be determined by a Prakas of the Minister of Land Management, Urban Planning and Construction.

### **Article 23**

The production, distribution, import, sale, supply, and use of any construction material, equipment or product without Cambodian Standard mark affixed on them, or without accreditation or compliance certification with the building technical regulations shall be prohibited in the case where the construction material, equipment or product is required to have the Cambodia Standards mark affixed, or to have accreditation or compliance certification with the building technical regulations.

The use of construction material, equipment, and product that does not comply with building technical regulations shall be prohibited.

The formality and procedure for checking compliance of the use of construction material, equipment, and product with the building technical regulations shall be determined by a Prakas of the Minister of Land Management, Urban Planning and Construction.

### **Article 24**

The Ministry of Land Management, Urban Planning and Construction shall establish a National Construction Laboratory.

The organization and functioning of the National Construction Laboratory shall be determined by a sub-decree.

### **Article 25**

Any construction laboratory for business purposes shall have a license granted by the Minister of Land Management, Urban Planning and Construction.

The establishment of a construction laboratory for learning, research, and training purposes shall have a permit from the Minister of Land Management, Urban Planning and Construction.

The terms and conditions and procedure for granting, suspending, and revoking a permit for establishing a construction laboratory for learning, research, and training purposes shall be determined by a sub-decree.

## **Chapter 8 Building, Repair or Demolition Permit**

### **Article 26**

All building or demolition work shall have prior permission by the competent authority.

#### **Article 27**

Building or demolition work in emergency or in disaster situations in order to save or protect lives or to prevent serious impact or damage to health or property in emergency situations shall not require a prior permit.

Within a period of 30 (thirty) days, at the latest, after the emergency situation ends, the owner of the construction built in the emergency situation shall apply for an certificate of occupancy according to the existing conditions and procedures.

Within a period of 30 (thirty) days, at the latest, after the emergency situation ends, the owner of the construction demolished in the emergency situation shall notify in writing the competent authority.

#### **Article 28**

The building or demolition works that do not require permission are as follows:

- Small constructions that do not affect public security, safety, and order;
- Wooden houses, houses with concrete ground floor and wooden upper floor, wooden or concrete ground-houses in rural or farming areas that do not affect tourist destinations, heritage sites, conservation sites, or protected areas;
- A construction which serves national security and national defense.

The types and sizes of building or demolition works which do not require permission shall be determined by a sub-decree.

#### **Article 29**

Repair, modification, or installation of construction equipment does not require permission if the work does not affect its load support structure, exterior aesthetics, or the function of the whole building or any part of the building and does not affect public security, safety, and order. In this case, the construction owner shall give the competent authority prior notice.

The types and sizes of repair, modification/alteration or installation of construction equipment that do not require permission shall be determined by a sub-decree.

The formality and procedure for prior notices concerning repairs, modifications or installations of construction equipment which do not require permission shall be determined by a Prakas of the Minister of Land Management, Urban Planning and Construction.

#### **Article 30**

The conditions and procedure for granting, suspending and revoking building, repair, or demolition permits shall be determined by a sub-decree.

#### **Article 31**

A building, repair, or demolition permit does not absolve the individual who is granted the permit from any obligation and responsibility according to the building technical regulations and other existing regulations.

The carrying out of building or demolition work for the construction that does not require a permit does not absolve the construction owner from any obligation and responsibility according to other existing laws and regulations.

## **Chapter 9 Management of Design Documents**

### **Article 32**

Every design document used for building or demolition work shall be responsibly signed by a designer who holds a license or permit granted by the Minister of Land Management, Urban Planning and Construction.

### **Article 33**

Every design document used for building or demolition work shall comply with the building technical regulations and spatial and urban regulations.

A design document used for the building or demolition work of any type of construction, except for a construction for personal use, shall be built with infrastructure, equipment, and services for people with disabilities, namely roads and ramps for mobility, rails, elevators, toilets, parking lots specially designed for people with disabilities as well as signposts.

Compliance of a design document with the building technical regulations and spatial and urban regulations shall be certified by a certifier who has a license or permit granted by the Minister of Land Management, Urban Planning and Construction.

A design document for building or demolishing a construction which requires a permit shall be certified for compliance with the building technical regulations by a certifier who has a license or permit granted by the Minister of Land Management, Urban Planning and Construction.

### **Article 34**

A construction owner shall ensure that building or demolition work which requires a permit is properly carried out according to the design document approved by the competent authority through a permit.

Before building or demolition work is carried out, The competent authority may grant permission for modification of the approved design document.

Permission to modify a design document shall be given in the form of a permit for design document modification.

The conditions and procedure for permission for design document modification shall be determined by a sub-decree.

### **Article 35**

Every work of a designer, either entirely or partially original, approved by the competent authority through a building permit shall be protected from plagiarism or piracy, according to the existing regulations.

A single design document cannot be used at other site(s) without permission from the designer who has already signed the design document and from the construction owner.

The use of a design document that has a special architectural value at other site(s) shall be prohibited. Design documents that have special architectural values shall be determined by a Prakas of the Minister of Land Management, Urban Planning and Construction.

## **Chapter 10**

### **Management of Building or Demolition Work**

#### **Article 36**

Every building or demolition work shall be carried out by a builder who has a license granted by the Minister of Land Management, Urban Planning and Construction or a permit granted by a capital/provincial administration.

A builder is not required to have a license granted by the Minister of Land Management, Urban Planning and Construction or a permit granted by a capital/provincial administration provided that the builder has satisfied all the following requirements:

- Being a construction professional;
- Building or demolishing a construction that is his/her personal home; and
- Building or demolishing a construction according to his/her professional skill.

#### **Article 37**

Every building or demolition work shall be carried out according to:

- A design document
- The building technical regulations
- Other existing regulations.

Every building or demolition work which requires a permit shall follow a design document approved by the competent authority through a permit.

#### **Article 38**

Every building work which requires a permit shall have a prior permit for construction site opening.

The conditions and procedure for issuing a permit of construction site opening shall be determined by a sub-decree.

#### **Article 39**

Builders shall ensure public security, safety, order and environment at their construction sites.

#### **Article 40**

An owner of a construction required to have a permit shall provide a progress report on building or demolition works to the competent authority.

Progress reports on building or demolition works shall be prepared by the builder and agreed upon by a construction owner.

The formality and procedure for reporting progress on building or demolition works to the competent authority shall be determined by a Prakas of the Minister of Land Management, Urban Planning and Construction.

#### **Article 41**

When the site is under operation, every building or demolition work which requires a permit shall be checked and certified by a certifier who holds a license or permission granted the Minister of Land Management, Urban Planning and Construction.

The certifier of building or demolition work shall produce a report and issue a certificate certifying the work's compliance with the design document approved by the the competent authority and according to the building technical provisions.

#### **Article 42**

If it is necessary to ensure public security, safety, and order, the the competent authority can assign a construction controller to check building or demolition works.

The construction owner, construction users, persons involved in building works, including a real estate developer, a builder and a construction certifier shall give cooperation to the construction controller.

The competent authority may decide to suspend, modify, halt, or require the demolition of a construction, or take other necessary measures if the building or demolition work has been found not to comply with the building technical regulations and other existing regulations.

#### **Article 43**

The conditions and procedure for managing and controlling building or demolition works shall be determined by a sub-decree.

### **Chapter 11 Construction Occupancy**

#### **Article 44**

The occupancy of a construction which requires a building permit shall be permitted by the competent authority through an certificate of occupancy.

A construction owner shall apply for an certificate of occupancy before using it or having it used.

Every construction which requires a building permit shall be checked and certified for compliance with the building technical regulations by a certifier who holds a license or a permit granted by the Minister of Land Management, Urban Planning and Construction before the competent authority permits occupancy.

#### **Article 45**

The competent authority may permit temporary occupancy for a certain period of time of an entire construction or any part of a building project in the case where the entire construction or any part of the building project can be occupied safely.

#### **Article 46**

The conditions and procedure for granting, suspending, and revoking an certificate of occupancy shall be determined by a sub-decree.

#### **Article 47**

A construction which is used for non-residential purposes requires a quality and safety control within a maximum period of 5 (five) years from the day when the certificate of occupancy is issued. Quality and safety control shall be further conducted regularly once every 5 (five) years, at the latest.

A construction which is used for residential purposes requires a quality and safety control within a maximum period of 10 (ten) years from the day when the certificate of occupancy is issued. Quality and safety control shall be further conducted regularly once every 10 (ten) years, at the latest.

Quality control and certification of the quality and effectiveness of the construction's fire prevention and extinguishment system shall be conducted once every 2 (two) years.

Hazardous construction equipment requires a control once a year. The types of hazardous construction equipment shall be determined by a Prakas of the Minister of Land Management, Urban Planning and Construction.

A construction owner or a building manager has an obligation to hand over the result of the construction's safety and quality control to the competent authority within a period of 1 (one) month, after the deadline for the conduct of the construction's quality and safety control.

#### **Article 48**

The competent authority may require a quality and safety control if there exists a risk to human life, property or effect on public security or order.

#### **Article 49**

Construction safety and quality control shall be conducted by construction controllers or certifiers who hold a license granted by the Minister of Land Management, Urban Planning and

Construction.

Every expense for construction safety and quality control shall be borne by a construction owner.

For a co-owned building, the owners of all private units shall be jointly responsible for every expense for construction safety and quality control, in proportion to the sizes of private units.

#### **Article 50**

The formality and procedure for construction safety and quality control shall be determined by an inter-ministerial Prakas between the Minister of Land Management, Urban Planning and Construction and the Minister of Interior.

### **Chapter 12 Dangerous Buildings**

#### **Article 51**

The Ministry of Land Management, Urban Planning and Construction and capital, provincial, municipal, district, Khan administrations have duties to control and monitor any dangerous construction in order to take necessary measures for ensuring public safety, security, and order.

#### **Article 52**

For a dangerous building, the building owner and building manager have an obligation to report to the competent authority and follow all measures to avoid accidents as determined by the competent authority.

When it is necessary to avoid an accident, the competent authority shall take such urgent measures as cordoning off the building and requiring it to be demolished.

Every expense for avoiding the accident shall be borne by the building owner.

#### **Article 53**

The levels of danger, the issuance of measures for avoiding accidents, and the procedure for managing dangerous buildings shall be determined by a Prakas of the Minister of Land Management, Urban Planning and Construction.

### **Chapter 13 Constructions Built or Demolished Without or In Breach of the Building Permit**

#### **Article 54**

The competent authority shall take measures to halt any building or demolition works without a building permit if the building or demolition work requires a permit.

#### **Article 55**

The competent authority shall take measures to suspend any building or demolition works

which are carried out in breach of the permit and shall require the construction owner to make corrections according to the permit.

#### **Article 56**

The competent authority shall take measures for adjusting or demolishing a construction built without or in breach of the permit if the building work requires a permit.

The competent authority shall take measures for banning occupancy, business practice, disposal, and transactions related to a construction without or in breach of the permit if the building work requires a permit.

### **Chapter 14 Construction Inspection**

#### **Article 57**

The Minister of Land Management, Urban Planning and Construction shall appoint construction inspectors to conduct monitoring, observation, research, and control; collect evidence; and enforce this law.

Construction inspectors are qualified as judicial police to examine offences as stated in this law pursuant to the provisions of the Criminal Procedure Code.

The formality and procedure for qualifying construction inspectors shall be determined by an inter-ministerial Prakas of the Minister of Justice and the Minister of Land Management, Urban Planning and Construction.

#### **Article 58**

During law enforcement operations, construction inspectors shall wear a uniform with insignia and have a mission order.

The uniforms, insignias, and decorations of construction inspectors shall be defined by a sub-decree.

#### **Article 59**

Construction inspectors have duties and rights as follows:

- Examining, halting, taking temporary measures against, and giving transitional fines for construction offences as stated in this law;
- Temporarily revoking a permit or a related license if the permit or license holder breaks this law;
- Seizing evidence and building case files of construction offences;
- Taking other measures in the framework of implementing this law.

The formality and the procedure for conducting construction inspections shall be determined by a Prakas of the Minister of Land Management, Urban Planning and Construction.

**Article 60**

Construction inspectors can enter a construction site at any time while it is in operation or enter a building during working hours in order to perform their duties.

**Article 61**

Every operation of construction inspection in examining an offence shall follow the Criminal Procedure Code.

Construction inspectors can apply for assistance from every level of local authority and armed forces unit or other relevant competent authorities in order to contribute to repress offences as stated in this law.

If there is an actual offence or if there is no building or demolition permit, relevant competent authorities shall immediately inform competent construction inspectors in the closest proximity in order to take action according to the procedure.

**Chapter 15  
Incompatibility****Article 62**

A public servant who has the competence to review and/or approve a design document may not serve as a designer or a certifier of a design document that s/he has prepared or certified.

**Article 63**

A construction inspection officer, construction controller, and certifier may not be a construction owner; his or her spouse, directive relative, relative within the third degree of consanguinity, or relative within the third degree of affinity; or a person with a financial vested interest in the building project.

**Article 64**

Performing the function of a designer shall be incompatible with performing the function of a certifier of his or her own design document.

**Article 65**

Performing the function of a builder shall be incompatible with performing the function of a certifier of his or her own building work.

**Article 66**

A certifier of a design document or building works may not be the construction owner's spouse, direct relative, or relative within the third degree of consanguinity.

A shareholder of a company that owns a construction, a staff member of a company that owns a construction, or a person with a financial vested interest in the building project may not

perform as a certifier of the construction's design document or building work.

## **Chapter 16**

### **Construction or Demolition Contract**

#### **Article 67**

A construction or demolition contract shall be made in writing and shall stipulate the following minimum clauses:

- Identity of contract parties
- Location, size and type of work
- Contract fee, date and mode of payment
- Assurance of the contract parties about fulfilling the obligations in the contract
- Technical requirements and work safety requirements
- Requirements for the supply of construction materials, equipment or tools, and machinery to be used for building or demolition works and for installation on the construction
- Conditions for contract amendment and cancellation
- Insurance or other provisions related to liability for damage caused by work
- Confirmation of compliance of a design document, as the object of the construction or demolition contract, with the existing regulations
- Work commencement and completion dates and handover date
- Conditions for force majeure
- Dispute resolution related to the contract.

#### **Article 68**

For construction or demolition contracts for private residential buildings, abusive clauses shall be considered null and void.

Abusive clauses in construction or demolition contracts for private residential buildings are as follows:

1. A clause requiring the construction owner to give a mandate to the contractor to seek a necessary loan to finance the building work.
2. A clause requiring the construction owner to pay off the contract fee in advance in order for the contractor to hand over the construction to the construction owner.
3. A clause prohibiting the construction owner or his/her representative from entering to check a construction site before the payment of the contract fee at each stage and before the handover of the construction.
4. A clause requiring the contractor to carry out building or demolition work according to a building, repair, or demolition permit attached with technical requirements that have changed significantly from the technical requirements of the building, repair, or demolition

project, which are the object of the original contract.

5. A clause relieving the contractor of obligations to effect subsequent completion within the time set in the contract by acknowledging the reasons for delays, except for force majeure and reasons caused by the construction owner him/herself.

#### **Article 69**

The parties to a construction or demolition contract can set conditions precedent on obligations or rights arising from the contract as follows:

1. Acquisition of land or real right which allow for building in the event of the construction owner obtaining a sale contract.
2. Receipt of a building, repair, or demolition permit or other permits of the competent authority. In this case, the construction owner shall clearly specify the date of the application for permits.
3. Receipt of a loan to finance building or demolition work.
4. Receipt of insurance for damages caused by building or demolition work.
5. Receipt of a guarantee for supply of construction material, equipment, or product for a construction site.

#### **Article 70**

Duties to complete the work that is the object of the construction or demolition contract without defect are as follows:

1. Building works are carried out according to the permits, building technical regulations, existing regulations and instructions;
2. Building works are carried out by using an appropriate method and with specialized competence;
3. Construction material, equipment or product for supplying the works shall fit with the functions, comply with the design document, and be of good quality according to technical regulations;
4. Construction material, equipment or product for supplying the works shall be new unless stated otherwise in the contract;

#### **Article 71**

The period of warranty on defect of work that is the object of a construction contract from the day of handover of construction shall be determined as follows:

- a. At least 10 (ten) years for a construction structure made of reinforced concrete, concrete-steel composite, or steel.
- b. At least 5 (five) years for exterior walls, windows, doors and roofs of the building
- c. At least 2 (two) years for electrical, plumbing, and mechanical works, and other related works.

The parties to a construction contract may agree to set a longer period of warranty on defect of works than that set in the paragraph above.

It is considered null and void to set a shorter period of warranty on defects of works than that set in the paragraph above.

## **Chapter 17 Insurance**

### **Article 72**

A construction or demolition contractor shall have a site liability insurance for building or demolition work which is the object of the construction or demolition contract to give compensation for any damage, loss of property, injury, disability, or death caused by the work to the workers and to the third party.

The competent authority shall ensure that the construction contractor has signed an insurance contract with an insurance company prior to granting permission for a groundbreaking ceremony.

### **Article 73**

In the case where the construction contractor signs a construction or demolition sub-contract, the obligation to sign a site liability insurance contract is the burden of the construction or demolition contractor. The site liability insurance shall cover operation of works of all construction or demolition sub-contractors.

In the case where the construction owner signs a construction or demolition contract with multiple construction or demolition contractors for carrying out building or demolition works of the same construction, all construction or demolition contractors shall sign separate contracts for site liability insurance.

### **Article 74**

In the case of operation of building or demolition works of a real estate development project, the real estate developer shall sign a contract for site liability insurance with an insurance company directly.

### **Article 75**

The types and sizes of construction which require insurance for building or demolition work shall be determined by a sub-decree.

## **Chapter 18 Liability of Construction Stakeholder**

### **Article 76**

A designer shall be liable for paying compensation for any damage caused to other person(s) if the design document of the construction has defect except that the designer can show evidence that his/her design document complies with the existing required regulations.

**Article 77**

While the building or demolition work is being carried out, the construction owner and the builder or demolisher shall be jointly liable for paying compensation for any damage caused to other person(s) in the case where building or demolition works or construction site management has defect.

**Article 78**

A construction certifier shall be liable for paying compensation for any damage caused to other person(s) due to defect of his/her certification work.

**Article 79**

A construction owner, building manager, and construction lessee shall be jointly liable for paying compensation for any damage caused to other person(s) in the case where the occupancy or management of the construction has defect.

**Article 80**

The right to claim compensation for damage arising from defect in design work, building or demolition, construction site management, certification work, construction occupancy and construction management shall expire by prescription if:

- A period of 3 (three) years has elapsed after the victim or his or her legal representative was aware that s/he may claim compensation for damage, or
- A period of 10 (ten) years has elapsed after the damage occurred.

**Article 81**

A producer of construction material, equipment, and product shall be liable for paying compensation for damage to others caused by defect in their products, except when the producer can show any of the following evidence:

1. At the time the construction material, equipment or product were put on sale or distributed, the hitherto scientific and technical knowledge was unable to find the defect, which caused the damage;
2. The construction material, equipment or product were produced according to the required technical regulations.

**Article 82**

The right to claim compensation for damage arising from defect in construction material, equipment, and product shall expire by prescription if:

1. A period of 3 (three) years has elapsed after the victim or his or her legal representative was aware that s/he may claim compensation for damage, or
2. A period of 10 (ten) years has elapsed after the construction material, equipment, and product were handed over for the first time by the producer. In the case where the construction

material, equipment, and product contain a substance that affects human health, this period shall be added 20 (twenty) years.

## **Chapter 19**

### **Dispute Resolution in the Construction Sector**

#### **Section 1**

#### **Complaints in the Construction Sector**

#### **Article 83**

A person with a vested interest in a decision of a competent authority in the construction sector has the right to complain in writing within 60 (sixty) days, from the day when a notification of the decision is received, to the authority which has issued the decision, or to the Ministry of Land Management, Urban Planning and Construction.

The competent authority which has received the complaint shall issue a written decision, with clear reasons, about the complaint within 30 (thirty) working days, from the day when the complaint is received.

In the case where the competent authority which has received the complaint does not decide about the complaint within the period specified in the paragraph above, the complainant can complain to the Ministry of Land Management, Urban Planning and Construction within 60 (sixty) days, from the day when that period ends.

The Minister of Land Management, Urban Planning and Construction shall issue a written decision with clear reasons within 30 (thirty) working days, from the day when the complaint is received.

Any person who is not satisfied with the decision about the complaint has the right to complain to the court within 30 (thirty) days from the day when the notification about the decision is received.

In the case where the Minister of Land Management, Urban Planning and Construction does not decide about the complaint within the period specified in the paragraph above, the complainant may complain to the court within 30 (thirty) days, from the day when that period ends.

#### **Article 84**

A person with a vested interest in a decision of a competent authority in the construction sector shall complain in writing within 60 (sixty) days, from the day when a notification of the decision is received, to the Ministry of Land Management, Urban Planning and Construction, before complaining to the court.

The Minister of Land Management, Urban Planning and Construction shall issue a written decision with clear reasons within 30 (thirty) working days, from the day when the complaint is received.

In the case where any person is not satisfied with the decision of the Minister of Land Management, Urban Planning and Construction, s/he has the right to complain to the court according to the established procedure within 30 (thirty) days from the day when the notification

about the decision is received.

### **Article 85**

Any person who is not satisfied with any measure of a construction inspector may complain in writing to the Ministry of Land Management, Urban Planning and Construction within 60 (sixty) days from the day when the notification about the measure is received, or may complain to the court according to the existing procedure within 30 (thirty) days from the day when the notification about the measure is received.

The Minister of Land Management, Urban Planning and Construction shall issue a written decision with clear reasons about the complaint within 30 (thirty) working days, from the day when the complaint is received.

In the case where any person is not satisfied with the decision of the Minister of Land Management, Urban Planning and Construction, s/he has the right to complain to the court according to the established procedure within 30 (thirty) days, at the longest, from the day when the notification about the decision is received.

In the case where the Minister of Land Management, Urban Planning and Construction does not decide about the complaint within the period specified in the paragraph above, the complainant may complain to the court within 30 (thirty) days, from the day when that period ends.

## **Section 2**

### **Resolution of Disputes over the Exercise of Individual Rights in the Construction Sector and over Construction or Demolition Contracts**

### **Article 86**

A person who suffers damage or has a genuine concern that s/he will suffer damage caused by the exercise of any individual's rights or obligation in the construction sector may submit a request to a Commission for Construction Dispute Resolution for mediation before filing a complaint to the court.

The request for mediation shall be made in writing within 60 (sixty) days, from the day when s/he suffers the damage.

The Commission for Construction Dispute Resolution shall mediate between the parties to the dispute within 60 (sixty) days, from the day when the request is received.

In the case where the Commission for Construction Dispute Resolution decides to reject the request for mediation, the Commission shall send a written notice to the requester. In this case, the requester has the right to complain to the court according to the existing procedure.

In the case where the Commission for Construction Dispute Resolution does not implement the mediation procedure within the period specified in the paragraph above, the requester has the right to complain to the court according to the existing procedure.

In the case where the parties to the dispute do not reach a unanimous agreement to end the dispute according to the mediation of the Commission for Construction Dispute Resolution, the requester may complain to the court according to the existing procedure from the day when that

period ends.

### **Article 87**

Any party or both parties to a construction or demolition contract can request a Commission for Construction Dispute Resolution for mediation and resolution of a dispute over the implementation of that construction or demolition contract.

The request for mediation shall be made in writing within 30 (thirty) days, from the day when the dispute arises.

The Commission for Construction Dispute Resolution shall mediate between both parties to the dispute and issue a written decision with clear reasons within 30 (thirty) working days from the day when the request for mediation is received.

The parties to the dispute may decide to stop accepting dispute mediation and resolution of the Commission for Construction Dispute Resolution at any stage of mediation; but the parties to the dispute shall submit a written notice to the Commission for Construction Dispute Resolution about their intention to stop receiving dispute mediation and resolution of the Commission for Construction Dispute Resolution before filing a complaint to the court.

### **Article 88**

The extinctive prescription regarding claims shall be paused in the case where there is a request for mediation to the Commission for Construction Dispute Resolution.

### **Article 89**

The Commissions for Construction Dispute Resolution have the following structure:

1. The National Commission for Construction Dispute Resolution
2. Capital/provincial Commissions for Construction Dispute Resolution
3. Municipal/district/Khan Commissions for Construction Dispute Resolution

The organization and functioning of the Commissions for Construction Dispute Resolution shall be determined by a sub-decree.

## **Chapter 20 Penalty Provisions**

### **Article 90**

Punishments in this law include a written warning, suspension or revocation of a license or a permit for construction professional practice or business practice, transitional penalty, prohibition against professional practice, forced demolition and/or rebuilding to the original condition, fine, and imprisonment.

### **Article 91**

A written warning, suspension or revocation of a license or a permit for construction

professional practice or business practice is the competence of the Minister of Land Management, Urban Planning and Construction.

The Minister of Land Management, Urban Planning and Construction can assign or delegate the competence as stated in this article to Capital, provincial, municipal, district, Khan governors.

#### **Article 92**

Transitional penalty is the competence of construction inspectors.

Payment of transitional penalty leads to the extinguishment of the criminal action.

In the event the offender refuses to pay the transitional penalty, a construction inspector can build a case of the offense to submit to a competent court.

The offenses punishable by transitional penalty shall be determined by a sub-decree.

The procedure for transitional penalty, penalty payment, management of penalty receipts and management of revenues from the penalty as stated in the provisions of this law shall be determined by an inter-ministerial Prakas of the Minister of Land Management, Urban Planning and Construction, the Minister of Justice, and the Minister of Economy and Finance.

The Royal Government can choose to offer rewards to any official for their involvement in suppressing construction offenses.

#### **Article 93**

Any person who is not an engineer, architect, and any other tradesperson who functions as a construction professional shall be punished with a fine from 5,000,000 (five million) riels to 20,000,000 (twenty million) riels.

The person in question shall be punished by imprisonment from 1 (one) month to 1 (one) year and fined double the amount indicated above in the case of committing the same offense again within one year.

#### **Article 94**

Any engineer, architect and any other tradesperson who functions as a construction professional without being registered at a professional board shall be punished with a fine from 4,000,000 (four million) riels to 10,000,000 (ten million) riels.

The person in question shall be punished by imprisonment from 1 (one) month to 1 (one) year and fined double the amount indicated above in the case of committing the same offense again within one year.

#### **Article 95**

Any person who practices a profession in the construction sector independently without a license shall be punished with a fine from 20,000,000 (twenty million) riels to 40,000,000 (forty million) riels.

The person in question shall be punished by imprisonment from 1 (one) year to 3 (three) years and fined double the amount indicated above in the case of committing the same offense again within one year.

#### **Article 96**

Any person who conducts construction business without a permit and causes an injury to or damages the health of others shall be punished by imprisonment from 1 (one) year to 3 (three) years and with a fine from 10,000,000 (ten million) riels to 20,000,000 (twenty million) riels.

#### **Article 97**

Any person who opposes the decision of a competent authority to suspend, alter, halt, or demolish a construction, or prohibit occupancy shall be punished with a fine from 20,000,000 (twenty million) riels to 40,000,000 (forty million) riels.

Any person who opposes for a second time the decision of a competent authority to suspend, alter, halt, or demolish a construction, or prohibit occupancy shall be punished by imprisonment from 1 (one) month to 3 (three) months and fined double the amount indicated above.

#### **Article 98**

Any person who uses or installs, for building work, construction material, equipment, and product which are required to ensure construction quality and users' safety without compliance with the building technical regulations or without compliance with the technical regulations on construction material, equipment, and product which are required to meet a certain standard and causes an injury to or damages the health of others shall be punished by imprisonment from 1 (one) year to 3 (three) years and with a fine from 20,000,000 (twenty million) riels to 40,000,000 (forty million) riels.

#### **Article 99**

Any designer who develops a design document without compliance with the building technical regulations, and the carrying out of the design document causes an injury to or damages the health of others shall be punished by imprisonment from 1 (one) year to 3 (three) years and with a fine from 20,000,000 (twenty million) riels to 40,000,000 (forty million) riels.

#### **Article 100**

Any builder who builds or demolishes a construction without compliance with the design document and building technical regulations, and causes an injury to or damages the health of others shall be punished by imprisonment from 1 (one) year to 3 (three) years and with a fine from 20,000,000 (twenty million) riels to 40,000,000 (forty million) riels.

#### **Article 101**

Any certifier who has certified the compliance of a design document or the building or demolition work; yet in fact, the design document or the building or demolition work does not comply with the building technical regulations and/or the approved design document, and causes an injury to or damages the health of others shall be punished by imprisonment from 2 (two) years to 5 (five) years and with a fine from 30,000,000 (thirty million) riels to 60,000,000 (sixty million)

riels.

### **Article 102**

Any person who uses or puts for use, for business purposes, a construction which has no certificate of occupancy, and causes an injury to or damages the health of others shall be punished by imprisonment from 1 (one) year to 3 (three) years and with a fine from 20,000,000 (twenty million) riels to 40,000,000 (forty million) riels.

### **Article 103**

Offending acts stated in Articles 95, 96, 97, 98, 99, 100, 101 and 102 of this law shall be punishable by imprisonment from 5 (five) years to 10 (ten) years if such acts cause amputation of a limb(s) or permanent disability to the victim.

Offending acts stated in Articles 95, 96, 97, 98, 99, 100, 101 and 102 of this law shall be punishable by imprisonment from 7 (seven) years to 15 (fifteen) years if such acts cause the death of a person(s).

### **Article 104**

The punishments stated in Articles 97, 98, 99, 100, 101, 102 and 103 of this law also apply to the offending acts stated in these articles if any of these acts is committed by the technical director of a construction business company.

### **Article 105**

Any legal entity that conducts construction business without a license shall be punished with a fine from 40,000,000 (forty million) riels to 80,000,000 (eighty million) riels.

A legal entity may be held criminally responsible based on the condition stated in Article 42 (Criminal Responsibilities of Legal Entities) of the Criminal Code for the offenses stated in Articles 97, 98, 99, 100, 101, 102 and 103 of this law.

A legal entity shall be punished with a fine from 60,000,000 (sixty million) riels to 100,000,000 (one hundred million) riels as well as by one or more additional penalties as follows:

1. Dissolution according to modalities determined by Article 170 (Dissolution and Liquidation of Legal Entities) of the Criminal Code;
2. Placement under judicial supervision according to modalities determined by Article 171 (Placement under judicial supervision) of the Criminal Code;
3. Prohibition from carrying on one or more activities according to modalities determined by Article 172 (Prohibition from Carrying on Activities) of the Criminal Code;
4. Disqualification from public tenders according to modalities determined by Article 173 (Disqualification from Public Tenders) of the Criminal Code;
5. Publication of decisions on the punishment according to modalities determined by Article 180 (Publication of Decisions) of the Criminal Code;
6. Broadcasting of decisions by audio-visual Communication according to modalities

determined by Article 181 (Broadcasting of Decisions by Audio-Visual Communication) of the Criminal Code.

## **Chapter 21** **Transitional Provisions**

### **Article 106**

Within a period of 2 (two) years after this law coming into force, the owner of any construction that has already been built without a permit or built in breach of a permit prior to this law coming into force shall apply for a certificate of occupancy for his/her construction from the competent authority if the construction requires a building permit.

During this above period, all the existing penalty provisions related to the construction sector shall continue to apply to any construction that has already been built without a permit or built in breach of a permit prior to this law coming into force.

### **Article 107**

The competent authority may provide an occupancy certificate for any construction that has already been built without a permit or built in breach of a permit prior to this law coming into force if that construction does not cause danger to users and the public and does not affect public order.

The formality and procedure for granting certificate of occupancy for construction that has already been built prior to this law coming into force shall be determined by a Prakas of the Minister of Land Management, Urban Planning and Construction .

### **Article 108**

Within 2 (two) years after this law comes into force, any construction laboratory which has been operating or doing business shall apply for a permit or a business license according to the provisions of this law.

### **Article 109**

If necessary, the Royal Government of Cambodia may require construction professional or construction business company to deposit money at the National Bank of Cambodia to insure liability for his/her professional or business practice. Construction professional or construction business company may withdraw their deposits when they end their professional or business practice, and when their license expires or is revoked by the competent authority.

Customers of construction professionals or construction business companies who have suffered damage shall be entitled to a lien in second priority after employees' wages on the deposits stated in the above paragraph.

The conditions and procedure for money depositing, deposit withdrawal, and minimum amount of money to be deposited at the National Bank of Cambodia, according to the various types of license, in order to insure liability for professional or business practice shall be determined by a sub-decree.

## **Chapter 22**

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**Final Provisions**

**Article 110**

Any provision that contradicts this law shall be abrogated.

**Article 111**

This law is declared as a matter of urgency.

Saturday, 6th day of the waxing,  
Month of Katdeuk, Year of Pig, B.E. 2563  
Done at the Royal Palace, 2 November 2019

PRL. 1911.1656

NORODOM SIHAMONI

Having made the request to His Majesty the King  
For Signature  
Prime Minister

Samdech Akka Moha Sena Padei Techo HUN SEN

Having informed Samdech Akka Moha Sena Padei Techo Prime Minister  
Deputy Prime Minister,  
Minister of Land Management, Urban Planning and Construction

CHEA SOPHARA

Having copied from the original  
Permanent Deputy Prime Minister,  
Minister in charge of the Office of the Council of Ministers

Kete Nite Kosal Bandit BIN CHHIN

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## Annex of the Law on Construction

### Glossary

1. **Construction work** refers to design work, surveying work, building work, demolition work, site management work, certification work, testing work, construction project management or construction safety and quality control.
2. **Design work** refers to plan/design drawing work, research work and data analysis for architectural and engineering work, planning work, preparation of lists of estimated costs, preparation of technical instructions, and detailed plan/design drawing work.
3. **Surveying work** refers to study and analysis of data and information generated from measurement, survey, topography, and observation which serve planning, design work, and building work.
4. **Building work** refers to land work, building work of a new construction, repair work, modification work, and installation.
5. **Repair work** refers to the repair of any part of a construction or of the whole construction that has been damaged for any reason, including replacement of any old, dilapidated part that may eventually cause an accident; improvement; and interior installation of materials and equipment by preserving the aesthetics, original shape, without affecting the construction structure.
6. **Modification work** refers to alteration of the function of the whole or a part of a construction.
7. **Demolition work** refers to the work of dismantling or removing any part of a construction, or removing a whole construction, or the work of destroying the construction.
8. **Certification work** refers to examination, analysis and certification of a design document, calculation, technical instructions for building or demolition work and operation of building or demolition work, compliance with building technical regulations and other existing regulations to ensure safety, well-being in building or demolition work and in the use of the construction.
9. **Testing work** refers to study, analysis, geological calculation of construction structures, construction tools and machinery, and construction materials, equipment and products.
10. **Construction project management** refers to the work that a construction project manager carries out on behalf of a construction owner in order to ensure that a building or demolition project operates efficiently in terms of time, cost, quality and safety.
11. **Revocation** refers to decision to nullify a construction license or a permit by the competent authority or official.
12. **Construction contract** refers to a contract between a construction owner and a builder and a contract between a builder and a sub-contractor to carry out building or demolition work.
13. **Design document** refers to a technical document for the purpose of construction works such as architectural design, structural design, mechanical system plan, electrical system design,

wastewater-clean water system design, fire safety system design, or other technical designs/plans, documents, and instructions for building or demolishing and using a construction.

14. **Contract fee** refers to a fee or any other exchangeable value which a construction owner must pay to a builder as determined in a construction contract.
15. **Force majeure** refers to an event that happens against one's will; is unexpected and irresistible.
16. **Building technical regulations** refer to mandatory technical standards, requirements, and rules for carrying out construction works adopted by a competent institution.
17. **Spatial and urban regulations** refer to regulations stated in legal rules on land management and urban planning, spatial planning, land use master plan, land use plan and detailed urbanization plan.
18. **Load** refers to weight, pressure, or any force that presses or has impact on a construction structure.
19. **Construction equipment** refers to equipment that is assembled, made, or produced to be used in or fixed to a construction in order to increase quality, comfort and ease of construction use, namely lamp, electric wire, optic wire, sink, faucet, bathtub, air-conditioner, elevator, pipe.
20. **Construction product** refers to finished or semi-finished product that is made or produced with construction materials and used to build a construction structure, such as roof tile, brick, mortar, concrete, pillar, wall, decorated ridge-piece on rooftop, concrete floor, concrete pipe, ceiling plaster, corrugated iron/steel, fiberboard, wall paper, paint, or tile adhesive.
21. **Producer** refers to a producer, an importer or a person who affixes his/her name on the product as a producer or a seller.
22. **Construction owner** refers to an owner or a real estate developer of a construction that is built on his/her own land or on someone else's land with the landowner's permission or a perpetual lessee who builds a construction on the lessor's land.
23. **Construction controller** refers to a technical official who is appointed by the competent authority in order to check building or demolition works and controls construction quality and safety.
24. **Defect** refers to a change from a normal or regular state.
25. **Certificate of occupancy/Occupancy certificate** refers to a permit granted by the competent authority to a construction owner to use, lease construction, or conducts business with a construction.
26. **Dangerous building** refers to a construction or any part of a construction or construction materials, equipment attached to the construction which may cause danger to a neighboring construction(s), lives, bodies, and health of construction users, neighbors and the public.

- 
27. **Construction** refers to the process of construction work or to a building, a structure or permanent or temporary architecture constructed with construction materials, equipment or products.
  28. **Construction material** refers to a raw material to be mixed, combined, assembled, or used as a construction structure, equipment or products, such as sand, crushed stone (aggregate), gravel, cement, steel, glass, clay, ceramic, wood.
  29. **Builder** refers to a construction or demolition contractor, a specialized builder or demolisher or a team of construction craftsmen.
  30. **Real estate developer** refers to a trader, an investor or a company which conducts a construction building business for sale to generate a profit.
  31. **Competent authority** refers to the Minister of Land Management, Urban Planning and Construction, Capital, provincial, municipal, district, and Khan governors.
  32. **Construction professional** refers to an architect or engineer who has registered at the Board of Architects, Cambodia or the Board of Engineers, Cambodia or a tradesperson who has registered at other relevant construction professional boards.
  33. **Tradesperson** refers to a construction technician (skilled worker/workman) who has received a training at a related specialized technical school or who is skilled and experienced in carrying out building works, or a tradesperson whose professional board has not been created.
  34. **Building manager** refers to a person who receives a mandate or rights to manage a construction from a construction owner for a specific period of time.

### 3.2 Prakas on Procedures and Formalities of Construction Inspection

**KINGDOM OF CAMBODIA**

**NATION RELIGION KING**

**Ministry of Land Management, Urban Planning,  
and Construction**

**Ministry of Justice**

**No. 118 Bro.Kor/Dor.Nor.Sor.Kor Yor**

**Inter-Ministerial Prakas**

**on**

**Procedures and Formalities of Construction Inspection**

**Deputy Prime Minister  
Minister of Land Management, Urban Planning, and Construction**

**Minister  
Ministry of Justice**

- Having seen the Constitution of the Kingdom of Cambodia;
- Have seen Royal Decree No. NS/RKT/0918/925, dated 06 September 2018 on the Appointment of the Royal Government of the Kingdom of Cambodia;
- Have seen Royal Kram No. NS/RKM/0618/012, dated 28 June 2018, promulgating the Law on Organization and Functioning of the Council of Ministers;
- Having seen Royal Kram No. NS/RKM/0699/09, dated 23 June 1999 promulgating the Law on the Establishment of Ministry of Land Management, Urban Planning and Construction;
- Having seen Royal Kram No. NS/RKM/0196/04, dated 24 January 1996 promulgating the Law on the Establishment of Ministry of Justice;
- Having seen Royal Kram No. 04/NS/94, dated 10 August 1994 promulgating the Law on the Land Management, Urban Planning and Construction;
- Having seen Royal Kram No. NS/RKM/0508/017, dated 24 May 2008 promulgating the Law on Administrative Management of Capital, Provinces, Municipalities, Districts and Khans;
- Having seen Royal Kram No. NS/RKM/0807/024, dated 10 August 2007 promulgating the Criminal Procedure Code;
- Having seen Royal Kram No. NS/RKM/1109/022, dated 30 November 2009 promulgating the Law on Criminal Code;
- Having seen Sub-Decree No. 62 Or.Nor.Kro/Bor.Kor, dated 20 July 1999 on the Organization and Functioning of the Ministry of Land Management, Urban Planning, and Construction;

- Having seen Sub-Decree No. 240 Or.Nor.Kro/Bor.Kor, dated 29 August 2014 on the Organization and Functioning of Ministry of Justice;
- Having seen Sub-Decree No. 86 Or.Nor.Kro/Bor.Kor, dated 19 December 1997 on the Construction Permit;
- Having seen Sub-Decree No. 42 Or.Nor.Kro/Bor.Kor, dated 03 April 2015 on Urbanization of the Capital, Municipalities, and Urban Areas;
- Having seen Sub-Decree No. 76 Or.Nor.Kro/Bor.Kor, dated 09 June 2015 on Amendment on Article 30, Article 34, Article 38, Article 50, Article 66, Article 74, Article 82, under Sub-Decree 42 Or.Nor.Kro/Bor.Kor, dated 03 April 2015 on Urbanization of the Capital, Municipalities, and Urban Areas

## HEREBY DECIDES

### CHAPTER 1

#### GENERAL PROVISIONS

##### Article 1.-

This Prakas aims to govern on real estate development to be effective, qualify, safe, social and environmental order for the living through protection and prevention wrongful acts against the provisions of Urban Planning and Construction.

##### Article 2.-

This Prakas aims to set out the procedures and formalities of construction inspection in the real estate development.

##### Article 3.-

The following key terms are used in this Prakas:

1. **Construction Inspection** refers to inspection, investigation, and examination on real estate development to take any measures or fines on person acting in violation on provisions of Urban Planning and Construction.
2. **Provisional Fines** refers to the punishment to any person who violates on the provisions of Urban Planning and Construction to pay the fines to state.
3. **Real Estate Development** refers to:
  - New construction, repair, reconstruction, building expansion, additional construction on existing building, demolition, changing functional usage of building, changing on building design, expand on the size of construction and renovation on outdoor of existing building;
  - Construction and modification on building that may cause dangerous harm in fire including station, depot, storage, or distribution products of oil or gas, workshop, ignition productions;
  - Display signboard, display antenna of television and telecommunication in the purpose of business advertisement such structures on land and building;

- Land development such as conversion types of land use for land construction plan, adjustment on land plot, organization on plot of land division, adjustment on structure of land for development of capital, development on residents area or Borey and residential building, development of commercial and/or services area and multi-purpose areas, development of industrial area, industry park and factory, development of special economic zone, development of urbanization infrastructures, development of tourism zone, and other developments;
  - Changes in legal characteristic of regulation, such as suspension on validity of construction permits which is expired, transfer of owner under construction permit.
4. **Spatial and urban regulations** refers to any rules concerning on real estate development as stipulated under Sub-Decree No. 42 Or.Nor.Kro/Bor.Kor, dated 03 April 2015 on Urban Planning of the Capital, Municipalities, and Urban Areas, and Sub-Decree No. 76 Or.Nor.Kro/Bor.Kor, dated 09 June 2015 on Amendment on Article 30, Article 34, Article 38, Article 50, Article 66, Article 74, Article 82, under Sub-Decree 42 Or.Nor.Kro/Bor.Kor, dated 03 April 2015 on Urban Planning of the Capital, Municipalities, and Urban Areas.
  5. **Construction Inspector** refers to a technical official in national and sub-national level as engineer or architecture of the Ministry of Land Management, Urban Planning, and Construction who is appointed and delegated to perform the construction inspection.
  6. **Competent Authority** refers to the General Department of Construction, the General Department of Land Management and Urban Planning, the Municipal/Provincial Department of Land Management, Urban Planning, and Construction, Municipalities District Commune Division of Land Management, Urban Planning, Construction and Land.
  7. **Letter of Permit on Real Estate Development** refers to the letter of permit on land development or construction or demolition permit.

## CHAPTER 2

### JURISDICTION

#### Article 4.-

Construction inspector consist of the following:

1. Head as engineer or architecture of the Ministry of Land Management, Urban Planning, and Construction.
2. Technical official as engineer or architecture of the General Department of Construction and General Department of Land Management and Urban Planning of the Ministry of Land Management, Urban Planning, and Construction.
3. Technical official as engineer or architecture of Municipal/Provincial of Department of Land Management, Urban Planning, Construction and Cadastre.
4. Technical official as engineer or architecture of Municipal/District/Commune Division of Land Management, Urban Planning, Construction and Land.

Composition of construction inspector officer shall determine by decision of Minister of the Ministry of Land Management, Urban Planning, and Construction.

**CHAPTER 3****CONSTRUCTION INSPECTION****Article 5.-**

Competent authority shall decides for construction inspection.

The competent authorities are the following:

1. Minister of the Ministry of Land Management, Urban Planning, and Construction for all types and size of real estate development.
2. Governor of the Municipal and Provincial Board of Governor for real estate development under the jurisdiction of municipal/provincial administration.
3. Governor of the City/District/Commune Board of Governor for real estate development under the jurisdiction of Municipalities District Commune Administration.

Only Head of Unit has jurisdiction that may propose for construction inspection to competent authority.

**Article 6.-**

Minister of Ministry of Land Management, Urban Planning, and Construction is the authority to issue mission letter for construction inspection to construction inspector in the national level.

Governor of the Municipal/Provincial Board of Governors Municipal Provincial is the authority to issue mission letter for construction inspection to construction inspector of the Municipal/Provincial level as per request of Director of Municipal/Provincial Department of Land Management, Urban Planning, Construction and Cadastre.

Governor of the City/District/Commune Board of Governor is the authority to issue mission letter for construction inspection to construction inspector of the City/District/Commune as per request of Head of City/District/Commune Division of Land Management, Urban Planning, Construction, and Land.

**Article 7.-**

All construction inspection works shall be participated by construction inspectors with the following number:

- At least 5 (Five) construction inspectors for construction inspection work approved by Minister of the Ministry of Land Management, Urban Planning and Construction;
- At least 3 (Three) construction inspectors for construction inspection work approved by Governor of Municipal/Provincial Board of Governor; and
- At least 1 (One) construction inspector for construction inspection work approved by Governor of City/District/Commune Board of Governor.

**Article 8.-**

Construction inspector may commence any inspection work in any place only if there is consent from the owner of location.

Construction inspector may perform any inspection work in a construction site only if the said construction site is in operation.

Construction inspector may perform any inspection work in a building or construction which is open to the public only during the working hours of such location.

Construction inspector may perform any inspection works at the location of private immovable property after 6:00 A.M in the morning and before 18:00 P.M in the evening.

In a necessary case which requires to have the construction inspection works at the time differ from the above mentioned in this Article, such construction inspectors shall obtain permission from prosecutor.

#### **Article 9.-**

During inspection works, construction inspector shall present the mission letter, wearing uniform, and identity sign.

#### **Article 10.-**

During inspection mission, construction officer shall perform as the following:

- Inspect and investigate on compliance of land development and/or construction work or demolition work based on construction permit, technical regulations, and other applicable regulations;
- Inspect on business operation of an individual or design company, construction company, and constructor group;
- Inspect on work safety indoor or outdoor surround the construction site;
- Review the relevant document concerning on project of land development and/or construction or demolition project such as: certification document on ownership or possession of land, land development permit, and/or construction or demolition permit, architectural design project, permit on open or completion of construction site, project on equipment structure of construction and other technical documents, contract on installing security measures surrounding construction site, and construction contract;
- Request to construction owner or real estate developer to provide information concerning design company, construction company, tradesperson and/or constructor group who are engaging with land development project and/or construction or demolition project;
- Instruct to construction owner or real estate developer to adjust their construction work in accordance with permit on real estate development.
- Instruct to construction site management to take emergency rules to avoid the accidental danger or harm to the public order within and surrounding the construction site;
- Instruct to individual or design company, and/or construction company, and/or constructor group concerning on legal instruments and technical construction regulations in relation with real estate development;

- Establish minutes on construction inspection and prepare a report on the outcome of inspection works;
- Perform other works as assigned by competent authority.

**Article 11.-**

Minutes of construction inspection works and its report on the outcome of inspection shall be submitted to competent authority through head of competent authority unit to review and approve within 5 (Five) working days commencing from the date of inspection.

Minutes of construction inspection works and its report on the outcome of inspection of construction inspector at sub-national level, which submitted to competent authority through head of competent authority unit, shall make a copy for Ministry of Land Management, Urban Planning, and Construction.

**Article 12.-**

Minutes of construction inspection works shall be included with the following contents:

- Identity of construction owner or real estate developer and/or individual or design company, and/or construction company, and /or constructor group;
- Detail information on land development project or project on construction or demolition;
- Result of its verification on the compliance of permit on real estate development;
- The signature of construction inspector, construction site manager, and/or construction owner, and related parties.

The sample minutes on construction inspection mission is under the Annex1 of this inter-ministerial Prakas.

**Article 13.-**

Report on construction inspection mission, which submitted to competent authority, shall be included with the following contents:

- Identity of construction owner or real estate developer and/or individual or design company, and/or construction company, and /or constructor group;
- Information concerning on land development project or project of construction or demolition;
- Result of the verification on the compliance of permit on real estate development;
- The conclusion on the result of construction inspection mission;
- Make a proposal as rules and/or punishment to competent authority to consider and decide;
- Signature of construction inspector and signature and seal of head of competent authority unit.

In case of construction inspector make a propose for provisional fine, the report on construction inspection mission shall be included with the following contents:

- Types of violation acts by indicated with dimension, term, consequences, and other necessary

information;

- Identity of construction owner, real estate developer, and/or design company, and construction company that committed the act of violation;
- Regulations based on such violation;
- The amount to be provisionally fined.

The sample report on construction inspection mission is under the Annex2 of this inter-ministerial Prakas.

#### **Article 14.-**

When reviewing and seeing real estate development operating by do not comply with permit, technical regulations, and other applicable regulations, the report on result of construction inspection shall make a suggestion as rules and/or a punishment or more as the following:

- A written warning;
- Suspension of construction site;
- Suspension or revocation of permit on land development, and/or permit on construction or demolition, permit on opening or closing a construction site, certificate on construction business;
- Prohibition from using or doing business relating to construction;
- Provisional detention on equipment, products, tools, machinery relating the committing of violation acts,
- Enforcement for demolition or reinstatement on the changes or loss caused by the act of violation;
- Provisional fines on person who committed violation act;
- Impose other measures in accordance with applicable regulations.

#### **Article 15.-**

Competent authority shall decide on procedures and/or punishment against person who committed violation act based on minutes of construction inspection mission and report on the result of construction inspection mission not exceeding 15 (Fifteen) working days commencing from the date of signing on such report.

In case, such person does not follow with procedures and/or punishment fine as required by competent authority, the competent authority shall prepare and submit the case to the court in order to take enforcement measure.

#### **Article 16.-**

Construction inspector shall not perform with the following acts:

- Cause the impact or any obstruction to development or construction, or demolition process pursuant to permit, technical regulations, and applicable laws during its construction inspection mission;

- Publicize of relevant information concerning on construction technical regulations, and construction contract.

**Article 17.-**

During construction inspection mission, construction owner or real estate developer and/or individual or design company, and/or construction company, and/or constructor group, and/or representative having the following duties:

- Provide the collaboration endowed with wills for performing construction inspection works;
- Allow the construction inspector officer site inspect every corner of construction site;
- No obstruction, prohibition or cause any difficulty for construction inspection works;
- Be present during the operation of construction inspection as per request from construction inspector for parties who are involved with development project;
- Clarify, explain, provide information and related documents, or make declaration concerning on the implementation of applicable laws, and legal instruments concerning its real estate development with ethic, integrity, and responsibility;
- Take reasonable measurement to ensure security and safety of construction inspector during inspection works at project site, or constructions site, or its construction;
- Provide sample of material, equipment, or other machinery, which are the subject of inspection or analysis for verification purpose.

**Article 18.-**

During construction inspection mission, construction owner or real estate developer and/or individual or design company, and/or construction company, and/or constructor group, and/or representative have the following duties:

- Request to construction inspector to present their mission letter;
- Request to construction inspector record all his/her respond or confirmation in the minutes of construction inspection works;
- To obtain a copy of minutes on construction inspection works.

**CHAPTER 4****COMPLAINT****Article 19.-**

Person who do not agree with any actions and/or punishment of competent authority to inspect the construction, may file the written complaint to such authority within 15 (fifteen) days commencing from the date of receiving decision or notification on decision on any action taken and/or punishment. The competent authority to inspect the construction shall decide on such complain within 30 (thirty) days commencing from the date of receiving complaint.

If competent authority to inspect the construction do not decide on the complaint within the

period as mentioned in this Prakas, complainant may file to competent authority on construction inspection based on hierarchy within 15 (fifteen) days commencing on the its due date.

Complainant may complain for the decision of competent authority to inspect the construction based on hierarchy within 15 (fifteen) days commencing on the date of receiving the decision or notification on decision of its complaint.

Minister of the Ministry of Land Management, Urban Planning, and Construction shall make a written decision by stating the reasons for the decision on complain within 30 (thirty) days commencing from the date of receiving complaint.

In case of the Minister of the Ministry of Land Management, Urban Planning, and Construction does not decide on the complaint, the complainant has the right to bring that complain to court.

Capital/Provincial Governor of Board of Governor shall make a written decision by stating the reason for the decision within 25 (twenty five) days commencing from the date of receiving complaint.

Municipal/District/Khan Governor of Board of Governor shall make a written decision by stating the reason for decision on complain within 20 (twenty) days commencing from the date of receiving complaint.

In the event of violating person does not pay the provisional fine, competent authority shall file this case file to Prosecution Department of the Court of First Instance after due date of complaint as stated in this Prakas.

## **CHAPTER 5**

### **TRANSITIONAL PROVISIONS**

#### **Article 20.-**

Municipal/District/Khan Administration that do not have land used master plan, those Municipal/District/Khan Governors of the Board of Governor do not have any authority to decide on inspection related to land development. In this case, Capital/Provincial Governor of the Board of Governor is the competent authority to make decision on inspection related to those land development.

Municipal/District/Khan Governor of the Board of Governor that do not have any authority to issue the building, repair or demolition permit and construction site opening and closing permit, do not have authority to decide on inspection related to building or demolition work. In this case, Capital/Provincial Governor of the Board of Governor is the competent authority to make decision on site inspection related to building or demolition work as per request of Capital/Provincial Director of Department of Land Management, Urban Planning, Construction and Cadastre.

## **CHAPTER 6**

### **FINAL PROVISION**

#### **Article 21.-**

Any regulation contradicted to this Inter-ministerial Prakas shall be abrogated.

**Article 22.-**

Secretariat General, Director of Cabinet, General Directors, Head of Department and relevant units under supervision of Ministry of Land Management, Urban Planning, and Construction and Ministry of Justice and Capital/Provincial, Municipal/District/Khan Governor of Board of the Governors, shall undertake to implement this Inter-ministerial Prakas as per their respective duties from the date of signature onwards.

Made in Phnom Penh, dated on 02 August 2019

Deputy Prime Minister

Minister of Justice

Minister of Land Management, Urban Planning, and Construction

*[Signed and Sealed]*

*[Signed and Sealed]*

**CHEA SOPHARA**

**ANG VONG VATHANA**

**Copied to:**

- Council of Ministers
- All ministries and institutions
- Cabinet of Samdech Techo, Prime Minister
- Cabinets of Samdech, His Excellency/Her Excellency, Deputy Prime Ministers
- “To be informed”
- As in Article 22 “To be implemented”;
- Royal Gazette
- Archives-chronology

### 3.3 Prakas on Formalities and Procedures for Issuance of Construction Permit

**KINGDOM OF CAMBODIA**

**NATION RELIGION KING**

**Ministry of Land Management, Urban Planning, and Construction**

**No. 013 Dor.Nor.Sor/Bro.Kor/Ni.Kor**

**Prakas**

**on**

**Formalities and Procedures for the Issuance of Construction Permit**

**By Minister of Land Management, Urban Planning and Construction**

**Deputy Prime Minister**

**Minister of Land Management, Urban Planning, and Construction**

- Having seen the Constitution of the Kingdom of Cambodia;
- Having seen Royal Decree No. NS/RKT/0918/925, dated 06 September 2018 on the Appointment of the Royal Government of Cambodia;
- Having seen Royal Decree No. NS/RKT/0320/421, dated 30 March 2020 on the Appointment and Amendment to the Composition of the Royal Government of Cambodia;
- Having seen Royal Kram No. NS/RKM/0618/012, dated 28 June 2018, promulgating the Law on Organization and Functioning of the Council of Ministers;
- Having seen Royal Kram No. NS/RKM/0699/09, dated 23 June 1999 promulgating the Law on the Establishment of Ministry of Land Management, Urban Planning and Construction;
- Having seen Royal Kram No. NS/RKM/1119/019, dated 02 November 2019 promulgating the Law on Construction;
- Having seen Sub-Decree No. 62 Or.Nor.Kro/Bor.Kor, dated 20 December 1999 on the Organization and Functioning of the Ministry of Land Management, Urban Planning, and Construction;
- Having seen Sub-Decree No. 42 Or.Nor.Kro/Bor.Kor, dated 03 April 2015 on Urbanization of the Capital, Municipalities, and Urban Areas;
- Having seen Sub-Decree No. 76 Or.Nor.Kro/Bor.Kor, dated 09 June 2015 on Amendment to Article 30, Article 34, Article 38, Article 50, Article 66, Article 74, Article 82, under Sub-Decree 42 Or.Nor.Kro/Bor.Kor, dated 03 April 2015 on Urbanization of the Capital, Municipalities, and Urban Areas;
- Having seen Sub-Decree No. 224 Or.Nor.Kro/Bor.Kor, dated 30 December 2020 on

Construction Permit;

- Pursuant to the needs of the Ministry of Land Management, Urban Planning, and Construction.

### **Hereby Decides**

## **Chapter 1**

### **General Provisions**

#### **Article 1.-**

This Prakas determines on formalities and procedures for the issuance of construction permit and issuance of renewal construction permit by the Minister of Land Management, Urban Planning, and Construction for the purpose of implementation Sub-Decree No. 224 Or.Nor.Kro/Bor.Kor, dated 30 December 2020 on Construction Permit.

#### **Article 2.-**

The scope of this Prakas is applied for construction or works under the jurisdiction of granting construction permit of Minister of Land Management, Urban Planning and Construction as stipulated under Article 4 of Sub-Decree No. 224 Or.Nor.Kro/Bor.Kor, dated 30 December 2020 on Construction Permit.

#### **Article 3.-**

The definition of mains key terms under this Prakas are defined as the following:

1. **Building work** refers to land work, building work of a new construction, repair work, modification work and installation.
2. **Modification work** refers to the functional changes as a whole or in part of a construction.
3. **Real Estate Development Project** refers to Borey development project, co-ownership building development project, or other construction project except personal resident construction project, factory construction project on the economic land concession, and construction project for handicrafts or factories for the purpose of farming in agricultural zone.
4. **One Window Service** refers to One Window Service of the Ministry of Land Management, Urban Planning, and Construction.
5. **Representative of Legal Entity** refer to the chairman of the board of director of a company, general director of director of a company which their respective names are indicated in the Memorandum and Articles of Association (MAA) of the company, or representative agency of the foreign national company established under the law of other foreign countries or chairman or chief executive officer that having their respective name are stipulated under MAA or Memorandum of Understanding (MOU) of an organization or association or representative of an organization or association, or chief or representative of a political party, or any individual who has its name are stipulated in a Prakas or regulations on the registration or recognition on such legal entity.
6. **Construction Owner** refers to an owner of a construction or a real estate developer who has designed or constructed on his/her own land or on someone else's land with the consent from land owner or a perpetual lessee who has built a construction on the lessor's land.

7. **Cadastral information certificate** refers to document provided by Provincial and Municipal Departments of Land Management, Urban Planning, Construction and Cadastre, which described on the location of land parcel and other information of land parcel including its type, current legal status, characteristic and burden of a land parcel based on documents and land registry book.
8. **Land Certificate** refers to document provided by Provincial and Municipal Departments of Land Management, Urban Planning, Construction and Cadastre, showing the plots of land designed, area plan, land ownership, land location, land size, land boundary location of latitude and longitude, types of land use, area of land use, condition inside of construction and surrounding location, and picture capturing conditions of plots of land.
9. **General Department of Specialist** refers to General Department of Construction and General Department of Cadastral and Geography of the Ministry of Land Management, Urban Planning, and Construction.
10. **Certificate on legal possession of land** refers to certificate of ownership of immovable property, certificate of possession of immovable property, certificate of economic land concession, certificate of perpetual lease, certificate of long term lease, certificate of usufruct rights holder, lease on immovable property, or principle approval from Royal Government. If the construction owner is not the land owner, it shall have a written agreement from land owner.
11. **Identification documents of Construction owner** refers to Khmer Identity Card, or passport, certificate of incorporation, Prakas on establishment of a local associations or non-governmental organization, MOU of non-governmental organization or association of a foreigner government and Ministry of Foreign Affairs and International Cooperation, or Prakas on Registering in the List of a Political Party.

## Chapter 2

### Procedures for the Issuance of Construction Permit

#### Article 4.-

The application requirements to apply for a construction permit having the following:

- |   |           |
|---|-----------|
| 1. Application for Construction Permit                          | 01 Copy   |
| 2. Identification documents of construction owner (Copy)        | 02 Copies |
| 3. Certificate on legal possession of land (Copy)               | 02 Copies |
| 4. Land Certificate   | 02 Copies |
| 5. Cadastral information certificate                            | 02 Copies |
| 6. Architectural design   | 05 Copies |
| 7. Report on Assessment and Certificate of Architectural Design | 05 Copies |
| 8. Certificate of compliance on architectural design            | 05 Copies |

In case applying for a construction permit on modification work, the application requirement for such construction permit shall attach with extract design in accordance with the actual architectural design for 2 (Two) copies.

If the construction owner is a legal entity, the identification document of construction owner shall attach with MAA of the entity for 2 (Two) copies except for an association or non-governmental organization of a foreign government.

Construction owner shall submit ab architectural design and technical instruction on architectural as hard document and soft document to One Window Service.

All architectural design shall attach with technical instruction on architecture.

Application sample for construction permit is the Annex 1 of this Prakas.

Land certificate sample is the Annex 2 of this Prakas.

Sample of table of assessment on the application requirement to apply for a construction permit for legal entity is the Annex 3 of this Prakas.

Sample of table of assessment on the application requirement to apply for a construction permit for an individual is the Annex 4 of this Prakas.

#### **Article 5.-**

The construction owner shall personally affix his/her thumbprint or sign on the application for construction permit.

If a construction owner is a legal entity, the application for construction permit shall have his/her right thumbprint or signature, name of its legal representative and seal of the legal entity. Representative of legal entity shall personally affix right thumbprint or sign on the application for construction permit.

If legal entity authorized other representative to perform on formalities to apply for a construction permit, the application requirement for construction permit shall attach with authorization letter of legal entity notarized by the notary public.

Authorization letter sample as representative of legal entity is the Annex 5 of this Prakas.

#### **Article 6.-**

All documents in the application for construction permit shall be made in Khmer language. All documents are in English version shall be translated into Khmer and notarized by notary public.

Technical instruction of architecture may be made in English language.

All photo copied document shall be certified by capital, provincial, municipal, district, or khan administration or by the notary public except the certificate of ownership of immovable property.

### **Chapter 3**

#### **Procedures for the Issuance of Construction Permit**

#### **Article 7.-**

The application requirement for construction permit shall be submitted to One Window Service.

The One Window Service shall review on the application for construction permit within the date of application submission.

The application documents for construction permit shall be reviewed, verified and evaluated by General Department of Specialist under the supervision of the Ministry of Land Management, Urban Planning, and Construction.

#### **Article 8.-**

In case the application document for construction permit is qualified in accordance with the requirement documents checklist concerning the application documents for construction permit, One Window Service shall perform with the following actions:

1. Fill in the requirement document check list.
2. Register number and date of submission in registry book of One Window Service and copy the registration number and its date on application for construction permit.
3. Make an In seal of One Window Service on all documents of application for construction permit for 1 (one) copy and give construction owner.
4. Prepare the receipt of document by having its registration number and date and the signature of in charge officer.
5. Prepare and give the payment receipt for reviewing and issuance of construction permit.
6. Give the original payment receipt of application submission with registration number and date, and sealed documents for construction permit to construction owner within the date of review on application after making payment on reviewing and issuance of construction permit.

#### **Article 9.-**

In case of reviewing and seen that the application documents for construction permit are not qualified, One Window Service officer shall perform with the following actions:

1. Fill in the requirement document check list for construction permit about the insufficient documents or formality error of document.
2. Register the date, signature, and name of in charge officer who reviewed on the application on the documents check list which is already filled in.
3. Submit the application documents and required documents check list which already filled in the date, signature, and name of in charge officer who reviewed on such requirement documents to construction owner or its representative within the date of reviewing the application.

#### **Article 10.-**

Assessment and approval on documents submission for construction permit shall not exceeding 45 (Forty Five) working days commencing from the date One Window Service issued payment receipt on application in accordance with the following procedures:

1. One Window Service may send application submission to the General Department of Construction and General Department of Cadastral and Geography with no longer than 2 (Two)

working days commencing from the issuance date of the receipt of application to check and give advice.

2. General Department of Cadastral and Geography that has Department of Land Registration as executive body shall have 20 (Twenty) working days commencing from the date of obtaining application from One Window Service, for review on the application and verified on cadastral information that was provided by the Municipal/Provincial of Department of Land Management, Urban Planning, Construction and Cadastre and prepare a report concerning on the outcome of assessment and verification on such cadastral information certificate; and send this report to One Window Service.
3. General Department of Construction that has Department of Design as executive body shall has no longer than 25 (Twenty Five) working days commencing from the date of obtaining application from One Window Service, to review on the application, prepare report on assessment and evaluation on architectural design project and send that report to One Window Service.
4. One Window Service may submit the report on the assessment and evaluation on architectural design project, and report on the outcome of the assessment and verification on cadastral information certificate for recommendation from the Ministry based on its hierarchy in order to get comment and approval within 1 (One) working day commencing from the date of obtaining application form General Department of Specialist, and prepare and submit payment receipt on construction permit concerning excess indication land use over the formal maximum, if any.
5. General Department of Administration that has Department of Administration as executive body may arrange on the registration of number, date, and seal on construction permit, and design permit then give it to construction owner or representative through One Window Service, and General Department of Construction for filing with no longer than 2 (Two) working days commencing from the date of obtaining approval from Ministry of Land Management, Urban Planning, and Construction.

#### **Article 11.-**

In necessary case, Ministry of Land Management, Urban Planning, and Construction may appoint construction inspector to inspect actual location of construction project. Construction inspector shall prepare minute and report on the inspection of request location for construction no longer than 3 (Three) working days commencing from the date of inspection. The period of inspection, minutes, and report on inspection of location request for construction permit shall be included with the period of approval on application for construction permit.

#### **Article 12.-**

In case of General Department of Specialist found that the file of application submission for construction permit requires for adjustment or any supplementary, the General Department of Specialist shall prepare acknowledgment of document checklist return back to One Window Service by its indication about all points which are required to adjust or supplement with no longer than 12 (Twelve) working days commencing from the date of receiving application for construction permit from One Window Service.

In case of construction project is operating prior to obtaining construction permit, the application for construction permit shall be included with additional report on assessment and evaluation on construction works issued by inspector and construction certification and a copy on provisional fine payment receipt issued by construction inspector.

One Window Service shall issue notification letter on the correction or supplementary on application for construction permit and invite construction owner or representative to get that notification within 15 (Fifteen) working days commencing from the date of receipt of application.

Duration for correction or supplementary documents for construction permit shall not included the period for assessment and approval of construction permit.

In case of correction or supplementary on the application submission for construction permit, the period for assessment and approval for construction permit shall be recommencing from the date of One Window Service issued the payment receipt on correction or supplementary application submission.

Sample of notification letter on the correction or supplementary of application submission for construction permit is the Annex 6 of this Prakas.

#### **Article 13.-**

In case of General Department of Specialist has found that the application for construction permit is not complied with applicable provisions and may not be able to make any correction or supplementary, the relevant general department and One Window Service shall implement with the following procedures:

1. General Department of Specialist has no longer than 25 (Twenty Five) working days commencing from the date of receipt of application from One Window Service to prepare report on assessment and evaluation on architectural design project or report on the outcome of the assessment and verification on cadastral information certificate and deliver that report to One Window Service.
2. One Window Service shall submit report on assessment and evaluation on architectural design project and/or report on the outcome of the assessment and verification on cadastral information certificate to management of the Ministry based on its hierarchy in order to get feedback on recommendation and approval with no longer than 1 (One) working day commencing from the date of obtaining application from General Department of Specialist.
3. General Department of Administration that has Department of Administration as executive body may arrange for the registration of number, date, and seal on notification letter on rejection application for construction permit, and then give it to construction owner or representative through One Window Service, including notification on file of application submission no longer than 2 (Two) working days commencing from the date of obtaining approval from Ministry of Land Management, Urban Planning, and Construction.

Sample of notification letter on rejection application for construction permit is the Annex 7 of this Prakas.

### **Chapter 4**

#### **Formalities and Procedures of Granting Construction Permit for Real Estate Development Project**

#### **Article 14.-**

Application for a Construction Permit as stated in Chapter 2 of this Prakas shall be implemented

the same with an application for a construction permit in real estate development project and shall add a permit for land development and land development plan granted by the competent authority.

**Article 15.-**

A construction permit may be granted pursuant to the request of construction owner in phase by phase according to the plan provided in land development pPermit.

**Article 16.-**

Procedures for review and approval on application for construction permit as stated in Chapter 3 of this Prakas shall be implemented the same for the application of construction permit in real estate development project.

## **Chapter 5**

### **Formalities and Conditions for The Renewal of Construction Permit**

**Article 17.-**

Construction owner or representative shall submit an application for the renewal of construction permit at One Window Service within 30 (Thirty) days prior to the expiration date of the construction permit.

In case there is amendment to any documents of the dossier for the initial construction permit, the new application for renewal of construction permit shall adjust according to such amendment.

Sample of application for renewal of construction permit is the Annex 8 of this Prakas.

Sample of checklist on application for renewal of Construction Permit of a legal entity is the Annex 9 of this Prakas.

Sample of checklist on application for renewal of Construction Permit of an individual is the Annex 10 of this Prakas.

**Article 18.-**

Procedures of granting construction permit as stipulated under Chapter 3 of this Prakas shall be implemented the same for the granting of renewal construction permit.

The renewal construction permit can be issued one time only.

## **Chapter 6**

### **Complaint**

**Article 19.-**

Person having a beneficial relationship with the decision of Minister of Land Management, Urban Planning and Construction in granting the construction permit has the right to file complaint to Ministry of Land Management, Urban Planning and Construction or to the competent court according

to the applicate procedures.

## Chapter 7

### Transitional Provisions

#### Article 20.-

Letters and Instructions of Minister of Land Management, Urban Planning, and Construction related to issuance of the construction permit that implemented before this Prakas enter into force, shall be effective until there is a replacement by new Letters and Instructions.

Construction permit which issued to the owner before this Prakas enter into force shall be continues its validity until its expiration date.

#### Article 21.-

Application for construction permit and application for extension of construction permit that have been submitted to one-window service office before this Prakas become effective, specialized general departments and one-window service office shall continue the review process and decide until the end of the procedure. In this case, specialized general departments and one-window service office shall implement the principles or condition as stated in this Prakas that in favor of the construction owner.

## Chapter 8

### Final Provisions

#### Article 22.-

Any regulation contradicted to this Prakas shall be abrogated.

#### Article 23.-

Director of Cabinet, General Directors, General Inspector, Head of Department and relevant units under supervision of Ministry of Land Management, Urban Planning, and Construction and, shall undertake to implement this Prakas as per their respective duties from the date of signature onwards.

Phnom Penh, dated on 20 January 2022

Deputy Prime Minister

Minister of Land Management, Urban Planning, and Construction

*[Signed and Seal]*

**CHEA SOPHARA**

#### Copied to:

- Council of Ministers

- All ministries and institutions
- Cabinet of Samdech Akka Moha Sena Padei Techo, Prime Minister
- Cabinets of Samdech, His Excellency/Her Excellency, Deputy Prime Ministers  
“To be informed”
- As in Article 23 “To be implemented”;
- Royal Gazette
- Archives-chronology

## 4.1 Law on Road

# LAW ON ROAD

**Notice:** This translation in English of the Law on Road is an unofficial translation. Thus, in case of discrepancy between the English version and the Khmer version, the exact meaning shall be interpreted according to the text of Law in Khmer.

**KINGDOM OF CAMBODIA****NATION RELIGION KING****PREAH REACH KRAM**

NS/RKM/0514/008

**We**

**Preah Bat Samdech Bormniet Norodom Sihamoni**  
**Samanphoum Cheatsasna Rakhatkateya Khemrarotheas**  
**Puthinthreathoreamohaksat Khemreachnea Somohopheas**  
**Kampuchekreachroathboranaksanti Sopheakmonglea**  
**Sereivibolea Khemarasreypireas**  
**Preah Chao Krong Kampuchea Thipdey**

- Having seen the Constitution of the Kingdom of Cambodia
- Having seen the Preah Reach Kret No. NS/RKT/0908/1055 of 25 September 24 2013 on the appointment of the Royal Government of the Kingdom of Cambodia
- Having seen the Preah Reach Kram No. 02/NS/94 of 20 July 1994 promulgating the Law on the Organization and Functioning of the Council of Ministers
- Having seen the Preah Reach Kram No. NS/RKM/o196/03 of 24 January 1996 promulgating the Law on the Establishment of the Ministry of Public Works and Transport
- Having seen the proposals of Samdech Akka Moha Sena Padei Techo Hun Sen Prime Minister of the Kingdom of Cambodia

**HEREBY PROMULGATED**

The Law on Road adopted by the National Assembly on 3 April 2014 at the second ordinary session of the five legislatures and approved by the Senate to its entire form and legality on 11 April 2014 at its extraordinary session of the third legislature and includes the following provisions:

**CHAPTER 1****GENERAL PROVISION****ARTICLE 1.-**

This law has objective to management, development of roads infrastructure sector and to ensure the road traffic safety in the Kingdom of Cambodia.

**ARTICLE 2.-**

This law has the following aims:

- To protection of public property, protection and enhance of roads quality, maintaining orders, facilitate of the roads traffic and roads transportation.
- To determine the policy, strategy, and developing plan for the construction, repair, and maintenance of roads infrastructure including to set up measures and technical regulations
- To promoted and encourage the private sector to participant in the construction, repair, maintenance, and developing of roads infrastructure
- To promoted cooperation and integrations of the nation, region, sub-region, and worlds on the roads infrastructure sector
- To encourage for conduct research program on roads technique and to transfer of new technique for the roads infrastructure development in the Kingdom of Cambodia
- To development of human resources in roads infrastructure sector in the Kingdom of Cambodia.

**ARTICLE 3.-**

The scope of this law shall be applied to all the activities relevant with roads infrastructure sector in the Kingdom of Cambodia.

**ARTICLE 4.-**

Key terminologies used in this law shall be defined their definitions in the glossary attached as the annex of the law.

**CHAPTER 2****COMPETENT AUTHORITY OF ROAD MANAGEMENT****ARTICLE 5.-**

The competent authorities for the roads infrastructure management shall be designated as follows:

- 1- The Ministry of Public Works and Transport shall the competent authority to manage the expressway, national road, provincial road, and other roads as assigned by the Royal Government.
- 2- The Ministry of Rural Development shall the competent authority to manage the rural roads, and other roads as assigned by the Royal Government.
- 3- Sub-national Administration shall the competent authority to manage roads within Capital, cities, provincial urban, roads constructed, rehabilitated, and maintained by under the Sub-national Administration's budget and budget collected from various sources as well as other roads through the assignment of duties from the Ministry of Public Works and Transport and the Ministry of Rural Development to the Sub-national Administrations and other roads as decided and approved by the Royal Government.

The sharing of other competent authorities' road management shall be determined by the Royal Government.

**ARTICLE 6.-**

Sub-national Administration shall have the right to oversee and manage roads within their jurisdictions as defined in point 3 under the Article 5 of this law. In each planning, road development and project study requiring the technical high standard, the Sub-national Administrations may request the approval of the Ministry of Public Works and Transport or Ministry of Rural Development depending upon the areas of responsibility of individual ministries and subject to the technical regulations, urbanization and heritage regulations and the provision of this law.

### **CHAPTER 3**

#### **ROADS TYPES, NAMING AND CLASSIFICATION**

##### **ARTICLE 7.-**

The road network in the Kingdom of Cambodia can be classified as follows:

- 1- Expressway
- 2- National roads
- 3- Provincial roads
- 4- Rural roads
- 5- Capital streets, urban streets, and counties streets in provinces
- 6- Other roads which determined by the Royal Government.

##### **ARTICLE 8.-**

The expressway, national roads, provincial roads, capital streets, urban streets, counties streets in provinces shall be named and/or numbered and must exactly determine of long distance.

Setting up naming roads or numbering roads shall be determined as below:

1. Roads may be named such as well-known persons, persons with merits to the country or historical or natural geography or cultural relics or events, and place-names or local customs.
2. Roads may be numbered in accordance with a methodology, which may be determined exactly of roads location, road types, and the priority of roads.
3. Naming roads or numbering roads which connected to international roads shall be setting up to the Royal Government decided. For roads connected to international road networks, both domestic and international names and numbers can be used.

Formality and procedures of naming roads or numbering roads and changing naming roads or numbering roads shall be determined by the Royal Government.

##### **ARTICLE 9.-**

The competence authorities of road management shall be division of road classification based on administrative geography, roads function, and technical standards, and shall be made of roads inventory which consultation with relevant the competence authorities on the period no longer 5 (five) years per time, for the roads classification and changing of the roads classification.

The roads function and roads classification and changing of the roads classification shall be determined by Sub-decree.

## CHAPTER 4

### ROAD DEVELOPMENT AND MAINTENANCE

#### ARTICLE 10.-

The competent authorities of road management shall develop a road master plan development, project design and prioritize projects for road construction, rehabilitation, improvement, upgrading, expansion, and maintenance as well as for other roads infrastructure development activities to propose the approval from the Royal Government.

Formalities and methodology for the road development planning, project designing and project prioritization shall be determined by a Joint-Prakas of the Minister of the Ministry of Public Works and Transport and the Minister of the Ministry of Rural Development.

#### ARTICLE 11.-

All the road construction, road expansion, interchange, intersection, overlap roads, bridges, overhead space above, overpass bridges, underground or tunnels, culverts, ground water, road ground or overhead railroad, and particularly road within daily traffic congestion, a public dissemination and draft construction project plan shall be made available to relevant competent authorities. In this case, if the legal ownerships are affected by the planned road construction or expansion project, owners may receive fair and just compensation as provide for in the law on expropriation.

#### ARTICLE 12.-

Any construction on the land for road construction development, in particularly area for right of way which is permanently established shall be prohibited, except for the construction in some special projects such as of the equipments used in the national defense, security and in road management or road construction and construction for other public services which require the approval of the Royal Government in accordance with request of the competent authorities of road management.

Right of way may be utilized for various temporary purposes without affecting the equipments and structures for safe road traffic.

The management of right of way used along roads network shall be determined by a Sub-decree.

#### ARTICLE 13.-

Before being put into operation, the competent authorities of road management or private individuals authorized to construct or develop new roads must be completely installation with road furniture and in accordance with technical regulations that approved design.

#### ARTICLE 14.-

In the construction of new roads, right of way and land for construction of important road infrastructures shall be set aside.

Nonetheless, the construction of roads within towns, boreys (residential communities) and new development areas shall include the construction of roads for pedestrians, the handicapped and construction of other road infrastructures to assure safe traffic.

The earmarked right of way and land for construction of road infrastructures above shall be publicized and the draft plan for such right's right of way and land for construction of those road infrastructures shall be put forward to the Ministry of Land Management, Urban Planning and Construction and the Ministry of Interior to cooperate in launching appropriate measures.

#### **ARTICLE 15.-**

Every construction of roads, interchange, intersection, overlap roads, bridges, overhead space above, overpass bridges, underground or tunnels, culverts, ground water, road ground or overhead railroad, shall be carried out in accordance with the technical regulations as stated under the Article 23 of this Law.

#### **ARTICLE 16.-**

Roads must have maintained regularly. The road maintenance can be categorized as routine maintenance, periodic, and emergency repair.

Roads that are officially launched shall be under the proper management and maintenance in alignment with the technical regulations and maintenance procedures as set out in Article 23 of this Law by assuring good maintenance of the road conditions, regular auditing and monitoring of the road infrastructure components.

#### **ARTICLE 17.-**

The competent authorities of road management shall establish a vehicle weighting station in main roads, vehicle terminal, parking lots, roadside service station, in a long roads network. The competent authorities of road management, where deemed necessary and after approved by the Royal Government, may construct a toll station along the roads to serve the road transportation services, road protection and maintenance.

All types of stations construction as stated in paragraph 1 above must be compliance with technical regulations as stated under the Article 23 of this law.

#### **ARTICLE 18.-**

For all the road infrastructure development and maintenance projects principally approved by the Royal Government, the competent authorities of road management may implement such projects on its own or engage the private sector in the road infrastructure development or maintenance in accordance with the Public Procurement Law.

Where a concessionaire or road construction firm is in charge of the road infrastructure development or maintenance project, the work shall be undertaken in consistence with the provisions of this Law, Concession Law and other existing regulations.

#### **ARTICLE 19.-**

The concessionaire or road construction firm shall cooperate with relevant ministries and institutions with the functions and authorities in the management, control, audit or solving road related disputes and regularly reports the road construction, maintenance, incidents, and accidents and immediately report any event involved with the roads.

## **CHAPTER 5**

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## TECHNIQUES ENTITY AND ROAD INFRASTRUCTURE

### TECHNICAL REGULATION

#### ARTICLE 20.-

The competence authorities of road management shall establish its own organizational structure responding to the road infrastructure development plan and requirement for public service.

#### ARTICLE 21.-

The competence authorities of road management shall establish a national institution for road infrastructure development. This institution have role for the study, research, testing and training, and also play role as centre for managing, collection data and distribution of information which relevant the roads infrastructure sector.

The organization and functioning of the national institution for the roads infrastructure development shall be determined by sub-decree.

#### ARTICLE 22.-

The competence authorities of road management shall create a national laboratory for roads sector. The laboratory shall undertake quality experimentation, evaluation of construction materials and physical materials used in the work implementation and issue quality certification concerning the public works.

The organization and functioning of the national laboratory for road sector shall be determined by sub-decree.

#### ARTICLE 23.-

The Ministry of Public Works and Transport shall have competent authority to adopt technical regulation for road infrastructures and other technical requirements consistent with international technical regulations for the road infrastructure construction as mentioned follow:

- 1- Technical standard for roads and bridges construction.
- 2- Technical standard for roads equipment, drainages equipment, and roads facility.
- 3- Technical standard for safety and heavy equipment maintenance.
- 4- Technical standard for works safety of public works workers.
- 5- Technical standard and procedures the road maintenance.
- 6- Technical standard for vehicle weighting station, vehicle terminal, stopping station parking lots, rest area in alongside road network.
- 7- Other technical standards applied in the public works sector for the roads infrastructure.

Each technical regulation shall be determined by a Prakas of the Minister of the Ministry of Public Works and Transport.

## CHAPTER 6

### ROAD USE

**ARTICLE 24.-**

Road users and all natural person relevant roads must be respective compliance with the provisions as stated in this law and law on road traffic.

In case of the provisions of law on road traffic not consistent with the provision of this law, the law on road shall prevail.

**ARTICLE 25.-**

Trucks transportation users must respect the loading weight limit as hereunder specified in the Article 26 of this law and must cooperate in the weighting at the weigh station set up along each road and conform to the technical standard for the road dimension limit.

The dimensions of technical standards shall be determined by a Prakas of the Minister of the Ministry of Public Works and Transport, and a Prakas of the Minister of the Ministry of Rural Development.

The controlling of overloading the limited maximum weight of the vehicles, it is the competent authority of the national committee for the controlling of overloading the limited maximum weight of the vehicles.

The organization and functioning of the national committee for the controlling of overloading the limited maximum weight of the vehicles shall be determined by Sub-decree.

**ARTICLE 26.-**

The overloading the limited maximum on the road networks as following:

1. On the expressway, national road, provincial road, street in capital, street in city, street in urban of provinces, and rural road must be compliance as following:
  - a. Maximum weight on the sustaining axle of automobile, trailers or semi-trailers is limited as follow:
    - 6 (six) tons for single axle with two wheels under the steering wheel.
    - 11 (eleven) tons for twin axles with four wheels under the steering wheel.
    - 10 (ten) tons for single axle with four wheels.
    - 19 (eighteen) tons for twin axles with eight wheels.
    - 24 (twenty four) tons for triple axles adjacent to each other's with twelve wheels.
  - b. Permitted maximum total weight of automobile is defined as follow:
    - 16 (six teen) tons for automobiles with twin axles which one axle is located in the front of the automobile with two wheels, and the other one located in the back with four wheels.
    - 25 (twenty five) tons for automobile with triple axles as one axle is located in the front of the automobile where there are two wheels and the twin ones located in the back of the automobile where there are eight wheels.
    - 30 (thirty) tons for automobile with four axles as twin ones are in the front of the automobile where there are four wheels and the other two axles are in the back of the automobile where there are eight wheels.
  - c. Limitation of permitted maximum total weight of automobile with trailers shall be defined

as follow:

- 35 (thirty five) tons for automobile with trailers having four axles as a single axle is located in the front of automobile where there are two wheels and the other single axle in the back of the vehicle where there are four wheels and the single axles of the trailers with eight wheels.
  - 40 (forty) tons for automobile with trailers having five axles onward.
- d. Limitation of permitted maximum weight of automobile with semi-trailers shall be defined as follow:
- 35 (thirty five) tons for automobile with semi-trailers having four axles as a single axles is located in the front of automobile where there are two wheels and other single axle in the back of the vehicle where there are four wheels and the twin axles of the semi-trailers with eight wheels.
  - 40 (forty) tons for automobile with semi-trailers having five axles onward.

The total weighs of the automobile and the trailers or semi-trailers which is not included in points above shall be asked for special permission letter from the competent authorities of road management.

2. All vehicle axle loads as specified above in point 1 shall bear a pressure on the road no more than 5(five)Kg/cm<sup>2</sup>.

#### **ARTICLE 27.-**

Road users when arrival the ferry dock, or road highest level, or roads that require high attention shall respect the instructions of the ferry dock or safety agent on duty at destinations.

Orders of the ferry dock used and road highest level, or roads that require high attention shall be determined by a Prakas of the Ministry of Public Works and Transport, and a Prakas of the Minister of the Ministry of Rural Development.

#### **ARTICLE 28.-**

The organizing and management of various events such as cultural and sport events, exhibition and ceremonies along the roads shall be done according to the following instructions:

- 1- The Organizer shall propose the road use attached with the traffic safety project to the sub-national administrations. The activity can proceed only after the approval of the sub-national administrations at relevant levels subject to the level of the event and if considered necessary.
- 2- Sub-national administrations shall publicize the information about the planned road closure on the timely basis and introduce appropriate measures for protection of public order and traffic safety.
- 3- Sub-national administrations shall engage and cooperate with the organizer in coping with any emergencies and securing traffic safety.

The formalities and procedures of the road use shall be defined by a Joint-Prakas issued the Minister of Interior and Minister of Public Works and Transport or a joint parkas issued by the Minister of Interior and Minister of Rural Development.

#### **ARTICLE 29.-**

The road use and other roadside activities related to the roads within the Capital, cities and towns shall follow steps as follows:

- A- Sidewalks and roads assigned for pedestrians shall be used for pedestrians to walk only.
- B- Sidewalks and roads assigned for pedestrians may be used for other purposes as stated in the provisions of Article 28 of this Law.
- C- Following activities shall not be allowed:
  - Parking of vehicles or motor vehicles along the roads, sidewalks and roads for pedestrians not properly at the designated area.
  - Unauthorized construction of road barricades or zebra crossings or similar objects on the roads.
  - Other activities contrary to this Law.

#### **ARTICLE 30.-**

For assuring the safe traffic movement along the expressway, national roads and provincial roads, every construction of structures whose entrance and exit are close to the roads above in a near distance shall be carried out as follows:

- 1- The construction of structures such as petrol station, gas station, car wash garage, garage or other similar structures which an average number of people gather shall be located at least (fifteen) 15 meters from the border line of the right of way.
- 2- The construction of commercial centers, sport stadiums, match fields, cinema theaters, hospitals, academic institutions, the organization of markets, fairs, exhibitions or other operations which there is a large gathering of people shall be located at least (fifty) 50 meters from the border line of the right of way.
- 3- The specifications as set out in Items 1 and 2 above shall not apply to any structures erected in accordance with the existing regulations.
- 4- The distance limit as specified in Items 1 and 2 above for rural roads shall be determined by a separate sub-decree.

#### **ARTICLE 31.-**

Any person who performs public works such as installation of electrical poles, drainage system, or other additional necessary works relating to road embankment, carriageway, shoulder, sidewalk, and right of way shall obtain approval from the authorities in charge of the road management.

#### **ARTICLE 32.-**

Roads digging, roads drilling, roads cutting or other works for the business purposes, which may cause damage and impact on the road embankment, carriageways, shoulder, roadside or right of way and assembling of advertising signs or display of billboards across the road or right of way shall be obtains a permit in writing by competent authorities of road management. The person in charge of the work implementation shall adopt effective measures for protecting the public order, facilitating the traffic movement, preventing any eventual incidents, environmental protection and respect the instructions of expert authorities.

The person in charge of the work implementation as stated in the above paragraph shall restore the regular normal functioning of the roads.

**ARTICLE 33.-**

All activities as stated in the Article 32 of this law shall pay the service fees to the competent authorities of road management. There is, however, exception for these activities if done to serve the public interests with the approval of the Royal Government.

The fees as prescribed in the above paragraph shall be determined by a joint parkas issued by the Minister of Economy and Finance and Minister of Public Works and Transport for use in the interest of the national budget.

**ARTICLE 34.-**

The competent authorities of road management may open the entrance-exit passage, divert the roads or close the roads completely or partially to allow or disallow the traffic movement temporarily or permanently after the approval of the Royal Government and through a public notice.

The decision making as stipulated in the above paragraph will be possible in any of the following cases:

- 1- For the protection of national heritages
- 2- For serving the public traffic movement
- 3- In the event of force majeure

In any of the three events stated above, the authorities in charge of the road management shall:

- Instruct the use of alternative roads,
- Where there is no alternative road, solve, adjust or arrange for an alternative road for the roads which are closed or diverted.

In closing, opening or diverting the roads for temporary traffic movement, the authorities in charge of the road management may immediately issue an immediate public notice.

**CHAPTER 7****PROTECTION OF ROAD INFRASTRUCTURES****ARTICLE 35.-**

Owners of immovable property which are located close to the roads must not cause traffic congestion or damages to roads. Where any problem occurs owing to these activities, the competent authorities of road management shall issue a written notice to the owners of immovable property to arrange for removal of such obstacles within an appropriate period. In case of ownership of immovable property after receiving the information fail to take any effective actions, the competent authorities of road management shall carry out removal of the same without any claim and such owners of immovable property shall be responsible for all expenses incurred on such immovable property.

**ARTICLE 36.-**

Any individuals wishing to fill in the land or do anything on the right of way to create an entrance and exit to private residences, companies, factories, enterprises or other places adjacent to the roads shall apply for written approval with the authorities in charge of the road management or Administrator. And

their work can be carried out with the official approval and in line with the instructions of the competent authorities of road management or road manager

Formality and procedures of permission letter shall be determined by a Joint-Prakas of the Minister of the Ministry of Public Works and Transport and the Minister of the Ministry of Rural Development.

#### **ARTICLE 37.-**

All competent authorities shall launch legal measures to prevent any destruction to the road infrastructures and encroachment on the right of way.

Any person when seeing the road infrastructures are damaged, broken or collapsed shall make prompt report to the authorities in charge of the road management or sub-national administration or any competent institutions at the nearest distance for corresponding measures.

#### **ARTICLE 38.-**

Prohibited activities which make disaster to road infrastructure facilities and created obstruction to traffic safety as behave:

1. Destroying roads by purpose on road infrastructure facilities:
  - Digging, drilling, and created breaking of roads
  - Imported vehicles and tool equipped trucks
  - Occupying or invasion or using land of roads and particularly the right of way
  - Changing the assemblies or changing direction of roads do not have permits
  - Build of construction in the right of way, fulfil of land into drainages system of road safety.
2. Created obstruction which interrupt to traffic safety:
  - Pouring lubricating substance on roads and making of inclined or collapse of road facilities
  - Changing, writing, removing, taking, or made loss of beneficiary to road signs, traffic light signals, protection wall and fences, marker posts, direction signals, and creating of obstruct on roads.
  - Leaving materials construction or other materials on roads such as through stones, lands, sands, waste and garbage on roads, and placing and spreading sharp objects on roads in case other place for spreading sharp objects.
3. Activities in caused obstruction to traffic safety:
  - Organizing of festivals on road such as markets, dancing, sold of goods on road, and meeting of peoples on the road, or taking roads and bridges for staying contrary this law
  - Exhibited of materials or other signals advertising of visibility or cut off precaution of drivers or creation of obstruct for pedestrians
  - Build of wall causing accidents or anyone construction on roadside
  - Fulfil land in the right of way highest than roads without drainages system
  - Upgrade or connected roads linking to main roads do not a permit.
4. Other activities in caused disaster to roads, to created accident to peoples and transportation mean on the roads.

## CHAPTER 8

### ROAD CERTIFICATION

#### ARTICLE 39.-

The operation of business relevant with the roads infrastructure sector likely roads maintenance, and opening the laboratory for the road sector must be certification.

Conditions and procedures of the request for certification of operation on the roads infrastructure, road maintenance, and opening the laboratory for the road sector shall be determined by the Sub-decree.

#### ARTICLE 40.-

Any request to obtain a certification of operation on the roads infrastructure, road maintenance, and opening the laboratory for the road sector shall be pay certification fees.

Certification fees shall be determined by an Join-Prakas of the Minister of the Ministry of Economy and Finance and the Minister of the Ministry of Public Works and Transport or an Join-Prakas of the Minister of the Ministry of Economy and Finance and the Minister of the Ministry of Rural Development and shall be beneficial to the national budget.

## CHAPTER 9

### FUND FOR ROADS MANTENACE AND DEVELOPMENT

#### ARTICLE 41.-

At the end of each year, the Ministry of Public Works and Transport, the Ministry of Rural Development, and Sub-national Administration shall develop a budget project for the road development and maintenance within the framework of its annual budgets.

#### ARTICLE 42.-

Funds for roads maintenance and development shall be under the law on financial and it has been resources from:

- National budget
- Cooperation funding from the donors
- Fund from private sector
- Donate from charity, national and international nongovernment organizations, associations or communities
- Profit from the investment and legal operation on the roads sector
- Transactional fines
- Other legal revenues.

## CHAPTER 10

## INSPECTION OF ROAD INFRASTRUCTURE

### ARTICLE 43.-

The Ministry of Public Works and Transport shall be designating the inspector officers of roads infrastructure to conduct monitoring, investigation, control and enforcement of this law.

The inspector officials of roads infrastructure obtain a legal habilitation to control the offences as stated in this law, in accordance with the provision of the criminal procedures code.

Formality and procedures for obtaining a legal habilitation to the inspector officials of road infrastructure shall be determined by a Join-Prakas of the Minister of Justice and the Minister of the Ministry of Public Works and Transport or the Minister of the Ministry of Justice and the Minister of the Ministry of Rural Development.

### ARTICLE 44.-

The competent inspector officials of roads infrastructure may request other relevant authorities to deal with the suppression of offences as stated in this law.

### ARTICLE 45.-

At every operation, the inspector officials of roads infrastructure shall have mission order.

The uniforms, insignia and rank sign of the inspector officials of roads infrastructure shall be determined by a Sub-decree.

### ARTICLE 46.-

Road inspector officials shall have the right to perform inspection and launch the following measures:

- To conduct regular monitoring and audit on the road infrastructure components and private laboratories engaged in the roads industry business.
- To be empowered to receive and receive copies of documents from providing sources and facilities that produce materials used in the construction of road infrastructures without prejudice to the construction work and environment which may be destructive and detrimental to the road infrastructures.
- To monitor, stop and issue temporary penalties for any activities that are destructive and detrimental to the road infrastructures.
- To temporarily revoke relevant permits or licenses where relevant holders break this Law.

The procedures on the inspection of roads infrastructure shall be determined by Join-Prakas of the Minister of the Public Works and Transport and the Minister of the Ministry of Rural Development.

### ARTICLE 47.-

Any person, who disagrees to any measure taken by the inspector officials of roads infrastructure, maybe able to complain within 30 days (thirty days) at the Ministry of Public Works and Transport, after the date of issuance of the decision.

The Minister of the Ministry of Public Works and Transport shall decide on the complaint in the period of no longer than 45 days (forty five days) after the date of receiving the complaint.

In case of disagreement with the decision of the Minister of the Ministry of Public Works and Transport, that person has a right to complain to the other governmental mechanisms or to the court in following the procedures.

## **CHAPTER 11**

### **PENALTIES**

#### **ARTICLE 48.-**

The penalties of this law included warning letter, revocation or suspension of the certificate of registration and all types of permits, transactional fines, a court fines and imprisonment.

#### **ARTICLE 49.-**

The warning letter, the revocation or suspension of the certificate of registration and permits are the authority of the Ministry of Public Works and Transport, and the Ministry of Rural Development.

The transactional fines are the competency of the inspector officials of roads infrastructure have authority in the surrounded determinate juridical of served works.

#### **ARTICLE 50.-**

The inspector officials of roads infrastructure have authority to impose transactional fines as determined in the Article 52 to Article 70 of this law.

The transactional fines shall be imposed in case the offender confesses and consents to pay according to the penalties of this law. The transactional fine causes to terminate the penal complaint.

In case the offender does not consent to pay the transactional fine, the inspector officials of roads infrastructure shall file the case of offense to transmit to the court in following the procedures.

In case the offender's identify is unknown, the inspector officials of roads infrastructure shall request the prosecutor to confiscate the offensive evidences as state properties.

The relevant person has the authority to file complain against the prosecutor's verdict to the civil court.

The procedure and the authority to impose the transactional fine as stated in this law shall be defined by an Inter-Prakas of the Minister of the Ministry of Economy and Financial and the Minister of the Ministry of Public Works and Transport or an Inter-Prakas of the Minister of the Ministry of Economy and Financial and the Minister of the Ministry of Rural Development.

#### **ARTICLE 51.-**

The transactional fine, a fine imposed by a court sentence or the proceeds from selling evidences which have been confiscated as state properties by the court verdict shall transfer into the national budget.

The government may decide to reward the inspector officials who participated in suppressing a specific offence as state in this law.

**ARTICLE 52.-**

Any person licensed to construct or develop a new road:

- 1- Without the use of road equipments as per the construction plan, is temporarily punishable by a fine of 5 000 000 (five million) Riels and shall be required to set up all road equipments as per the construction plan as stated in the contract.
- 2- Without the use of sufficient road equipments in accordance with the construction plan and not meeting technical requirements, is temporarily punishable by a fine of 2 000 000 (two million) Riels and shall be required to set up all road equipment as per the construction plan as stated in the contract.
- 3- With the use of all road equipments as per the construction plan, but not meeting technical requirements, is temporarily punishable by a fine of 1 000 000 (one million) Riels and shall be required to set up all road equipments as per the construction plan as stated in the contract.

**ARTICLE 53.-**

Legal entity may be found criminally responsible under Article 42 of the criminal code on the criminal responsibility of legal entities, for the offences in the Article 52 of this law.

Legal entity shall be subject to impose a transactional fine the following offences as below:

- 1- In case an offence as stated in point 1 of the Article 52 of this law, it shall be subject to impose a transactional fine of 10 000 000 (ten million) Riels.
- 2- In case an offence as stated in point 2 of the Article 52 of this law, it shall be subject to impose a transactional fine of 5 000 000 (five million) Riels.
- 3- In case an offence as stated in point 3 of the Article 52 of this law, it shall be subject to impose a transactional fine of 2 000 000 (two million) Riels.

**ARTICLE 54.-**

Any person licensed to construct roads, junction roads, interchange, intersection, overlap roads, bridges, overhead space above, overpass bridges, underground or tunnels, culverts, ground water, road ground or overhead railroad, does not respected the technical requirements as per the construction plan shall be subject to impose a transactional fine of 5 000 000 (five million) Riels and shall be required to set up all road equipments as per the construction plan as stated in the contract

**ARTICLE 55.-**

Legal entity may be found criminally responsible under Article 42 of the criminal code on the criminal responsibility of legal entities, for the offences in the Article 54 of this law.

Legal entity shall be subject to imposed a transactional fine of 10 000 000 (ten million) Riels and shall be required to set up all road equipments as per the construction plan as stated in the contract

**ARTICLE 56.-**

Any person licensed to implement the road development or roads maintenance project, which:

1. Collected fees for road use without authorization from competent authorities, it shall be subject

to impose a transactional fine of 5 000 000 (five million) Riels. In case this violation it continued, a double transactional fine shall be imposed.

2. Failed to publicly announce its rate of road use fee as permitted by competent authorities, it shall be subject to impose a transactional fine of 2000 0000 (two million) Riels and shall be required to make such public announcement. In case this violation it continued, a double transactional fine shall be imposed.
3. Failed to introduce lower rate of road use fee as already agreed with competent institutions, it shall be subject to impose a transactional fine 2 000 000 (two million). In case this violation it continued, a double transactional fine shall be imposed.

#### **ARTICLE 57.-**

Legal entity may be found criminally responsible under Article 42 of the criminal code on the criminal responsibility of legal entities, for the offences in the Article 56 of this law.

Legal entity shall be subject to impose a transactional fine the following offences as below:

- 1- In case an offence as stated in point 1 of the Article 56 of this law, it shall be subject to impose a transactional fine of 10 000 000 (ten million) Riels.
- 2- In case an offence as stated in point 2 of this Article 56 of this law, it shall be subject to impose a transactional fine of 5 000 000 (five million) Riels.
- 3- In case an offence as stated in point 3 of the Article 56 of this law, it shall be subject to impose a transactional fine of 5 000 000 (five million) Riels.

#### **ARTICLE 58.-**

The concessionaire or road construction firm that fails to cooperate with or bar competent officials in performing their duties as stated in the Article 19 of this law shall be subject to impose a transactional fine of 2 000 000 (two million) Riels.

In case this violation it continued, a double transactional fine shall be imposed.

#### **ARTICLE 59.-**

Legal entity may be found criminally responsible under Article 42 of the criminal code on the criminal responsibility of legal entities, for the offences in the Article 58 of this law.

Legal entity shall be subject to impose a transactional fine of 5 000 000 (five million) Riels. In case this violation it continued, a double transactional fine shall be imposed.

#### **ARTICLE 60.-**

Any driver of heavy truck carrying goods on the road, who:

1. Does not weighting at overload stations along the roads network, shall be subject to impose a transactional fine of 500 000 (five thousand) Riels.
2. Overloading less than 5% of the overload the limited maximum weight shall be subject to obtain a warning letter.
3. Overloading more than 5% to 10% of the overload the limited maximum weight shall be:

- a. Unload the goods and detain the vehicles for (10) ten days and shall be subject to impose a transactional fine of 100 000 (one hundred thousand) Riels per ton.
  - b. Take away the driving license and suspended for 10(ten) days.
4. Overloading more than 10% to 20% of the overload the limited maximum weight shall be:
- a. Unload the goods and detain the vehicles for 1(one) month and shall be subject to impose a transactional fine of 200 000 (two hundred thousand) Riels per ton.
  - b. Take away the driving license and suspended for 6(six) months.
5. Overloading more than 20% of the overload the limited maximum weight shall be :
- a. Unload the goods and detain the vehicles for 1(one) year and shall be subject to impose a transactional fine of 300 000 (three hundred thousand) Riels per ton.
  - b. Take away the driving license and suspended for 2(two) years.

In case that there are an offenses on the total loading weight on vehicles and including the offense on overloading weight on axles, it shall be subject to impose on the two case.

In case this violation it continued, a double transactional fine shall be imposed and stopped the transportation business for 1(one) year. The owner of the vehicles shall be responsible for the cost of loading and reloading goods and renting cost of the place to keep the goods and the vehicles.

#### **ARTICLE 61.-**

Legal entity may be found criminally responsible under Article 42 of the criminal code on the criminal responsibility of legal entities, for the offences in the Article 60 of this law.

Legal entity shall be subject to impose a double transactional fine to offenses under the Article 60 of this law. In case this violation it continued, a double transactional fine shall be imposed under the sentence 1 of this paragraph.

#### **ARTICLE 62.-**

Any person who have does not respect order of the safety agent which regular controlling at destinations as stated under the Article 27 of this law shall be subject a transactional fine of 10 000 (ten thousand) Riels.

#### **ARTICLE 63.-**

Any person who has been the construction of the creation hurdles on roads, placing and spreading sharp objects, or similar objects on roads does not permit from the competent authorities shall be subject a transactional fine of 1 000 000 (one million) Riels and must have enforcement removed all equipment which the object of the constructions far way.

#### **ARTICLE 64.-**

Any person who performs public works without permission of the competent authorities of road management, leading to damage of the road embankment, carriageway, shoulder, road edge and land reserved for right of way are required to restore the same to their original conditions, and shall be subject a transactional fine of 500 000 (five hundred thousand) Riels.

#### **ARTICLE 65.-**

Legal entity may be found criminally responsible under Article 42 of the criminal code on the criminal responsibility of legal entities, for the offences in the Article 64 of this law.

Legal entity shall be subject to impose a transactional fine of 1 000 000 (one million) Riels.

#### **ARTICLE 66.-**

Any person who uses right of way for entrance passage to his/her private house, building, factory, enterprise, or other facilities adjacent to the main road without authorization from the competent authorities shall be subject a transactional fine of 50 000 (fifty thousand) Riels.

In case this violation it continued, a double transactional fine shall be imposed.

#### **ARTICLE 67.-**

Any person who causes the road to be slippery, sticky, or disposes debris on the road or piles equipments on the road, and displays materials or signs that block the sight of drivers or causes any obstacles to pedestrians shall be subject a transactional fine of 50 000 (fifty thousand) Riels.

In case this violation it continued, a double transactional fine shall be imposed.

#### **ARTICLE 68.-**

Any person who changes, removes, moves, writes or damages traffic signs, traffic lights, safety fences, milestones or guide signs, protection walls and fences, marker posts, direction signals, dividing strips and other road furniture shall be subject a transactional fine of 100 000 (one hundred thousand) Riels.

In case this violation it continued, a double transactional fine shall be imposed.

#### **ARTICLE 69.-**

Any person who runs any road infrastructure business, maintains and operates laboratory relating to road sector do not have certification shall be subject a transactional fine 5 000 000 (five million) Riels.

In case this violation it continued, a double transactional fine shall be imposed.

#### **ARTICLE 70.-**

Any person who :

1. Organizes activities and other events on the road do not have permit from the Sub-national Administration shall be subject a transactional fine of 100 000 (one hundred thousand) Riels.
2. Organizes activities and other events on the road do not have permit or permit from the Sub-national Administration, leading to unintentional damage of the roads or facilities shall restore their original conditions and be punishable under provisions of Article 419 (Other Damages due to Imprudence or Non-observance) of the Criminal Code.

#### **ARTICLE 71.-**

Any person who illegally constructs permanent solid structure on land earmarked for development of road infrastructure shall be given a written warning and required to remove the same.

In case of recidivism, a penalty of imprisonment from 1(one) month to 1(one) year and a fine from 100 000 (one hundred thousand) Riels to 2 000 000 (two million) Riels.

**ARTICLE 72.-**

Any person who constructs various structures without compliance with point 1 and point 2 of the Article 30 of this law shall be fine of 100 000 (one hundred thousand) Riels to 1 000 000 (one million) Riels and must enforcement for moving of all these construction.

In case of recidivism, a penalty of imprisonment from 6(six) month to 2(two) year and a fine from 1 000 000 (one million) Riels to 4 000 000 (four million) Riels.

**ARTICLE 73.-**

Any person who alters or diverts a road and piles up or paves a road connecting to the main road do not have permit from the competent authorities of road management shall be a fine of 1 000 000 (one million) Riels to 4 000 000 (four million) Riels.

In case of recidivism, a penalty of imprisonment from 6(six) month to 2(two) year and a fine from 1 000 000 (one million) Riels to 4 000 000 (four million) Riels

**ARTICLE 74.-**

Any person who has encroached on, controlled or used the same by constructing any building or other workmanship on land belonging to the road shall be fine of 100 000 (one hundred thousand) Riels to 1 000 000 (one million) Riels and must enforcement for remove of these constructions or these workmanship.

In case of recidivism, a penalty of imprisonment from 6(six) month to 2(two) year and a fine from 1 000 000 (one million) Riels to 4 000 000 (four million) Riels

**ARTICLE 75.-**

Any person who has used heavy truck transporting overloaded goods on the road that damages the road, culvert or bridge shall be a penalty of imprisonment from 6(six) month to 2(two) year and a fine from 1 000 000 (one million) Riels to 4 000 000 (four million) Riels.

Any competent government official who permit overload vehicles has been traffic on the roads and caused of roads damaged or broken crossing drainages or bridges shall be subject to impose as perpetrator.

**ARTICLE 76.-**

Legal entity may be found criminally responsible under Article 42 of the criminal code on the criminal responsibility of legal entities, for the offences in the Article 75 of this law.

Legal entity shall be subject to impose a fine of 5 000 000 (one million) Riels to 10 000 000 (ten million) Riels and including one or more additional penalties as below:

- 1- Dissolution according to formalities determined by Article 170 of the criminal code on the Dissolution and Liquidation of Legal Entities.
- 2- Placement under the court surveillance according to formalities determined by Article 171 of the Criminal Code on the Placement under the Court Surveillance

- 3- Prohibition from operating one or more activities according to formalities determined by Article 172 of the Criminal Code on the Prohibition from Operating Activities.
- 4- Expulsion from public transactions according to formalities determined by Article 173 of the Criminal Code Expulsion from Public Transactions.
- 5- Posting decision on punishment according to formalities determined by Article 180 of the Criminal Code on the Posting of Decisions.
- 6- publication of decision on punishment on newspapers or broadcasting by all means according to formalities determined by Article 181 of the Criminal Code on the Broadcasting the Decision by Means of Audi-Visual.

#### **ARTICLE 77.-**

Any person who perform public works without permission of competent authorities of road management, leading to damage of the road embankment, carriageway, shoulder, road edge and land reserved for right of way are required to restore the same to their original conditions and shall be a penalty of imprisonment from 2(two) years to 5(five) years and a fine from 4 000 000 (four million) Riels to 10 000 000 (ten million) Riels.

#### **ARTICLE 78.-**

Legal entity may be found criminally responsible under Article 42 of the criminal code on the criminal responsibility of legal entities, for the offences in the Article 77 of this law.

Legal entity shall be subject to impose a fine of 10 000 000 (ten million) Riels to 20 000 000 (twenty million) Riels and including one or more additional penalties as below:

- 1- Dissolution according to formalities determined by Article 170 of the criminal code on the Dissolution and Liquidation of Legal Entities.
- 2- Placement under the court surveillance according to formalities determined by Article 171 of the Criminal Code on the Placement under the Court Surveillance
- 3- Prohibition from operating one or more activities according to formalities determined by Article 172 of the Criminal Code on the Prohibition from Operating Activities.
- 4- Expulsion from public transactions according to formalities determined by Article 173 of the Criminal Code Expulsion from Public Transactions.
- 5- Posting decision on punishment according to formalities determined by Article 180 of the Criminal Code on the Posting of Decisions.
- 6- publication of decision on punishment on newspapers or broadcasting by all means according to formalities determined by Article 181 of the Criminal Code on the Broadcasting the Decision by Means of Audi-Visual.

## **CHAPTER 12**

### **TRANSITION PROVISION**

#### **ARTICLE 79.-**

Any existing legal instrument related to the road sector shall be valid until a new legal instrument take effect in lieu thereof under provisions of this Law.

**ARTICLE 80.-**

Subsequent to time when this law enters into force within the period of 1 (one) year, all road related laboratories operating the business shall apply for a license under provisions of this Law.

**CHAPTER 13****FINAL PROVISIONS****ARTICLE 81.-**

Any laws and legal instruments as at present in force on the applicable date and are contrary to the provisions of this Law shall be considered unenforceable to the extent thereof from the applicable date.

Phnom Penh, May 04, 2014

On behalf and by order of the Royal Highness

**(Signature and stamp)**

PRL. 1405.558

**Samdech Akka Moha**

**Thom Poutisal Chea Sim**

Having inform to His Majesty the King

For Royal Signature

Prime Minister

**Samdech Akka Moha Sena Padei Decho HUN SEN**

Having informed to Samdech HUN SEN,

The Prime Minister of the Kingdom of Cambodia

Minister of Public Works and Transport

Signature

**TRAM IV TEK**

No.

For Copy and Distribution

Phnom Penh, 2014

Secretary General of the Royal Government

Signature and Seal

**SOY SOKHA**

## ANNEX OF THE LAW ON ROAD

### GLOSARY

- 1- **ROAD** referred to whole parts of the road included segment road, carriageway, shoulder or berm, bridges, overhead space above, overpasses, underpasses and ferry landing stage.
- 2- **CARRIAGEWAY** referred to segment road for motorized traffic.
- 3- **LANE STRIP** referred to the road separated by dotted or long lines along the road, with enough width for all kinds of vehicles to traffic in one row.
- 4- **SIDEWALK** referred to roadside in cities or towns, which are prepared for pedestrians however vehicles cannot be allowed to park over there.
- 5- **ROADSIDE** referred to parts of both sides of the trunk of the road located outside the cities and towns and that it can be parked if necessary
- 6- **BERM** referred to lies between an open channel and a cutting slop protecting the former from being clogged with eroded material, and it includes plants of tree, traffic signs and road furniture
- 7- **ROUNDAABOUT** referred to the junctions of two or more roads, and that in the central part, it has the terrace or sculpture or other monuments and has one-way road surrounded with arrow signs for traffic direction.
- 8- **FERRY DOCKS** referred to surface land yard which right determined nearly water bank or ferry yard which prepare for transportation safety and convenient and travelling cross channel streams, rivers, gulf bank side to other bank side by using ferry or ferry bridges or using board, ferry, pushing ferry etc, the yard of ferry dock shall be prepare the construction of road for clime or down, waiting station, waiting for passengers which have agency for organizing orderly of traffic and other facilities for served ferry landing stages.
- 9- **ROAD FACILITIES** referred to vehicles terminal, parking lots, traffic light signal, road sign, road direction, maker post, road marking or fence, dividing strip, roundabout, fence dividing of traffic, guard fence, retaining wall, protection wall, milestone, boundaries signal, included sign board and other road furniture along both roadsides.
- 10- **DRAINAGES DEVICES** referred to culverts, ditches, reservoir or catch basins, wastewater treatment station, chutes or climbing, etc that has prepare along road for defence of road, road facilities, traffic safety.
- 11- **DIVIDING ROAD FACILITIES** referred to a part of a road that divides the surface into two opposite directions of traffic or separates the road in lanes. Dividing road facilities has been type of mobility or immobility.
- 12- **WORKMANSHIP** referred to construction of bridges, culverts, wall guarding land, drainages system and other physical infrastructures that has provided safety, efficiency, and made sustainable to road.
- 13- **ROAD CONSTRUCTION** referred to vehicles stopping station, parking lots, road facilities, workmanship, and other construction served for roads.
- 14- **ROAD INFRASTRUCTURE** referred to right of way, road construction, vehicle terminal, vehicle parking yard, parking lots, roadside service station and rest area.
- 15- **RIGHT OF WAY** referred to land strips along both sides of the middle point of road included seized of right of way, reserving for the management, developing and protection road to ensure traffic safety and used for another road infrastructure affair which determined in linear of right of way.

16- **LINEAR OF RIGHT OF WAY** referred to linear of right of way boundary that have distance limited from the middle point of road.

17- **ROAD DIMENSION LIMITS** referred to rule for height and width of a road, bridge, ferry landing stage, underpasses in order to vehicles loaded cargoes pass by safety.

18- **INTERSECTION** referred to the places where two or more roads are converged with one flat surface and are not defined by the angle of the axis of the road.

Intersections have different shapes such as +, **X**, **T**, **Y** and roundabout etc.

19- **INTERSECTION OVERHEAD** referred to the places where two or more roads are converged with one flat surface and are not defined by the angle of the axis of the road. Intersections overhead have different shapes such as +, **X** and **★**.

20- **TOTAL MAXIMUM WEIGHT OF VEHICLES** referred to the sum of the net weight of vehicle and the maximum loading weight of the vehicle. If the vehicle has the cart, the total maximum weight of the vehicle is the sum of total maximum weight of each vehicle.

21- **EXPRESSWAY** referred to a road reserved only for motor vehicles, with median strips separating carriageways for the two opposite directions of traffic, without at grade crossing with any road, furnished with adequate additional equipment and facilities to ensure uninterrupted and safe traffic, reduce travelling time and control the number of points at which vehicles exit and enter.

22- **ROAD USERS** referred to the vehicle drivers, pedestrians, and who are travelling on the roads.

23- **NATIONAL ROAD** referred to main road with a lot of traffic:

- a- Road which has a starting point from Phnom Penh Capital to municipal of provinces in whole country.
- b- Road which has a starting point from municipality of province to other municipal of provinces.
- c- Road which has a starting point from the National Road to other National Road.
- d- Road which a junction from the National Road to municipal of a provinces.
- e- Road which a junction from the National Road or starting point from the municipality a province connecting to potential area such as port, train station, airport, special economy zoon, tourism destinations, international border checkpoints, and other main economies potential.
- f- Main road of the national which a lot of traffic determined by the Royal Government comply with request of the Ministry of Public Works and Transport.

24- **PROVINCIAL ROAD** referred to road with a medium of traffic:

- a- Road which a starting point from the municipal of a province to urban district or Khan.
- b- Road a junction from the National Road to Provincial road.
- c- Road a junction from the Provincial road or City road to urban district or Khan.
- d- Road which a starting point from the municipal of a province to provincial road.
- e- Road junction from the provincial road to provincial road.
- f- Road which a junction from the provincial road or city road or urban road in the provinces connecting to potential area such as port, train station, airport, special economy zoon, tourism destinations, bilateral border checkpoints, and other medium economies potential.

25- **CAPITAL ROAD, CITY ROAD, AND URBAN ROAD IN PROVINCES** referred to road which under

the jurisdiction of Phnom Penh Capital or Provincial administrative included carriageway, roadside, and sidewalk.

26- **RURAL ROAD** referred to:

- a- Road which a connecting from the National road to municipal, town of districts/Khan, communes or villages.
- b- Road which a connecting from municipal, town of district/Khan to municipal, town of district/Khan.
- c- Road which a connecting from municipal, town of district/Khan to communes/Sangkat.
- d- Road which a connecting from communes/Sangkat to communes/Sangkat.
- e- Road which a connecting from communes/Sangkat to villages.
- f- Road which a connecting from villages to villages.
- g- Road in villages.

27- **VEHICLE TERMINAL** referred to place of vehicles stopping in order that the passengers or other vehicles pass by or stop for loading and unloading goods or passengers.

28- **VEHICLE WEIGHTING STATION** referred to place who has build for the controlling of load vehicles.

29- **TECHNICAL REGULATIONS** referred to technical norms, technical standards, guidelines relevant technical works, works safety conditions and traffic safety conditions.

30- **ROAD OPERATORS** referred to road managers, road constructors, road controllers, funded providers or concessionaires who has developed and roads maintenance, transportation operators and road users, residents along roadsides, suppliers of materials, equipment and road facilities.

31- **ROADSIDE SERVICE STATION** referred to place for served traffic along roads such as petrol station, managing and providing information station, tourism area, rest area, and car repair garages etc.

32- **PARKING LOTS** referred to the leasing of vehicle in the state of motionlessness in long or short period in which the driver can leave the vehicle alone.

33- **REST AREA** referred to place for passengers' rest who has provided some restaurants, toilet, and information station.

34- **OVERLAP ROADS** referred to two roads or more roads on the land surface or difference land surfaces have a parallel direction, difference types and functions.

35- **BRIDGES** referred to constructions crossing water surface for the travelling from each location to another locations.

36- **OVERHEAD BRIDGE** referred to an overpass bridges on the ground level for travelling from each location to another locations which overpass all types constructions at difference locations and highest level.

37- **OVERPASS BRIDGES** referred to an overpass bridges on the ground level for travelling from each location to another locations which overpass on the roads or railroads at a location.

38- **TUNNELS REFERRED** to travelling on the roads located underground or under tunnels that has been defence walls.

39- **LAYOUT** referred to an original copy in order to archives.

## 4.2 Sub-Decree on Conditions and Procedures for License for Conducting Business on Sectors of Road Infrastructure and Road Maintenance

### KINGDOM OF CAMBODIA NATION RELIGION KING

Royal Government of Cambodia

No. 94 ANK.BK

Sub-Decree

On

**Conditions and Procedures for Requesting License for Conducting Business on Sector of Road Infrastructure, Road Maintenance, and Opening Road Sector Laboratory**

**Royal Government**

- Have seen the Constitution of the Kingdom of Cambodia;
- Have seen Royal Decree No. NS/RKT/0913/903 dated 24 September 2013 on the Appointment of the Royal Government of Cambodia;
- Have seen Royal Decree No. NS/RKT/1213/1393 dated 21 December 2013 on the Amendment and Supplement to the Composition of the Royal Government of Cambodia;
- Have seen Royal Kram No. 02/NS/94 dated 20 July 1994 promulgating the Law on Organization and Functioning of the Council of Ministers;
- Have seen Royal Kram No. NS/RKM/0196/03 dated 24 January 1996 promulgating the Law on the Establishment of the Ministry of Public Works and Transport;
- Have seen Royal Kram No. NS/RKM/0514/008 dated 04 May 2014 promulgating the Law on Road;
- Have seen Royal Decree No. NS/RKT/0409/413 dated 07 April 2009 on the Establishment of the Board of Engineers, Cambodia;
- Have seen Sub-Decree No. 14 ANK.BK dated 03 March 1998 on the Organization and Functioning of the Ministry of Public Works and Transport;
- Have obtained approval from the Plenary Meeting of the Council of Ministers on 10 July 2015.

**Hereby decides:**

**Chapter 1**

**General Provisions**

**Article 1.**

The Sub-Decree aims to promote the quality in construction, rehabilitation, maintenance, and development on sector of road infrastructures with sustainability, stability including the guarantee of transparency, integrity, equity and efficiency in participating in bidding of construction, rehabilitation, maintenance, and granting consultation service on technical of road construction for the all road infrastructure projects within the Kingdom of Cambodia.

#### **Article 2.**

This Sub-Decree has purpose to set out the conditions and procedures on the requesting for license to carry out the business on sector of road infrastructure, road maintenance, and opening road sector laboratory.

#### **Article 3.**

The scope of this Sub-Decree is applicable on state entity who implementing the work on sector of road infrastructure, and persons who carrying the business relating to sector of road infrastructure, road maintenance, technical consultation of road construction, project study, quality control on construction of road infrastructure, and opening road sector laboratory within the Kingdom of Cambodia.

#### **Article 4.**

Terms used in this Sub-Decree shall be defined as below:

- ROAD referred to whole parts of the road includes segment road, carriageway, shoulder or berm, bridges, overhead space above, overpasses, underpasses and ferry landing stage.
- ROAD INFRASTRUCTURE referred to right of way, road construction, vehicle terminal, vehicle parking yard, parking lots, roadside service station and rest area.
- ROAD CONSTRUCTION referred to roads, vehicles stopping station, parking lots, road facilities, workmanship, and other construction served for roads.
- ROAD DEVELOPMENT referred the development, construction, rehabilitation, and renovation of road excluding road maintenance.
- ROAD LICENSE is called License, referred to permit to carry business on sector of road infrastructure, road maintenance, technical consultation service on road construction, project study, quality control on construction of road infrastructure, and opening road sector laboratory.
- PERSONS referred to an individual or legal entity who carry the business on sector of road infrastructure, road maintenance, technical consultation service on road construction, project study, quality control on construction of road infrastructure, and opening road sector laboratory.
- PRE-QUALIFICATION referred to pre-evaluation on the quality, qualification of person in carrying business on on sector of road infrastructure, road maintenance, technical consultation service on road construction, project study, quality control on construction of road infrastructure, and opening road sector laboratory.
- GOVERNMENT UNITS referred to Engineering Unit of the Ministry of National Defense, Engineering Unit of Ministry of Interior, and other units of the Government who implement work relevant to sector of road infrastructure.

## **Chapter 2 Authority in Granting Road License**

**Article 5.**

Ministry of Public Works and Transport is the competent authority in granting road license for person carrying business on sector of road infrastructure, road maintenance, technical consultation service on road construction, project study, quality control on construction of road infrastructure, and opening road sector laboratory.

**Chapter 3  
Principles of Doing Business****Article 6.**

Persons who wish to carry out business on sector of road infrastructure, road maintenance, technical consultation service on road construction, project study, quality control on construction of road infrastructure, and opening road sector laboratory, shall apply for application completion at the Ministry of Public Works and Transport.

Form and sample of application shall be determined by the Prakas of Minister of Public Works and Transport.

**Article 7.**

Every business operation on sector of road infrastructure, road maintenance, technical consultation service on road construction, project study, quality control on construction of road infrastructure, and opening road sector laboratory must be licensed by the Ministry of Public Works and Transport.

**Article 8.**

Persons who apply for license, or renew license, or transfer license, or change the license holders shall pay for license fees.

Road License fee shall be determined by inter-ministerial prakas between Minister of Economy and Finance and Minister of Public Works and Transport.

**Chapter 4  
Conditions on Granting Road License****Article 9.**

Persons who is eligible to carry out the business on sector of road infrastructure, road maintenance, technical consultation service on road construction, project study, quality control on construction of road infrastructure shall comply with the following conditions:

- Shall have certificates or letter certifying the registration in commercial registry and the letter certifying their tax identification number;
- Shall have professional engineer, and engineer registered as civil engineering, and intermediate technician who is equipped with skill on the project study of bridge, road, components, measurement, construction materials, and site management or other relevant skills and shall recognized by Board of Engineers of Cambodia;

- Shall have work experience according to the subject of application. In case of legal entity as the company, such experience referring to company's experience;
- Shall comply with other technical provisions pursuant to Article 23 of Law on Road.

Alternatively, for persons who wishes to carry the business on road sector laboratory, shall meet the additional conditions below:

- Shall have professional engineer, and engineer registered as civil engineering, and intermediate technician who is skilled with construction materials or relevant skills on road and shall be experienced on relevant work recognized by Board of Engineers of Cambodia;
- Shall have sufficient testing equipment relating to road;
- Shall have work experience according to the subject of application. In case of legal entity as the company, such experience referring to company's experience;
- Shall comply with other technical provisions pursuant to Article 23 of Law on Road.

#### **Article 10.**

Road license is valid for 5 (Five) years commencing from its issuance date.

Sample of road license shall be determined by the Prakas on Minister of Public Works and Transport.

#### **Article 11.**

Persons obtained road license has the right to transfer the possessory rights on road license to third party or spouse or child or their legal representatives to bear the responsibility on behalf of them subject to prior approval from the Ministry of Public Works and Transport and shall comply with conditions and procedures stipulated under this Sub-Decree.

#### **Article 12.**

Persons who wish to continue the business shall submit application for their business renewal at least 3 (Three) months prior to license expiration date at the Ministry of Public Works and Transport as stipulated under Article 5 of this Sub-Decree by attached with the existing license and their annual work activity report. During the application for road license renewal, the business operation shall continue in operation until the date the Ministry of Public Works and Transport examine and approve to renew the license.

### **Chapter 5**

#### **Procedure of Granting, Transferring, Suspension and Revocation of Road License**

#### **Article 13.**

Ministry of Public Works and Transport shall decide on application for license, license renewal, transfer of road license holder to government units and all applicant who have properly completed the documents and pursuant to conditions and procedures stipulated under this Sub-Decree by not exceeding 30 (Thirty) working days from the date receiving the application.

In case the Ministry reject or not review the application as per stipulation under the above Paragraph 1 shall indicate the reason in writing to the applicant not exceeding 30 (Thirty) days

from the date receiving the application.

Procedure of review and assessment for granting the license, license renewal, transferring the license holder, rejection not to grant the license, shall be determined by the Prakas of Minister of Public Works and Transport.

#### **Article 14.**

Ministry of Public Works and Transport has the authority to suspend or revoke the road license in case the license holder does not comply to the subject of application or pursuant to the conditions of license or has transferred the holding rights without approval from the Ministry of Public Works and Transport or has not properly comply in accordance with the technical provisions provided under Article 23 of Law on Road.

Procedure of suspension or revocation of road license shall be determined by the Prakas on Minister of Public Works and Transport.

#### **Article 15.**

Persons who dissatisfied with the objection decision not to grant license, renew license, transfer of license, suspend license or revoke the license of road has the right to lodge complaint within 30 (Thirty) working days commencing from the date receiving the decision, to the Minister of Public Works and Transport or through other mechanism of the Royal Government or to the court according to the applicable legal proceeding.

### **Chapter 6 Separate Provisions**

#### **Article 16.**

Foreign legal entity who wishes to apply for license to carry out the business on sector of road infrastructure, road maintenance, technical consultation service on road construction, project study, quality control on construction of road infrastructure, and opening road sector laboratory shall have their representative attached with power of attorney indicating the legal rights and sign by the owner of enterprise or company. The representative agent shall have specific communication address and shall comply with formality and conditions provided under this Sub-Decree and other relevant law and regulations in force.

Domestic company and foreign company who are licensed shall ensure that the foreign engineer recruited by the company to work in the Kingdom of Cambodia has registered with the Board of Engineers of Cambodia.

#### **Article 17.**

Ministry of Public Works and Transport shall establish a classification list of all applicants who has applied for the license to file as the fundamental in monitoring, assessment, and conduct the pre-qualification in developing sector of road infrastructure, road maintenance, technical consultation service on road construction, project study, quality control on construction of road infrastructure, and opening road sector laboratory, and for filing as the basis for assessment, granting license renewal or remove from the official list for license.

Conditions and procedures of pre-qualification and classification of applicant for road license shall be determined by the Prakas of Minister of Public Works and Transport.

**Article 18.**

Government Unit who implements the work related to sector of road infrastructure shall apply for license pursuant to conditions and procedures determined by the Prakas on Minister of Public Works and Transport.

**Chapter 7  
Penalty**

**Article 19.**

Person who is carrying the business on sector of road infrastructure, road maintenance, technical consultation service on road construction, project study, quality control on construction of road infrastructure, and opening road sector laboratory without the license shall be subject to provisional fines according to the Law on Road.

**Article 20.**

Any person who falsifies the road license or other public documents for the purpose to obtain road license shall be punished according to the Criminal Code.

Suspension or revocation of business license or provisional fines shall not free the committed persons from civil responsibility and/or criminal responsibility as stipulated in the applicable law and regulations.

**Chapter 8  
Transitional Provision**

**Article 21.**

Upon the effective of this Sub-Decree, persons who have been operating the business on sector of road infrastructure, road maintenance, technical consultation service on road construction, project study, quality control on construction of road infrastructure, shall have the duration of 6 (Six) months to apply for road license pursuant to this Sub-Decree.

For the opening of road sector laboratory shall comply with Article 80 of Law on Road.

**Chapter 9  
Final Provision**

**Article 22.**

Any provisions contrary to this Sub-Decree shall be abrogated.

**Article 23.**

Minister in charge of the Council of Ministers, Minister of Economy and Finance, Minister of Public Works and Transport, all Ministers and Chief of all relevant institutions shall implement

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this Sub-Decree based on their function from the date of signature.

**Copied to:**

- Ministry of Royal Palace;
- General Secretariat of the Constitutional Council;
- General Secretariat of the Senate;
- General Secretariat of the National Assembly;
- General Secretariat of the Royal Government;
- Cabinet of Prime Minister;
- Cabinet of Deputy Prime Minister;
- Same as Article 23;
- Royal Gazette;
- Achieves-Chronology

Phnom Penh, 22 July 2015

**Prime Minister**

**Signed and Sealed**

**Samdech Akka Moha Sena Padei Techo Hun Sen**