

Law & Insurance

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Part 1

Commercial Legal Principles

1

Introduction to Law on Commercial Enterprise

A. History

The history of the Law of Cambodia stems from its political history. At the time of independence from the French in 1953, Cambodia had a reasonably strong functioning legal system made up of laws and institutions introduced by the French, together with century-old customary law which applied mainly in rural areas. However, unlike many “ex- colonial” countries, Cambodia was unable to build its own legal infrastructure from this promising beginning. Revolution and civil wars destroyed the existing structures and eliminated professionals and officials capable of administering the laws. From the early 1970’s onwards, the administration of the state was inevitably linked to one-party political regime and raw military power. In 1993, a new Constitution proclaimed “a multi-party liberal democratic regime guaranteeing human rights and the respect of law”. Whether these aspirations on paper can be put into practice remain to be seen. The legacy of nearly two decades of socialist rule backed by military power is proving hard to shake off.

Regardless of legal systems a country adopts - whether Civil or Common, Liberal or Communist Law – the sources of law can be categorized into two: the internal and external sources.

The internal sources: refer to the national sources in which the local legislative or executive body, such as National Assembly, has been adopted.

- Constitutional law;
- Laws adopted by the National Assembly (Chhbab);
- Royal decrees (Reach Kret);
- Sub-decrees (Anu-kret);
- Ministerial proclamations (Prakas);
- Decisions (Sach k’dei Samrach);
- Circulars (Sarachors);
- Jurisprudence;
- Customs;
- Religious rules;
- Famous theory of jurist.

The external sources: refers to international sources of law which the international bodies or communities have made for the common interest of all nations. This type of sources has to be respectively ratified by the national legislative body in order to incorporate it into the national laws. These laws take the same effect as local legislations.

- International treaty, e.g. Universal Declaration of Human Rights etc.
- Convention, e.g. Child Rights Convention etc.
- International principle of law
- International custom, e.g. international customary trade principle.
- Pact, e.g. investment pact with Japan, Khmer Rouge Tribunal pact, Mekong Sub-region electricity pact.

- Memorandum, e.g. Memorandum on the Extradition between the Kingdom of Cambodia and the Kingdom of Thailand.

Even though Cambodia is a sovereignty state which independently upholds its own legislations, there is a provision in Cambodia laws which allow the incorporation and use of international legislations. Which law takes precedence over the other remains doubtful for it may vary from one legal area to another.

There is a case where international law is being placed above the local law. For instance, Art. 31 of the 1993 Cambodian Constitution stated clearly that Cambodia recognizes and obeys human rights as guaranteed in the United Nations Universal Declaration of Human Rights as well as all related conventions on rights of women and children. In addition, there is also a case where the international law stays lower level than the local law. For example, Art. 67 of the Cambodian Copyright Law promulgated on March 03rd 2003 stated that every international treaties that Cambodia is a party to can be acquired for uses when there is a lack of national sources governing these matters.

B. Legal Personality

Principally, there are two types of person recognized at law – natural/physical person and legal person. Regardless of type, each person has rights, obligations and liabilities that are guaranteed or enforced by law.

B1. Natural Person

Generally, upon birth every child is considered a natural person but whether they are competent for obligations and liabilities or not, further examination shall be done.

By law every individual who is 18 years old or above, not suffering from mental disability either by accident or at birth, shall be considered as a competent natural person who has legal rights, obligations and liabilities under the law (i.e. compulsory military services), agreement (i.e. contract) or non-agreement (i.e. negligent act).

In contrast, any person who is mentally disabled regardless of whatever age or a minor aged below 18 years old is at law recognized as an incompetent person. Such person is incompetent to enjoy such rights and bear such liabilities. The legal liabilities and rights will be born by their parents or legal guardians.

B2. Legal Person

Legal persons can be either public or private institution. There is a separate set of laws that govern public institution but the focus in this compilation is private institutions.

The majority of private legal persons are commercial companies which as stated in Art. 1 of the Cambodian Law on Commercial Enterprise can be a private limited or public limited company. Commercial enterprise can be formed as partnership – general partnership or limited partnership, company – public limited company or private limited company and sole proprietorship.

The insurance company is public limited company¹ and it is not only governed by insurance law but also other relevant provisions in the commercial law and regulations of Cambodia, read Art. 73 of

¹ Art. 45, Insurance Law 2000

Insurance Law. The insurance company is therefore under the commercial enterprise law recently adopted in 2005 as this law only excludes private limited company that provides financial services including bank, insurance and finance company².

C. Nature of Company

Public Limited Company is a form of limited companies that is authorized by law to issue securities to the public³. This kind of company consists of more than 30 shareholders. Its process and form is the same as the private limited company.

Art. 88 of the Law on Commercial Enterprise defines securities as:

- a share of any class and series of share of company
- a bond
- a certificate evidencing a security

Private Limited Company is a form of limited companies that meets the following requirements⁴:

- Shareholders: 2 or 30 shareholders
- Cannot issue securities to the public and shares is not offered to the public in general but to the shareholders' family/managers
- May have one or more restriction on its class of shares
- Registered with the Commercial Registrar as prescribed and provided by the Ministry of Commerce.

D. Formation of Company

One or more competent natural or legal person may establish a Limited Company by filing an Art. of incorporation with the director. The articles of incorporation shall contain the following information⁵:

- The name of the company
- The company's Registered Office in the Kingdom of Cambodia
- The objectives of the company and any restrictions on the business. Company objectives may include one or more types of businesses not contrary to any provision of law
- The authorized capital to be stated in national currency
- The classes and any maximum number of shares and the par value per shares that the company is authorized to issue
- If the company is authorized to issue more than one class of shares, the Art. of incorporation shall state the maximum number of shares and the par value per share and shall describe the rights, privileges, restrictions and conditions attached to each class
- If a class of shares may be issued in series, the Art. shall authorize the directors to fix the number of shares in each series, to determine the designation of each series, and to determine the rights, privileges, restrictions and conditions attached to each series

² Art. 85, Law on Commercial Enterprise 2005

³ Art. 87, Law on Commercial Enterprise 2005

⁴ Art. 86, Law on Commercial Enterprise 2005

⁵ Art. 93, Law on Commercial Enterprise 2005

- If the issue, transfer or ownership of shares of the company is to be restricted, a statement to that effect and a statement as to the nature of such restrictions
- The name and complete address of each shareholder
- The number of directors, or the maximum and minimum number of directors of the company

Furthermore, the articles may also include any provision that is necessary. For instance, the Articles may include the procedure of annual meeting or voting.

D1. Formality of the articles

The articles may be executed either through a private agreement or through a notary. The articles shall be signed or initiated by all the shareholders⁶. An incorporator shall submit the articles attached with other documents to the Director of Companies who in turn forwards them to the relevant authority for registration.

D2. Certificate of Incorporation and Effect

After accepting the articles of incorporation for filing, and after receiving the filing fee, the Director of Companies shall issue a certificate of incorporation. A company comes into existence and acquires legal personality on the date shown in the certificate of incorporation. Company will take its effect from the signature date.

E. Capacity and Rights of the Company

E1. Capacity of the Company

Internal Territorial Capacity

A company has the capacity, rights and privileges to carry on its business throughout the Kingdom of Cambodia⁷.

External Territorial Capacity

A company has the capacity to carry on its business, conduct its affairs and exercise its rights in any jurisdiction outside the Kingdom of Cambodia to the extent that the laws of such jurisdiction permit⁸.

E2. Nationality of the Company

A company shall be deemed to be of Khmer nationality only if⁹:

- The company has a place of business and a registered office located in the Kingdom of Cambodia
- More than 51% of the voting shares of the company are held by natural or legal persons of Khmer nationality

F. Restricted Business or Powers

A company shall not carry on any business or exercise any rights that are restricted by its articles, nor shall the company exercise any of its rights in a manner contrary to its articles¹⁰. Put it simply, a

⁶ Art. 95, Law on Commercial Enterprise 2005

⁷ Art. 99, Law on Commercial Enterprise 2005

⁸ Art. 100, Law on Commercial Enterprise 2005

⁹ Art. 101, Law on Commercial Enterprise 2005

company's Art. is an initial provision that clearly stated the company's scope of business and activities. All related affairs shall be consistent with the company's Art..

G. Registered Office, Books and Records

G1. Registered Office

At all times, a company shall have a registered office in the Kingdom of Cambodia, located in the place specified in its articles. Upon such change of address, notice on a prescribed form shall be sent to the Directors of the Company within 15 days of the change¹¹.

G2. Corporate Records

A company shall prepare and maintain, at its registered office, records containing¹²:

- Articles and by-laws, and all amendments thereto
- minutes of meetings and resolutions of shareholders
- copies of all notices required to be sent or filed in accordance with this law
- a securities register

Shareholders and creditors of the company, their agents and legal representatives and the Director of Companies may examine the corporate records described above during the usual business hours and may take extracts free of charge.

If the company is a public limited company, any other person may take extracts of the corporate records by paying a reasonable fee¹³.

Types of Records

Director records

A company shall prepare and maintain adequate records and records containing minutes of meetings and resolutions of the directors and any committee of directors. The Directors records shall be kept at the registered office of the company or at such other place as the directors think fit and shall at all reasonable time be open to inspection by the directors¹⁴.

Accounting records

A company shall prepare and maintain adequate accounting records for a period of ten (10) years after the end of the financial year to which the records relate. If accounting records are kept at a place outside the Kingdom of Cambodia, copies of these accounting records shall also be kept at the registered office¹⁵.

Company's duty to preserve records

A company and its agents shall take reasonable precautions to ensure that company books and records are maintained in an accurate and properly preserved condition, read Art. 114 of the Law on Commercial Enterprise 2005.

¹⁰ Art. 103, Law on Commercial Enterprise 2005

¹¹ Art. 108, Law on Commercial Enterprise 2005

¹² Art. 109, Law on Commercial Enterprise 2005

¹³ Art. 110, Law on Commercial Enterprise 2005

¹⁴ Art. 112, Law on Commercial Enterprise 2005

¹⁵ Art. 113, Law on Commercial Enterprise 2005

H. Company Structure and Meeting

H1. Company Structure: Director and His Office

Chairman of the Board

The board of directors shall elect a chairman from among its members. By a majority vote of the directors, the chairman may be removed from the office of chairman however not from his position as a director¹⁶.

Director

- Number of Directors - A private limited company shall have one or more directors. A public limited company shall have at least three (3) directors. Shareholders shall elect directors by ordinary resolution of shareholders who have the rights to vote¹⁷.
- Qualifications of Directors - Any legally competent natural person over eighteen (18) years old may serve as a director or officer of a company. A director is not required to be a shareholder or to meet any other qualification unless the articles or bylaws¹⁸ impose specific qualifications on them.
- Term of Office for Director - If the articles do not provide a term, each director shall be elected for a term of two (2) years and may be re-elected¹⁹.
- Power of Directors - The directors shall oversee the management of the business and affairs of the company. The articles of incorporation shall provide for the rights of the directors namely:
 - Appoint and remove all officers and determine the specific rights for such officers
 - Set the salaries and other compensation of such officers
 - Fix the salary or other compensation for directors and submit them to shareholders for approval
 - Issue notes, bonds, debentures and other evidences of debt of the company and fix their absolute, relative and contingent characteristics
 - Propose to shareholders the amendments or annulments to the Art. of incorporation
 - Propose to the shareholders an agreement of merger or consolidation between the company and any other person
 - Propose to the shareholders the sale of all or major part of the company's assets
 - Propose to the shareholders a dissolution or liquidation of the company
 - Declare dividends in accordance with accounting principles and the terms of payment of each class of shares entitled to receive dividends
 - Issue shares in the company to the extent authorized in the articles of incorporation and bylaws
 - Borrow money
 - Issue, reissue or sell security of the company
 - Give a guarantee on behalf of the company

¹⁶ Art. 127, Law on Commercial Enterprise 2005

¹⁷ Art. 118, Law on Commercial Enterprise 2005

¹⁸ A Company may adopt bylaw that regulates company's affairs or business, read Art. 102, Law on commercial Enterprise 2005.

¹⁹ Art. 120, Law on Commercial Enterprise 2005

- Mortgage, hypothecate, pledge or otherwise create a security interest in all or any property of the company to secure any obligation of the company
- Close account books of each financial year and propose the annual profits for submission to the shareholders and shareholders' general meeting.
- Staggered terms for directors - Terms of directors may be staggered so that all their terms do not end in the same year²⁰.
- Classes of directors - the articles may also confer on the holders of each class of shares the right to elect one or more directors who shall serve the terms and shall manage other affairs provided by the Art.. The terms of office and voting power of directors of any such class may be greater or less than those of any other class of directors²¹.
- Removal of director - a director may be removed with or without cause by a majority of the shareholders entitled to vote for the director²².
- Resignation of director - a director may resign at any time by giving written notice to the company. The resignation shall take effect immediately or at the time stated in the notice. A director who is the last director remaining in office, and who resigns before another director has been appointed shall be liable for damages caused to the company by his resignation²³.
- Continuation in office - A director may continue to serve after his term expires until a replacement has been elected²⁴.

Director may resign at any time from his office however such written notice must be made to the company. The resignation may take immediate effect or at the time stated in the notice. The last director remaining in the office shall be liable for any damages caused to the company by his resignation if he had left office before the appointment of new director²⁵.

H2. Company's Meeting

Shareholders' Organizational Meeting

The initial directors shall organize the first shareholder's general meeting within one (1) year after the company is formed. Notice of the meeting shall be given in writing at least twenty (20 days) in advance to those persons entitled to attend the meeting. The notice shall state the date, place, and agenda of the meeting²⁶.

Calling meetings

The chairman has the right to call directors' meetings. One-third of the total number of serving directors may call a director's meeting. Unless the articles or bylaws provide otherwise, the board meeting shall be conducted within the Kingdom of Cambodia. The board of directors shall be held at least once every three (3) months. The adoption of the Board Directors Resolution shall be decided base on the majority vote of the members or representatives that were presented in the meeting²⁷.

Notice of meetings

The board of directors may meet at any place as stated in the notice. The notice shall state the date and agenda of the meeting.

²⁰ Art. 122, Law on Commercial Enterprise 2005

²¹ Art. 123, Law on Commercial Enterprise 2005

²² Art. 124, Law on Commercial Enterprise 2005

²³ Art. 125, Law on Commercial Enterprise 2005

²⁴ Art. 126, Law on Commercial Enterprise 2005

²⁵ Art. 125, Law on Commercial Enterprise 2005

²⁶ Art. 117, Law on Commercial Enterprise 2005

²⁷ Art. 128, Law on Commercial Enterprise 2005

In the absence of notice of meeting, directors may waive the notice. In the meeting, directors may voice their objection to any business decision on the ground that such meeting is not called according to the law²⁸.

I. Dissolution of Company

Nothing lasts forever, so does a company's life. Upon such financial crisis, company may choose to dissolve itself or declare bankruptcy under the supervision of court.

Below is the general process when such dissolution will take place.

After approval of a resolution to liquidate and dissolve, the company shall send a statement of intent to dissolve in prescribed form to the Director of Companies. On receipt of a statement of intent to dissolve²⁹, the Director of Companies shall issue a certificate of intent to dissolve. Upon issuing the certificate of intent, the company shall cease to carry on business except to the extent necessary for the liquidation, but its legal personality continues until the Ministry of Commerce issues a certificate of dissolution.

Notice of Intent to Dissolve

After issuing a certificate of intent to dissolve, the Director of Companies shall:

- immediately send notice of intent to dissolve to each known creditor of the company
- immediately publish notice of intent to dissolve for two (2) consecutive weeks in a newspaper published or distributed in the place where the company has its registered office, or in other publications as provided by regulations from the Ministry of Commerce

Liquidation

After issuing a certificate of intent to dissolve, the company shall:

- collect its property
- dispose of properties that are not to be distributed in kind to its shareholders
- discharge all its obligations
- do all other acts required to liquidate its business

After giving the notice of intent to resolve, and adequately providing for the payment or discharge of all its obligations, the company shall distribute its remaining property, either in money or in kind, among its shareholders according to their respective rights.

Supervision by court

The Director of Companies or any interested person may, at any time during the liquidation of a company, apply to a court for an order that the liquidation be continued under the supervision of the court.

An applicant shall give the Ministry of Commerce notice of the application, and the Director of Companies is entitled to appear and be heard in person or by counsel³⁰.

²⁸ Art. 129, Law on Commercial Enterprise 2005

²⁹ Art. 253, Law on Commercial Enterprise 2005

³⁰ Art. 256, Law on Commercial Enterprise 2005

Dissolution

After the liquidation is completed, the company shall prepare articles of dissolution. Articles of dissolution in prescribed form shall be sent to the Director of Companies. On receipt of articles of dissolution, the Director of Companies shall issue a certificate of dissolution. The company ceases to exist on the date shown in the certificate of dissolution³¹.

³¹ Art. 257, Law on Commercial Enterprise 2005

2

Law of Contract

A. Definition

Contract is a mutual and wilful consent between two or more people to create, modify or terminate one or more rights and obligations related to them³².

Particularly, people here can be either:

- Natural person; or
- Legal person where representative will enter into contract on behalf of them.

B. Validity of Contract

A contract is considered valid only if it is³³:

- **Real and free agreement:** There must be meeting of the mind between the parties, in addition, offer and acceptance must be properly communicated and made with free will.
- **Made by capable parties** (recognized at law)³⁴: 18 years of age or older and not suffering from mental disorder. However, minors may validly enter into a contract of necessity for their daily life such as buying food or paying motor taxi fee etc.
- **Specified free agreement of subject matter that is certain, possible to perform, lawful and consistent with social order and good social customs:** Subject matter must be in existence and possible for performance. It must be stated clearly what obligation and right are bound by the parties and up to what extent. In addition, the contract must not be illegal or in contradiction with the public order or interest, i.e. gambling or smuggling contract is illegal contract.

C. Formation of Contract

Contract can be done in either verbal or written form³⁵. Every contract of value exceeding 5,000 Riels (~USD1.25) has to be in writing. And all contracts have to be in line with³⁶:

- Honesty;
- Social morality; and
- Equity – by not excessively exploiting the other party's interest³⁷.

The contract cannot be made in order to exceedingly take advantages of the other party of the contract. With regard to this point, many countries adopt the **“Consumer Protection**

³² Art. 1, Decree Law # 38 on '(Non)Contractual Liabilities' 1988

³³ Art. 3, Decree Law # 38 on '(Non)Contractual Liabilities' 1988

³⁴ Art. 14, Decree Law # 38 on '(Non)Contractual Liabilities' 1988

³⁵ Art. 4, Decree Law # 38 on '(Non)Contractual Liabilities' 1988

³⁶ Art. 2, Decree Law # 38 on '(Non)Contractual Liabilities' 1988

³⁷ Art. 11, Decree Law # 38 on '(Non)Contractual Liabilities' 1988

Law” aiming at preventing the exploitation of the buyers by the sellers. Basically, the principle of equity will come into play when there is a great exploitation taking place.

As for the form of the contract, in current practice, parties are the authors of the contract and lawyer or legal consultant may be asked to assist in document preparation as there is no particular standard form issued by the ministry or any authorized bodies.

D. Void and Voidable Contract

Void contracts are any contract that is ³⁸:

- Against law, public order or custom, i.e. contract to hire people to assassinate others, contract to smuggle drugs, contract to hire a woman to have sexual relationship or bear a child for the family etc.
- Against public interest or social morality, i.e. contract to sell daughters/sons, contract on pornographic films, contract on prostitution or contract on slavery etc.
- Whose obligations cannot be performed, i.e. life insurance contract for the decease.

Voidable contract refers to any kind of contract that has³⁹:

- No real agreement or free consent.
- Incapacitation of one or more parties.

It is worth noting that a contract will be considered as no-real agreement if it contains⁴⁰:

- **Mistake** – mistake as to the substance of the object which is the subject-matter of the contract. Mistake as to person cannot be a legal ground for voiding the contract unless it related mainly to the subject matter.
- **Duress or Violence** - can be a legal ground for voiding the contract if it causes bodily or emotional injuries on:
 - Parties to the contract;
 - Parties’ Spouse; or
 - Relatives (whether ascendants or descendants).
- **Fraud** – where there are acts of deception, dishonesty, or misrepresentation committed by one party to the contract.

In particular, by reference made to Art. 13 of the Decree Law # 38 ‘party who claimed to void contract under the above reasons shall bear the burden of proof to the court of law’.

E. Contract & Insurance

Insurance is a commercial contract between the insured and the insurer. In exchange for a premium consideration, the insurer undertakes to indemnify the insured in the event of loss directly caused by a peril or perils as specified in the policy. An insurance contract shall follow the principle of Fairness, Mutual Benefit and Social Interest.

³⁸ Art. 5, Decree Law # 38 on ‘(Non)Contractual Liabilities’ 1988

³⁹ Art. 6, Decree Law # 38 on ‘(Non)Contractual Liabilities’ 1988

⁴⁰ Art. 7, Decree Law # 38 on ‘(Non)Contractual Liabilities’ 1988

Insurance contract is governed by the Insurance Law, other related insurance regulations, and Decree law # 38. Being commercial in nature, the contract of insurance follows general principles that govern other commercial contracts.

Parties in the Insurance Contract

The parties in the insurance contract are⁴¹:

- Insurer – insurance company, agents and brokers; and
- Insured – persons who enter into an insurance contract with an insurer.

Obligations of the Parties

Referring to article 5 and 6 of Sub-Decree on Insurance, there are some obligations imposed on the insurer and insured:

- The insured has the following obligations:
 - Pay premium to the insurer in full amount;
However, the payment can be made either in full or instalments as agreed between the parties⁴²;
 - Take reasonably immediate action to notify the insurance company upon an occurrence of claim;
 - Cooperate with insurer in giving material information and documents related to the claim.
- The insurer has obligations to:
 - Indemnify for any loss or damage upon the claim occurrence, which is accidentally caused by coincidence, natural disasters, or any reasons which are not the wilful acts of the insured.
Insurance principally provides coverage to only any accidental damages yet the insurer may extent to cover damages by natural disaster or may exclude it up to what have spelled out in their policy schedule.
 - Pay claim up to the degree of damage and sum insured in a timely manner.

F. Other Contracts under Decree Law # 38

There are several types of contracts such as sale contract, interest bearing loan contract, secured personal property, contractor contract, carrier contract, contract for Suretyship, bailment contract, and etc. Bailment contract is the focus of this study due to its relevance in insurance, in particular the innkeeper's liability aspect. Sale contract is also relevant, but will be discussed in the next chapter.

F1. Bailment Contract

A bailment contract is a contract whereby a person called the "bailee" keeps in custody the personal property of another person the "bailor" gratuitously or for a fee, and returns that property to the bailor or to a person clearly designated by the bailor at a specified time or at the time when the property is demanded back. As a fundamental rule, if no fee is specified in the contract, a bailee shall receive no fee.

⁴¹ Art. 5, Sub-Decree on Insurance 2001

⁴² Art. 11, Sub-Decree on Insurance 2001

F2. The duties and responsibilities of the bailee

A bailee must preserve and return the bailed property at a specified time or at the time when the bailor demands it back. Additionally, the bailee is not entitled to use the bailed property without the authorization of the bailor.

A bailee is liable for any damage or loss to bailed property resulting from fault on the part of bailee. However, if the bailed property is damaged or lost by reason of a force majeure, no compensation shall be awarded.

If the bailment is for a fee and the bailed property is lost by reason of theft, a bailee is bound to pay compensation. In case, the bailment is gratuitous and the bailed property is lost through theft, the bailee is not bound to pay compensation if the bailee has sufficient evidence proving that he carefully safeguards the bailed property.

However, a hotel owner, store owner or restaurant owner is liable for the loss through theft of the property of its guests or customers where such property is kept in the custody of the hotel, store or restaurant owner.

3

Law on Sales of Goods

Commercial code contains a set of law that deals with commercial transaction. One of the most important laws in this area is the law on contract. Another one is the law governing the sales of goods. In Cambodia, however, there is no commercial code in existence. Instead, all the laws dealing with commercial transactions are contained in Decree 38 on contracts and non-contractual obligations.

Decree Law # 38 was enacted on October 28, 1988, during a time when Cambodia was not yet a free market economy. The wordings of the law reflect the economic reality of that time, and therefore, we may find certain provisions that are inconsistent with the free market economy of today. For instance, in the law of contract, there is a provision that a party to the contract should not take advantage of another. The benefit accrued to each party should be fair and reasonable. It could be said that the intention of the law was to prevent abuse and exploitation. In a free market economy, however, the law does not protect a party who makes a bad bargain by, for example, paying higher price than the market. Even though in a free market economy, such protection is not provided by statute, the principle of equity will emerge into play to maintain fairness and justice.

Suffice to say, Chapter Two, Section I of Decree 38 provides the basic laws governing sale contracts. The relevant articles are Art. 34 to 55, which applies to all sale contracts.

A. Definition

Art. 1 defines “Contract” as a freewill agreement between two or more persons to create, modify or terminate rights or obligations related to them.

Art. 34 defines “Sales” as the transfer of ownership of goods or transfer of right from one person to another in return for money or other rights.

A “Sale Contract” is, therefore, a freewill agreement to transfer ownership of goods or rights from one person to another in return for a consideration. For there to be a valid contract, there must be an agreement which consists of an offer and an unqualified acceptance.

A sale contract is void if:

- The goods were obtained illegally, whether from a serious or minor criminal act
- The seller has no ownership to the goods, e.g. leasee enters into a contract to sell property that he had leased from other - the actual owner. Such contract shall be held void.
- The goods have multiple owners, and the other owners do not consent to the sale.
- It is between spouses, i.e. sale contract made between husband and wife is considered void but it shall not be void if it is between parents and children or between relatives.

The reason behind is that every Cambodian spouse is automatically considered to adopt the Joint Property System unless they choose otherwise after their legal registration of marriage. This automatic consideration makes the Joint Property System the most common system that governs property and ownership rights of wives and husbands. In effect, every property is considered to be jointly owned by the spouses unless it is obtained through inheritance.

The rationale for the above can be found in Art. 1 and 31 of the Cambodian Marriage and Family Law 1989. It defines marriage as a contract whereby the husband and wife voluntarily agree to live together and have the duty to love, care, obey and help each other to achieve prosperity and happiness. Thus, it would bring complication if husbands and wives are allowed to enter into a commercial sale contract with a motive for profit. Disputes that could arise would jeopardise the good relationship between the spouses. Critically, it would be in contradiction with the spirit of this provision.

With respect to this matter, Cambodia Land Law 2001 also stipulated that contract between spouses are unenforceable, read Art. 67.

Sale contracts between the spouses can produce some negative legal effect to a certain extent. For example, the husband owes money to the creditor for some reasons. The latter tries to seize the former's car who later sells to his wife in order to escape from the car seizure. At this point, the contract is void. Nevertheless, this kind of contract would become enforceable at law if a very strong evidence of contractual intention can be found. For instance, the husband can sell an inherited diamond ring to his wife so long as he can prove that this ring is actually his own property gained by inheritance or otherwise.

B. Obligations & Rights of Sellers

B1. Quality of Goods

It is the obligation of the seller to ensure quality of the goods before delivering to the hands of the buyer on the date of delivery. The seller cannot change features or modify the goods in any way, because it changes the original offer. Once the offer is changed, the original agreement is no longer valid.

The seller is responsible for damages to the goods before delivery. The buyer can annul the sale contract if the goods are lost or severely damaged and a replacement is not available. If the contract is canceled, the buyer can claim for damages for the lost or damaged goods as a result of the seller's errors or omissions.

The law does not make it clear what it means by delivery. If the goods are delivered to the buyer by a carrier, does delivery here refer to the handover of goods to the carrier or the final delivery by the carrier to the buyer? It is important that the parties specify their obligations clearly in the contract to avoid such ambiguity. If such clause is absent from the contract, the court would decide based on trade custom and the circumstance of the case.

All features, conditions of the goods, and ownership rights must be made known to the buyer. In addition, the seller must also handover documents describing those conditions of the goods to the buyer. Hidden conditions or those not obvious to the buyer must also be made known.

The buyer may void the sale contract or reduce the price if they discover undesirable hidden defects. The seller has one year after the delivery of goods to rebut the claim. By remaining silent, the seller is considered to have waived his right to rebut.

B2. Quiet Possession

The buyer is entitled to enjoy his goods free of interferences from a third party. The interferences include threat of lawsuits from a third party to claim back ownership of the purchased goods. If such case happens, the buyer may call for immediate guarantee from the seller. Provided the seller

manages to silent the interference, no compensation of damage is incurred. Otherwise, the seller will be responsible for all costs incurred, including cost to defend the case.

If the case is lost to the third party, the seller is obligated to return the money paid to the buyer in addition to making restitution for damages caused which include the cost to form the contract and other expenses. If the seller dies, the heirs of the seller will take over the responsibility.

The buyer may also cancel the contract if he discovers that the goods are obtained illegally.

B3. Multiple Sellers, Multiple Buyers

This case happens when the buyer purchase the goods for resell to another party who in turn purchase the goods for resell to even another party. In the event of claim, the end buyer claims from his seller, and not from the original seller. The process repeats itself until it reaches the original seller.

C. Rights and Obligations of Buyers

The buyer has to make payment at the place and time agreed in the contract. If the contract does not specify a payment date and time, payment shall be made upon delivery of the goods.

Interest rate for late payment shall not exceed 5% per annum. If the contract does not specify an interest rate, the buyer may pay only the price of the goods. But if benefits or profits are made from the unpaid goods, the seller has the right to charge an interest rate not exceeding that specified by the law (5%).

Any interference such as a lawsuit to the quiet possession of the goods will give the buyer the right to delay payment.

As long as the full payment is not made, the seller can always annul the sale contract. If such case arises, partial payment plus interest must be returned to the buyer. The goods and benefits accrued thereof must also be return to the seller.

4

Law of Tort

A. What is Tort?

Generally speaking, though Cambodia does not have an elaborate law on tort, tort's concept has been included in its regulation, specifically Decree Law # 38 on (Non)Contractual Responsibility, section Non-contractual Responsibility and some in Land Law promulgated on August 31, 2001. For the time being, there are some provisions concerning the torts in the draft civil code.

Torts can be categorized into three types:

- Trespass;
- Negligence; and
- Nuisance.

Trespass

Trespass takes three main forms:

- Trespass to person;
- Trespass to goods;
- Trespass to land.

Trespass to person

Trespass to person is any act affected to the person physically or emotionally. It takes three forms:

- Assault;
- Battery;
- False imprisonment.

Assault

Assault can take the form of threatening or putting the victim in fear violently. Cambodian law does not mention assault. Regarding this point, there's a provision in the UNTAC law about "Indecent Assault": any person who sexually assaults another person of either sex by touching, caressing...is guilty of the misdemeanor of indecent assault.

Battery

Battery is the intentional hurt or damage to the victim by using violent force. Shooting or hitting the victim is the best example of battery. Usually, assault and battery go together as every assault does not necessarily lead to battery while battery is linked to assault. However, they can be mutually exclusive. In the UNTAC law, it is labeled as "battery"⁴³.

False imprisonment

⁴³ Art. 41, UNTAC Law 1992

Any person without order from the court authorities who catches, detains, or imposes physical restraint to any person will be penalized for “false imprisonment”⁴⁴. “Imprisonment” may be in a prison, a house, a locked room, cubicle etc. It is a felony act occasionally committed by the police or local authorities but more generally by kidnappers.

UNTAC Law 1992 has a specific provision regarding false imprisonment. Art. 35 of this law stated that any person, without order or authorization from the court, arrest, imprison or refrain someone shall be punishable at law:

- 10 years in jail if that false imprisonment act is longer than one month.
- 3 – 5 years in jail if that false imprisonment act is lesser than one month.

Trespass to goods

It is defined as “wrongful interference with goods”. Even though in the Cambodian law context no specific law mentions about trespass to goods, it is concluded in the Criminal Act, UNTAC law. Someone may be sued for trespass to goods when he damaged the goods of another regardless of whether it is intentional or otherwise. If it is intentional, it is penalized in the criminal law “wrongful damage to property” - which is considered at law as a Misdemeanor - for 1 to 3 years in prison or lower punishment from 2 to 12 months for minor damages or where the property cost is of low value, Art. 52 of UNTAC law.

Also, it is considered as trespass to goods when someone receives or buys goods belonged to another and additionally he is not aware that it is a stolen goods. If that property owner demands the return of goods and the former refuses to give it back, the latter can sue for obtaining or concealing stolen goods.

Conversion

Any person who steals or attempts to steal the property of another either natural or legal person must be penalized in prison from 6 months to 5 years⁴⁵.

Trespass to land

Trespass to land takes three forms:

- Unlawful entry onto the land of another;
- Unlawfully remaining on the land of another;
- Unlawfully placing or throwing any material object upon the land of another.

In the land law of Cambodia, the owner of immovable property (land) cannot use his property in order to disturb or harm a third party, particularly his neighbors. The simple usage of the land in a way permitted by the law is considered not to be a disturbance. There is a provision giving rights to the owner of the land to cut the tree branches or pick the fruits of his neighbor which spread to his land without any legal consequence.

If the trespasser deliberately makes plantation or build houses on the land of the legal owner without permission, the owner has the right to keep those things or asks the trespasser to remove them from the land.

⁴⁴ Art. 35, UNTAC Law 1992

⁴⁵ Art. 43, UNTAC Law 1992

In case the owner asks the trespasser to dismantle the building or remove the plantation, the expenditure incurred for so doing is born by the trespasser and there is no remedy available for the trespasser.

Negligence

Decree Law #38 on the Non-Contractual Liability: any person who causes damages to others by reason of his own fault shall be liable in compensation for such damage. Even though the damage is caused by involuntary acts such as carelessness or negligence, the offender shall be liable, reads Art. 121.

Nuisance

Presently, there is no law governing this matter except the draft civil code which Art. 152 provides as below:

A landowner who wishes to carry out activities on his land that may create a nuisance with regard to neighbouring parcels, such as drilling, boring or digging, or who wishes to install or store on his land equipment or materials that are dangerous, inconvenient or unsanitary, shall comply with specially established rules that regulate the distance at which such activities, equipment or materials may be located or the measures that must be taken.

B. Who is Capable for Tort Liability?

Natural Person

Person who has committed wrong to other and causes economic loss, mental and bodily injury shall bear the legal liability for compensation. This was guaranteed by Art. 121 of Decree Law # 38 'Any one who had caused damaged to others has to be liable for that action regardless of whether it is by negligence, recklessness or carelessness'.

In case of incompetent natural person such as Minor or Unsound minded person does something wrong which causes damages to the other, the result would be different. Art. 122 of Decree Law # 38 stipulates that mentally disabled person and minor below 14 years old are incapable persons and they have no legal liability for their action. So their parents or guardians (and any related person recognized at law, e.g. employer) shall be personally liable for what is owed by the incapable persons under their charge, read Art. 123.

Person between 14 to 18 years old will be held responsible for their wrongful act to the other, yet their parents may be collectively or solely responsible for compensation if the minor is insolvent.

Besides, the owner, caretaker or person in charge of animals is by law liable for any damages caused to others by such animals while under their control or while such animals had escaped or lost, read Art. 127 of Decree Law # 38.

Legal Person

Public or private institutions, organizations or enterprises are held responsible for any damages caused by a wrongful act of their employees or workers in connection with their business. Plus, employer is legally liable for compensation to any third party who suffered damages from their employee's act in the course of employment.

C. Defenses in Tort

Those who commit wrong to other can escape liability if they can prove that⁴⁶:

- The incident occurred by force majeure; or
- The victim is solely wrong.

Assumption of Risk - Any damage that arises from *assumption of risk* by the victim that is not against social interest, no compensation will be imposed⁴⁷.

On the other hand, the tortfeasor (a person who commits a tort) can have his liability reduced if there is a proof that such act is contributory negligence either by him, other tortfeasors or the victim.

Contributory Negligence - In a case where the damage is caused partly by the victim, he shall be liable for his part of that damage⁴⁸. This refers to the contributory fault between the defendant and the plaintiff. Specifically speaking, the defendant will proportionately compensate the victim based on the fault of the victim. Likewise, in case where there are many persons who jointly commit the tort, all parties must accept the proportional liability according to their contribution in the negligence act, read Art. 129 of Decree 38. And if one of the contributors had fully paid the compensation, he then shall be granted the right to claim money back from the other contributors up to their due proportion.

D. Tort and Insurance

Insurance provides cover only for cases where such event happened by accident without any willful act of the insured, for insurance is all about insuring risk, the future uncertainty, beyond human's control. Else the risks may not be insurable.

E. Strict liability

Sometimes a person may be held liable even though their actions are neither intentional nor negligent. We call this "Strict liability" or in other words "no-fault" liability.

Decree law # 38 also raises the point: any person who causes damages to others by reason of his own fault, shall be liable in compensation for such damage. Even where the damage is caused by involuntary acts such as carelessness or negligence, the offender shall be liable.⁴⁹ Also, the defendant still holds strict liability for his hazardous items. For example, a flower pot in his balcony dropping from the second floor on passerby.

Decree law # 38 states that owners of pets/animals, or person who uses such animals, shall be liable for damage caused to others by such animals while under their control or where such damage occurs at any time when such animals escape or are lost.

Property owners, on the other hand, shall be liable for damage caused to others if such damage is due to the owner's negligence by failing to properly maintain, control or repair the property.

⁴⁶ Art. 133, Decree Law # 38 on '(Non)Contractual Liabilities' 1988

⁴⁷ Art. 134, Decree Law # 38 on '(Non)Contractual Liabilities' 1988

⁴⁸ Art. 132, Decree Law # 38 on '(Non)Contractual Liabilities' 1988

⁴⁹ Art. Decree law # 38

Vicarious liability

Vicarious liability comes to play when there is a relationship between master and servant, for instance, employer and employee. This kind of liability is included in the Decree law # 38 which says that state, social, collective organizations or enterprises shall be liable for damage resulting from the actions of their officials, staff, or workers at the time of employment or while performing work for their employer.

G. Defamation

In the context of Cambodia Law, defamation is provided in the criminal law – i.e. UNTAC law. Some countries codified it into the civil code, and some do not. Cambodia is an example of a country which incorporates it into the criminal law. Penalty for defamation previously took the form of imprisonment or fine, but in the present day time, it has been amended and restricted to fine without any imprisonment from 1 million Riel to 10 million Riel only or approximately USD2,500. The following is an extract of defamation provision in UNTAC law:

Any bad faith or imputation of a given fact which harms the honor or reputation of an individual is defamation.

The original publication or reproduction of the allegation or imputation is punishable, even if it refers to a person who is not explicitly named but whose identity is made evident from the defamatory speech, shout, threat, writing, printing, sing, poster, or audiovisual dissemination.

Any allegation or imputation against a public figure which the author, the journalist, publisher, editor, or producer knows to be false and nevertheless distributes, publishes, writes or circulates with malicious intent is also a defamation.

Any insult, contemptuous remark or abusive languages which do not claim to impute fact constitute libel.

Imprisonment for defamation had a strong negative effective on society especially the free press and freedom of speech of individuals. This had been the case for Cambodia when it was used as a political instrument to detain individuals accused of defamation which is a criminal offence under the UNTAC law.

The other extreme – i.e. limit defamation to civil offence only – is equally undesirable because rich people may slander or libel others freely knowing that the most they could lose is the compensation to winning party. This is particularly true as political parties may use the media to their advantage and pollute the political environment. Having said that, it can be seen the negative effect is not acceptable.

The law has to regard defamation as a criminal offence in order to prevent those bad effects on the society. Being a criminal act, people will be more careful or take precaution with respect to what they say or write simply because their money cannot help them if they commit defamation. They will have to pay a fine (which will go to the state budget), compensate for the winning party's reputation and emotional damages, and most importantly have their name registered in the criminal record.

5

Law of Employment & Labour

A. Work-related Accident

An accident or illness is work-related if it happens to an employee:

- Due to work;
- During working hours;
- While they are traveling directly to or from home or work as long as the trip was neither interrupted nor a detour made for personal reason.

An accident may be work-related regardless of who is at fault in relation to the accident. Occupational illnesses are also considered to be work-related accidents.

Every manager of an enterprise shall manage or appoint someone to take all appropriate measures to prevent work-related accidents.

The victim or his beneficiaries are entitled to compensation from the manager of enterprise or the employer in the event of work-related accidents inflicting on him and resulting in temporary incapacitation.

Compensation for fatal accidents or for accidents causing permanent disability is paid to the victim or his beneficiaries as an annuity. Supplementary compensation is granted to victim who requires constant care from another. In the event of incapacitation, compensation shall be paid no later than the fifth day after the accident.

B. Strike

A strike is a concerted work stoppage by a group of workers that takes place within an enterprise or establishment for the purpose of pressuring their employer into meeting their demands as a condition for their return to work.

The rights to strike and to a lockout are guaranteed. It can be exercised by one of the parties to a dispute in the event that they reject the arbitral decision.

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

Freedom of work for non-strikers shall be protected against all from of coercion or threat. A strike suspends the labour contract. During strike, allowance for work is not provided and salary is not paid.

During a strike, the employer is prohibited from recruiting new workers as replacement for the strikers except when required to maintain minimum service.

B1. Strike Procedure

Prior notice

A strike must be preceded by prior notice of at least seven working days and be filed with the enterprise or establishment. If the strike affects an industry or a sector of activity, the prior notice must be filed with the corresponding employer's association, if any. The prior notice must precisely specify the demands which constitute the reasons for the strike. In addition, prior notice must be sent to the Ministry of Labour.

During the notice period, the Labour Minister shall actively seek all means to conciliate between the parties to the dispute, including soliciting the collaboration from other relevant ministries.

Minimum Service

During the notice period, the parties to dispute are required to attend a meeting in order to arrange the minimum service in the enterprise where the strike is taking place so that protection of the facility installations and equipment of the enterprise will be assured.

Essential Services

If the strike affects an essential service, of which an interruption would endanger or be harmful to the life, safety, or health of the public, the prior notice shall be extended to a minimum of 15 working days.

During the notice period, the Labour Minister shall determine the minimum essential service to be maintained so as not to endanger the life, health or safety of persons affected by the strike.

B2. Illegal Strike

Illegal strikes are those that do not comply with the procedures set out in the Labour Law. Also, non-peaceful strikes are illegal. The common courts have sole jurisdiction to determine the legality or illegality of a strike. If the strike is declared illegal, the strikers must return to work within 48 hours from the time when this declaration is given out. A worker who, without valid reason, fails to return to work by the end of this period is considered guilty of a serious misconduct.

Lockout

A lockout is a total or partial closure of an enterprise or establishment by the employer during a labour dispute.

The right to a lockout shall be exercised under the same provisions as the right to strike.

A lockout undertaken in violation of labour law obligates the employer to pay the workers for each day of work lost.

National Insurance

A general insurance system required for work-related accidents shall be set up. This system shall be managed by the National Social Security Fund.

Part 2
Insurance Law

6

Insurance Law & Regulations

A. The History of Insurance Market Development

The history of Cambodian insurance market dated back to the colonial era in 1950s during which French insurance companies maintained operation. After independence, state-owned insurance company SNAR - Societe National d'Assurance et Reassurances - carried on the business until 1975 and ceased operation when the Khmer Rouge seized control of the country.

For many years after the Khmer Rouge regime, no insurance business was in operation. In 1990, state-owned Caminco was established and was the first to conduct insurance business after independence. However, due to the lack of human resources, technical experience and capacity, Caminco was not very active despite being the first and only company in the industry.

The lack of law on insurance meant that Caminco was the only authorized and registered insurance company at that time. Caminco acted as an insurance provider as well as the regulator. Many companies that followed later were either agents or an insurance entity under its legal supervision.

In 1994, Indochine Insurance started its operation as an agent of Caminco. This was followed by Asia Insurance in 1995 with the great majority of shares owned by Asian Insurance International (Holding). In 1999, Forte Insurance entered the industry as another agent of Caminco. The lack of technical expertise on the part of Caminco had resulted in many local agents bypassing Caminco and placing insurance directly with offshore companies.

In 2000, Insurance Law was enacted by the National Assembly. It required all insurance companies to have registered capital of SDR 5,000,000 (or USD 7,000,000 using a fixed exchange rate). 10% of the registered capital must be deposited at the National Treasury. Many agents eventually transformed themselves into full-fledged insurance companies after fulfilling the capital requirement.

In 2002, Cambodia Re was established to accept reinsurance business from local providers. It is stipulated in the law that 20% of all risks must be ceded to Cambodia Re. Initially, the state owned and operated Cambodia Re, but later on in 2004, it was transformed into a joint-venture with Asian Insurance International (AII).

In October 2004, Indochine Insurance was forced to close down by the authority for failing to comply with capital requirement as stipulated in Insurance Law of Cambodia.

After the demise of Indochine, only three companies have been in operation namely Forte, Asia and Caminco. The absence of Indochine did not negatively affect the industry. In fact, the industry grew rapidly in line with the growth of the overall economy. Gross premiums more than quadrupled from \$2.4m in 1999 to \$10.8m in 2005. And it will continue to grow in many years to come.

High growth potential is attractive to local and foreign companies alike who are looking for investment opportunity in the insurance industry. Two companies are expected to enter the market soon. It will be interesting to see how the new entries will shake up the competitive landscape.

B. Establishment of Insurance Company

Art. 7 of the Cambodian Insurance Law adopted in July 25, 2000 stated that ‘every insurance company is under legal control of the Ministry of Economy and Finance and governed by the related law in Cambodia.’

Only licensed company can run an insurance business in Cambodia⁵⁰. Every insurance company has to register itself at the relevant ministry and fulfill the requirements as shown below.

B1. Type of Insurance Company

Insurance company can be in a form of Public Liability Company only⁵¹. It can be either state owned, private or joint venture which has to comply with the relevant statute for public enterprises. Insurance companies have to be in line with license granted by Ministry of Economy and Finance⁵².

B2. Registered Capital

To obtain a license, an insurance company must have a minimum registered capital according to the type of insurance business⁵³:

- Life insurance : 5 Million SDR
- General insurance : 5 Million SDR
- General + Life insurance : 10 Million SDR

SDR or Special Drawing Right is an international reserve asset created by the IMF in 1969 to supplement the existing official reserves of member countries. At the time of writing (July 9th, 2007), the exchange rate is USD1.52 per SDR. However, the ministry fixes it at 1.4. So 5 million SDR is equivalent to USD 7,000,000.

The IMF maintains daily updates of exchange rates to major currencies on its website at: http://www.imf.org/external/np/fin/data/rms_five.aspx.

B3. Required Cash Deposit

An insurance company is required to deposit cash at the National Treasury of Cambodia the amount of 10% of the registered capital till the business operation ceases and not lower than 50% of the registered capital deposited at any recognized bank in Cambodia as a solvency margin of the company. However, when the cash is not sufficient for the insurance operation, the concerned company may further use the solvency margin⁵⁴.

Solvency Margins – Solvency margin, as defined in Art. 56 of the Sub-Decree on Insurance, is a reserved fund for claims settlement unexpectedly occurred or the settlement of claim which is more than the reserve fund the company created from the insurance premium collected. The minimum of solvency margin shall be defined according to the significance of each type of the insurance company as follows:

- For the Life **or** General Insurance Company, the minimum of solvency shall be:
 - a. fifty percent (50%) of the duly registered capital for the initial year of operation;

⁵⁰ Art. 8 , Insurance Law 2000

⁵¹ Art. 45 , Insurance Law 2000

⁵² Art. 49 , Insurance Law 2000

⁵³ Art. 46 , Insurance Law 2000

⁵⁴ Art. 53 , Sub-Decree on Insurance 2001

- b. 13,300 million Riels when total insurance premium revenue does not exceed 66,500 million Riels after deduction of total reinsurance premium of previous fiscal years;
 - c. twenty percent (20%) of total insurance premium gained in previous fiscal year when the total insurance premium gained is from 66,500 million Riels to 332,500 million Riels after deducting total reinsurance premium of previous year; and
 - d. 66,500 million Riels plus ten percent (10%) of insurance premium surplus which is more than 332,500 million Riels generated by deducting the total reinsurance premium of previous year from the total insurance premium.
- For the Life **and** General Insurance Company, the solvency margin shall be at least 26,600 million Riels.

Punishment - For any insurance company which does not comply with the above stated solvency margin shall be punishable under Art. 53 of Insurance Law⁵⁵:

- Riels 10,000,000 (Ten million Riels) to Riels 50,000,000 (fifty million Riels) fine; and
- The license shall be revoked.

B4. Insurance License

To be a legal authorized company running insurance business in Cambodia, each company must apply for a license in which an initial authorization letter has a 5 year mandate. The next letter of renewal request of 3 years shall be sent to notify the Ministry of Economy and Finance 1 month prior to expiry. This license is not alienable⁵⁶.

The first license fee varies according to the type of insurance company⁵⁷:

- General Insurance 50,000,000 Riels
- Life Insurance 50,000,000 Riels
- General + Life Insurance 100,000,000 Riels

Fee for renewal license will be stated in the Prakas of Ministry of Economy and Finance.

Art. 65 of Sub-Decree further stated that from the date receiving license if an insurance company fails to register with the commercial register within six (6) months without any valid reasons, such license will automatically become invalid. And the ultimate decision of such license revocation would bring insurance company to a legal dissolution⁵⁸.

Temporary License – To cater to the current market’s condition, the Cambodian Government has issued an Instruction Circular on Issuance of Temporary Insurance License which allows the Ministry of Economy and Finance to issue temporary insurance license. Applicants for temporary license are required to meet the following conditions:

⁵⁵ Art. 53 (2), Sub-Decree on Insurance 2001

⁵⁶ Art. 49, Sub-Decree on Insurance 2001

⁵⁷ Section 7, Prakas No. 864 on License to Insurance Company and Branch of Foreign Insurance Company, November 23, 2001.

⁵⁸ Art. 72, Sub-Decree on Insurance 2001

- a) Abiding by the existing law and sub-decree on insurance and regulations and Prakas promulgated by the Ministry of Economy and Finance in each phase related to the insurance formalities, contents and structures.
- b) Paying a deposit of 10% of the registered capital of USD 7,000,000.00 into the deposit account of the Ministry of Economy and Finance at the National Bank of Cambodia.
- c) Paying the required solvency deposit of USD 3,500,000.00 in five phases into a separate account at any commercial banks recognized by the National Bank of Cambodia:
 - Year 1: USD 350,000.00
 - Year 2: USD 525,000.00
 - Year 3: USD 700,000.00
 - Year 4: USD 875,000.00
 - Year 5: USD 1,050,000.00
- d) Reinsuring with the reinsurance company 'Cambodia Re' twenty percent (20%) of their insurance services.
- e) With respect to the profit, the license shall not be allowed to distribute dividends to their shareholders when the companies have not met the solvency requirement of USD 3,500,000.00. To avoid distribution of dividends in indirect or other ways, all reinsurance agreement or other contract with shareholders or their branches shall be subject to the examination by the Ministry of Economy and Finance in case of suspicion.

Fee for the temporary license is 10,000,000.00 Riels with one year validity and takes effect from the date of signing the license.

In case of non-compliance with the law, the Ministry will send a written notice to the license holder to demand an explanation. Failure to provide satisfactory explanation within 15 days will be ground for the Ministry to revoke the license.

B5. Company Meeting

Within 3 months after the end of each financial year, the insurer has to submit records of ordinary general meeting, reports of auditor and board of directors to the Ministry of Economy and Finance.

B6. Report Submission

The insurer has to prepare its monthly business statistics submitted to the Ministry of Economy and Finance for examination no later than the 15th day of the subsequent month⁵⁹ including the following⁶⁰:

Business Transactions

- Number of insurance policy issued to clients dividing into classes of business
- Inception date of each insurance policy
- Expiry date of each insurance policy
- Total sum insured
- Insurance premium rate
- Discount rate

⁵⁹ Please refer to heading 5 of the Instruction Circular on Issuance of Temporary Insurance License, December 09, 2002

⁶⁰ Art. 95, Sub-Decree on Insurance 2001

Claims Settlement

- Number of insurance policies with loss records
- Nature of loss and claim amount paid
- Nature of loss and outstanding claim amount

Reinsurance – every reinsurance arrangement has to be reported annually to the Ministry of Economy and Finance. Report on reinsurance that is already audited shall be submitted to the ministry within three (3) months after the end of the fiscal year. Also, the report should follow a standard format as approved by the Ministry⁶¹.

Annual Financial Report – within six (6) months after the end of each calendar year, Insurance and Reinsurance Company have to submit the audited financial reports as well as other necessary documents of the company to the Ministry of Economy and Finances, read section 18, Prakas no. 193 on Solvency of Insurance Company, April 01, 2005.

It is notable that according to the provision stated under heading 6 of the Instruction Circular on Issuance of Temporary Insurance License dated December 09, 2002, the Company's Audited Financial Reports of the previous year shall be submitted to the Ministry during period of three (3) months after the end of each year. So basically these two provisions are contradict one another on the time frame for report submission. But since the Prakas on Solvency of Insurance Company is in higher hierarchy and is recent than the Instruction Circular, then actual time shall be six (6) months after the end of each year.

C. Compulsory and Non-Compulsory Insurance

C1. Compulsory Insurances

According to the Sub Decree on Insurance dated 22 October 2001, Compulsory Insurances are listed as following:

- Motor Insurance;
- Insurance for Passengers Transportation;
- Insurance for Construction Site;
- Marine and Aviation Insurance; and
- Insurance for Labour case.

Motor Insurance:

Certain motor vehicles are required to have third party liability insurance. These motor vehicles include⁶²:

- All types of motor vehicles used for commercial purpose, for transporting goods, passengers and tourists within the kingdom of Cambodia
- All types of motor vehicles belonging to companies, enterprises and factories
- All types of motor vehicles of Non-Governmental Organizations, International Organizations and Associations
- Cement mixers moving from one place to another by its own or by being towed

⁶¹ Section 10, Prakas no. 193 on Solvency of Insurance Company, April 01, 2005

⁶² Art. 31, Sub-Decree on Insurance 2001

- Tricycles used for commercial purpose or transporting goods or passengers

The insured motor vehicles must have a certificate of insurance as well as a sticker posted on the windshield⁶³.

Within 60 days, motor vehicle owners holding existing licenses of transport business shall purchase the compulsory third party liability insurance else the General Direction of Transport or Provincial-Municipal Department of Public Works and Transport shall temporarily suspend or revoke the applicable license and technical certificate until this insurance obligation is fulfilled⁶⁴.

The minimum amount of insurance coverage required under the compulsory motor vehicle or third party liability insurance shall be as follows⁶⁵:

- a) For motor vehicles with four or more than four wheels:
 - USD 5,000.00 at the minimum per person for bodily injury or death;
 - USD 25,000.00 at the minimum per occurrence for bodily injury or death;
 - USD 10,000.00 at the minimum for property damage.
- b) For motor vehicles with less than four wheels:
 - USD 5,000.00 at the minimum per person for bodily injury or death;
 - USD 12,500.00 at the minimum per occurrence for bodily injury or death;
 - USD 5,000.00 at the minimum for property damage.

Note: In Art. 33 of the above Sub-Decree, Third Party does not include:

- vehicle owner
- driver
- caretaker
- person living under direct responsibility of vehicle owner

Insurance for Passenger Transportation:

Every company that is licensed to operate a transportation business in Cambodia must have insurance covering their passengers transported either by road, sea, river, air or railroad.

The minimum amount of compulsory passenger liability shall be as follows⁶⁶:

- USD 5,000.00 at the minimum per person for bodily injury or death;
- USD 50,000.00 at the minimum per occurrence for bodily injury or death;
- USD 1,000.00 at the minimum for property damage;
- USD 100,000.00 at the minimum per occurrence for bodily injury or death for owners of any transport vehicles with a capacity of 10 passengers or more;

⁶³ Art. 36 and 37, Sub-Decree on Insurance 2001

⁶⁴ Section 9, Inter-Ministerial Prakas on Compulsory Motor Vehicle of Third Party Liability Insurance, October 16, 2002

⁶⁵ Section 3, Inter-Ministerial Prakas on Compulsory Motor Vehicle of Third Party Liability Insurance, October 16, 2002

⁶⁶ Section 3, Compulsory Insurance for Passenger Transportation, October 16, 2002

- USD 250,000.00 at the minimum per occurrence for bodily injury or death for owners of any transport vehicles with a capacity of 50 passengers or more.

Construction Insurance:

All constructions, rehabilitations, installations or erections under the responsibility of entrepreneurs, contractors or sub-contractors shall have construction liability insurance.

Exemption in part or whole may be agreed by the Ministry of Economy and Finance if they can prove to the Ministry that they can settle liability claims quickly and sufficiently.

All constructions, rehabilitation of existing constructions, and installations cannot be started if no insurance is in place⁶⁷.

However, the following types of constructions are exempted from the compulsory insurance requirement⁶⁸:

- Construction performed by a government entity;
- Constructions, rehabilitation of existing constructions, and installations that are under the responsibilities of a legal entity engaged in a public work for the interest of the public and that the Ministry of Land Management, Urban Planning and Construction and Ministry of Economy and Finance can confirm quick and adequate settlement of any liability;
- Small scale construction which does not require a construction permit.

The construction liability insurance protects the interest of any third party:

- living around the construction site; or
- passing through/nearby the construction site.

And it shall cover all accidents regardless of whether they are physical injury or property damage caused by the owner, contractor or sub-contractor of the construction site, read Art. 40 of the Sub-Decree on Insurance.

The minimum amount of third party construction liability insurance coverage shall be as follows⁶⁹:

- USD 5,000 at minimum per person for bodily injury or death;
- USD 25,000 at minimum per occurrence for bodily injury or death;
- USD 10,000 at minimum for property damage.

Note: In case that a transport vehicle with third party liability insurance cause an accident at an insured construction site, the motor vehicle insurer shall settle any claims first, and the construction site insurer shall settle any subsequent claims if the insurance terms of the construction site is applicable in this case, read section 9 of the Inter-Ministerial Prakas on Compulsory Insurance of Construction Site.

Marine and Aviation Insurance: will be determined in a specific Sub-Decree⁷⁰.

⁶⁷ Section 4, Inter-Ministerial Prakas on Compulsory Insurance for Construction Site, October 16, 2002

⁶⁸ Section 2, Inter-Ministerial Prakas on Compulsory Insurance for Construction Site, October 16, 2002

⁶⁹ Section 3, Inter-Ministerial Prakas on Compulsory Insurance for Construction Site, October 16, 2002

⁷⁰ Art. 38, Sub-Decree on Insurance 2001

Insurance for Labour Case:

A general insurance system required for work-related accident shall be set up. This system shall be managed by the National Social Security Fund⁷¹.

Notes: Art. 8 of Insurance Law stipulates that every insurance which is beneficial to physical or legal persons being the insured and which have insurable interest over the subject matter – whether life or non-life – can enter into the contract only with the insurance companies that is duly registered and licensed to operate insurance business within the Kingdom of Cambodia only.

C2. Non-Compulsory Insurances

Besides the above mentioned insurance, there are many other types of insurances such as:

- Personal Accident insurance;
- Property insurance; and
- Life insurance etc.

Personal Accident Insurance:

In case the applicant does not provide his/her true age:

- Insurer may cancel the policy within 2 years and refund the remaining premium. (Art. 23 of Sub-Decree on Insurance 2001); and
- If this misrepresentation causes the insurer to charge a premium lower than actual price, then the insurer has the right to:
 - Ask the insured to make up the premium; or
 - Pay the benefit according to the percentage of the premium paid, Art. 24 of Sub-Decree on Insurance.
- On the other hand, if this misrepresentation causes the insured to pay more than the actual price, the insurer shall return the excess amount to the insured, Art. 25 of Sub-Decree on Insurance.

Life Insurance

Life insurance is not yet operational in Cambodia. The Ministry of Economy is the process of developing the necessary laws and regulations for life insurance business. At this stage, they consult with foreign experts and major stakeholders in the industry to try to develop a set of laws that deliver the benefits to all at minimal cost. The Ministry expects life insurance business to be operational in 2008. However, given the progress of the legislations and readiness of the market, the introduction of life insurance may be pushed beyond 2008.

Property Insurance

Succession - If the insured died, his property shall be under ownership of the heir who has duty to notify the insurer for endorsement issuance so that insurance will be transferred to his name. On the other hand, the heir and insurer have the right to cancel the first insurance policy⁷².

Sale - The insurance shall be valid to the new owner of the subject matter insured if such owner immediately notifies the insurer and asks for endorsement to officially transfer the existing insurance to his name.

⁷¹ Art. 256, Labor Law 1997

⁷² Art. 20, Sub-Decree on Insurance 2001

And in the case that the insured (ex-owner) fails to notify the insurer through a registered letter or a letter with duly certified acceptance then the burden of paying premium shall still be born by him. On the other hand, the new owner and insurer may choose to cancel the policy as agreed⁷³.

D. Pillars of Insurance

According to the current Cambodia Insurance Law, several principles in insurance industry have been introduced in insurance business in Cambodian context:

- **Utmost Good Faith** - Insurance contract deems null and void if it breaches the principle of utmost good faith by having concealed the truth, wilfully misrepresented material facts which lead to change of the subject matter⁷⁴.
- **Insurable Interest** - The insured must have an insurable interest in the subject matter. An insurable interest means an interest or benefits to which the insured has the right in relation to property, life or body of an individual⁷⁵.
- **Indemnity** – The insurer bears a liability to indemnify the insured for any loss or damages as being agreed in the insurance contract⁷⁶.
- **Subrogation** - Upon fully indemnified, the insured shall give subrogation rights to the insurer to claim against the third party. But the insurer cannot claim against the descendant, ancestors, relatives by marriage, and managers and employees who are living in the residence of the insured, except when it is a malicious case caused by them⁷⁷.

For subrogation against party related to the insured, market agreement generally restrict the right of the insurer. The insurers generally agree not to subrogate against the insured's immediate family or employers because such exercise of right will result in no benefit to the insured, e.g. compensation to the insured is claimed back from the immediate family. This waiver of subrogation rights is written in the contract, and varies from insurers to insurers.

- **Proximate cause** - Only damages arising from the risk covered under the policy are payable⁷⁸.
- **Contribution** – the law does not have any provision on contribution. There is, however, an Art. stating that the financial compensation should not exceed the value of the subject matter insured. It implies that the insured cannot recover more than the full indemnity unless otherwise agreed with the insurer.

E. Reinsurance

The current Cambodian law does not prohibit insurance company licensed in this country in extra transaction as reinsurer, for Art. 60 of Sub-Decree on Insurance ruled that all insurance company can operate the reinsurance for:

⁷³ Art. 21, Sub-Decree on Insurance 2001

⁷⁴ Art. 20, Insurance Law 2000

⁷⁵ Art. 16, Insurance Law 2000

⁷⁶ Art. 3, Insurance Law 2000

⁷⁷ Art. 28, Insurance Law 2000

⁷⁸ Art. 19, Insurance Law 2000

- Outward reinsurance; and
- Inward reinsurance.

In the case where outward reinsurance is needed, the local reinsurance company shall be given priority⁷⁹ which means that the insurer shall at first consider their ceding to the internal reinsurer. Insurance company is required to cede the surplus amount to reinsurer if:

- The retention of insurance premium for property insurance company for each operating year shall not exceed four times its present capital and reserved fund combined⁸⁰. The surplus shall be reinsured.
- The maximum liability for each risk insured by the insurance company shall not exceed ten percent (10%)⁸¹ of the present capital and reserve fund combined.

E1. Outward Reinsurance

- **Mandatory Reinsurance** - Except for life insurance, every insurance company is mandated to cede twenty percents (20%) of each policy written to the State Owned Reinsurance Company⁸².
- **Voluntary Reinsurance** - Other than the compulsory cession to the state owned reinsurer, the insurance company is free to additionally cede the risks to any competent reinsurers.

E2. Inward Reinsurance

At the time of writing, excluding the state owned reinsurer, there has been no local insurer which expands itself as a reinsurer. Still, Cambodia insurance market is expected to grow quickly and local insurance companies may eventually have the capacity to become reinsurer.

F. Others

F1. Premium Warranty

Failure to pay premium within 30 days from the signed date will allow the insurer to cancel the policy⁸³.

- Within the first 20 days, the insurer may send a reminder notice to pay premium.
- For the remaining 10 days, the insurer has the right to cancel the policy.

F2. Time Limitation

Time limitation for claim settlement provided by the policy shall not exceed three (3) years from the occurrence, read Art. 25 of Insurance Law 2000.

This Statute of limitation shall be terminated by the agreement of both parties, after the survey report of the loss adjusters is finalized.

F3. Premium Refund

There are specified cases where insurer will return the premium to the insured:

⁷⁹ Art. 63, Sub-Decree on Insurance 2001

⁸⁰ Art. 61, Sub-Decree on Insurance 2001

⁸¹ Art. 62, Sub-Decree on Insurance 2001

⁸² Art. 67, Sub-Decree on Insurance 2001

⁸³ Art. 18, Insurance Law 2000

- The insured may terminate the insurance contract before the expiry date however they must provide 10 day prior notice. Insurer shall refund 90% of the remaining premium based on reasonable grounds.

Nonetheless, in case of requesting to terminate the insurance after the occurrence of the risk and the company has already paid the claim, the insurance company shall not refund the insurance premiums for the remaining period⁸⁴.

- In case of suspension for a major repair, a notice shall be delivered by the insured to the insurance company at least ten (10) days in advance. The insurance company shall refund 90% of the insurance premium for a period of suspension⁸⁵.
- If the insured is bankrupt before the expiry date specified in the insurance contract, a notice of such event shall be delivered to the insurance company at least ten (10) days prior to the declaration of such bankruptcy by a registered letter or a letter with a duly acceptance. The insurance company shall refund 90% of the remaining premium⁸⁶.
- Following a notification through a formal letter to the insurance company within twenty four (24) hours after the resale, the seller shall have rights to withdraw 90% of the insurance premium for the remaining period if the new owner does not come forward and request to continue the contract by officially transferring the insurance into his own name⁸⁷.
- In case of total loss of the subject matter caused by an uninsured risk, the insurer has to refund 90% of the pro-rata premium for the remaining validity of the policy⁸⁸.

F5. Usage of Reserve Fund

Insurance company shall use at least seventy five percent (75%) of its reserve fund to reinvest in the Kingdom of Cambodia⁸⁹.

F6. Alienability of Written Policies

Art. 69 of Sub-Decree on Insurance: with approval from the Ministry of Economy and Finance, all insurance companies may transfer part or total the unexpired insurance portfolios, which are acceptable to one insurance company or more as agreed.

⁸⁴ Art. 12, Sub-Decree on Insurance 2001

⁸⁵ Art. 13, Sub-Decree on Insurance 2001

⁸⁶ Art. 14, Sub-Decree on Insurance 2001

⁸⁷ Art. 22, Sub-Decree on Insurance 2001

⁸⁸ Art. 27, Insurance Law 2000

⁸⁹ Art. 66, Sub-Decree on Insurance 2001

7

Agency

A. Definition

Agency is created when a person called agent acts on behalf of another person called principle. In the Cambodian context, Law of Agency is stipulated both in general and specific law.

A1. Definitions of agency

Referring to the draft civil code of Cambodia, agency is defined as a relationship where a representative – the agent – enters into a contract with another party by stating that he is acting on behalf of a principal within the scope of the agency contract.⁹⁰ The effects of the contract are attributed directly to the principal. An agency can be created by contract between the principal and the agent.

A2. Nature of agency

There are two kinds of agents in insurance - insurance agent and insurance broker.

In the Insurance Law, an insurance agent is a natural person or legal entity who receives insurance commission from insurance company and manages the insurance business on behalf of the insurance company under a clearly specified mandate.

An insurance broker is a legal person who carries out insurance business for the benefit of the Insured, providing the intermediary services between the insured and the insurance company. A broker concludes an insurance contract and collects brokerage commission.⁹¹

B. Formation of insurance agent

Any person either natural or legal who intends to be an insurance agent or broker must submit an application for business license, attached with other required documents to the Ministry of Economy and Finance. They are not permitted to operate the agency business without a proper license.

B1. Validity of License

The license for insurance agents has **3 year validity** from the date of issuance whereas that for the insurance brokers has 1 year validity from the date of issuance. These licenses are not transferable under whatever circumstances.

The insurance agents and brokers must apply for renewal at least one month before the expiration of license to Ministry. In this period the insurance agent still can operate their business.

Any person either natural or legal who holds an agency license and wish to do business with more than one insurance company must inform the Ministry of Economy and Finance in writing.

B2. Solvency

Licensed insurance agents must deposit the amount of **US\$ 10,000** at the National Treasury of Cambodia. Licensed brokers must deposit the amount of **US\$ 50,000** at the National Treasury of

⁹⁰ Art. 361 of civil code draft.

⁹¹ Art. 50 of Insurance law 2002.

Cambodia. Addition, the insurance broker prior to the commencement of its business shall have professional liability insurance with sum insured equivalent to **US\$ 500,000** (five hundred thousand US dollars) evidenced by a photocopy of the insurance certificate to be sent to the Ministry of Economy and Finance.⁹²

C. Rights and Liabilities of Agents

Each insurance company has to limit the rights, liabilities, process, and other conditions for both agents and brokers through their agency agreement.

The brokers at fault, who cause damages or loss to the insured, have to bear the liability for compensation up to the actual damages to the insured⁹³.

⁹² Art. 85, 86 of Insurance law 2002.

⁹³ Art. 83 of Insurance law 2002.

Part 3
ADR & Litigation

8

Alternative Dispute Resolution

A. Definition

“Alternative Dispute Resolution” or ADR is a term that refers to the process in which a variety of methods or techniques are used to solve disputes without litigation. Negotiation, mediation, and arbitration are the common resolution processes of ADR programs.

Negotiation is a process in which the disputants attempt to reach the mutual agreement without the intervention of a third party. Mediation refers to a resolution mechanism with the intervention of an impartial third party, but does not impose binding solutions. Arbitration procedure authorizes a third party to decide the cases.

Based on these definitions, ADR systems have non-binding and binding decisions. Negotiation and mediation are non-binding while arbitration system is either binding or non-binding.

There are many kinds of ADR but in Cambodia the ADR takes the form of conciliation, negotiation or mediation. In the world of commercial business ADR is a significant way to maintain and strengthen the business relationship. For instance, the businessmen prefer conciliation to negotiate their business dispute rather than settle it through the court. Typically, they will ask the lawyer to find a resolution method either through mediation or negotiation.

B. Arbitration

In many countries arbitration has been increasingly used as a method of settling disputes arising out of contracts. Generally, parties to a contract agree in a specific clause to dispute settlement by a neutral, impartial arbitrator, based on the evidence and arguments provided by both parties. The arbitrator is chosen by the parties. The decision of the arbitrator, or award, has the same legal effect as a court judgment.

Currently, in Cambodia, there is arbitration council for labour disputes, but only for the collective labour disputes. The council does not entertain individual dispute and the service provided is free of charge.

The law on Commercial Arbitration was adopted in 2006 in order to facilitate impartial and prompt resolution of commercial disputes in accordance with the wishes of the parties, to safeguard the legal rights and interests of the parties, and to promote the sound development of the economy.

It is to be noted that prior to the adoption of the law, arbitration was also used to solve the disputes in Cambodia despite the absence of law on that aspect. Usually, this was done through a lawyer or senior officials of Ministry of Commerce or Ministry of Finance appointed by the disputed parties to find the solution for them.

B1. Arbitration Agreement

In order to process the arbitral tribunal, there must be arbitration agreement. The arbitration agreement shall be in writing. An agreement is in writing if it is contained in a document signed by

the parties or in an exchange of letters, or other means of electronic telecommunication (telexes, telegrams, faxes) which provide a record of the agreement⁹⁴.

B2. National Centre of Commercial Arbitration

An independent National Arbitration Centre (“NAC”) will be established under the auspices of Ministry of Commerce. The objectives of the National Arbitration Centre are:

- to promote settlement of commercial disputes by means of arbitration in Cambodia
- to create the necessary infrastructure and rules for the administration of arbitration cases in the Kingdom of Cambodia, where an expressed agreement of disputing parties to refer disputes to National Arbitration Centre
- to ensure that high quality standards of arbitration are maintained in the Kingdom of Cambodia
- to set standards for the qualification of arbitrators

Khmer natural person or foreigner who is arbitrator shall register with the National Arbitration Centre⁹⁵.

B3. Jurisdiction of Arbitral Tribunal

The jurisdiction of Arbitral Tribunal shall be as follows:

- The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement.
- A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence.
- The arbitral tribunal may rule on a plea either as a preliminary question or in an award on merits⁹⁶.

Unless otherwise agreed by the parties, the arbitral panel may, at the request of a party, order any party to take such interim measure of protection as the arbitral panel may consider necessary in respect of the subject matter of the dispute. The arbitral panel may require any party to provide appropriate security in connection with such measure.

B4. Conduct of Arbitral Proceedings

The party or the arbitral tribunal can decide to determine the following:

- Determination of Rules of Procedure;
- Place of Arbitration;
- Language;
- The law to be applied; and
- Commencement of Arbitral Proceedings

⁹⁴ Art. 7 of Commercial Arbitration 2006.

⁹⁵ Art. 11 of Commercial Arbitration 2006.

⁹⁶ Art. 24 of Commercial Arbitration 2006.

Most significantly, the arbitration tribunal must provide equal treatment to both parties.

The parties are free to determine the number of arbitrators. The number of arbitrators shall be odd number. Failing to do so, the number of arbitrators shall be three (3).

The arbitral tribunal, or a party with the approval of the arbitral tribunal, may request from a competent Court (Commercial, or Appeal, or Supreme) assistance in taking evidence. The Court may execute the request within its competence and according to its rules on taking evidence⁹⁷.

B5. Counter claim

The jurisdiction over counter claim, recognition, and enforcement of arbitral award shall rest with the Appellate Court of the Kingdom of Cambodia.

The Supreme Court of Cambodia shall be the final jurisdiction to try counter claim of the party who is not satisfied with the decision of the Appellate Court within fifteen (15) days⁹⁸.

B6. Recognition and Enforcement of Award

An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced. The party relying on the award or applying for enforcement shall supply the certified original award or a duly certified copy thereof, and the certified original arbitration agreement or a duly certified copy thereof. If the award or agreement is not in Khmer, the party shall supply a duly certified translation thereof into Khmer⁹⁹.

⁹⁷ Art. 35 of Commercial Arbitration 2006.

⁹⁸ Art. 43 of Commercial Arbitration 2006.

⁹⁹ Art. 45 of Commercial Arbitration 2006.

9

Litigation & Court Proceedings

A. Level of Court

The courts play an important role in society, particularly once there is a dispute over the interests of the people. Solving problem through the court process is not popular for many businesses because it is costly and time consuming. They would consider settling the problem through the court when the benefits outweigh the costs, such as when there is an apparent injustice.

The Court in Cambodia is divided into three classes:

- Court of First Instance
- Appellate Court
- Supreme Court

A1. Court of First Instance

Municipal/provincial courts are the first instance courts hearing cases arising in the province or municipality in which the court is located (except for the military cases). There are 24 courts of such level for 24 cities/provinces in Cambodia. Its jurisdiction is limited to the province or city in which it resides. The 24 courts deal with all kinds of lawsuits regardless of whether they are administrative, commercial suit or otherwise.

The one military court is located in Phnom Penh. It hears cases involving military offences, that is, those involving military personnel, e.g. breach of discipline or destruction of military property.

A2. Appellate Court

Appellate Court or Court of Appeal is located in Phnom Penh and hears cases from all over Cambodia. It hears all cases appealed from a court of first instance – municipal, provincial or military. If one party is not satisfied with a judgment or decision given by a court of first instance, they may file an appeal to the appellate court. The appeal court will make a new judgment which may uphold, modify or annul the lower court judgment or decision. The trial is conducted by three judges.

A3. Supreme Court

The Supreme Court is located in Phnom Penh. It is the highest court in the country and, like the appeal court, has general jurisdiction over the whole country. The Supreme Court hears three kinds of cases:

- **Questions of law** for cases appealed from the appeal court. That is, the Supreme Court will decide on whether the lower court's interpretation of law is correct or not, but will not look at the facts found by the lower court on which that interpretation was based.
- Upon a **second appeal** from the appellate court, where that court does not follow the judgment of the Supreme Court, the Supreme Court tries **both questions of fact and law**.
- On a **"Complaint to review"** by a convicted person, the Supreme Court may hear extra evidence, not available at the time of their trial or appeal, which established the innocence of the convicted person.

The trial is conducted in the first complaint by five judges, second complaint by nine judges and the president of the Supreme Court must be present at every trial in that court.

The duties of the judicial judges

In a criminal case, there are 3 judges in the court of Cambodia:

- Public prosecutor acting as a standing judge;
- Investigating judge; and
- Trial judge.

Duties of the public prosecutor

- is the principal party in the criminal case;
- initiates the criminal action in the court;
- seek to convict the accused;
- conduct a preliminary investigation to find out the important facts that may lead to an accusation of the suspect;
- make a preliminary charge;
- propose the investigation judge to make a thorough investigation.

The duties of the investigating judge:

- conduct the investigation of the case;
- notify the accused of his rights and counsel the accused about attorney;
- make decision on temporary release or detention;
- issue an order to the accused to appear in court for investigation;
- when the suspect has either come forward voluntarily or been arrested, conducts a full investigation by calling witnesses and victims, gathers evidence and documents, interrogate, use specialists to analyze evidence, search the suspect's house and seize all evidence

The duties of the trial judge:

- adjudicate the case in the hearing;
- Trial judge must not be an investigation judge, a relative of, or has any relationship with the accused.

B. Court Process

Civil cases are handled differently from criminal cases in certain aspects as follows:¹⁰⁰

Civil Cases

Interested parties, victims, or authorized representatives may be plaintiffs.

Party is entitled to claim damages.

Complaint is lodged with the President of the court.

Reconciliation is possible.

Court fee must be paid.

Rights of parties are equal.

Evidence collection and presentation is the responsibility of the parties, but they can request judges to investigate.

All parties or their lawyers can present evidence.

The court may record and sequester property, but may not detain the defendant.

Imprisonment for debts may be ordered

No clear separation between reconciling, enquiring, and trial judges

Criminal Cases

The prosecutor is the principal party.

The victim or authorized representative is entitled to claim compensation for damages and request punishment.

Criminal complaint is lodged with the prosecutor.

No reconciliation.

No court fee.

Special measures taken to protect the rights of the accused.

The prosecutor and the investigating judge collect evidence.

The civil party and the accused or their respective lawyers can present evidence for the prosecution and evidence for the defence respectively.

The court may detain or temporarily release the accused.

The accused may be imprisoned for failure to pay pecuniary compensation.

Clear separation of duty and independence between investigating judges and trial judges.

A basic rule of the criminal law is that nothing is a crime until it is made so by law, and no one can be prosecuted for any action unless that action is a crime according to the law. So criminal law has to be written down. This is because everyone must know what it is – because everyone must obey it. When a crime is committed, it may often result in two legal actions: a criminal prosecution, and a civil claim for compensation or damages.

¹⁰⁰ Textbook on the Introduction to the Cambodian Judicial Process, pp. 39.

The goal of a **criminal action** is to prosecute those accused of committing any act that is deemed a criminal offence under the law. The state is responsible for prosecuting criminal actions, through the Office of Prosecution. All crimes carry a punishment, usually a term of imprisonment or a fine. The purpose of the punishment is to deter wrongdoers and prospective wrongdoers from committing further crimes.

A **civil action** seeks a judicial resolution of disputes between parties. The civil actions most commonly brought to the court are divorce cases, land disputes, contract disputes, debt cases, and sometimes damage claims for losses resulting from criminal acts. Damages which result from a criminal act can be claimed by the victim of such act, or by a guardian or a legitimate representative.

The judgment rendered in civil cases can include ordering a party to return the property or to pay a monetary award to a party in lieu of the return of property, or to perform a specific action for another party.

The criminal aspects will not be mentioned in this text. The focus point is the process of civil action in the court of law in Cambodia.

B1. Types of Civil Actions

Civil actions can be classified into four main categories:

- Action in personam;
- Action in rem;
- A mixed action;
- Etat civil suit.¹⁰¹

Action in personam is directed against an individual or company, as for example when a plaintiff sues a debtor to pay his/her obligation.

Action in rem is a claim of right or interest in an object be it personal or real property such as the right to enjoy benefits derived from the property, the right to use property, or the right to stay on property.

A mixed action is a combination of the previous two. It involves an action against an individual together with a claim of right or interest in an object.

Etat civil suit concerns civil status such as divorce, paternity suits, and adoption. It does not fall under the previous categories of lawsuits because it does not involve the obligations owed by another person or right to a property.

B2. Statute of limitations in Civil Cases

The time limitation for a civil complaint is not clearly established or standardized. It may vary depending on the type of suit.

- Any person can sue to absolutely rescind a void contract at any time¹⁰².

¹⁰¹ Textbook on the Introduction to the Cambodian Judicial Process, pp. 41.

¹⁰² Art. 18, Decree law 38.

- The time limitation for voidable contract because of incapacity, mistake, duress, or fraud, the aggrieved party or any person having a lawful interest in the claim can sue to rescind the contract within a maximum period of 12 months¹⁰³.
- Except where the law prescribes differently, obligations resulting from a contract shall be deemed to have expired if the obligee party has not sued for performance within 5 years from the date defined in the contract. Where the date is not defined in the contract, the date of entering into the contract shall be the date¹⁰⁴.
- The limitation period for claiming compensation for damages will be limited to three years¹⁰⁵.

B3. Civil Jurisdiction

Jurisdiction is the power of a tribunal to accept and decide a case and lawfully execute its decision. Only a tribunal with appropriate jurisdiction can hear a case.

There are three kinds of jurisdiction for courts of first instance:

- **Territorial jurisdiction** refers to a geographical area over which the authority of the court extends.
- **Subject matter jurisdiction** refers to the power of a court to hear a particular case because of the issues involved.
- **Personal jurisdiction** (resident of the defendant) refers to the power of a court to hear a case against a person in that jurisdiction.¹⁰⁶

B4. Initial Phases of Processing a Civil Case

There are five possible steps in the initial process: lodging the complaint, reconciliation, fee payment and registration, investigation, and motions of recusal, if any. A person who is involved in a civil lawsuit can go through all the steps alone, or may have an attorney to represent him or her.

Lodging a Complaint

The people should lodge their complaints directly with the court, or if the complaints are received by the administrative authorities, those authorities should forward the complaints to the relevant courts.

Reconciliation

Reconciliation is a process in which the court helps parties to reach an agreement without extensive legal proceedings or payment of court fees. The reconciliation is considered a mandatory step and an integral part of court proceedings for civil cases.

Cases for Which the Law Does not Require Reconciliation

Some cases never require reconciliation, for instance, a case involving a person who claims ownership of an object that the court has already decided to attach for the settlement of debt. If during the auction proceeding a third party also claims ownership of the object attached, that third party can file a complaint to the court to decide the ownership. The court may proceed with the case without reconciliation.

¹⁰³ Art. 19, Decree law 38.

¹⁰⁴ Art. 25, Decree law 38.

¹⁰⁵ Art. 135, Decree law 38.

¹⁰⁶ Textbook on the Introduction to the Cambodian Judicial Process, pp. 43.

Registration of Complaint and Court Fees

After submitting a claim, the plaintiff must first pay a court fee. The court fee is mandatory. If the fee is not paid, the court will not take the case except in cases where the plaintiff is too poor to pay. This must be certified by a village head or commune chief. The court fee varies from one level of court to another. The court fee is the burden of the losing party. This means that if the plaintiff loses the case, the court fee is not refundable; if the defendant loses, he/she must pay the plaintiff. The fee was fixed by the Law on Court Fees, 8 February 1993.¹⁰⁷

Investigation

After a case has been registered and fees have been paid, the court appoints an inquiring judge to conduct investigation into the matters set forth in the complaint. This stage of information collection is handled by the inquiring judge in order to compile a report to be presented at the trial. Usually, the reconciling judge joins in the investigation as well.

In current practice, even if a case comes to the investigation step, the court may reconcile the parties. In this case, if the parties can be reconciled, the court holds a trial session to confirm the reconciliation of the parties. After hearing the parties' agreements to reconcile, the court renders a judgment called "**Judgment as a result of reconciliation**".

The purpose of the investigation is to collect evidence, and to identify the legal basis of the case in order to provide proper and objective information at trial. The first step of the inquiry is to determine the legal relationship between the plaintiff and the defendant in order to get insight into the real nature of the complaint.

B5. Civil Trial

Although all necessary steps may have been taken during the course of inquiry, including statements by various parties, the trial process requires in-person, oral public presentation to be made in order to re-confirm what has been offered previously, and to re-examine the evidence and opinions of those attending the trial.

The trial must be public, except for cases relating to security or confidential matters, or cases which may affect social morality. If the case is to be heard in camera (all spectators are excluded from the hearing room), the presiding judge must announce and record the reason why the hearing is so held.

In all cases, the judgment must be publicly pronounced. Trials during the time of People's Republic of Kampuchea and the State of Cambodia were conducted by a panel composed of a judge and two People's Assessors. Later, after the arrival of UNTAC, the participation of People's Assessors at the court of first instance was omitted; trials in lower courts are now conducted by a single judge.

C. Enforcement of Judgment

The next step after a judgment is execution or enforcement of the judgment, if there are no more oppositions and/or appeals. The law that governs the procedure for the execution of civil judgments is the "Law on the Execution of Civil Judgment," passed by the National Assembly of the State of Cambodia, 6 April 1992.

In the civil suits, there are three main remedies:

- Order to pay compensation, damages, or settlement of debt;
- Attachment of debtor's property;

¹⁰⁷ Textbook on the Introduction to the Cambodian Judicial Process, pp. 54

- Imprisonment for debt.

Order to Pay Compensation, Damages, or Settlement of Debt

This is a preliminary step in which the court instructs a judgment debtor to voluntarily pay a certain amount of money or other compensation (including interest) to satisfy the judgment. In this case, the court will indicate a specific time period and amount of money to be paid.

Attachment of Debtor's Property

Attachment is a process by which the property of the debtor is seized and placed in the possession of the court in order to sell it to satisfy the debt. In principle, the creditor may request the judgment executor to attach the debtor's property if there is a judgment bearing the executing clause. Otherwise the creditor does not have right to request the judgment executor to attach the debtor's property.

Imprisonment for Debt

Imprisonment for debt is a process by which the court orders physical confinement of a "recalcitrant" debtor who refuses to perform his/her contractual obligations, in order to force payment of the debt. "Recalcitrant" is not defined in the law, but it is commonly understood to mean that a debtor has the ability to pay the debt but is indifferent or defiant about the request to pay. Imprisonment for debt is not a satisfaction of the debt. The debtor is still obligated to pay or be subject to property attachment even after he/she has completely served the prison term.

In any case, the maximum term for physical imprisonment for debt is 8 months. The place of imprisonment should be in the province in which the debtor resides.

Part 4
Other Related Laws

10

Law of Demonstration

A. Definition of Demonstration

In the context of Cambodia law, demonstration is not defined properly however it stipulates that meetings and gatherings of groups and crowds for staging demonstrations are allowed by the law subject to approval by the authority. On the other hand, meetings of groups or crowds in public places or on public roads, or demonstration marches that can be detrimental to public tranquillity, order or security, are categorically prohibited.

B. Process of Demonstration

Marching demonstrations on public roads to express views on any issue may be held under the following conditions:

- No violence, arms or any other dangerous instruments
- No harm to public tranquillity, social order and security

Authorities in each commune through which a group of demonstrators will march shall be informed at least three days beforehand, in writing, the following:

- the surnames, names, addresses and signatures of three of the demonstration's organizers;
- objectives;
- locations;
- dates;
- streets; and
- number of people participating in the demonstration.

If demonstrations are to be held in provincial towns or cities, they should be reported in writing to the authorities there.

Authorities, after receiving a notice, should issue a Letter of Admission. However, if the authorities concerned believe that the specific demonstration has characteristics conducive to turmoil, they can ban the demonstration, issuing a decision to do so within 48 hours and communicating this decision to the demonstration's organizers.

A copy of the decision should be immediately forwarded to higher authorities within 24 hours. In case of disagreement as to the decision of the authorities, demonstration organizers may lodge a protest to higher authorities. These higher authorities shall make a decision on the grievance of the demonstrators either to approval or reject the demand, and shall then communicate the decision to the petitioning party within 24 hours.

If any demonstration takes place without local authorities being informed beforehand or without authorization from local authorities, the local authorities can take measures to stop the demonstration from occurring.

If, after two notices of the ban by the local authorities, the demonstrators still refuse to discontinue their activities, the local authorities shall disperse the demonstrators with force that does not endanger the lives of the demonstrators. All this is a temporary basis measure.

C. Legal Measures for Demonstration

If a peaceful demonstration turns into a violent demonstration or a riot, the appropriate authorities will take the most appropriate measures to stop the violent demonstration or riot.

If demonstrators are armed with dangerous weapons or equipment, security forces can remove the dangerous weapons and equipment from the demonstrators. And if the demonstrators persistently refuse to hand over the dangerous weapons or equipment, the security forces can detain the demonstrators temporarily and remove their dangerous weapons and equipment.

After the demonstrators acknowledge their wrongdoing, they shall be released and the dangerous weapons and equipment shall be returned to the rightful owners, except in cases of other offences related to the dangerous weapons and equipment.

Disguised demonstrators and those who incite demonstrators to use violence shall be punished according to the law currently in effect. Anyone taking advantage of a demonstration to commit burglary, looting, robbery or other offenses shall be punished to the maximum degree according to the law currently in effect.

E. Responsibility for Demonstration

If any official, carrying out his duty at a demonstration, commits an offence causing damage to private or public property, or commits an offence causing injury or death to other people, shall be punished according to the law currently in effect.

Any demonstrator resorting to violence so as to cause damage to private or public property or to inflict bodily harm or death on other people or officials on duty shall be punished according to the law in effect, depending on the degree of the committed offence.

Reparation of all damages caused by a demonstration shall be the responsibility of the province or city where the demonstration occurred. If the provincial or municipal authorities find the offenders who caused the damage in the demonstration, they can sue these offenders to repay to the city or province the cost of reparations to the victims.

If the damages are caused by the fault or negligence of the victims of the damages themselves, the reparation of the damages by the province or city shall be reduced or cancelled.

11

Law on Social Security Schemes

Social Security Schemes is defined in Labour Law of the Kingdom of Cambodia and the provisions thereof cover the following:

- Pension scheme
- Occupational risk

The other contingencies shall be subsequently determined by Sub-decree based on the actual situation of the national economy.

Social Security Schemes shall be under the Management of the National Social Security Fund. This National Social Security Fund has its acronym "NSSF" The National Social Security Fund is a public establishment.¹⁰⁸

A. Persons under the Social Scheme

Persons covered by Social Security Schemes in this law regardless of nationality, race, sex, belief religion, political opinion, national extraction, social origin, membership of trade union or act in trade union are:

- All workers defined by the provisions of the Labour Law, if those persons perform work in the territory of the Kingdom of Cambodia for the benefit of an employer or employers, regardless of nature, form and validity of the contract done or kind and amount of the wage received by the person thereof.
- State workers, public workers and every personnel who are not governed by the Common Statute for Civil Servants or by the Diplomatic **statue** as well as officials who are temporarily appointed in the public service.
- Trainee person who is attending rehabilitation centre and apprentice deemed as workers above.
- Persons work in self-employed profession.
- Seasonal or occasional workers.¹⁰⁹

B. Pension Scheme

Employers and workers covered by this law are required to pay contribution to NSSF. The benefits of the pension scheme include old age pension and allowance, invalidity pension, survivors' pensions and allowance.

Each NSSF member who is 55 years of age who has paid contribution less than 60 qualifying months for Social Security Schemes and has finished all wage-related works, but has not fulfilled other conditions in order to get old age pension is entitled to have old age allowance which shall be paid as a lump sum.

¹⁰⁸ Art. 3 of Social Security Scheme 2002

¹⁰⁹ Art. 4 of Social Security Scheme 2002

NSSF members who become disabled before the age of 55 is entitled to have invalidity benefit provided that the person concerned has fulfilled the following conditions:

- Being registered in the NSSF at least for five years
- Having fulfilled for six qualifying months for Social Security Schemes within the last 12 months up to the date of beginning of the incapacity leading to the validity.¹¹⁰

C. Occupational Risk

An accident is considered to be employment injury inflicted on the body of the worker regardless of the cause if it happens to worker during the working hours, whether or not the worker was at fault. It is the accident inflicted on the body of the worker or an apprentice with or without wage, who is working in whatever capacity or whatever place for an employer or manager of an enterprise.

Equally, accidents happening to the worker during the direct commute from his residence to the work place and home are also considered to be employment injury as long as the trip was not interrupted nor was a detour made for a personal or non-work related reason.

If the accident causes the victim to die, the NSSF shall provide funeral benefits and pension to the immediate family of the victim. The immediate family of the victim are those who have the following criteria:

- Not the divorced or lost spouse of the victim with legitimate marriage certificate before the accident, or spouse-to-be after the accident
- All children under the victim's charge shall be determined by Sub-decree on the establishment of NSSF
- Parents or ageing persons who are under the tutelage and direct charge of the victim during the accident.¹¹¹

D. Dispute over the Social Scheme

Dispute or complaint relating to the provisions and regulations of Social Security Schemes between NSSF members, employer and NSSF that can not be resolved through conciliation by the Committee for Conciliation of Dispute or Complaint of the NSSF shall be resolved under the authority of the court of law, which the NSSF member or employer live in. The Minister in charge of Social Security shall issue Prakas determining the composition and formulation of the Committee for dispute settlement of the NSSF.¹¹²

¹¹⁰ Art. 9 of Social Security Scheme 2002

¹¹¹ Art. 20 of Social Security Scheme 2002

¹¹² Art. 31 of Social Security Scheme 2002

12

Traffic Law

All kind of vehicles driving in Cambodia must be on the right-hand side. There must be a driver driving in the vehicle traveling on the road.

It is worth noting that the traffic law of Cambodia was enacted on 08 February 2007 and Decree # 68 on Land Traffic Law adopted on 31 August 1991 was abrogated. Some articles take effect immediately, while some others do not, for example:

- Chapter 10 on the traffic penalties will be in force six months after the law takes effect except provisions in:
 - Art. 77: use of fake documents related to traffic law
 - Art. 79: vehicles without registration plate and vehicle ID card, and
 - Art. 84: excessive loading of a vehicle.
- Art. 7 on traffic order of traffic police, Art. 8 on rule of precedence of traffic signs, and Art. 9 on traffic conditions for a driver will be in force 5 years after the law takes effect.
- Art. 43 on driving license score, Art. 44 on issues concerning the scoring card will be in force 5 years after the law takes effect.

A. Traffic Rights Priority

Order of the priority rights: ¹¹³

- Traffic signs have priority over the traffic rule
- Traffic lights have priority over the traffic signs
- Hand signals of traffic police have priority over traffic lights, road markers and dividers, traffic signs and traffic rules.

B. Traffic Rules for Drivers

- Drivers and passengers who are on the front seats of motor vehicles must wear the safety belt.
- Drivers of motorcycles, tricycles, towing motorcycles must wear helmet.
- No people Or goods allowed in front of the drivers.
- Children below 10 years old is not allowed to sit on the front chair of motor vehicles without an adult sitting nearby and/or without wearing the safety seat belt.
- Children below the age of 10 months must be put in a baby seat with the safety seat belt tied to the back seat of the vehicle.
- Children age between 10 months to 4 years must sit on children seats with safety belt tied to the back seat of the motor vehicle.
- No disturbance to the residents living along the road and road users

¹¹³ Art. 8 of Traffic law 2007

- No drinking of alcohol that has alcoholic degree from 0.25 milligram per air liter or from 0.5 gram per liter of blood or over
- Vehicles with metal chained wheels (e.g. tanks) are not allowed on public road. Such kinds of vehicles must be carried by the vehicles whose tires are rubber-based.
- Usage of mobile phone is prohibited while driving. Such use is allowed provided a hand-free headset is used to communicate with the phone.
- The drivers must not drive in parallel with one another on the road. The driver must not drive across the rows of the military match, police match, and other matches.
- Children under the age of 6 are prohibited from playing along or walking across the street disorderly.
- There must be a guardian to bring a blind person to cross the road.
- While driving, the driver must in constant alert, be swift to avoid road obstacles and take reasonable care to avoid causing annoyance to other road users and pedestrians.
- It is prohibited to load goods or other effects that block the vision of the driver.

C. Rules for Towing

The methods for towing must be put into practice as follows:¹¹⁴

- For towing a vehicle, the driver must use wire or metal rod or towing equipment which are strong and flexible.
- The driver must not use towing cable for any vehicle whose laden weight is over 5 tons.
- The driver must not tow more than one vehicle or tow any vehicle with trailer or semi-trailer.
- Towing of bicycles or motorcycles is prohibited.
- The driver must not tow any vehicle containing passengers inside except a driver in control of the towed vehicle.
- Any vehicle with a trailer or semi-trailer must display the triangle sign with mirror reflecting two yellow lights placing in front of the vehicle on both side of the registration plate.
- The technique of towing trailer or semi-trailer and taking off the trailer or semi-trailer from the vehicle must be issued by the Ministry of Public Affairs and Transportation.

D. Vehicle Speed

Driving speed must follow the guidelines as following:¹¹⁵

D1. General Vehicle

- **Downtown**
 - For motorcycles and tricycles, the maximum speed is 30 km/h.
 - For general automobile, the maximum speed is 40 km/h.
- **Out of Town**
 - The maximum speed is 90 km/h for general vehicles. An exception is for goods-carrying vehicles whose total weight is over 3.5 tons. The maximum speed of such vehicle is limited to 70 km/h and 60 km/h for towing vehicles.

¹¹⁴ Art. 8 of Traffic law 2007

¹¹⁵ Art. 17 of Traffic law 2007

- Drivers must maintain a safe distance with the vehicles in front to minimize the risk of collision. The safety distance depends on the speed of the vehicles – the faster the speed, the longer the distance. Out of town, vehicles whose laden weight is over 3.5 tons or whose width is longer than 7m and travelling at the same speed must maintain a safety distance of at least 50m.

D2. Vehicle carrying Hazardous Goods

- **Downtown**
 - For motorcycles and tricycles, the maximum speed is 30 km/h.
 - For automobile, the maximum speed is 40 km/h.
- **Out of Town**
 - For vehicles whose maximum laden weight is below 3.5 tons and over 3.5 tons for vehicle using brake system, the maximum speed is 70 km/h.
 - For vehicles whose maximum laden weight is over 3.5 tons without brake system, the maximum speed is 60 km/h.

D3. Vehicle Traveling on the Railway

- **Downtown**
 - For general vehicle, the maximum speed is 60 km/h.
- **Out of Town**
 - For general vehicle, the maximum speed is 100 km/h; except for goods transportation vehicle whose maximum laden weight is below 3.5 tons, the maximum speed is 80 km/h and for trailer vehicle, the maximum speed is 70 km/h.
 - Vehicle with priority rights

The above-mentioned maximum speeds in D1, D2 and D3 do not apply to:

- police march;
- military march;
- military police march;
- fire engine;
- ambulance; and
- other vehicles using the special sound and light signal in the course of work.

E. Driving License

All drivers of motor vehicles must have a driving license.¹¹⁶ Drivers of motorcycles with a cubic capacity of 49cc and above must have driving license according to the kind of vehicle.

The national and international driving license for all kinds of vehicles must be issued by the Ministry of Public Affairs and Transportation. For special vehicles such as tanks, war vehicles, armed vehicles, motor tricycles, and escorting vehicles belonging to the state, the licenses are issued by the Ministry of Interior and the Ministry of National Defense. There are 5 kinds of land driving license of Cambodia:¹¹⁷

¹¹⁶ Art. 9 of Traffic law 2007

¹¹⁷ Art. 40 of Traffic law 2007

- **Class A** is for motorcycles and tricycles.
 - A1 – motorcycles whose cubic capacity is 49cc to 125cc;
 - A2 – motorcycles whose cubic capacity is over 125cc; and
 - motorcycles with trailer
 - tricycle.
- **Class B** is for passenger carrying vehicle not exceeding 09 persons including the driver.
 - Goods transportation vehicle whose maximum laden weight is below 3.5 tons.
 - Vehicle of this class B can attach with trailer whose maximum laden weight is below 0.75 tons.
- **Class C** is for goods carrying vehicle whose maximum laden weight is over 3.5 tons and can attach trailer whose maximum laden weight is below 0.75 tons.
- **Class D** is for passenger carrying vehicle.
 - D1 – passenger carrying vehicle from 10 to 20 persons including the driver and can attach trailer whose maximum laden weight is below 0.75 tons.
 - D2 – passenger carrying vehicle exceeding 20 persons including the driver and can attach trailer whose maximum laden weight is below 0.75 tons.
- **Class E** is for any vehicle in class B, C, D whose maximum laden weight of towing trailer is over 0.75 tons. It is categorized as three:
 - E (B);
 - E (C); and
 - E (D).

The various conditions regarding the driving license are the following:¹¹⁸

- Drivers belonging to each class can drive only vehicles of that particular class. Drivers with disability are entitled to a drive a special vehicle provided that he has the special license.
- The license holders must submit an application for renewal prior to the expiration date of the driving license. Failure to do so will result in a legal sanction.

E1. Age of Drivers

The age of the drivers according to the Class of driving licenses are as following:¹¹⁹

- At least 16 years of age for Driving license Class A1
- At least 18 years of age for Driving license Class A2 and B
- At least 22 years of age for Driving license Class C and D1
- At least 24 years of age for Driving license Class D2 and E

E2. Validity of Driving License

¹¹⁸ Art. 41 of Traffic law 2007

¹¹⁹ Art. 41 of Traffic law 2007

The time limit of validity of driving licenses is the following:

- Driving license Class A and B have the validity till the drivers reach the age of 65 but their health has to be checked and the driving licenses have to be renewed once in 5 years.
- The driving license of Class C, D, and E have the validity of 3 years. The drivers have to submit for license renewal once every 3 years after health check-up before being permitted to drive.
- Drivers aged of 65 or over, the health of drivers using all kinds of license must be checked once every 2 years. The driving license must be renewed once 2 years.

Driving License Scoring

All driving licenses have a scoring note which consists of a total of 12 points and the score will be reduced once there's a traffic offence.

E3. Foreign Driving License

Except in the case that there is an agreement or international treaty – bilateral or multilateral – which recognize international driving licenses with the kingdom of Cambodia, any foreigner who is a legal immigrant intending to on the road of Cambodia must have a Cambodian driving license in two ways:

- Take the driving exam as Cambodians do;
- Submit the driving license of his own country to the Ministry of Public Affairs and Transportation in order to exchange for the Cambodian driving license subject to approval

The exchanged Cambodian driving licenses has a validity of 1 year.

F. Inspection and Control on Vehicles

Before hitting the road, all kinds of vehicles, trailer, or semi-trailer whose laden weight is over 750 Kg must apply for the registration plate and vehicle ID card at the Ministry of Public Affairs and Transportation. Any vehicle without the above-mentioned items must be carried by a registered vehicle during its transit on the road.

All of the automobiles, motorcycles, tricycles and other vehicles belonging to the state and used for security, public order and defense service must be registered and have vehicle ID and registration plate issued by the Ministry of Interior or Ministry of National Defense.

All trailer, semi-trailer, motorcycles or tricycles traveling on the road must have the technical inspection certificate issued by the Ministry of Public Affairs and Transportation or a private company authorized by Ministry of Public Affairs and Transportation.

F1. Validity of technical inspection

Validity of technical inspection certificate is as the following: ¹²⁰

- New tourist vehicles which have not yet been used must go through a technical inspection and get the first inspection certificate whose validity lasts 4 years. Afterwards it must have the technical inspection every 2 years.
- Old tourist vehicles which have already been used must have a technical inspection every 2 years.
- New vehicles used for carrying passengers and goods and new industrial vehicle used as a tool of trade which have not yet been used must have a technical inspection and get the first

¹²⁰ Art. 48 of Traffic law 2007

inspection certificate whose validity lasts 2 years. Afterwards it must have the technical inspection every year.

- Old vehicles carrying passengers and goods, and old industrial vehicles used as a tool of trade must have the technical inspection every year.
- New trailers or semi-trailers which have not yet been used must go through the technical inspection and get the inspection certificate whose validity lasts 2 years. Afterwards it must have the technical inspection every year.
- Old trailers or semi-trailers which have already been used must have the technical inspection every year.
- Prior to registering for the plate number and vehicle ID card, all vehicles, trailers, or semi-trailer which have been modified locally must first have the technical inspection and afterwards it must have the technical inspection every year.
- New motorcycles and tricycles which have not yet been used must come to get the technical inspection whose validity lasts 4 years.
- Old motorcycle and tricycles which have already been used must have the technical inspection every 2 years.

F2. Auto Business License

All garages must have a business license issued by the Ministry of Public Affairs and Transportation and in case of necessity there must be inspection by the Ministry of Interior.

All vehicles, trailers, semi-trailers used in transportation business must have business license issued by the Ministry of Public Affairs and Transportation. The validity of this license is 1 year.

For transportation business activities, all transportation must have documents issued by the Ministry of Public Affairs and Transportation and relevant Ministry as below:

- Vehicle identification card and license plate
- Driver license according to the type of vehicle
- Technical inspection certificate
- License to transport goods for the vehicle
- Transportation business license
- Insurance Document issued by Insurance Company
- Other licenses issued by relevant authority

G. Usage of Light and Sound Signals

The usage of the horn is allowed in daytime in order to inform other road users to avoid an eventual accident. From dusk till dawn, flashing of headlight is used instead of horn to alert other drivers.

Equipping with the sound, light, or others beyond the technical specification of the vehicle is prohibited.

G1. Usage of special sound and light signals

Special light is an additional equipment with multi-color rotating lights which means as follows: ¹²¹

¹²¹ Art. 30 of Traffic law 2007

- **Special light**
 - Red or blue special light – for police, military, military police vehicles, fire engine and hospital ambulance.
 - Dark yellow special light – for public service vehicles such as those used for road cleaning and repairing and special transportation vehicle equipped with this special light sign. These vehicles must be driven at slow speed.
- **Special sound**
 - Special sound is a sound signal used by vehicles with priority rights such as police, military, military police, or fire engine vehicles which have an additional siren sound. Hospital ambulances have an additional siren wailing twice time up and down.

When these vehicles use the special lights and sound signals, road users must move to the right hand side, slow down or stop in order to make way for these vehicles.

In the course of their duties, the drivers of the above-mentioned vehicle can drive:

- in reverse direction on one-way road;
- through the red traffic light;
- in unlimited speed;
- with priority rights on a crossroad;
- pass or cross the traffic line.

In whatever the circumstances, the drivers of these kinds of vehicles must always drive carefully in order to avoid a traffic accident with other road users and must follow the order signals of traffic agents.

G. Traffic Accident

All traffic accidents are the duties of the traffic police. In case of a traffic accident, the driver, other road users, or eyewitness involved in the accident have to stop the vehicles, report to the police or local authority. They should not use violence, and are prohibited from leaving the scene without mutual agreement or permission from the traffic police.

- If the accident caused damages to property only, both parties can settle the case through a reconciliation regardless of intervention from the traffic police.
- If there were death or bodily injuries, the drivers , road users or eyewitness involved the accident would:
 - Immediately report to the nearest traffic police or local authorities;
 - Send the victim to the nearest hospital. Vehicle users may not allowed to reject the rescue measure.
 - Co-operate to maintain safety of the parties involved and traffic flow at the scene.
 - Avoid activity that may remove traces of evidence useful for identifying the person responsible for the accident.

- Keep waiting at the scene until the arrival of a traffic agent. They should not allow the person causing the accident to leave the scene prior to obtaining the permission from the traffic agent.

G1. Traffic Regarding Diplomatic Agent

For traffic accident involving foreign diplomats or envoys, traffic police must record the incident and submit a report to the Ministry of Foreign Affairs and International Cooperation who in turn arrange a representative to cooperate with traffic police, examine the case and take necessary action.¹²²

G2. Duties of the Land Traffic Police

Traffic offenders have the right to bring the file to the court in case of disagreement on the offence penalties.

Traffic police have the right to withdraw and suspend the driving license for at least 1 month.

In case of traffic accident, traffic police at the accident scene has a duty to seize the vehicle and keep it at the police station, hold the driver for interrogation, and make a report of the accident.

If the driver is drunk, the police will send him to the hospital to get a certificate of alcoholic degree and forward it along with the police report to the court. With respect to the seized vehicle, it will be released upon the payment of fine or penalty.

Traffic offences whose penalty is imprisonment or fine shall be under the competency of the court. On the other hand, minor traffic offences may be penalized by the traffic police. Principally, the police have the right to conciliate in case of accident causing only property damages. If the case does not reach an agreement, the traffic police must forward the case to the court.

G3. Penalties for traffic offences

The driver may be liable for both criminal and civil penalties for his traffic offences.¹²³

- Owner or vehicle driver must be responsible for civil action in case of accident causing property damages.
- All traffic offences must be brought to the court except for minor offences for which the drivers may be penalized or warned.
- Any driver who causes bodily injuries to others unintentionally and as a result the victim is disabled and unable to perform his work for 8 days or more must be penalized by imprisonment for 6 days to 1 year and/or be fined 25,000.00 Riel to 2,000,000.00 Riel.
- The offender must be penalized to the maximum extent for committing one of the following offences:
 - Driving without driving license or the driving license is not properly in conformity with the law;

¹²² Art. 39 of Traffic law 2007

¹²³ Chapter 10 of traffic law 2007

- Drunk driving;
 - Causing many injuries to the people;
 - Evade the scene in order to escape liability.
- Any driver who unintentionally causes permanent bodily injury or disablement to others must be penalized by imprisonment for 1 to 3 years and/or be fined 2,000,000.00 Riel to 6,000,000.00 Riel. Also, the penalty is at the maximum if the offence is one of the above.
 - Any driver who intentionally causes bodily injury, disablement, or death must be penalized according to the penal law.
 - The legal guardian who allows children below the age of 6 to walk on the road in a disorderly manner and cause a traffic accident must be liable for civil action.
 - The owner of the pet who lets the pet walk disorderly on the road and cause traffic accident must be liable for civil action.

H. National Committee on Traffic Safety

National Committee on Land Traffic Safety will be set up in order to take necessary measures to reduce traffic accidents.¹²⁴

¹²⁴ Art. 56 of Traffic law 2007

13

Marriage and Family Law (Succession)

Marriage is a contract between one man and one woman who voluntarily agree to live together.

A. Valid Marriage:

The age condition is:

- Man : 20 years old
- Woman : 18 years old

However, people of lower age than above can legally get married if the lady is pregnant and their parents or legal guardians consent to it¹²⁵.

Marriage is considered legal only if the new spouses have entered into a marriage contract and registered it with the local authority of the district where the wife resides with the presence of two marriageable witnesses as required by Art. 14 of Marriage and Family Law 1989.

In addition, the law mandates certain marriage to be invalid such as:

- same sex marriage;
- impotent;
- incurable or not yet cured diseases;
- mental disorder.

B. Spouse Disappearance

Any one spouse who has disappeared for more than one year from the date of disappearance without any information as to whether s/he is death or still alive, another spouse may re-marry 15 days after pronouncement of judgment on the spouse's real disappearance¹²⁶. Third party cannot complaint against this new marriage even though the disappeared spouse has returned.

From this provision, an inference can be made: after one year of disappearance, a court judgment of disappearance would be released which equally means that the missing person's status is death.

Additionally, though this provision about spouse disappearance is stipulated only in the Marriage and Family Law, it is applicable to anyone who disappears for one year or more as long as there is no other provision that says otherwise.

C. Property Separation:

Marriage does not last forever. It can end by act of party, i.e. divorce, or act of god such as death.

C1. Divorce

¹²⁵ Art. 6, Marriage and Family Law 1989

¹²⁶ Art. 10, Marriage and Family Law 1989

Referring to article 70 of Marriage and Family Law, upon divorce:

- Joint property can be shared under agreement of both parties.
- If there is no agreement, both parties will withdraw their individual property and leave the remaining property to be divided equally into two shares.
- However, for some special cases and under the request of any one party the court may get involved in property allocation based on grounds other than above mentioned as court may take children's interest and production of each spouse into consideration. It is also noteworthy that housework has equal value to the outside work.

C2. Death

Presently, there is no law governing inheritance other than the Draft Civil Code which shall come into place and contains some provisions on this matter.

Basically, upon death there are two possibilities: Testate Succession and Intestate Succession

Capacity to Make a Will

Person who have attained the age of majority and minors who have been released from guardianship or parental power may make a will¹²⁷ and importantly at the time of making a will, the testator must have the capacity to do so¹²⁸.

Forms of Will

Wills shall be made in the prescribed form of this code. Will can be made:

- by notarial document¹²⁹;
- by privately produced document¹³⁰; and
- by secret document¹³¹.

Succession

Testate Succession - Property will be shared according to the designated succession shares, proportions and entitled persons. So it is very essential for the court to determine the validity of the will. And regardless of form, in case of doubts on the will's validity, the court may not confirm a will unless it is convinced that it represents the true intention of the testator.

Intestate Succession - In the case of intestacy, property of the deceased will be divided under the supervision of the law which is also called Statutory Succession. Mainly, the Draft Civil Code had categorized successors into three ranks:

- **First rank – Lineal Descendant(s)** of the decedent, i.e. Children¹³². They shall have equal shares in the succession regardless of whether they are natural or adopted.

¹²⁷ Art. 1168, Tentative English Draft Civil Code March 06, 2006

¹²⁸ Art. 1169, Tentative English Draft Civil Code March 06, 2006

¹²⁹ For further detail, please refer to Art. 1173, Tentative English Draft Civil Code March 06, 2006

¹³⁰ For further detail, please refer to Art. 1174, Tentative English Draft Civil Code March 06, 2006

¹³¹ For further detail, please refer to Art. 1175, Tentative English Draft Civil Code March 06, 2006

¹³² Art. 1156, Tentative English Draft Civil Code March 06, 2006

- **Second rank** – If there is no lineal descendant then **Lineal Ascendant(s)** of the decedent shall become successor(s), i.e. the parents shall become the successor(s) provided that there is no other person who is more closely related¹³³.
- **Third rank** – If neither lineal descendant(s) nor lineal ascendant(s) exist then the **Sibling(s)** of the decedent shall be the successor(s)¹³⁴.

However, if the first rank persons die prior to the commencement of the succession, the children of such persons can become successors by representation. This shall not apply to second or third rank persons¹³⁵. It should be noted that the succession shares shall be always equal regardless of the succession rank or succession by representation as they are all protected by law.

The **Spouse** of the decedent shall become a successor in every case¹³⁶. This means that in any rank, spouse shall always be in equal position to the other successor(s).

According to article 1162 of the Draft Civil Code, there is a method to calculate succession share as below.

Let's say, Mr. A is intestate with total value of heritable property of USD 1,200,000.

- If the successors are the spouse and lineal descendant, the spouse and each of the descendants shall succeed in equal shares.

Calculation:

Children	:	4
Spouse	:	1
Total successors	:	5
Each is entitled for	:	1,200,000/5 = USD 240,000

- If the successors are the spouse and the decedent's parents, the spouse shall succeed to a one-third share, and the parents to a two-third share. If there is only one parent, the share shall be equal.

Calculation:

1)	Parents	:	2
	Spouse	:	1
	Total successors	:	3
	Each is entitled for	:	1,200,000/3 = USD 400,000
2)	Father or Mother	:	1
	Spouse	:	1
	Total successors	:	2
	Each is entitled for	:	1,200,000/2 = USD 600,000

- If the successors are the spouse and lineal ascendants other than the decedent's parents or siblings or their successors by representation, the spouse shall succeed to a one-half share

¹³³ Art. 1159, Tentative English Draft Civil Code March 06, 2006

¹³⁴ Art. 1160(1), Tentative English Draft Civil Code March 06, 2006

¹³⁵ Please refer to Art. 1160(3) and art. 1157, Tentative English Draft Civil Code March 06, 2006

¹³⁶ Art. 1161(1), Tentative English Draft Civil Code March 06, 2006

and the lineal ascendants other than the decedent's parents or siblings or their successors by representation shall succeed to a one-half share.

Calculation:

Grandparents	:	2	
Spouse	:	1	
Total successors	:	3	
Spouse is entitled to	:	$1,200,000/2$	= USD 600,000.00
Each grandparent	:	$600,000/2$	= USD 300,000.00

Epilogue: Critical Analysis of Forte's Law Compliance

Several branches of laws are relevant to the insurance industry. They have been studied in details in this compilation – particularly how they affect the operation of a registered insurance company. As a professional industry, it is crucial that all players comply with the law to maintain fair competition and equity. Forte's application has been very much consistent with the law, but there are certain aspects which we need to look into further.

There are three aspects of the law which Forte has to comply with.

- Company establishment and running process;
- Insurance aspects;
- Labour employment.

A. Company Establishment and Running Process

Forte was founded in 1999 and registered as Forte Insurance (Cambodia) Plc. at the Ministry of Economy and Finance. At the outset, Forte obtained a temporary license to operate an insurance business which required Forte to satisfy the solvency requirement in 5 years according to the Insurance Law of Cambodia. At present, Forte has satisfied the requirements and obtained the full license.

Following this, Forte only needs to pay the renewal fee every year.

Also as a commercial establishment, Forte has the duty to pay tax as mandated by Tax Law as follows:

- Tax on Profit;
- Withholding Tax; and
- Tax on Salary.

A1. Forte's Trade Name – Use of Khmer Name

Forte is public limited company governed by the Commercial Enterprise Law of Cambodia. According to law, it is required to display its name in Khmer language. The Khmer name shall be placed above and shall be larger than the name in the foreign language.

This requirement applies to all forms of communication that use the trade name which include, but not limited to, seals, signs, letterheads, documents, and on all public advertisements displayed on land, on water or in the air within the Kingdom of Cambodia.

In practice, however, the trade name of Forte is still in the foreign language. There is no Khmer name above the English name yet. It could be the reason why the public wrongly pronounce Forte name as Fort or Ford – the US car manufacturer.

Nevertheless, Forte is in the conformity with other commercial elements such as the registration procedure and company process.

B. Insurance Aspect

B1. Insurance product designation

Insurance product wordings of Forte are all copied from the foreign companies, for instance, QBE Insurance in Singapore, and adapted to the Cambodian environment. Even the Wordings are not yet in Khmer, it is not a key problem to commercial operation of Forte.

The main concern is for the clients. Insurance wordings are designed for use in a foreign business environment in addition to being in a foreign language. Some local clients insist on having the policy in Khmer since they do not want to enter into insurance contract with the ambiguity of English language.

This is the vital obstacle for local clients. It is very important to translate the English version into Khmer. Through this Khmer version, it will help the clients better understand insurance in Cambodia and spread the insurance concepts in this developing market. In particular, it will contribute both to the growth of the insurance market and our company.

Being the foremost local insurer, Forte should assign itself with the national language and custom of Cambodia. As a matter of fact, by having leaflets, brochures, wording, policy schedules and other related documents in Khmer language, Forte may be able to attract more local clients or promote Forte's fame to the public which constitutes an initial step to expand the local market.

Forte needs to comply with the provision of insurance law in article 9 requiring insurance contracts to be in Khmer language. It is worth noting that in the court of law of Cambodia evidences must be in Khmer language and so must the insurance contract. This will also be very useful and beneficial to Forte in case of disputes, as foreign language wording or contract may lead to misunderstanding and/or wrong interpretation during a litigation as well as an arbitration process.

B2. Claim settlement

In every Forte's wordings, there is always a clause stating that arbitration will primarily come before the court to resolve disputes between the insured and Forte and this is in same spirit of insurance law. In practice, negotiation would usually be in priority to litigation in claim settlements.

Minimum Liability not as stated in law – there are specified minimum amounts of liability restricted by law particularly for compulsory insurance such as Motor, Passenger Transportation Insurance and Insurance for Construction Site for each case, person, or property. Yet in real practice Forte has paid claims lower than the minimum level.

The payment made which is lower than the required minimum to the victims or his beneficiary reflects the inconsistency with the law. It is critical that Forte should start considering it as the regulation has specified amount for payment in each case. Let's say permanent disablement or death that is caused by the compulsory motor insurance: Forte as an insurer to the insured has to comply with all the provision of this minimum liability failing to which would be ground for the victims to pursue justice at the court of law for the minimum compensation.

Time Limitation of Claims – The law mandates that claim shall be paid within 10 days, whereas Forte uses its own time limitation of 14 days after the insured has satisfied all documentary requirements. This is not a major problem as the difference is only 4 days.

Insurance agents – not all agents of Forte make the deposit as required by the law. They are, thus, outlawed agents. According to the law, to obtain the agency license:

- An agent has to deposit US\$ 5,000.00 at the National Treasury of Cambodia
- A broker has to deposit US\$ 10,000.00 at the National Treasury of Cambodia.

Third party in Insurance - The insurance company shall also cover the loss or damage caused by persons under responsibility of the insured – whatever type or how serious the case may be, read article 19 of insurance law. In contrast, in the policy wordings of Forte, damage to the insured's property caused by persons under the responsibility of the insured is not payable.

C. Labour Employment

C1. Paid Public Holiday

At Forte, some public holiday days are cut off which reflects inconformity with the provision of labour law on paid public holidays.

The Ministry of Labour issues a Prakas every year which set out paid public holidays in Cambodia. If a public holiday falls on a Sunday, employees can take the following Monday off. Time off for public holidays does not interrupt the length of service (seniority) or reduce paid annual leave.

Employers must pay employees their normal wages for public holidays.

Employers whose business cannot be interrupted on public holidays may ask the employees to work on these days. This work must be voluntary. An employer must pay employees their regular wage plus 100% for working on a public holiday. This means that they get extra day's pay on top of their normal pay.

$$\text{Hourly rate} = \frac{\text{Monthly basic wage}}{26 \text{ (days)} \times 8 \text{ (hours)}}$$

By working overtime on public holidays, employees must be paid an extra 100% over the rate for normal working hours.

Usually, Forte does not pay extra when employees work on public holidays.

D. Conclusion

Forte has basically complied with law as well as other related laws issued by the government's ministry or inter-ministry. Those good points bring Forte to a respectful position in the insurance market of Cambodia. However, Forte has missed and overlooked some legal issues which should be on the reform.

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