



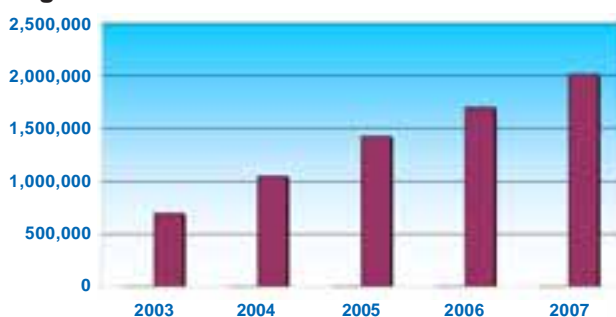
## The Tourism Law in Cambodia: Balancing regulation and facilitation of the sector

*Tourism growth in Cambodia has been very strong for a number of years, with tourism receipts contributing around 16% to Cambodia's GDP in 2007 – up from 6.3% in 2000<sup>1</sup>. Although in recent years, tourism has been one of four pillars<sup>2</sup> supporting Cambodia's very strong economic growth, policy and regulatory uncertainty is viewed as one of the top constraints inhibiting even stronger growth.<sup>3</sup> This is due to unclear delineation of responsibilities among government agencies that has led to the tourism sector being governed by the multiple, and sometimes conflicting, Prakas and Sub-decrees of different ministries and agencies.*

*The Ministry of Tourism recently submitted a draft Law on Tourism to the Council of Ministers aimed at meeting the dual objectives of promoting growth of the sector and meeting the private sector's demands for a simpler and more predictable legal framework that would reduce business risk and encourage greater investment.*

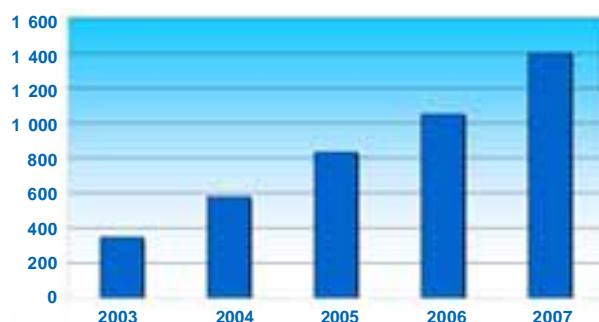
*The Ministry of Tourism has sent positive signals about its willingness to include a requirement in the new law that any future changes to tourism regulations must first involve private sector consultation, and that an accreditation system be established for tourism services in order to enhance the quality of service. Of issues addressed by the draft law, four are of particular interest for the development of the sector. These are: 1) requiring government consultation with the private sector on legal and regulatory issues; 2) addressing quality assurance; 3) defining the role of the Ministry of Tourism in facilitating the development of tourism sector business associations; and 4) defining the role of the Ministry of Tourism in dispute resolution. This Business Issues Bulletin highlights how the draft law addresses these issues and provides viewpoints on how the Ministry of Tourism should best implement the law.*

Figure 1: Number of tourist arrivals



Source:  
Ministry of  
Tourism

Figure 2: Tourism receipts (USD million)



Source:  
Ministry of  
Tourism



The *Business Issues Bulletin* provides those interested in business issues with a short summary and analysis of a particular topic affecting the business environment in Cambodia. Also included are opinions on topic from a number of relevant stakeholders.

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The statements and opinions presented here are only meant to provide additional reference material and do not reflect the official opinion of the Mekong Private Sector Development Facility or of IFC.

<sup>1</sup> Ministry of Tourism

<sup>2</sup> The others are the garment, agriculture, and construction sectors.

<sup>3</sup> FIAS, *Cambodia Tourism Development: A Value Chain Analysis*, (February 2007)

*So far, many agencies claim responsibility for managing the hotel industry in Cambodia. As a result, hotels have to spend much time and money to deal with officials who carry out overlapping jobs. In my opinion, it is good that the draft tourism law looks at governance in this sector by clarifying responsibilities of relevant government agencies. The tourism law should also look at ensuring the sustainability of the industry.*

**Philip Set Kao, President of Cambodian Hotel Association**

*The Tourism Law needs to confirm the authority of the Ministry of Tourism to prepare and review the Tourism Development Plan and for it to be incorporated into the National Economic Plan so as to be a policy and strategy for the whole of government. This begins with the process of aligning the actions of many ministries and authorities involved in implementation. If this is not done, the Tourism Development Plan is likely to fail as many do.*

**Trevor Atherton, Consultant on the Tourism Law to IFC MPDF**

**1. Consultation with the private sector to improve the quality of the legal framework**

The draft Tourism Law recognizes the importance of private sector consultation in developing the regulatory environment. According to the draft law “ *The Ministry of Tourism shall consult with the private sector in the issuance of Prakas and Sub-decrees that govern the sector, including: (i) establishment of the Cambodia Tourism Marketing Promotion Board; (ii) determination of criteria for tourism licenses; and (iii) determination of standards and requirements for quality assurance.* ”

The Ministry of Tourism rightly recognizes the importance of benefiting from private sector knowledge and experience through consultation with the private sector on future legal and regulatory decisions. This mandate to consult with the private sector will assist the Ministry of Tourism in finding appropriate regulatory mechanisms without falling into the trap of over-regulation. Tourism businesses know their own industry better than anyone else so it makes sense for the government to consult with them before

making any regulatory changes that could have negative side effects.

*Consultation with the private sector not only builds connections between the government and private sector, but it also allows the private sector to contribute to formulating policy and regulations that are friendly to the sector. Through this consultative process, members of tourism business associations will be able to provide the Ministry of Tourism with valuable information as it further develops the legal and regulatory framework.*

*I find this mechanism to be a win-win strategy for the government and the private sector. Through this process, the private sector will be able to raise its concerns to the government and can expect to have its voice heard to find solutions. The government will be able to manage the sector effectively and private businesses will be competitive, boosting economic growth.*

**Om Pharin, Vice President of Cambodian Association of Travel Agents**

**2. Quality assurance through accreditation**

Tourism business accreditation refers to the process of assessing, monitoring, and giving written assurance that a business, product, process, service, or management system conforms to specific requirements. Accreditation aims at providing incentives for tourism businesses to improve service quality.

International experience shows that accreditation schemes are an effective tool in encouraging quality improvements and building the reputation of hotels and tourism operators. Through the new law, the Ministry of Tourism is providing a clear system for classifying hotels and tourist accommodation services. By establishing a transparent accreditation scheme, the tourism law will provide a foundation for the private sector to self regulate quality by enabling the industry to develop objective standards that will inform prospective customers of the quality of services provided by hotels and tourist accommodation providers.

Since accreditation is seen as an effective tool for enhancing service quality, the Ministry of

Tourism should resist the impulse to regulate quality through its licensing procedures and should focus only on ensuring the safety of guests and guaranteeing that health and sanitation requirements are fulfilled. Other forms of quality control should not be associated with the licensing process and market mechanisms, including a transparent accreditation system, should be the main approach taken to promote improvements in quality that will benefit the tourism sector. When implementing the law, it will be important for the Ministry to ensure that licensing requirements are not directly linked to quality assurance, but instead focus only on safety and hygiene. Other aspects of quality should be regulated by market mechanisms that rely on the availability of information on the quality of services provided by hotels and tour operators, and the existence of a clear accreditation mechanism.

Over regulation of quality will increase the cost of doing business and distort the competitiveness of the tourism industry. More importantly, it will give regulators discretion in licensing that should be limited only to ensuring safety and hygiene. Too much regulation provides opportunities for informal charges.<sup>4</sup>

Rather than imposing regulations to assure service quality, it is important to encourage the private sector to improve quality. Alternative approaches to improving the quality of tourism services include encouraging competition among businesses and building the capacity of businesses to improve their services. Business associations can play an important role in this process.

*Some of our members in the Tourism Working Group of the Government Private Sector Forum have complained that in practice it takes a long time to get a tourism license. Excessive conditions for achieving quality assurance in order to obtain an operating license are unnecessary barriers to operating a tourism business and will not necessarily improve service quality. We should look at the experience of other countries that have worked to*

*improve the quality of service and recognize that market mechanisms are still the most effective.*

**Philip Set Kao, President of Cambodian Hotel Association**

### **3. Independent business associations are the key for promoting the tourism sector**

The current draft law stipulates that the Ministry of Tourism should 'facilitate' the process of establishing the constitution, rights and duties of tourism business associations and supervise their activities.<sup>5</sup> There are a variety of problems with this approach, and it would be far better if the Ministry of Tourism took no formal role in the internal operations of business associations.

Not only may the proposed role of the Ministry be unconstitutional if it limits freedom of association, but it may give the appearance of improper influence over the internal operations and independence of business associations. While the Ministry of Tourism can provide helpful assistance to business associations, should that be required, there is, however, no need to formally enshrine such a role in law.

*I believe that freedom of business associations is a key to promoting a conducive business environment. I think the independence of associations can be assured if there is less government control over their establishment.*

**Philip Set Kao, President of Cambodian Hotel Association**

*While consultation with the private sector is a prerequisite for improving the legal and regulatory environment, this can be achieved as long as business associations are independent to do advocacy work. The independence of business associations will ensure that they are encouraged to advocate for better policy and implementation. Therefore, the rights and constitution of a business association should not be influenced by public administration.*

**Om Pharin, Vice President of Cambodian Association of Travel Agents**

<sup>4</sup> IFC-MPDF, *Informal Charges Hinder Business Growth in Cambodia*, Business Issues Bulletin (March 2007).

<sup>5</sup> The draft Tourism Law, Article 19

## 4. Dispute resolution as an option

The current draft tourism law stipulates that the Ministry of Tourism shall establish a *tourism dispute resolution committee* to facilitate resolution of disputes that arise in the tourism sector.<sup>6</sup> While it is agreed that a quick, cheap and effective dispute resolution mechanism is important in the tourism sector, it needs to be clear that this is just one option for dispute resolution and that other mechanisms, including arbitration and mediation under the proposed National Arbitration Center or other mechanisms authorized by the Law on Commercial Arbitration can also be used by parties involved in a dispute.

It is important to ensure that parties involved in a dispute are able to use all options available to them under prevailing laws. While the Ministry of Tourism could be an option for resolving some disputes, businesses involved in a contract dispute, whether in the tourism or other sectors, may require more advanced dispute resolution mechanisms that are not available from the Ministry of Tourism, such as expertise in contract law and specialization in commercial arbitration or mediation. Freedom of parties involved in a dispute to select for themselves the method of alternative dispute resolution is a key principle of the Law on Commercial Arbitration, and it is in this spirit that the Ministry of Tourism should approach the provision of dispute resolution services.

*Experience from many businesses in Cambodia has shown that solving disputes through court results in delays. Like other businesses, hotel businesses want to solve disputes quickly. In other countries, commercial arbitration is a preferable method for solving commercial disputes. In Cambodia, I think if commercial arbitration is working properly, then this is an appropriate way for any business to resolve disputes.*

**Philip Set Kao, President of Cambodian Hotel Association**

*The first question that should be asked is how far could the tourism dispute resolution committee go in making decisions? Should the committee play a role as conciliator or arbitrator? Conciliation undertaken by officials who are knowledgeable about the tourism sector would be very helpful to solve disputes among tourism businesses. For example, the Ministry of Labor and Vocational Training is very successful in conciliating labor disputes, which many companies recognize as a good role model in mediating disputes.*

**Naryth Hem, Managing Partner of B.N.G Advocates & Solicitors**

## Conclusion

In the short to medium term, the tourism sector is likely to continue its strong growth. The real challenge will be to ensure that tourism continues to make a long-term contribution to Cambodia's economy in a way that maximizes its poverty reduction potential. It is encouraging that the Ministry of Tourism drafted the law through full consultation with the private sector, and has incorporated a permanent consultative mechanism into its policy making agenda. Ultimately, long-term growth depends on satisfying the demand of tourists by providing them with a good tourism experience at fair and competitive prices. To ensure a competitive business environment for the tourism sector, it is important that the Ministry of Tourism focuses its regulatory efforts on safety and hygiene concerns and allows the market to regulate quality through consumer choice and the establishment of a clear and enforceable accreditation system. Over regulation of tourism operators will increase costs and limit tourism options, without markedly increasing benefits. In this way the Tourism Law should foster alternative ways to improve services and encourage competition among tourism service providers, while building their capacity to improve the quality of service.

<sup>6</sup> Draft Tourism Law, Article 55. The law specifies that a Prakas will set out the details of what the committee can do, how it will work and the types of complaints and disputes it can resolve.