

Table of Contents

- Administrative and Public Sector
- Banking
- Finance
- Industry, Mine & Energy
- Investment
- Taxation

Administrative and Public Sector

Sub-Decree No. 488 dated October 16, 2013 on the Organization and Functioning of Ministry of Economy and Finance. (L&R/Adm/Khm/2013) (Royal Gazette, Year 13, No. 78, dated October 23, 2013).

On 16 October 2013, the Royal Government of Cambodia ("RGC") issued Sub-Decree No. 488 related to the Organization and Functioning of the Ministry of Economy and Finance ("MEF"). The purpose of this Sub-Decree is to:

- Organize the mission and infrastructure of the MEF.
- Organize the function and duties of the entities under the supervision of the MEF.
- Assure the quality and efficiency in the accomplishment of the mission related to economy and finance fields.

According to Article 4 of this Sub-Decree, the MEF acts as the headquarter of the RGC in the organization and implementation of the policy, legal and regulatory framework related to the management of macro-economy and public finance, State property, investment, financial industry and other related laws and regulations. Article 5 stipulates about the function and duties of the MEF while Article 6 defines the infrastructure of the MEF into two levels as follows:

1. Intermediate Level

- a. Cabinet of Minister
- b. Secretariat General
- c. General Department of Economic and Public Finance Policy
- d. General Department of Budget
- e. General Department of Administrative Finance of Sub-National
- f. General Department of Public Procurement
- g. General Department of Customs and Excise
- h. General Department of Taxation
- i. General Department of State Property and Non-Tax Revenue
- j. General Department of National Treasury
- k. General Department of Financial Industry
- l. General Department of Inspection
- m. General Department of Internal Audit

2. Local Level

- a. Municipal-Provincial Department of Economy and Finance
- b. Municipal-Provincial Branch of Customs and Excise – Office of Customs and Excise for Customs Formality Inspection – Other Offices of Customs and Excise
- c. Provincial-Khan Branch of Taxation
- d. Municipal-Provincial Treasury.

This Sub-Decree will replace all the other former Sub-Decrees related to the same matter.

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

T +855 23 217 510
+855 23 967 450

F +855 23 212 840

E info@bnglegal.com

W www.bnglegal.com

ABOUT US

BNG Legal is a leading law firm with offices in Phnom Penh and Yangon providing comprehensive legal services to foreign and local clients.

We differentiate ourselves by coupling a deep understanding of the local business environment with international professionalism and integrity.

We facilitate business, investment and trade between Cambodia, Myanmar and the rest of the world through innovative and cost-effective legal services.

Superior knowledge of local protocol, local procedure, and local people is necessary for any business to succeed in Cambodia, Myanmar and throughout Southeast Asia.

Conducting daily business in Cambodia and Myanmar, BNG Legal is up-to-date with the latest procedures and requirements, helping clients efficiently and successfully complete any project.

CAMBODIAN LAW BLOG

cambodianlaw.wordpress.com

BNG Legal believes expanding access to legal information is crucial to rule of law. To that end, several of our legal professionals write a blog discussing recent developments in the legal landscape.

LEGAL DATABASE

The laws and regulations in our database are based upon the Official Gazettes, law compendiums and other collections from the ministries and institutions of the Royal Government of Cambodia. These are available to the public through our partner site, www.bnglaw.net.

Banking

Prakas No. 122 dated May 30, 2013 on the Determination of Official Fee for Bank and Financial Institutions. (L&R/Fin/Khm/2013)

On 30 May 2013, the National Bank of Cambodia (“NBC”) issued a Regulation related to Fee Determination for Banking and Financial Institutions. According to Article 1 of this Regulation, it aims to determine the license fee, approval in principle fee, inquiry fee, application study fee, amendment of Articles of Association fee, share transfer fee, capital increasing fee and capital reduction fee for all banking and financial institutions.

This regulation combines all the fees contained in various former regulations. Below is the table summarizing all the new fees, where US\$1 equals 4,000 Riels.

| Item | Commercial Banks | Specialized Banks | Microfinance Institutions | |
|---|---------------------------------|--------------------------------|--------------------------------|-------------------------------|
| | | | Deposit-Taking MFIs | MFIs |
| Head Office | 150,000,000 Riels (~US\$37,500) | 70,000,000 Riels (~US\$17,500) | 70,000,000 Riels (~US\$17,500) | 20,000,000 Riels (~US\$5,000) |
| From 1-7 provincial and municipal branches (each) | 100,000,000 Riels (~US\$25,000) | 40,000,000 Riels (~US\$10,000) | 40,000,000 Riels (~US\$10,000) | 5,000,000 Riels (~US\$1,250) |
| From the 8th provincial and municipal branches (each) | 40,000,000 Riels (~US\$10,000) | 20,000,000 Riels (~US\$5,000) | 20,000,000 Riels (~US\$5,000) | 1,000,000 Riels (~US\$250) |
| Branches in districts (each) | 10,000,000 Riels (~US\$2,500) | 5,000,000 Riels (~US\$1,250) | 5,000,000 Riels (~US\$1,250) | 500,000 Riels (~US\$250) |
| Postal Service (each) | 1,000,000 Riels (~US\$250) | 500,000 Riels (~US\$125) | 500,000 Riels (~US\$125) | 200,000 Riels (~US\$50) |

Article 5 of this Regulation requires these institutions to pay the annual license fee by 15 January. Further, this Regulation also determine the fee for inquiry, study of application for license and approval in principle, change of license, certification on the license, share transfer, increase of capital and the reduction of capital. The failure to abide by this Regulation shall be subject to offense determined by the applicable laws.

Finance

Sub-Decree No. 476 dated August 26, 2013 on Financial Trust. (L&R/Fin/Khm/2013) (Royal Gazette, Year 13, No. 69, dated September 19, 2013).

In accordance with the Law on Finance Management for 2013, the financial trust is legally introduced into the Cambodia legal system, but the detail regulation thereon shall be determined by a Sub-Decree. Finally, on 26 August 2013, the Royal Government of Cambodia (“RGC”) issued Sub-Decree No. 476 governing the Financial Trust by defining relevant rules and procedures to establish, register, manage and monitor on financial trust. The Sub-Decree also covers trust funds that the government has entered into an agreement with the developing partners and is under the control of the banking and financial institutions.

This Sub-Decree applies to any financial trust that receives financing fund or no-refund financing of the developing partners or subordinated debt for the purpose of developing the banking and financial institutions. In this regard, Ministry of Economy and Finance (“MEF”) is the competent regulator in charge of supervising financial trusts. According to Article 6 of this Sub-Decree, the financial trust shall be made in writing and be registered with the MEF to be valid and enforceable. The MEF will decide to register the financial trust within 90 days after receiving the completed proposal or reject the registration by sending an appropriate reason in writing to the applicant within 30 days after receiving the completed proposal.

Chapter 3, 4 and 5 of this Sub-Decree provide comprehensive rules to govern the rights, duties and liabilities of the trustor, the trustee and the beneficiary as well as the mechanism to replace or substitute these actors.

The financial trust can be terminated for the following reasons:

- A prerogative decision or unanimous opinion of the trustor.

- A maturity of term as stipulated in the financial trust instrument.
- A serious violation by the trustee on the financial trust.

The financial trust shall continue its existence until the liquidation is successfully completed. All disputes related to the operation of the financial trust shall be settled through the Council of Legal Affairs of the MEF by conciliation or arbitration. However, regarding the unregistered financial trust, the Council of Legal Affairs of the MEF has the legal power to withdraw the trust and put it under the State supervision.

Finally, the trustee who manages or uses the trust in an inappropriate manner, in contradiction with the purpose of the financial trust, loses trust assets through embezzlement, or counterfeits report or documents, shall be subject to criminal, administrative and/or civil punishment according to the applicable laws and regulations. Further, within six months commencing from the date of this Sub-Decree, any person who manages the trust shall register this financial trust with the MEF. The failure to register the financial fund will be subject to its withdrawal and replace its supervision by the State.

Industry, Mine & Energy

Decision No. 35 (RGC) dated October 14, 2013 on the Temporary Postponement of All Kinds of Sand related Business along the Mekong and Bassac Rivers. (L&R/Bsn/ Khm/2013) (Royal Gazette, Year 13, No. 78, dated October 23, 2013).

The scope of this decision is to suspend temporarily all type of sand dredging operation along the Mekong and Bassac Rivers until further decision from the Royal Government of Cambodia. The following ministers are responsible to implement this decision: Minister of Council of Ministers; Minister of Ministry of Interior, Minister of Ministry Economy and Finance; Minister of Ministry of Commerce, Chairman of Sand Management Committee; Minister of Ministry of Land Management, Urban Planning and Construction; Minister of Environment; Minister of Ministry of Water Resources and Meteorology; Minister of Industry Mines and Energy; Minister of Ministry of Public Works and Transport; Minister of Ministry of Agriculture and other related ministries/institutions.

Investment

Sub-Decree No. 486 dated October 14, 2013 on The Organization and Functioning Of the Council For The Development Of Cambodia. (L&R/Inv/ Khm/2013) (Royal Gazette, Year 13, No. 77, dated October 19, 2013).

This Sub-Decree replaces the Sub-Decree No. 149 dated October 3th, 2008 on Organization and Functioning of the Council for the Development of Cambodia (CDC).

This Sub-Decree also updates the composition of the CDC in accordance with the newly formed government. It further provides the roles and responsibilities of relevant organization structure of the CDC as well as those of each Ministry and Institution involved in the "One-Stop services" regarding the investment project approval. Private directed investment remains under the competence of the Cambodia Investment Board of the CDC, whereas the specialized economic zones (SEZ) are still under the supervision of Cambodian Specialized Economic Zone Board (CSEZB).

This Sub-Decree is made up of 37 Articles and 4 Chapters prescribing Organization of the Council for the Development of Cambodia, Roles and Responsibilities of the Council for the Development of Cambodia, Functioning of the Council for the Development of Cambodia and Final Provision.

Taxation

Notification No. 1707 dated October 02, 2013 on Tax Assessment for Non-Interest Loan or below/above Market Interest Rate. (L&R/Tax/Khm/2013)

This Notification is issued in accordance with the Article 11 and 12 of the Law on Taxation 2003, the section 5.9 and 8.1 of Prakas on Profit Tax 2003, and upon the decision of Deputy Prime Minister and Minister of Economy and Finance dated 20 Jan 2012. This Notification aims to prevent any tax avoidance by the tax payer regarding the received profit. The Notification covers the tax determination on interest charge that real regime taxpayer borrows from bank or financial institution or non-financial enterprise whether the interest charged is at zero, below or over market rate. The Notification sets down as follow:

- For non-interest bearing loan and loan with interest rate below market rate recorded in the balance sheet, Tax Department shall not make deemed interest expense for the taxpayer to determine the withholding tax, or deem subsidy to determine the taxable profit on the different of interest which is lower than market rate. Moreover, if the enterprise doesn't record any expense in the accounting book, those expenses are determined as not yet paid and not subject to withholding tax.

- For loan with interest rate higher than market rate, there must be an amendment besides accounting book following the market interest rate. The excess amount of interest rate from market value must be deducted from interest expense. Market interest rate is determined as below:

- o Average of interest rate per annum of Singapore Interbank Offered Rate (SIBOR) plus 6% for loan from foreign country
- o Average of interest rate per annum of National Bank of Cambodia for loan within Cambodia

- Documentations for supporting the interest charged are below:

- a. Loan Contract or Agreement certified by lawyer from both parties
- b. Money transferred document which is related to loan contract or agreement
- c. Proper and clear record in accounting book.

If any enterprise doesn't have supporting documents as stated in (a), (b) and (c) above, loan is determined as non-proved loan which cause to increase the actual asset and is determined as taxable profit following the Section 2.2.3 of Prakas No. 1059 on the Profit Tax.

Notification No. 1728 dated October 09, 2013 on the Payment of Tax on Business regarding the Borey, Flats, Villa or Building for Sale (L&R/Tax/Khm/2013).

The Notification is the result of the meeting dated May 29, 2013 between the owners of Borey construction, apartment, villa, or building, and upon approval of Deputy Prime Minister and Minister of Economic and Finance dated July 31, 2013. This notification aims to inform to all of the owners of Borey construction, apartment, villa, or building for sale as below:

1. For the construction which was started and sale from May 29, 2013, the owner must buy the construction material from Self-Assessment Taxpayer (Real Regime) in order get the VAT input credit for off-setting with VAT output when making sale.

2. When there is sale, the construction's owner must add VAT of 10% on the construction value following the article 64 of Law on Taxation (LoT) and Prepayment of Profit Tax of 1% on the construction and land value referring to article 28 of LoT. The construction owner is also subject to other tax obligation.

In case, the owner of construction doesn't follow this notification, there will be a tax-reassessment following the article 116, 117 and punishment following the article 128, 131, 132 and 133 of LoT.

Notification No. 1734 dated October 10, 2013 on The Tax Registration Obligation of Business Operators and NGOs. (L&R/Tax/Khm/2013)

According to article 3 (new), article 101 of Law on Taxation (LoT), and article 2 of Aknukret on Value Added Tax, General Department of Taxation (GDT) informed to all business enterprises and organizations related to religion, charity or non-profit organization that they must register at the Tax Administration within 15 days after starting business or business activities following the tax regime as below:

1. Self-Assessment Regime (Real Regime): enterprises and organizations must register as real regime taxpayer if they meet the following requirements:

a. All type of business and organization described above

b. All business beside (a) above which earn annual revenues from 500 million riels up for sale of goods, from 250 million riels up for sale of service, and from 125 million riels up for contractual with government.

2. Estimate Regime: any business having lower annual revenues than the limit revenues of the Real Regime Taxpayer must register as Estimated Regime Taxpayer.

If the businesses or organizations do not register at the Tax Administration following above regimes, they will be subject to penalty and additional tax.