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## Administrative & Public Sector

### Sub-Decree No.575 dated 24 December 2013 on the Organization and Functioning of Ministry of Industry and Handicrafts. (L&R/Adm/Khm/2014) (Royal Gazette, Year 14, No.01 dated 04 January 2014)

The Ministry of Industry and Handicrafts has the mission to lead and manage industry and handicrafts sector in Cambodia. To support this mission, at local level there are bureaus of industry and handicrafts and there are branches of expert authorities. At the central level, there are:

- The Cabinet of the Minister
- The General Department of General Affairs
- The General Department of Industry
- The General Department of Small and Medium Enterprise and Handicrafts
- The Institute of Standards of Cambodia
- The National Metrology Center
- The Office of the Inspector General
- The Department of Internal Audit

The functions and duties of General Departments, Institute and Center are provided for in the Sub-decree. The functions and duties are also briefly stipulated in the Sub-decree. On the contrary, those of the Cabinet of the Minister followed the existing Sub-decree No.20 on Organization and Functioning of Ministries and Secretariats dated 30 April 1996.

The entry into force of this Sub-decree replaces (abrogates) six previous Sub-decrees which are:

1. Sub-decree No.183 dated 31 December 2010 on Organization and Functioning of the National Metrology Center;
2. Sub-decree No.40 dated 20 February 2009 on Promotion of the Industrial Laboratory Center of Cambodia to the Level of a Department under the General Department of Industry of the Ministry of Industry, Mine and Energy;
3. Sub-decree No.62 dated 04 June 2008 on Organization and Functioning of the Institute of Standards of Cambodia;
4. Sub-decree No.43 dated 30 May 2003 on Promotion of the Office of Industrial Property of the Technical Industry Department to become the Department of Industrial Property of the General Department of Industry of the Ministry of Industry, Mine and Energy;
5. Sub-decree No.12 dated 11 February 2002, on Promotion the Office of ASEAN and the Office of Industrial Standards to become the Department of ASEAN Cooperation and Affairs and the Department of Industrial Standards of Cambodia;
6. Sub-decree No.35 dated 26 April 1999 on Organization and Functioning of the Ministry of Industry, Mine and Energy.

### Sub-Decree No.576 dated 24 December 2013 on the Organization and Functioning of Ministry of Mines & Energy. (L&R/Adm/Khm/2013) (Royal Gazette, Year 14, No.01 dated 04 January 2014)

Separating the Ministry of Mines and Energy (MME) from the former Ministry of Industry, Mine and Energy (MIME), the Royal Government of Cambodia has issued the Sub-Decree No. 576 on the Organization and Functioning of the Ministry of Mines and Energy.

This Sub-Decree determines missions, structures and the compositions of relevant entities under the supervision of the MME. The missions of MME is to govern mines and energy sectors, including petroleum, gas and electricity in the Kingdom of Cambodia.

There are two levels of the MME:

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## 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.

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[cambodianlaw.wordpress.com](http://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](http://www.bnglaw.net).

### ☒ Central Level:

1. Cabinet of Minister;
2. General Department of General task;
3. General Department of Mines;
4. General Department of Petroleum;
5. General Department of Energy;
6. General Department of Inspection; and
7. General Department of Internal Audit.

### ☒ Local Level: Municipal-Provincial Department of Mines and Energy and competent branch.

In addition, this Sub-Decree, in its article 5, provides the roles and responsibilities of the MME.

**Decision No. 56 dated 25 December 2013 on the Allocation and transfer of the General and vassal former entities of the Ministry of Industry, Mines and Energy and the unit as well as the work involved to the Ministry of Industry and Handicrafts and the Ministry of Mines and Energy. (L&R/Adm/2014/Khm) (Royal Gazette, Year 14, No.02 dated 08 January 2014)**

Under this Sub-Decree, while the General Department of Mines and the General Department of Energy of the former MIME, together with its officials, working location and relevant materials resources are transferred to the MME, the General Department and other entities of the former MIME, together with its officials, working location and relevant materials resources are transferred to the MIH.

Furthermore, under article 2 of this Sub-Decree, location of the former General Department of Mine resources and former General Department of Energy are converted to cabinet of the MME. On the other hand, the cabinet of the former MIME is converted to cabinet of the MIH. Article 4 stipulates that the entities of local level of the MIH also fulfill their duties as local entities of the MME according to relevant tasks until there is new determination.

## Business

**Prakas No.045 Dated 31 January 2014 on the delegation of Supervision powers on precious metals jadeite jewelry business activities to the Municipal and provincial Department of Commerce.**

On 31 January 2014, the Ministry of Commerce issued the Prakas on the Delegation of Supervision powers on precious metal jewelry business activities to the Municipal and Provincial Department of Commerce. Within this Prakas, the Municipal and Provincial Department of Commerce is delegated to issue a Business Permit per request and is in charge to prepare all the necessary required documents in accordance with the provisions and procedures in places. This Prakas shall be in effective from the date of signature.

**Instruction No.46 dated 31 January 2014 on the implementation on Prakas No.045 dated 31 January 2014 on the on the delegation of Supervision powers on precious metals jadeite jewelry business activities to the Municipal and provincial Department of Commerce.**

On 31 January 2014, the Ministry of Commerce released Instruction No. 046, which provides the implementation to Prakas No. 045 on the Delegation of Supervision powers on precious metals jewelry business activities to the Municipal and Provincial Department of Commerce.

Under Instruction No. 046, the Municipal and Provincial Department of Commerce has the authority to issue the permit for Precious Metals jewelry business activities unless the applicant granted approval from the Ministry of Commerce. The applicant is required to provide the following documents:

- Application form
- Identity card or passport (foreigner)
- Sample of receipt
- Latest Patent certificate
- Photo
- contract

The validity of permit is 1 (one) year and should be renewed within 30 days before the expiration date.

All businessmen who are subject to the tax on profit is obliged to register with the Ministry of Commerce and to request the permit on precious metals jewelry from the Municipal and Provincial Department of Commerce before their business operation.

## Company

### **Prakas No.043 dated 22 January 2014 on the Revision Prakas on the Registration Names of Company, Names of Association and Protection of Minister of Ministry of Commerce (L&R/ Cpn /2013/Khm)**

On January 22, 2014, Ministry of Commerce (“MOC”) issued a Regulation No. 043 related to rectification of regulation on the registration of company name, association name and its protection. According to this regulation, the duties of Department of Intellectual Property as provided in Article 5 of the 2012 Regulation No. 222 related the name registration of enterprise, company, association and its protection are transferred to Department of Company Registration who will be in charge of checking name of enterprise, company, association or organization. Any provision which is contrary to this regulation shall be abrogated.

### **Notification No. 346 dated February 11, 2014 on the market interest rate level for loan 2013**

On February 11, 2014, General Department of Taxation (“GDT”) issued a notification No. 346 related to the determination of interest rate for loan market in 2013. In order to comply to Article 18 of the 2003 Taxation Law, Section 2.5 and 5.9 of the 2003 Regulation related to Tax on Profit, and the 2014 Instruction related to the determination of interest expense for enterprises, the GDT determines the interest rate for loan market in 2013 at twelve percent (12%) per annum. This interest rate is calculated based on the average of interest rate for loan from eight major domestic commercial banks. Finally, all taxation entities and enterprises under the self-declaration tax regime shall follow this notification for their tax result of year 2013.

### **Notification No.066 dated February 04, 2014 on the Filing of Request on License Renewal for the security representative and investment advisory representative.**

On February 04, 2014, Securities and Exchange Commission of Cambodia (“SECC”) issued a notification No. 066 related to the application to renew licenses for securities firm agents and investment advisory agents. According to this notification, all licensed securities firms, investment advisory firms, securities firm agents, and investment advisory agents are required to apply for license renewal within 30 days before its expiry date. The application for license renewal shall be submitted to the head office of SECC located at 99, Street 598, Khan Sen Sok, Phnom Penh. For further queries, you can contact through phone number 023 885 611 or through fax number 023 885 622 or through email at intermediaries@secc.gov.kh.

## Customs & Import-Export

### **Notification No.1338 dated 17 December 2013 on the Instruction and Limitation on some of Customs Procedure related to the Business Management or Keeping on the Vehicle.**

1. Vehicle for sale in warehouse or car dealer shop
  - All type of cars, vans and trucks has to stick the import tax stamp on the front, right, top on glass and inside the vehicle. Moreover a copy of receipt of Import tax and tax stamp letter has to keep in the vehicle under the tax stamp.
  - All type of motorcycle have to hang a copy of import tax on each motorcycle
2. For personal using vehicle
  - Car owner has to keep a copy of receipt of import tax or tax stamp letter and/or vehicle identification and stick the original tax stamp as instructed.
  - Motorcycle owner has to keep a copy of vehicle identification and/or receipt of import tax or other documents which proof the legislative of the vehicle in the motorcycle.
3. Business owner or dealer as mentioned on No. 1 have to keep all original documents which proof the legislative of vehicle that stored in warehouse or shop and cooperate with the Custom authority to check all the vehicle documents.

## Intellectual Property Rights

### **Royal Kram No. NS/RKM/0114/006 dated January 20, 2014 on Promulgation of Law on Geographical Indication.**

Cambodian law on Geographical Indications (GI) was promulgated by the King Norodom Sihamoni on 20 January, 2014. The law consists of 17 chapters and 41 articles. The law aims to protect the intellectual property of producers, operators and to protect the consumers who using the products bearing the GI. It also maintains the national identification, strengthen the knowledge, traditional know-how and reduce the poverty.

The Ministry of Commerce is the competence authority in charge of managing, possessing and registering all IG applications in Cambodia. Only GI association, group of representative of producers, organization and/or operators who receive the benefit from GI is entitled to file an application for registration a geographical indication.

Foreign application is also eligible for registration and protection in Cambodia unless that GI was successfully registered in the country of applicant. The Ministry of Commerce does not register foreign GI if that GI has not been registered in the country of applicant, invalidity or that GI has not been used in the country of applicant. All foreign GI applications must retain a legal agent, if they want to protect their GI in the Kingdom of Cambodia. However, in case of any inconsistency, the International Treaty related to Geographical Indication is considered as the principle provisions.

## Taxation

### **Instruction No.151 dated 22 January 2014 on the Enterprise's Interest Expense.**

In conformity with the provisions in Article 11 and 12 of Law on Taxation, Paragraph 5.9 and 8.1 of the Prakas on Profit Tax No.1059 MEF.PK.DT dated on December 12, 2003 and according to the decision made by His Excellency, Deputy Prime Minister, Minister of Economy and Finance dated January 20, 2012 on the general Department of Taxation's letter No.1304 GDT dated on November 4, 2011 for consistency in setting the deductible interest expense, the General Department of Taxation hereby instructs all units of taxation as follows:

1. For any enterprises which have recorded in balance sheet of loan from the bank or saving institution or from other enterprises, but without recorded interest expense, the unit of taxation shall implement as follows:

- a. Shall not implement the creation of "Deemed Interest Expense" with the aim of setting the general withholding tax for any enterprises in compliance with Section 8.1.2 of the Proclamation (Prakas) on Profit Tax stipulating that "for the objective of withholding tax, any expenses which are subject to tax withholding recorded as expenses in the accounting list shall be considered paid". Therefore, if any enterprises have not recorded any expense in the accounting list, they shall be deemed as outstanding and not subject to tax withholding.
- b. Shall not implement the creation of income from the Deemed Subsidy with the aim of setting income taxable on profit for the enterprises.

2. For any enterprises which have recorded in the balance sheet of loan from the bank or saving institution or from other enterprises with interest below the market interest rate, the unit of taxation shall not create the deemed interest expense to set the withholding tax or create income from the deemed subsidy in order to determine the taxable incomes on portion of the interest below the market interest rate.

3. For any enterprise which have recorded in balance sheet of loan from the bank or saving institution or from other enterprises and recorded interest expenses in the tax year, the unit of taxation shall:

- a. In case of enterprise loan from non-related party, the allowable interest rate should not exceed 120 percent of the market interest rate during that time.
- b. In case of enterprise loan from related party, the interest rate must not exceed the market interest rate during that time.

Regarding the aim of this circular on the market interest rate is the average of the interest rate from at least 05 big local commercial banks which is published annually by GDT.

4. Interest expense as mentioned in Item 2 and 3 in this circular is allowed deduction after implement deductible interest calculation in tax year in compliance with Article 12 of Law on Taxation and section 5.9 of Prakas on Profit Tax.

5. All loans as mentioned in Item 1, 2 and 3 above, the enterprise shall notify to tax administration within 30 days after the loan transaction incurred, attach with loan contract or agreement or supporting documents which clearly identify the loan. In case any enterprises did not notify to the Tax Administration or have no any supporting documents as required, the loan shall be considered as profit in conformity with the contents of Paragraph 2.2.3.f of the Prakas on Profit Tax.

This circular replaces the circular No.1707 GDT, date October 02, 2013 on Non-Interest Loan or below or above Market Interest Rate. All the units of taxation shall comply with the contents of this Circular in effect from the date of this signature.

**Notification No.215 dated 28 January 2014 on the Formality to apply for Definitive Closure of Business and Its Tax Clearance.**

General Tax Department would like inform to big and medium tax payers located in Phnom Penh that to reinforce tax administration management and accelerate tax auditing procedure for Enterprise that requested for business closing and tax clearance, you have to follow as below:

1. Permanently closed:

- a. Enterprise must filled all information required in form and attached with request letter for business closing, original latest patent, original VAT certificate, MAA, and Certificate of Incorporation, 3 latest monthly tax return, last annual tax return, and current annual tax return that asked for closing, and tax re-assessment letter in all period.
- b. Enterprise must pay stamp duty tax 1 million (1,000,000 Riels) according to Stamp Duty Rule to bank account and attached with when submit business closed form.

2. Enterprise requested for tax clearance:

Enterprise must submit a request letter with requested tax clearance period and attached with tax re-assessment letter for all period.

Both requested above, enterprise must submit requested form to General Tax Department with clarification of enterprise name in Khmer and Latin, Tax Identification Number, Current Address of enterprise, active Telephone Number, and attached with a copy of ID card or Passport of Director, Manager, or Owner of Enterprise.

Requested form must signed by Director, Manager, or Owner of Enterprise or the person who had legal authorize letter.

**Notification No.2298 dated 18 December 2013 of Tax Returning on Tax on Profit for Fiscal Year 2013.**

According to Article 5 and 29 of Law on Taxation (LoT) promulgated by the Royal Kram No. NS/RKM/0297/03 dated 24 February 1997, General Department of Taxation (GDT) informed to all directors, managers or owners of Real Regime enterprises about the obligation of 2013 annual tax on profit return submission and payment as below:

1. The enterprises using the calendar year (01 January to 31 December) shall submit the return and pay the annual tax on profit for the year 2013 not later than 31 March 2014 to the tax administration of their registered office.
2. The enterprises, allowed to use the tax year beside the calendar year, shall submit the return and pay the annual tax on profit for the year 2013 within 3 months after the tax year ended.
3. The enterprises having multi branches shall submit the annual tax on profit return, which is the combination returns of the head office and all branches, attached with income statement of each branch. Moreover, each branch shall declare its profit and loss following the form of annual tax on profit return and submit to the tax administration of its registered branch.
4. The enterprises, following many of Qualified Investment Project (QIP) or other projects which are QIP and non-QIP, and obtain the different of tax on profit exemption or subject to different rate of tax on profit, shall submit the return and pay the annual tax on profit as stated in above point (1) to (3) and shall follow the additional guidance from the Ministry of Economic and Finance (MEF).
5. For the representative of taxpayer, who is responsible for communicating with the tax administration and submitting the monthly and annual tax on profit return on behalf of taxpayer, shall have the transferred rights in written form from the taxpayer as stated in article 106 of LoT.
6. All enterprises having the obligation of submitting the return and paying the annual tax on profit shall attach the balance sheet, income statement and a table of transaction with the related person as shown in attached table.

Company's name: ..... TIN: .....

Table of Related Person's Transaction

Date: .....

A. Sale and Other Loan

No.	Company's Name	Transactions	Amount
1			
2			
3			
4			
5			

B. Purchase and Other Loan

No.	Company's Name	Transactions	Amount
1			
2			
3			
4			
5			

Phnom Penh, Day..... Month..... Year.....

Company director's signature and seal

Note:

According to article 3 (New), paragraph 10 of Amendment Law to the Law on Taxation promulgated by the Royal Kram No. NS/RKM/0303/010 dated 31 March 2003, "Related Person" refer to:

1. a member of the taxpayer's family;
2. an enterprise which controls or is controlled by, or is under common control with, the taxpayer. The term "control" means the ownership of 51 percent or more in the value or voting power of the equity interests in the enterprise.