



INVESTMENT GUIDE TO REAL ESTATE IN CAMBODIA | 2023



Contents

INTRODUCTION.....	3
REAL PROPERTY RIGHTS.....	5
Types Of Land Use Rights.....	6
Commercial/Industrial	7
Residential/Condominium	8
Agriculture	8
Leases	9
Foreign Ownership Restrictions.....	10
Perfecting Ownership	12
ACQUISITION OF OWNERSHIP	12
Asset Acquisitions	13
Other Acquisition Rights	14
ZONING AND PLANNING PERMISSIONS.....	15
Land Use Zoning.....	16
Environmental Laws.....	17
Real Estate Developer License	19
Real Estate Services Licensing.....	22
CONSTRUCTION	23
Legal Framework.....	24
Construction Authorization Documents	24
Licensing Requirements.....	26
TAX	29
Transfer Tax	30
Tax on Immovable Property (TIM)	30
Tax on Unused Land (TUL)	31
Immovable Property Rental Tax	31
Tax on Capital Gains.....	31
REIT (REAL ESTATE INVESTMENT TRUST)	34
REAL ESTATE FINANCE.....	36
Permitted Finance.....	37
Mortgage	37
Other Security Interests.....	37
Foreign Lender Restrictions	38
KEY CONTACTS	39
ABOUT DFDL	40

A photograph of ancient stone ruins, possibly Mayan or Aztec, featuring intricate carvings and a large tree in the background. A large white circular graphic is overlaid on the left side of the image.

01

INTRODUCTION

According to the Ministry of Land Management Urban Planning and Construction (“**MLMUPC**”), as of April 2023 throughout Cambodia there are 271 construction projects with total construction areas of 1,479,489 square meters with the estimated investment capital of USD 611,194,991. There are 304 construction projects with the total construction area of 576,963 square meters with estimated investment capital of USD 215,115,296 which increases 184.12% comparing to the data in April 2022. There are 278 construction projects with the total construction area of 1,257,356 square meters with the estimated investment capital of USD 482,465,013 which increases 26.68% comparing to March 2023.

Counting from year 2000 to April 2023, 63,161 projects were granted with the construction permits, with total construction area of 178,401,781 square meters and with the estimated investment capital of USD 71,070,470,808.

According to the Real Estate Business and Pawnshop Regulator (RPR) of Non-Bank Financial Service Authority (FSA), as of June 2023, there are around 500 real estate business projects have been registered and granted with the business licenses while around 200 projects are active¹.

As the world recovers from the Covid-19 pandemic, Cambodia saw 5.2% growth in GDP in 2022 according to the National Bank of Cambodia. This acceleration in growth was despite borders in a number of significant FDI sources remaining closed or partially closed during the year. While the recovery is underway, the real estate sector has faced some headwinds as the tourist market will likely take a couple more years to recover to pre-Covid-19 levels. However, the Cambodian government has taken a number of key measures to improve the market and encourage diversification of real estate investment, particularly in the industrial sector and the hospitality sector.

Various global financial institutions (World Bank and the Asia Development Bank) as well as the Cambodian government predicting a GDP of 4-6% in 2022 - the construction and real estate sector remains a key driver and pillar of the country’s economy.

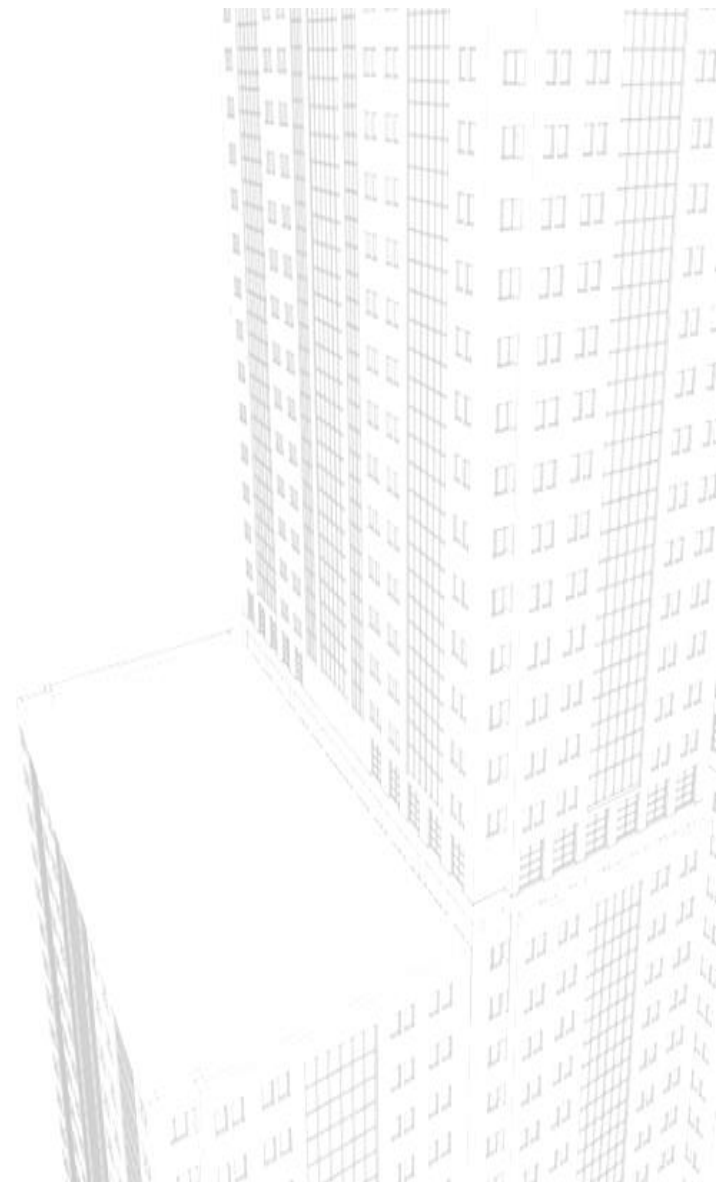
National Bank of Cambodia also cited increased domestic economic activity, investment, and rising local interest will be the key drivers of the Kingdom’s property sector growth in 2022. The local interest in the property market has resulted in landed properties becoming more popular.

¹ The estimated data was verbally provided by the RPR officer during a meeting on 14 June 2023.

Nationwide infrastructure projects have seen the Phnom Penh-Preah Sihanouk Ville Expressway has opened to traffic in early 2023.

This is in addition to new developments or upgrade projects on airports, port terminals, logistics hubs, bridges, and road projects in the major urban hubs of Phnom Penh, Sihanouk Province and Siem Reap, as well as the addition of many more community and mega malls. These are impacting the price of land and properties in the cities and in new areas of Cambodia.

Meanwhile, Special Economic Zones are seeing continued international interest and are primed for increased growth and investment.



An aerial photograph of a vast green landscape, likely a rural or agricultural area, with rolling hills and a clear sky with scattered white clouds. A large white circle is overlaid on the left side of the image, containing the text.

02

REAL PROPERTY RIGHTS

TYPES OF LAND USE RIGHTS

COMMERCIAL/INDUSTRIAL

RESIDENTIAL/CONDOMINIUM

AGRICULTURE

LEASES

FOREIGN OWNERSHIP RESTRICTIONS

Types Of Land Use Rights

Cambodia as a developing market with a young population, rich in land, and a growing middle class, holds significant opportunities for investment and development of the real estate market. Land may be privately owned, and state owned. Private land may be owned in perpetuity by Cambodian individuals or Cambodian registered entities without restrictions. Land is protected from expropriation by the Constitution and the Land Law dated 30 August 2001 (“**2001 Land Law**”), which only permits expropriation of land when in the “public interest” and if such expropriation is “fair” and “just compensation” is given to the owner in advance.

The Law on Expropriation 2010 provided Cambodia’s first regulatory framework for the state confiscation of private property. Notably, it empowers the state to expropriate property for the development of public infrastructure that serves the public or state interest with advance payment of fair and just compensation.

Nearly all investments in Cambodia involve investment in immovable property of some sort. For foreign investors, land investments are usually in the form of: (i) a long-term lease (also known as a perpetual lease with a duration of 15 years to 50 years) as detailed in section (e), (ii) a minority interest (up to 49%) in a Cambodian company that owns land, coupled with secured lending using land as collateral, (iii) by trust arrangement pursuant to the current development of trust regulations and (iv) an economic land concession granted by the government.

The Law on the Provision of Ownership Rights over Private Units of Co-Owned Buildings to Foreigners on 24 May 2010 (“**Foreign Ownership Law**”) allows foreign individuals or corporate entities to own up to 70% of the units in a co-owned building and enjoy common areas within a co-owned building provided that the building is registered as such at the Land Office, and those units are not on the ground level or below.

Current Land-Ownership Situation in Cambodia

Cambodia’s current system and rules for land registration, titling, ownership, and transfer of land are in a state of transition.

The 2001 Land Law as amended by the Law on Implementation of the Civil Code dated 31 May 2011, Inter-Ministerial Prakas No. 30 concerning Real Rights Registration Procedure Pertaining to the Civil Code issued by the Ministry of Land Management, Urban Planning and Construction and the Ministry of Justice where all the articles of which came into force on 29 July 2013 (“**Joint Prakas 30**”) and various regulations set procedures in place for the transfer and registration of land in Cambodia.

Official certificates of title that evidence ownership of immovable property are currently available, with the number of landowners in Phnom Penh and other urban centers and provinces who have obtained such titles continually increasing. Landowners can obtain a certificate of title through either sporadic registration or systematic registration conducted by the Municipal or Provincial Department of Land Management Urban Planning Construction and Cadastre (“**DLMUPC**”). The MLMUPC has also introduced a new format for certificates of title which contains a QR code which can be used to access the information on the certificate of title including the registered owner and encumbrances. According to October 2022 Report of MLMUPC, dated 4 November 2022, as of October 2022, there are 2,861 visitors having access to the QR code of certificates of title containing the QR code.

Before an investor deposits any money toward the purchase of land, such an investor should ensure that the landowner has a valid certificate of title registered with the relevant authorities. If there is no certificate of title, the investor should confirm that the purported owner of the land is the true owner by conducting due diligence at the relevant local village and commune offices, as well as at the Land Registry and review any available supporting documents that reflect ownership and possession of the land concerned.

Land Ownership Reform

The status of private immovable property ownership in Cambodia has been as tumultuous as Cambodia’s modern history. Before 1975, private landownership was protected by law. During the Khmer Rouge period, all private interests in land were abolished.

Beginning in 1979, after the fall of the Khmer Rouge, a communist-style ownership structure was put in place

with the state as owner of all immovable properties. During this period, occupation of land and buildings by an individual or family was enough to give the occupants certain “usufruct” rights to the structure. This “ownership by occupation” was particularly pronounced in urban areas where many families, upon returning to the cities after the period of civil conflict, simply occupied whatever available structure they desired. This right of use was informally recognized through the “family card,” which was issued by the State of Cambodia (“**State**”) for various population control purposes, and which named the family and its address.

In 1989, the State promulgated and implemented a number of legal measures aimed at facilitating the transfer of state land into private land. Any Cambodian occupying land or buildings could file a claim at the local agricultural or land office requesting ownership of the occupied property. Following an investigation process that identified and measured the plot’s boundaries and any adverse claims, the state recognized that the applicant was the true owner-occupant by issuing a certificate of land use and possession.

Family Land Privatization Scheme

Cambodia’s land privatization scheme provided for privatization to families based on their “family card” and their perpetual occupation of the land in question. Land, therefore, is usually owned by the entire family, as represented by the husband and wife. In order for a valid title to be passed on, the signature of both husband and wife, as well as those of all their children aged 18 years or older, is mandatory on all transfer documents. Innumerable land cases have ended up in court because this rule has often not been followed.

State Land

The new Law on Management, Use and Disposal of State Property (“**State Property Law**”) dated 12 November 2020. This State Property Law was issued pursuant to Article 58 of the 1993 Constitution which stipulates that “state property includes land, underground, mountains, seas, seabed, undersea, under-seabed, beach, air spaces, islands, rivers, creek, lakes, tributaries, forests, natural resources, economic and cultural centers, national defense bases and other buildings as determined as state-owned properties. The management, use and disposal of the state-owned properties is determined by Cambodian law.

Under the State Property Law, property belonging to the State is classified either as state public property (public property of the state), public property of a public entity and state private property (private property of the state).

Commercial/Industrial

The land in Cambodia can be developed for a commercial/industrial zone depending on its location. The investor may invest in an industrial zone or special economic zone (“**SEZ**”) for multi-purposes with special treatment or incentives from the government. The foreign investor may lease the land from a private owner, or the government based on the location and status of the land for the establishment of a SEZ. Alternatively, the foreign investor can set up a landholding company (in which at least 51% of the voting shares are Cambodian-owned and 49% of the shares are owned by a foreigner) to acquire the ownership of land for the establishment of SEZ.

The legal framework for SEZs is now governed by Sub-Decree No. 148 on Establishment and Management of Special Economic Zones dated 29 December 2005 (“**SEZ Sub-Decree**”), followed by the amendment to this SEZ Sub-Decree by Sub Decree No. 18 on Amendment of Article 4 (4.1 and 4.3) of this SEZ Sub-Decree, dated 22 February 2008. The SEZ Sub-Decree sets out the procedures and provisions related to the establishment and management of SEZs in Cambodia. It provides for two types of SEZ: general industrial zones and export processing zones (wholly dedicated to exports).

All SEZs must be approved for establishment by the Council for Development of Cambodia (“**CDC**”). Below are the basic terms for SEZs which are detailed in the SEZ Sub-Decree:

- must be 50 hectares of land or more in size;
- must be fenced on all sides;
- anti-flooding systems, clean water system, electricity, telecommunications. and postal systems must be provided;
- a residential center must be built for employees and employers with a large road system, public parks, and fire protection systems; and

- sewage systems, recycling systems for liquid waste, environmental protection measures and other related infrastructure must be provided. Zone investors must register with the SEZ Administration by providing all required documentation. The SEZ Administration will then register the project and grant incentives as provided under the New Investment Law and other regulations. The registration procedures are detailed in the SEZ Sub-Decree.

Residential/Condominium

There is a general restriction that land in Cambodia cannot be owned by foreigners (regardless of whether they are corporate entities or individuals).

An exception now exists for co-owned buildings pursuant to the Provision of Ownership Rights over Private Units of Co-Owned Buildings to Foreigners on 24 May 2010 (The “**Foreign Ownership Law**”) and Sub-Decree No. 82 on the Determination of the Proportion and Methods for Calculating Private Units that Can Be Owned by Foreigners in Co-Owned Buildings (“**Sub Decree 82**”). Under these laws, foreigners may own up to 70% of total surface-area of all private units in co-owned buildings or condominiums, excluding ground and underground floors. It should be noted that specific formalities have to be adhered to in order for foreigners to successfully register co-ownership titles. The aforementioned regulations apply to both newly constructed co-owned buildings and existing buildings to be converted into co-owned buildings.

In addition to the development of co-owned buildings, residential allotments such as gated communities are referred to as “Boreys” in Cambodia.

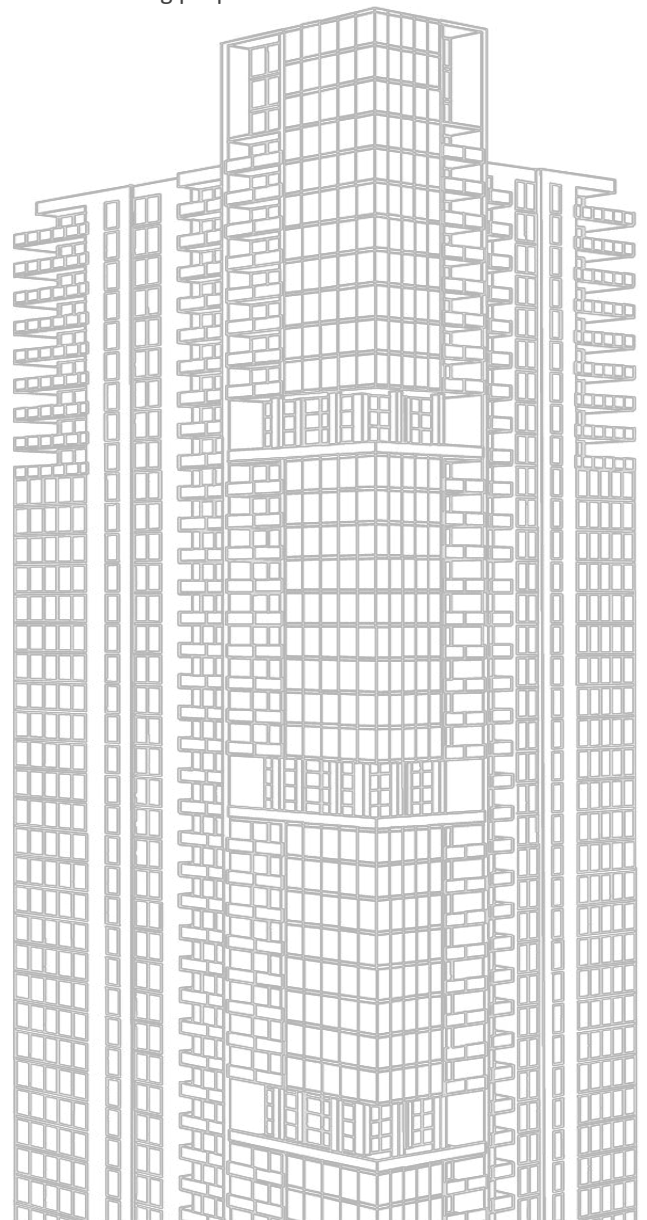
MLMUPC is the authority in charge of the registration and issuance of the Borey’s land lot ownership certificates. Sub-Decree 39 on Management of Borey dated 10 March 2011 (“**Sub-Decree 39**”) confirms that all residences in the form of private units of co-owned buildings shall be registered in accordance with Sub-Decree 126 on the Management and Use of Co-Owned Buildings dated 12 August 2009.

Borey developers must obtain real estate developer licenses in accordance with Prakas 089 as mentioned below. Sub-Decree 39 also provides that Borey developers must obtain a confirmation letter from the MEF in relation to their solvency.

Agriculture

Investors may consider investment in agricultural land by way of an economic land concession (“**ELC**”) granted by the Cambodian government.

State land may be subject to concessions, including an economic land concession and a social land concession. According to Article 52 of the State Property Law, ELC involves the use of state private land pursuant to a contract where the land is used by the concessionaire in order to pursue agricultural and agro-industrial activities. A social land concession is, however, a form of legal transfer regarding state private land for social purposes in order to provide aid to the poor who have no land for residential and farming purposes.



The term of ELC must not exceed 50 years. The size of ELC size must not exceed 10,000 hectares. A person may receive a land concession spread over various locations. The granted ELC covering various locations with a total area exceeding 10,000 hectares to various individuals and/or legal entities which are under the control of the same individual or entity is prohibited.

The concessionaire shall not be granted ownership rights over land which is subject to ELC unless the land also qualifies as a social land concession. ELC may be subject to succession for its remaining term.

The concessionaire shall be liable for the land area granted under the concession agreement and be responsible before the law for any loss or degradation of any part of the land area mentioned in the agreement.

The rules and procedures for economic and social land concessions are to be determined by Sub-Decree. As noted above, investors may have interests in state private property through economic concessions.

For foreign investors (particularly those with businesses that might involve so-called protected land) it is important to understand the different types of protected land and know which is the competent authority that manages the various categories of land in Cambodia.

Leases

Perpetual Leases

A perpetual lease is a lease with a minimum duration of 15 years and a maximum of 50 years and is renewable (see Article 244 and Article 247, Civil Code). A perpetual lease may include the rights to sub-lease or transfer/assign the lease rights to another party with or without consideration, including without limitation the successors or heirs of the lessee. A perpetual lease can also be used as security for financing.

A perpetual lease is not enforceable against third parties unless it is registered with the relevant MLMUPC (Article 246 of the Civil Code). Registration results in the lease being enforceable to third parties and ensures that any acquirer of the leased property would be aware of the lease as it would be noted on the land certificate of title.

Upon registration of a perpetual lease, a certificate of perpetual lease is issued by the relevant land office to the

lessee. A perpetual lease agreement must be executed in Khmer (signed and thumb-printed, and sealed with a corporate stamp, if any party to the lease is a corporate entity), in the presence of a district official or a Cambodian notary. A perpetual lease must be registered with the relevant land office in order for it to be upheld against third parties. A perpetual lease can only be registered on a certificate of title (hard title). The perpetual lease certificate can be subject to hypothec registration for any financing purposes.

Lease of State Immovable Property

A state-private immovable property may be subject to a lease through a written agreement for a maximum term of 50 years. The term of any lease agreement involving a state private property with a term exceeding 50 years shall be reduced according to the Civil Code Implementation Law. A lease agreement of state private property must also be attached with a specification book determining the rights and obligations of the lessee, and both must comply with the minimum rules determined by MEF Prakas.

The lease of state private immovable property with a term over 15 years shall confer perpetual rights to the lease and upon the lessee (i.e., right to assign the lease, to sublease, to grant a pledge or hypothec, succession rights, or other disposal with or without charge.)

The exercise of the above rights is subject to approval by the State Property Trustee Authority and the State Property Management Authority. The rules and procedures for the lease of state public property and state private property are to be determined by a Sub-Decree.

Furthermore, the state public immovable property can be leased pursuant to a lease arrangement provided that: (i) it shall not change the manner in which the property is used or cause damage to the property; and (ii) it shall not disrupt their function of serving the public interest or usage of the land for public services.

The leasing of state public property must be made through a written agreement that has been approved by MEF. The lease agreement shall be attached with a specification book determining the rights and obligations of the lessee. The lease term of any lease of state public property shall not exceed 15 years and such lease shall be entered into for public interest and public service.

A lease of public property may be revoked at any time if it is deemed necessary by the state and such lease must comply with the minimum rules determined by a Prakas of the MEF.

Foreign Ownership Restrictions

It is key that any investor should conduct a proper title search before purchasing an interest in land. At present, there are a number of different documents in use in Cambodia that may be presented as evidence of valid ownership or possessory rights over the land.

Not all of these documents represent unencumbered, indefeasible ownership of land. Some are only claims of ownership, while others allow the government to repossess the land without compensation.

There is a general restriction against foreigners owning land in Cambodia which is encapsulated into the Constitution and the Land Law.

However, regarding foreign ownership of co-owned buildings, a major step forward took place through the promulgation of the Law on the Provision of Ownership Rights over Private Units in Co-Owned Buildings to Foreigners ("**Foreign Ownership Law**") on 24 May 2010. Under the Foreign Ownership Law (described above) foreigners may own up to 70% of private units in co-owned buildings or condominiums, excluding ground and underground floors.

Specific formalities have to be adhered to in order to apply for co-ownership titles whereby foreigners' rights to co-owned buildings or condominiums may be registered.

This law applies to both newly constructed co-owned buildings and existing buildings to be converted into co-owned buildings.

Most private units in Cambodia are not registered as "co-owned" property at the Land Registry.

Noting that under Cambodian law, only Cambodian citizens or Cambodian entities can legally own land (and properties built on that land). Cambodian entities are defined as those in which 51% or more of the voting shares are held by Cambodian citizens or entities with a registered address in Cambodia.

There is no entirely risk-free way for foreigners to own land in Cambodia without obtaining Cambodian citizenship or investing in co-owned building in accordance with the Foreign Ownership Law.

One method that investors employ in order to mitigate legal risks relating to investments is the use of land holding companies. Provided 51% of the voting shares of a private limited company registered in Cambodia are owned by either a Cambodian citizen (or a Cambodian company) then such a company is deemed to be Cambodian.

A Cambodian company may invest in land and a foreign investor may secure its ownership interest in land by registering a security interest in the land by the registration of a hypothec.

Another option for the foreign investor to invest in land is through a trust arrangement. The Trust Law was promulgated on 2 January 2019 by Royal Decree № NS/RKM/0119/002 ("**Trust Law**"). Trust Law (and implementing sub-decrees) represent a promising legal development for investors in Cambodia.

Under the Trust Law, a trust may be created by a trustor or by applicable regulations. If the trust is created by the trustor, the trustor must transfer its property or funds to the trustee through the trust instrument by specifying the specific purpose of the trust and/or the identity of the beneficiary. The Trust Law sets out the role, rights, and responsibilities of the trustor (who establishes the trust), the trustee (the registered owner of trust property), and the trust's beneficiaries (who benefit from the trust).

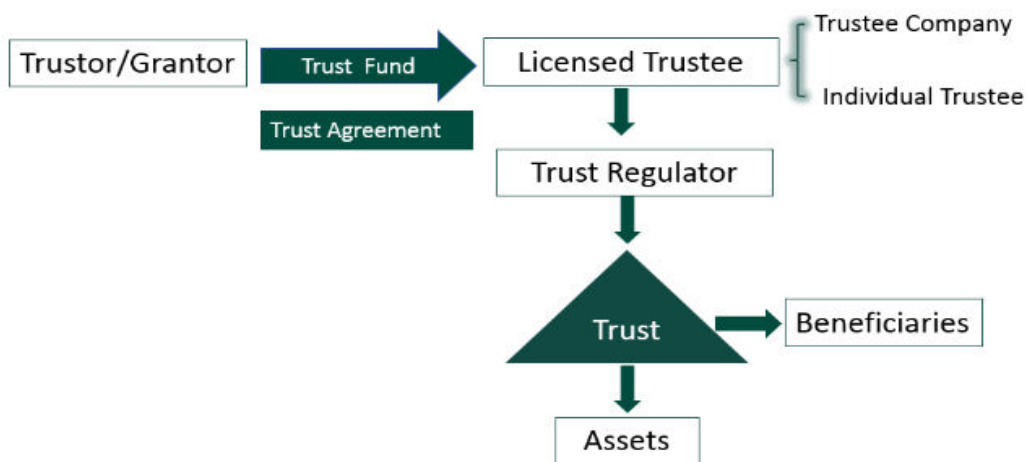
Sub-Decree 114 on Registration of Trust dated 2 August 2019 ("**Sub-Decree 114**") followed by Prakas No. 003 dated 26 January 2022 on Rules on the Management, Establishment and Functioning of Trust ("**Prakas 003**") sets out the rules, conditions and procedures relating to trust establishment and registration and the grant of licenses/permits to trustees.

A trust agreement must have three parties: a trustor, a trustee and a beneficiary. Under a trust agreement, the trustor transfers property or funds to the trustee. The trust agreement must be registered with the Trust Regulator.

appointed trustee(s) shall proceed with the process to apply for an approval to form a trust and, on behalf of trustor or grantor, register the trust with the Trust Regulator (Article 54 of Prakas 003). A trust is valid from the date of registration with the Trust Regulator.

All trusts must be approved by the Trust Regulator. The trustor or grantor must propose the appointment of trustee(s), duly licensed by the Trust Regulator, for the Trust Regulator’s approval (Article 8 of Prakas 003). Upon the registration of a trust, a certificate of trust registration will be provided by the Trust Regulator (which is valid for five years from the date of its first registration). The

A trustee can be a legal entity (trustee company) or individual person (individual trustee). A trustee must first be licensed and/or approved by the Trust Regulator. The individual trustee can be licensed to act as: (i) an independent individual trustee; or (ii) an individual trustee of a trustee company.



At the time of writing, the practical application of the law remains largely untested in the context of real estate investment.



CASE STUDY

A Cambodian landlord wishes to sell to a foreign-owned entity incorporated in Cambodia (“**FOE**”), a plot of land where a factory has been built. What are the options for the FOE to acquire the garment factory? The FOE is prevented from owning land and the factory itself as per the Cambodian Constitution and the 2001 Land Law. From a legal perspective, the factory cannot be separated from the land on which it is erected. Further, only natural and legal persons of Cambodian nationality have the right to own land in Cambodia. The FOE may establish a land holding company (“**LHC**”) in Cambodia to own the land. To be considered as having the Cambodian nationality, the LHC shall have at least 51% of the total shares held by one or several Cambodian shareholders (entity or individual). The 49% shares can be held by the FOE. The LHC could then lease the land and the factory to the FOE for its operations. Separating the land ownership and the operation of the business ring-fences the liabilities of the operating company’s business from the liabilities of the entity which owns real estate but tax rules on transfer pricing should be taken into account. The FOE can also implement a trust with a licensed trustee who will hold the land and the factory.



03

ACQUISITION OF OWNERSHIP

PERFECTING OWNERSHIP

ASSET ACQUISITIONS

SHARE ACQUISITIONS

OTHER ACQUISITION RIGHTS

Perfecting Ownership

According to the Civil Code, ownership over an immovable property may be acquired by a contract (aka sale and purchase contract). Article 336 (2) of the Civil Code further provides that a contract in which one of the parties bears a duty to transfer or to acquire ownership on an immovable property shall come into effect only when such a contract is made by a notarial document. Notarial documents here refer to the notarization by the notary/competent authorities.

The Civil Code also provides that the transfer of title by agreement pertaining to an immovable property shall come into effect only when the transfer of rights is registered in the land registry book at the MLMUPC. Upon registration, it is presumed that such rights belong to the person to whom it is registered.

The process of the immovable property ownership transfer will include the execution of the *Vente Definitive* and the land transfer application form (land office's standard format) and registration with the relevant land authorities. The ownership transfer process will also involve the tax authorities for payment of the stamp duty tax, which is at a rate of 4% based on the market value. The market value is determined as a higher value of the value on the contract or prescribed value determined under the Ministry of Economy and Finance's schedule whichever is higher. Such a tax must be paid before the land office approves the transfer of ownership of the land (or the change of the owner of the property on the land title). Also, it is important to note that any construction erected on the land will be included in the basis used to calculate the tax payable for the transfer of ownership.

For a share acquisition, the registration shall be made by filing the application and required documents with Ministry of Commerce as stated in Law on Commercial Enterprises, promulgated on 30 May 2005, as amended on 29 January 2022 by the Law on Amendment of Law on Commercial Enterprises, the Law on Commercial Rules and Commercial Register dated 26 June 1995, as amended on 18 November 1999 and Prakas No. 142.

Asset Acquisitions

The Civil Code distinguishes between five ways in which real estate ownership may be lawfully obtained:

- **Sale:** a transferor (or seller) transfers legal ownership of land to a buyer in exchange for the buyer paying the seller money;
- **Exchange:** the transferor transfers ownership of land to a buyer in exchange for the buyer transferring to the seller some object or services (other than money);
- **Gift:** the transferor gratuitously (i.e., without payment or exchange) offers to transfer land as a gift to another and that other person accepts that transfer of land;
- **Succession:** the transferee obtains ownership of land by virtue of the application of succession laws (broadly equivalent to inheritance) noting that a land owner obtaining their land under succession will be liable for debts which are secured by that land (assuming such debt were perfected); and
- **Prescription:** a person obtains ownership by virtue of having "peacefully" and "openly" possessed land for a continuous period without objection from another party. A person who peacefully and openly possesses land for a continuous period of twenty years may obtain ownership of that land by prescription (where their ownership has not been contested in that 20-year period). A person who peacefully and openly possesses land for a continuous period of ten years may obtain ownership of that land by prescription (where their ownership is held in good faith and without negligence of another). This applies to private ownership land and not state land.

Share Acquisitions

Any person (whether a natural person or legal entity) may indirectly acquire ownership rights to land by virtue of such a person indirectly controlling land through their ownership of shares in a company. There is tax implication for the transfer of the share of any person as transferor in the company.

Other Acquisition Rights

The Civil Code permits the use of both moveable and immovable property as security for payments of debts (and/or the discharge of other obligations) by any person including debts or obligations of legal entities.

A person (whether a natural person or legal entity) may acquire ownership of land as a result of the enforcement of a security right over immovable property.

There are two common forms of security interest over land: a hypothec and a pledge.

The owner of land is also the borrower of money (or the obligor) from the creditor and then the hypothec agreement or pledge will have only two parties (i.e., the creditor and the hypothecator - in the case of a hypothec).

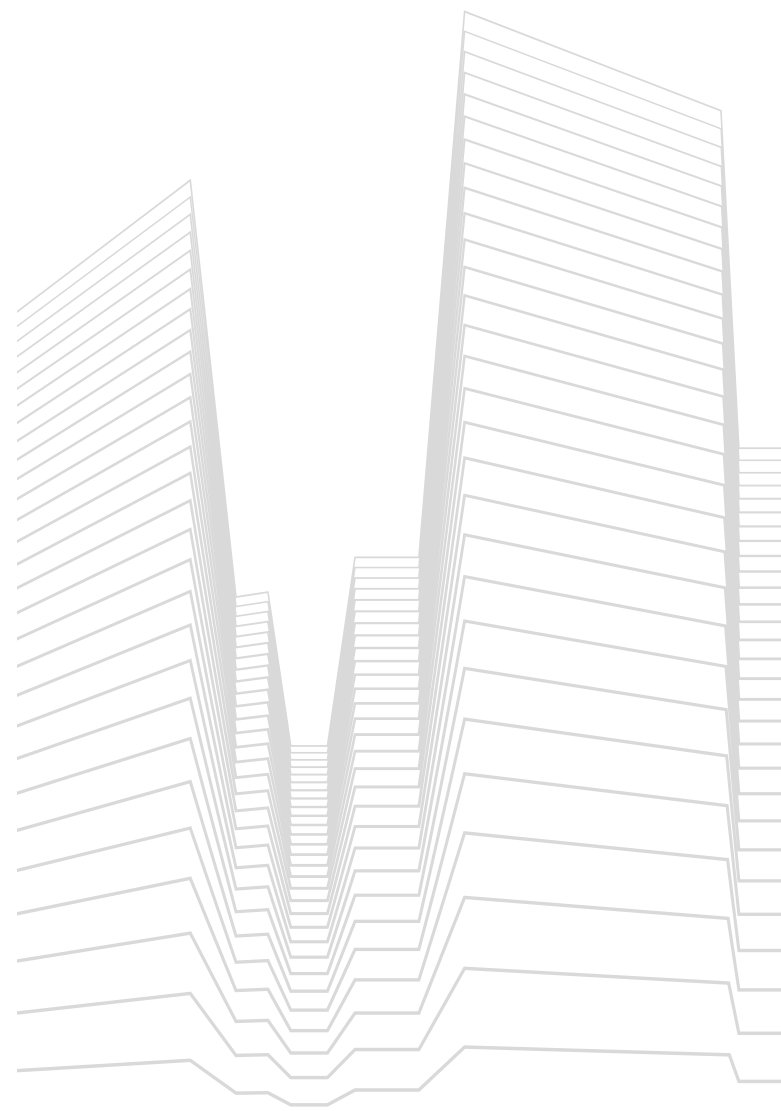
The key difference between the hypothec and pledge is the possession right afforded to the debtor during the term of the pledge/hypothec.

A hypothec is an agreement creating a security interest pursuant to which possession of land is retained by the debtor (who may also be the hypothecator) until the debt or obligation has been discharged. In contrast, under a pledge agreement the pledgee (or lender) will take physical possession of the land until the debt or other obligation owed to the pledgee has been discharged.

In practice, a hypothec agreement is the usual form of securing obligations where land is used as collateral. This is because it offers the landowner the right to continue enjoy possession of the land while that land simultaneously acts as security for the hypothec.

In either case, if a pledger or hypothecator defaults on their obligation to the pledgee or hypothec, then the hypothec or pledgee must submit a written request to the Court for so-called “compulsory execution”. If the Court grants an order of compulsory execution, then the Court will issue an order for the sale of the land which is the subject of the hypothec/pledge, and the proceeds of that sale will be used to discharge the outstanding obligation that was secured pursuant to the hypothec/pledge (Article 447 of the Code of Civil Procedure of Cambodia).

Note that a hypothec or pledgee will be treated as a secured creditor and shall have the right to receive the performance of their claim prior to other unsecured creditors.



An aerial photograph of a city, likely Manila, Philippines, showing a wide river (the Pasig River) flowing through the urban landscape. The city is densely packed with buildings, including several prominent skyscrapers. The river is flanked by greenery and residential areas. A large white circular graphic is overlaid on the bottom left of the image, containing text.

04

ZONING AND PLANNING PERMISSIONS

LAND USE ZONING

ENVIRONMENTAL LAWS

REAL ESTATE DEVELOPER LICENSE

REAL ESTATE SERVICE LICENSING

Land Use Zoning

On 3 April 2015, the government adopted regulations on land use planning and zoning being Sub-Decree No. 42 on Urbanization of Capital, Municipalities, and Urban Areas (“**Urbanization Sub-Decree**”). The Urbanization Sub-Decree aims to define urbanization of the capital, cities and provincial towns in Cambodia by outlining land development, construction and land use. This will include a master plan on land use or a master plan, land use plan and a detailed plan.

Land is divided into two types: (i) areas where development is permitted, and (ii) controlled areas.

Various restrictions are imposed on developments such as minimum numbers of car parking spaces, building height and the requirement to obtain a certificate of compliance or conformity of urban planning and construction before obtaining a construction site closing permit or a certificate of occupancy. In short, every form of construction must be in accordance with the provisions of the Urbanization Sub-Decree and Construction Law and regulations.

In addition to the Urbanization Sub-Decree, MLMUPC is currently working on new regulations in the form of Sub-Decree, Prakas or ministerial decision on land management and urban planning, the management and development of coastal areas.

As of 21 January 2022,² the following master plan of land use and land management planning exercise have been completed and put into use:

- At capital/provincial levels: master land-use plan for Phnom Penh and land management planning for Battambang and Preah Sihanouk Provinces.
- At city/urban areas: 17 master land-use plans including Battambang city, Takhmao city, Kampot city, Kep city, Bokor city, Koh Rong urban area, Siem Reap city, Khemarak Phoumin city, Paoy Pet city, Bavet city, Khan Chroy Changvar and Khan Sensok, and other urban areas of provinces.

- At Khan levels: master land-use plan for some Khans in Phnom Penh including Khan 7 Makara, Khan Prek Pnov, Khan Toul Kok, Khan Russey Keo, and Khan Mean Chey.

As part of the annual plan for 2022 regarding the development of legal framework I land and urbanism sector, MLMUPC is working on finalization of some pending draft regulations including:

- the master plan of land use for Kratie province for vision of year 2030 and Kampong Cham for vision for year 2035;
- procedure on establishment of plan of land management in province, region, and national levels;
- sub decree on management and development of coastal area in Cambodia;
- law on land management and urbanization; and
- New land law.

Nevertheless, there is no indication as to when those pending regulations will be adopted.

Foreign investors should familiarize themselves with the applicable zoning rules and regulations before moving forward with acquiring an interest in land. Investors should also familiarize themselves with the various land use permits and committees that exist both at the local and national level. For example, in Siem Reap, the Apsara Authority has been established to regulate the use of land around the Angkor Wat temple complex. Various use zones have been established to conserve and protect the temples and surrounding areas.

² Based on the annual report of the Ministry of Land Management, Urban Planning and Construction dated 21 January 2022.

Environmental Laws

On 29 June 2023, the Environmental and Natural Resources Code (“**Environmental Code**”) was promulgated by Royal Kram № NS/RKM/0623/007. The Environmental Code sets out the rules and procedures to strengthen, modernize and improve the management of environmental protection, conservation and restoration of natural resources, biodiversity and ecosystem functions to support sustainable economic development in Cambodia.

The lengthy Environmental Code contains 12 books and 865 articles which include variety of activities relating to environmental and natural resources protection mechanism and responsible institutions. The key elements of the Environmental Code are noted below.

The first book of the Environmental Codes covers the general provisions, the objective and scope of the Environmental Code, role and responsibility of ministries relevant to the environment and natural resources and legal policy development. The second book consists of 11 contents including the provisions related to environmental management and sustainability mechanism, natural disaster risk management and reduction, climate changes, biodiversity resources management for sustainable development and biosafety. This book also includes the provisions related to land use planning in which environmental consideration is required and sustainable city and green building together with general provisions and responsible institutions for these related matters.

In addition, this second book of the Environmental Code mentions the responsible electrical energy including the general provisions and responsible institutions for the responsible electrical energy strategy planning and type of energy and electrical energy framework. Interestingly, the 11th content of this book also describes the responsible extractive industries which refers to oil, gas, mine, and other metal industries with the general provisions and responsible institutions.

The third book of the Environmental Code focuses on the environmental protection restricted by its general principles. This book provides details on the following matters:

- inspection of hazardous substance emission;
- solid waste management;

- hazardous waste management;
- liquid waste management;
- air noise and vibration disturbance/pollution management; and
- management of substance which impacts ozone layer, cooling substance, other products made of substance or containing substance that impacts ozone layer.

The fourth book of the Environmental Code focuses on the management of natural protective zone and management of beach, coastal areas and sea.

The Environmental Assessment is provided under the fifth book of this Environmental Code which includes the Environmental Assessment Strategy and Environmental Impact Assessment (“**EIA**”) with following main provisions:

- general provisions;
- responsible institutions;
- EIA principles;
- EIA process;
- Additional EIA;
- public participation for EIA;
- environmental protection plan and project monitoring;
- environmental audit; and
- rights to access to information and national environmental list.

Books 6 and 7 determine the provisions related to the liability for the impact on the environment and natural resources by the project owner and the environmental education and awareness.

Book 8 of the Environmental Code provides the rule for environmental economy, finance, fee and the management of social and environmental fund. It also determines the following fees:

- environmental fee, or premium;
- payment and management of social and environmental fund;

- establishment and management of environmental trust; and
- financial grant or environmental management plan.

Book 9 of the Environmental Code also provides the mechanism and procedures for dispute resolution if there is any dispute related to environmental and natural resources dispute.

The penalty provisions are stated in the book 10 of the Environmental Code whereby those penalties are related to any violation to environmental and natural resources, environmental management, environmental protection, natural resource management and environmental assessment.

Although the Environmental Code was adopted, it will be implemented in one year after its effective date. Once the Environmental Code is implemented, this code will end the effect of related existing laws including Law on Environmental Protection and Natural Resource Management dated 24 December 1996, Law on Natural Protection Area dated 15 February 2008, and Law on Biosafety dated 15 February 2008.

Environmental matters are presently governed by the Law on Environmental Protection and Resource Management dated 24 December 1996 ("**Environmental Law**") which was enacted to protect and restore Cambodia's natural environment and to ensure the conservation, development, management, and sustainable use of natural resources.

The Environmental Law empowers the Ministry of Environment (MOE) to inspect any premises or any means of transport if the MOE considers that it affects the environment. To ensure the sustainability of natural resources, the Environmental Law requires all ministries to consult with the MOE before issuing decisions or

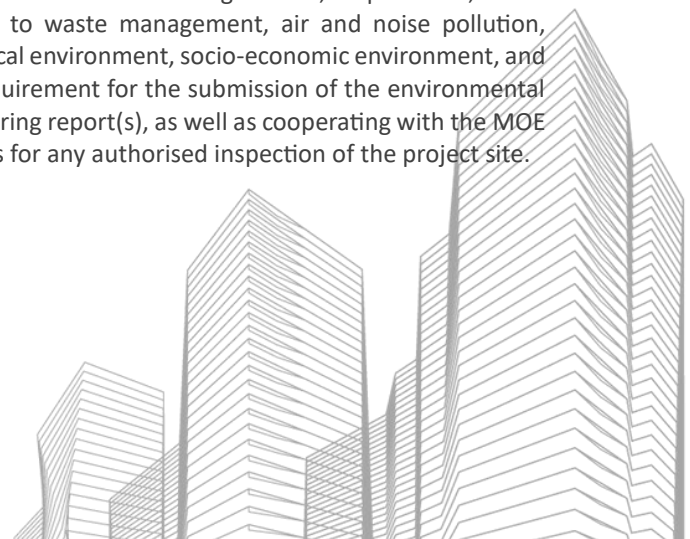
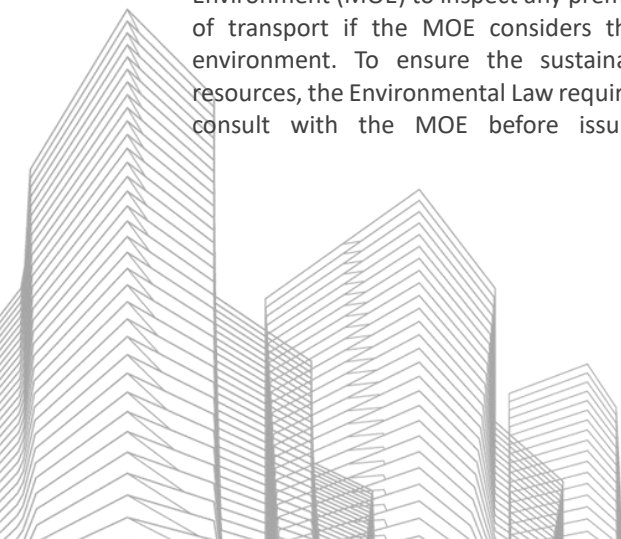
undertaking activities related to the protection, development or management of natural resources.

The Environmental Law is supported by various governmental regulations including Sub-Decrees on: Environmental Impact Assessment; Water Pollution Control; Solid Waste Management; and Control of Air and Noise Pollution.

Environmental Impact Assessments

Environmental impact assessments ("**EIAs**") are required for some projects depending on their nature, size, activity etc., as specified in the Sub-Decree No. 72 on Environmental Impact Assessment Processes dated 11 August 1999 ("**Sub-Decree 72**"). Sub-Decree 72 contains an Annex which lists all projects that require an EIA to be conducted. There are two types of EIA: (i) initial environmental impact assessment report ("**IEIA**"), and (ii) full environmental impact assessment/environmental and social impact assessment report ("**Full EIA**"). A Full EIA is a detailed study on the environmental impact of the project and is required to be conducted when a project is deemed to have a serious impact on the environment and public welfares.

The Department of Environmental Impact Assessment shall examine the project site and determine whether the project requires an IEIA or the Full EIA. Once done, each EIA must be submitted to the MOE for approval before commencing any project. In addition to the EIA, the project investor will be required to execute an environmental protection agreement with the MOE (an "**EPA**"). An EPA contains undertakings to implement the conditions prescribed in the Full EIA and comply with environmental laws and regulations, in particular, those related to waste management, air and noise pollution, biological environment, socio-economic environment, and the requirement for the submission of the environmental monitoring report(s), as well as cooperating with the MOE officials for any authorised inspection of the project site.



Real Estate Developer License

In order to regulate and control residential developments, including the co-owned buildings or Boreys, and to protect purchasers of houses, flats or units of co-owned buildings, the MEF has created a real estate developer license. This license is now governed by Prakas No. 089 issued by MEF on 20 January 2020 on the Management of Real Estate Development Business (“**Prakas 089**”). Prakas 089 supersedes previous regulations on the same subject matter.

The above license applies to residential development businesses, co-owned building businesses, and land parcel development businesses for sale or long-term lease. The latest activity (i.e. splitting land parcels) is now subject to a license or permit being issued pursuant to Prakas 089. This license is not required for the development of offices, warehouses or industrial projects.

There are two types of licenses/permits for residential and co-owned building developments. However, these are no longer linked to compulsory prepayments to carry out the project but rather as to whether the project is completed or otherwise before starting the sale process.

- **Type 1 license/permit:** granted to real estate developers that have completed the construction of their project(s) prior to start of the sale.
- **Type 2 license/permit:** granted to real estate developers that have started construction of their project(s) and simultaneously announced the sale thereof.

Licenses are issued by MEF, and permits are issued by the Capital-Provincial Department of the Economy and Finance. This license or permit must be obtained before starting the project. Regarding land parcel development businesses, there is only one category of license or permit.

The Capital-Provincial Department will issue permits to developers of housing developments or co-owned buildings that comprise 4-30 flats, 3-30 villas, or 4-30 units, and to land parcel developments lower than 10,000 square meters. The MEF on the other hand will be responsible for issuing licenses for housing developments or co-owned buildings or land parcel developments that exceed the above thresholds.

License/permit fees depend on the size and category of the construction project being undertaken as well as the surface area of the parcel of land in question.

In addition, on 2 March 2023 the Royal Government of Cambodia issued Sub-Decree No. 50 on the Management of Real Estate Development Business (“Sub-Decree 50”). Although Sub-Decree 50 was issued, Prakas 089 is still valid at this point in time.

Similar to Prakas 089, Sub-Decree 50 was issued to determine the rules and procedures for managing and inspecting the real estate development business in Cambodia to ensure the effectiveness and transparency of management and control of the real estate development business, equity and balance of interests between developers and buyers, attracting investors and trust to the public preventing any financial risk in the real estate sector, and contributing to preventing money laundering activity in the real estate development sector.

There will be a number of new Prakas or implementing regulations are to be issued under this Sub-Decree 50 which we note that detailed procedures on granting business licenses or permits and the mechanism on management of business operation will be determined by the joint Prakas between the Ministry of Economy and Finance (“**MEF**”) and Non-Bank Financial Service Authority (“**FSA**”). Furthermore, the mechanism on inspection of real estate development business, the dispute resolution procedures and rules-procedures on administrative penalties and breach will be determined by separate regulations.

The Sub-Decree 50 contains 31 articles and 9 chapters which also provides the new competent authority to regulate the real estate development business in Cambodia and to manage and control the real estate development business to the Real Estate Business and Pawnshop Regulator (“**RPR**”) of FSA and the Provincial/Municipal Department of Economy and Finance (“**PDEF**”) that is the Etat Major of the RPR.

The Sub-Decree 50 categorizes the business licenses and permits in three categories:

- Category 1: License or permit for housing development business;
- Category 2: License or permit for co-owned building development business; and

- Category 3: License or permit for land lot development business.

In addition, the licenses or permits under category 1 (housing development business) and category 2 (co-owned building development business) above are divided into two sub-types of licenses and permits:

- Type 1: license and permit to be granted to any developer who has completely finished construction, prior to announcement for sales and leases; and
- Type 2: license and permit to be granted to any developer who, at the same time, starts construction and announces gradual sales or leases.

The detailed rules and procedures to obtain the above licenses or permits will be determined by a joint Prakas between the MEF and the FSA.

As of today, the rules and procedures to obtain the above business licenses or permits under the current Prakas 089 is still applicable.

Pursuant to this Sub-Decree 50, the defined term of “*real estate development business*” has been updated to include *the business or investment activities for developing housing, co-owned building or land-lot for sale or lease*”.

The “lease” was defined under the Sub-Decree 50 as the lease of land or building of a developer with a term of at least 10 years while the Prakas 089 determines only a long-term lease with the term of at least 15 years.

From general view of the Sub-Decree 50, it provides the main provisions covering the real estate business operation, inspection, reporting, dispute resolution and penalties for violation of Sub-Decree 50’s provisions.

- **Real estate business operation:** Under the provision of the real estate business operation of Sub-Decree 50, the developer with license or permit is required to fulfill their obligations under the sale and purchase or lease contract of which sample has been submitted to the RPR.

In addition, under the Sub-Decree 50, the developer has to apply for the property management license or cooperate with a licensed property management company after the handing over the house or co-owned building to the buyers. The developer needs to inform the

RPR or PDEF on the name of the real estate agent who cooperatively sells the project of the developer.

According to the Sub-Decree 50, we do not see the provisions related to the buyer’s obligations while those are stipulated in the Prakas 089.

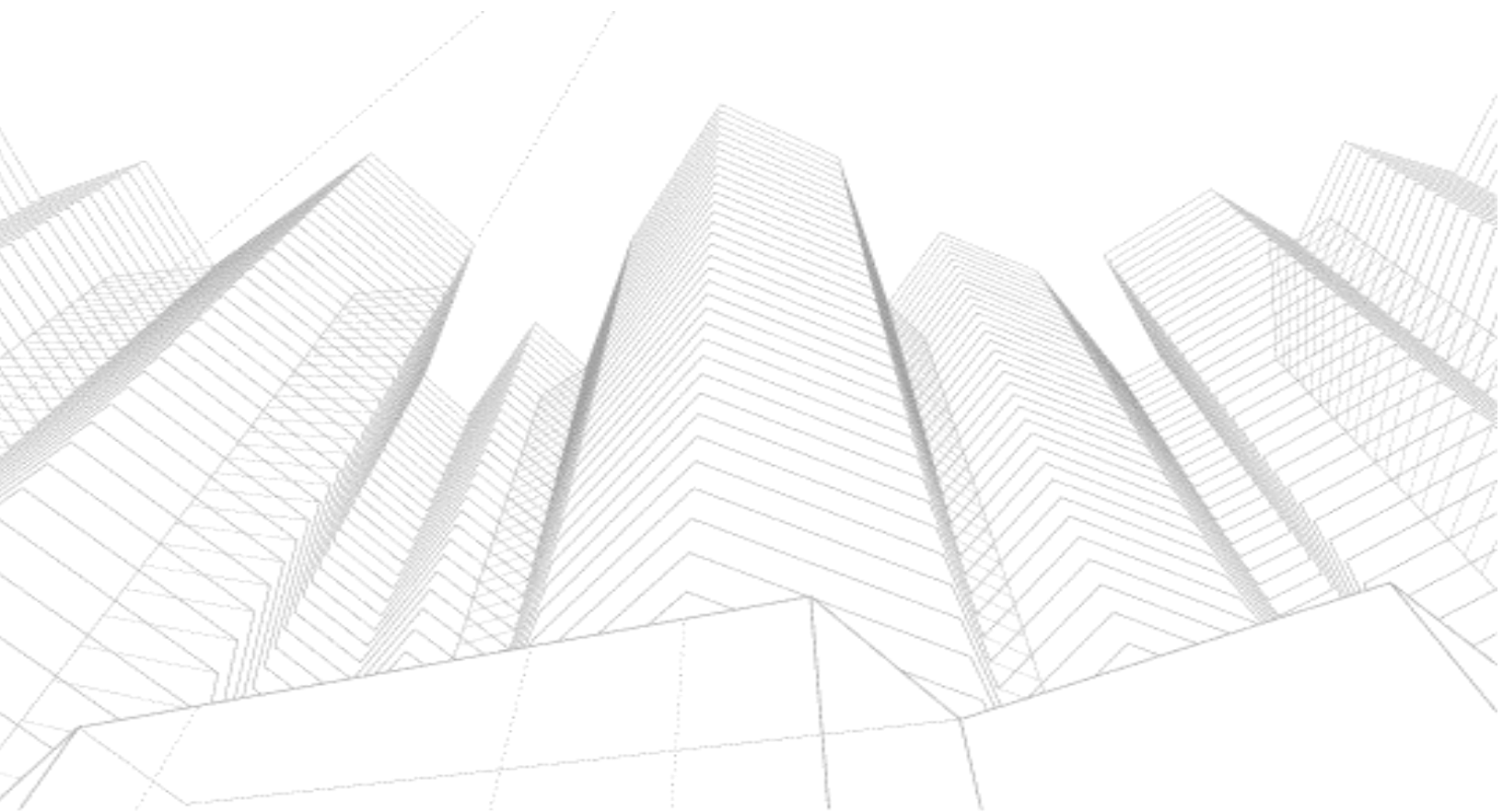
- **Sale and Purchase Agreement or Lease Contract (“SPA or Lease”):** The Sub-Decree 50 requires a number of terms and conditions to be included in the SPA or Lease, for instance, the parties, name of the project, project location, size of the property, date of construction commencement and completion, obligation of ownership transfer and liability in case of default and the list of the materials to be included in the house or co-owned building (etc.) where the condition of list of materials was not included in Prakas 089.

The same Sub-Decree 50 further provides that if the signatory of the SPA or Lease is not the legal owner or a lessee, the signatory is required to obtain a power of attorney from the owner or the lessee.
- **Business Guarantee:** The developer who wishes to obtain the license/permit under type 2 needs to deposit the business guarantee pursuant to the joint Prakas to be issued by MEF and FSA.
- **Developer’s Account:** The Developer must open a developer’s account in order to receive all kinds of deposit pursuant to the SPA or Lease; and this account can be closed until the development project has been completed and permitted by the RPR.
- **Suspension and completion of the project:** The licensed or permitted developer who wishes to suspend or finish the project has to file a written application to the RPR or PDEF. The detailed procedures will be determined by the joint Prakas between the MEF and the FSA.
- **Inspection:** The RPR or PDEF is entitled to nominate a competent authority to investigate or prevent any project from being carried out without any license or permit and to inspect any project under operation with a license or permit. Likewise, the developer has to provide any report or documents required by the RPR. The detailed mechanism for such inspection will be determined by a separate regulation.

- **Reporting:** The licensed or permitted developer is required to provide an audited financial annual report to the RPR no later than 3 months after each fiscal year and any other report as required from time to time by a separate regulation.
- **Dispute Resolution:** If there is any dispute related to the real estate development business, any party is entitled to file a complaint to the RPR before the dispute is referred to an arbitration or competent court, except for the criminal case. A detailed procedure of the dispute resolution will be provided in a separate regulation.
- **Penalty:** Any developer that violates the provision of the Sub-Decree 50 or any relevant regulations is subject to the administrative penalties as stated below:
 - a written warning;
 - prohibition from conducting operation or restriction for certain activities;
 - temporary suspension of the license or business permit for from 6 (six) months to 1 (one) year;
 - revocation of the issued license or permit or principle permit;
 - freezing the real estate development account;
 - freezing the business security deposit;
 - making a public announcement about violation of the provisions of this Sub Decree 50;
 - possible monetary fines; and
 - taking any other action measures in accordance with the existing laws and regulations.

The Sub-Decree 50 does not provide any specific amount on the monetary fines while the details of rules-procedures on administrative penalties and breach will be determined by a separate regulation.

We note that the Sub-Decree 50 is effective from 2 March 2023 onward, and a number of new parkas and separate regulations are to be issued in order to implement many provisions of this Sub-Decree 50.



Real Estate Services Licensing

The operation of any business involving real estate management, real estate valuation or real estate agency requires accreditation from the RPR of FSA. Previously, Prakas 636 on the management of business providing valuation services and immovable property services dated 29 June 2017 (“**Prakas 636**”) required all individuals or entities who wish to provide real estate valuation or other real estate services to hold business licenses or professional certificates issued by the MEF. On 27 December 2022, the FSA issued Prakas 064 on Real Estate Service Business (“**Prakas 064**”), replacing Prakas 636, to strengthen management and control of the real estate service business in Cambodia.

Prakas 064 provides legal entities performing real estate management, real estate valuation or real estate agency services to hold a valid license issued by the RPR. Individuals performing real estate valuation or real estate agency services whether as an individual or through a company must hold a valid professional certificate issued by RPR.

The license or certificate is valid for a period of one year and is renewable.

Prakas 064 describes qualifying criteria which must be satisfied in order to obtain a license or certificate and the renewal process. Prakas 064 outlines various on-going compliance obligations which include the preparation and submission of monthly, quarterly and annual reports.

The license and administration fees for a company and individual which are payable to the RPR in order to obtain the license or certificate are summarized in Article 16 of Prakas 064. The license fee for a company to obtain the real estate business license is KHR 500,000 (approx. USD 125) per license with an administrative fee of KHR 140,000 (approx. USD 35) while the certificate fee is USD 200,000 (approx. USD 50) per certificate with an administration fee of KHR 60,000 (approx. USD 15).

Besides the fee for the license/certificate, the real estate company and individual need to pay the annual real estate and pawnshop development fund to RPR. A company holding the license is required to contribute KHR 140,000 (approx. USD 35) per year while an individual holding a certificate is required to contribute KHR 60,000 (approx. USD 15) per year.

A company operating real estate services/doing any advertisement activities without the relevant license is liable to a fine from KHR 5,000,000 (approx. USD 1,250) to KHR 10,000,000 (approx. USD 2,500) and may also be required to stop its business operation/such advertising activities immediately.

The PRP is also entitled to impose administrative sanctions on any company/individual who is in breach of Prakas 064 which sanctions may include:

- the issuance of a warning letter;
- suspension/closing down of business operations;
- suspension/withdrawal of the business license/certificate;
- publishing the breaching activities; and
- taking any other action permissible by the law.

It should be noted that notwithstanding the introduction of Prakas 064, licenses or certificates that were previously issued to a legal entity or individual prior to Prakas 064 coming into force shall continue in full force and effect (until the relevant expiry date of such license or certificate).

The real estate valuation services businesses performing valuation services in the trust sector must obtain in respect of their services in the trust sector from the Trust Regulator.

Prakas 052 issued by the FSA on 3 November 2022 sets out the applicable conditions and procedures that a valuation company or valuation specialist (individual) must obtain in respect of valuation services for trusts and the on-going requirements e.g., the preparation and submission of valuation reports to the Trust Regulator.

The Trust Regulator may apply administrative sanctions to a valuation company or valuation specialist in the event of non-compliance with the terms and conditions of accreditation.

The potential sanctions include:

- warning;
- a rectification instruction;
- a restriction on accreditation;
- suspension;
- revocation of accreditation; and
- monetary fines.



05

CONSTRUCTION

LEGAL FRAMEWORK

CONSTRUCTION AUTHORIZATION DOCUMENTS

LICENSING REQUIREMENTS

Legal Framework

The Law on Construction entered into force on 3 November 2019 (“**Construction Law**”). The Construction Law establishes the regulatory framework to ensure quality, security, and safety in this sector, boost efficiency and enhance investor confidence in the real estate market. Towards this end, the MLMUPC is empowered as the competent authority that is responsible for managing the construction sector in general. The Construction Law includes various provisions relating to authorizations such as construction permits, demolition permits, repair permits, and certificates of occupancy.

Following the adoption of the Construction Law, the Royal Government of Cambodia issued Sub-Decree No. 224 ANKr.BK dated 30 December 2020 on Construction Permits (“**Sub-Decree 224**”) which laid out, among others, the conditions and procedures on the issuance of construction permits, repair permits, demolition and construction site opening permits and renewal of those permits under the sole supervision of the MLMUPC. The Sub-Decree 224 applies to all types of constructions, except for the types of constructions that are governed by separate regulations. This Sub-Decree 224 superseded and replaced the previous Sub-Decree No. 86 ANKr.BK issued two decades earlier in 1997. Please note, that the permits which were issued to construction owners prior to the date Sub-Decree 224 came into effect are still valid and enforceable until the expiry date of those permits.

In short, Sub-Decree 224 provides for provisions mainly to regulate: (i) the category of constructions, repairs, or demolitions that require prior permit from MLMUPC or capital/provincial governor or Khan and district governor, (ii) category of constructions, repairs or demolitions that do not require the relevant permits and (iii) conditions and procedure to issue and renew those permits.

Construction Authorization Documents

Construction Permits

Before carrying out any construction on land, the owner and the person legally occupying the land are obliged to

apply for a construction permit except for some works listed by Sub-Decree 224, which does not require a construction permit. This exception falls under the small-scale construction with a total floor area of less than or equal to 12 square meters, and a maximum height of five meters. Construction permits are also not required if the work is urgently necessary e.g., following an emergency or disaster in order to save or protect lives or prevent serious impact or damage to health or property. If there is an ongoing or pending dispute over occupancy rights to the land, MLMUPC will not issue a construction permit to the applicant. The competent authority to review and approve construction permits (the Minister of MLMUPC, the Governor of Capital-Provincial or District administrations) depends on the nature and particularly the size and height of the construction.

Construction permits must also now be obtained for non-building structures such as antennas, electrical poles, towers, gates, stupas, down-stream construction activities, etc. which previously had been exempted from these permit requirements.

In order to apply for the construction permit, various specified application documents in Khmer must be submitted detailing the planned construction. The construction plans must be signed by the landowner and drawn by an architect, or a construction company duly registered with/licensed by MLMUPC.

Following the submission of all complete supporting documents, it may take 45 working days to complete the review process if the decision is taken by the Minister of MLMUPC, 25 working days if it is taken by the Governor of the Capital/Provincial and 15 working days if it is taken by the Governor of the City/District Administration. Any failure to respond to a permit application by the competent authorities within the stipulated timeframes will be deemed as an implicit approval by the authorities.

Construction must begin within one year after the permit is issued (if not, the construction permit may be revoked by MLMUPC at its sole discretion), although one extension is allowed.

Demolition Permits

Like construction work, any demolition of an existing building requires a demolition permit in advance. The relevant application documents must be filed by the construction owner. If there is a dispute related to the ownership of a building, a demolition permit cannot be issued. Like construction permits, a demolition permit is not required if the demolition work is urgently required in the wake of an emergency or disaster to save or protect lives or prevent serious impact or damage to health or property. The conditions and formalities on the issuance of demolition permits are governed by Sub-Decree 224.

Repair Permits

The Construction Law and Sub-Decree 224 create a new kind of permit called a “repair permit.” This repair permit is required when repair or renovation work needs to be performed on an existing building.

A repair permit is not required if the repair work does not affect the load-bearing structure, construction components, original state, and exterior aesthetics of the construction; and if it does not affect security, safety and public order. Like construction permits, the repair permit will be revoked if the work fails to start within one year from the issuance of the permit, although one extension is allowed. The conditions and formalities relating to the issuance of repair permits are governed by Sub-Decree 224.

Construction Site Opening Permits

Prior to the commencement of the construction, renovation, installation or demotion work, a construction site opening permit must be obtained. If construction is suspended for more than one year after the work starts, a renewal of the site opening permit must be secured prior to resuming activities. Construction site opening permits will also lapse if work does not start within one year from the issuance of the permit, although one extension is allowed.

The conditions and formalities relating to issuance of construction site opening permits are governed by Sub-Decree 224.

Certificates of Occupancy

Following the Construction Law that requires construction owners to obtain a certificate of occupancy, RGC issued

new Sub-Decree 226 ANKr.BK dated 30 December 2020 on Conditions and Procedures on the Issuance, Suspension and Revocation of Certificate of Occupancy (“**Sub-Decree 226**”) to determine conditions and procedures to grant, suspend and revoke certificates of occupancy.

According to Sub-Decree 226, all types of construction that require construction permits must obtain a certificate of occupancy once construction is completed and before it is used, leased, or before the owner does business on the constructed structure. It simply means that without the certificate of occupancy, the constructed building cannot be subject to use, lease, or doing business. However, constructions that are not required to obtain construction permits as prescribed under Sub-Decree 225 are exempted from the certificate of occupancy requirement. Please note that the use of building without duly obtaining a certificate of occupancy may attract a monetary fine of up to KHR 80 million (approximately USD 20,000) and other legal action as may be pursued by the construction inspector. The details of the conditions and procedures to grant, suspend, and revoke a certificate of occupancy are provided in Sub-Decree 226 are not discussed here.

This certificate of occupancy is valid permanently regardless of changes in ownership. However, when there is a change of building function, a new certificate of occupancy will be required.

The construction owner may apply for a temporary certificate of occupancy for a portion of construction which is already built and safe to use. The template certificate of occupancy is valid until a final certificate is issued.

In the event that a certificate of occupancy is suspended or revoked, use of the building is also prohibited.



TIP

For buildings over which a site closing permit has been obtained prior to the issuance of Sub-Decree 226, this construction site closing permit may implicitly serve equally as a de facto certificate of occupancy.

If the investor wishes to develop the land to build a factory on the land with the construction area of more than 3,000 square meters, the investor needs to verify the certificate of title and the type of land with the DLMUPC. If the type of land is noted as agricultural land on the certificate of title, it needs to be converted into the constructible land. Then, the investor needs to apply for the relevant permits including the Construction Permit and Construction Site Opening Permits before the commencement of the construction and an occupancy certificate upon the completion of the construction site from the MLMUPC. The application documents will be filed with MLMUPC.

Licensing Requirements

Blueprint Design License and Construction Licenses

Under the Construction Law, construction professionals (including engineers and architects) and companies performing construction activities in Cambodia must be licensed by MLMUPC or permitted by the capital or provincial authorities as relevant to the respective business. The conditions and procedures for the issuance, suspension or revocation of the blueprint design license and construction license are governed by Prakas 75 on the Management of Blueprint Design and Construction Companies and Enterprises dated 2 September 1999 as amended on 8 October 2007 (“**Prakas 75**”) and Circular No. 002 dated 10 July 2000.

As of now, there are four categories of construction business license and three categories of blueprint design business license. While Prakas No. 75 does not clearly provide the reasons behind the classification of construction and architectural companies, in practice, each category determines the size of construction/design that a company may engage in. Once issued, the licensees are required to comply with ongoing obligations including reporting to MLMUPC

These licenses are valid for three years from the date of its issuance, renewable within 30 days prior to the expiry date indicated in the licenses.

Surveyor Licenses

On 5 December 2019, MLMUPC issued Prakas No. 175 on the formalities and procedures for provision, suspension and revocation of surveyor license (“**Prakas 175**”).

Under Prakas 175, individuals who intend to conduct surveying work must obtain a surveying license from MLMUPC. However, ASEAN qualified surveyors may conduct surveying work in Cambodia without requiring obtaining a surveyor license from MLMUPC.

There are three levels of surveyor license depending on the education qualifications and technical experiences of each surveyor. The conditions and formalities relating to the surveyor license are governed by Prakas 175. Each of these licenses is valid for five years and shall be renewed within 30 days prior to its expiry.

Construction Certification Licenses

On 30 December 2020, RGC issued Sub-Decree No. 225 ANKr.BK on Construction Certification Conditions and Procedures (“**Sub-Decree 225**”) in order to regulate the

activity of construction certifiers. Sub-Decree 225 determines the types and levels of licenses for the purpose of endorsing the construction, along with the conditions and procedures for the issuance, renewal, termination, suspension and revocation of such licenses.

Under this Sub-Decree 225, there are four types of construction certification license:

- Construction certifier license for general construction (two levels);
- Construction certifier license for architectural work (three levels);
- Construction certifier license for structural work (three levels); and
- Construction certifier license for mechanical/electrical/water systems (three levels).

The particular various criteria to obtain these licenses depend on the type and level of each license such as minimum registered capital ranging from KHR 100 million to KHR 1 billion (approximately USD 25,000 to USD 250,000), minimum year of experience from 10 years to 20 years for a technical director, minimum numbers of engineers or architects and professional liability insurance issued by a Cambodian insurance company. Professional liability insurance may be undertaken with a minimum deposit by the applicant at the National Bank of Cambodia depending on the type and level of each license ranging from KHR 50 million to KHR 500 million (approximately USD 12,500 – USD 125,000).

Foreign architects or engineers or companies have the right to perform this business activity in Cambodia, but they must fulfill the conditions and criteria detailed in Sub-Decree 225.

Each of these licenses is valid for three years from the date of its issuance and renewals must be applied for within 30 days before their expiry. It is a one-off issued process. If the original license is lost, broken or damaged, the new duplicate license may be requested to MLMUPC.

The granting, renewal, or termination of a license must be done in compliance with Sub-Decree 225.

The holder of a license that already expired may continue to exercise their obligations under the service contract created under the license validity period but cannot enter into a new service contract. The licensee can voluntarily cease to carry out their profession or business before its expiry date but is required to confirm in writing to MLMUPC that all obligations under the service contract have been fulfilled.

Even though the license is terminated, the licensee is not released from liability for loss, damages caused to customers or third parties because of defect of their inspection and certification works.

Following Sub-Decree 225, MLMUPC has issued some Prakas to implement and clarify the provisions of Sub-Decree 225. Those Prakas are listed below.

Prakas 033 on formalities and timeframe licensing, issuing

new license paper, termination and renewal of the construction certifier licenses dated 21 January 2021 (“Prakas 033”)

Like its name, Prakas 033 is to set forth the formalities and timeframe for licensing, issuing new license papers, termination and renewal of the construction certifier licenses (“**Certifier License**”). The Certifier License is required for any professional including individual and corporate entity who wishes to carry out construction certification activities. The application for a Certifier License must be submitted to MLMUPC via its one stop service.

Among other conditions, individual professional applicants must have a foreign work permit and residency permit which is valid for at least twelve months. For corporate applicants registered under the foreign jurisdiction, they must have a power of attorney (“**POA**”) appointing an authorized representative to apply for the Certifier License, and the POA must be duly signed by the company’s president.

Please note that the supporting documents requested by MLMUPC must be in Khmer. If they are in a foreign language, they must be translated into Khmer, certified by a qualified notary public. A copy of such documents must be also notarized or certified by the city, provincial hall, or Khan Office.

Upon successful registration, a Certifier License may be issued within 20 working days from the date of submission of the completed documentation to MLMUPC, except if it requires more items or additional information.

As part of ongoing obligation, a licensed professional must notify MLMUPC of any change of information listed in the application. However, for a corporate licensee, the notification is required for any change of the corporate information such as directors, business location, telephone number, email address, insurance certificate, deposit amount, information listed in the articles of incorporation. However, if a technical director or technician is changed, an approval from MLMUPC must be obtained. In such a case, a new Certifier License will be issued with the new person appearing on the license.

The new Certifier License replacing the old one will have the same validity and may be requested in case of a loss or damage, change of their name, registered office, or company's president.

The Certifier License is valid for three years from its issuance date and may be renewable within at least 30 days before its expiry date. According to inter-ministerial Prakas No. 492 of MLMUPC and the MEF dated 10 August 2021, the government fees for such a license application (corporate licensee) depends on category of the license ranging from KHR 3 million (approximately USD \$750) to KHR 6 million (approximately USD \$1,500). For individual professionals, the license fee is up to KHR 800,000 (approximately USD \$200).

Prakas 109 on formalities of certification work of architectural design and structural design dated 22 November 2021 ("Prakas 109")

This Prakas regulates the formalities of inspection and certification works to implement Sub-Decree 225. According to Prakas 109, the inspection and certification of the drawings are required for construction in which the construction permit is issued by the minister of MLMUPC and the Capital/Provincial Governor. However, religious buildings for which the construction permit is issued by the Capital/Provincial Governor, or construction for which the permit is issued by the Governor at Khan/District levels are not required to have an inspection and certification, but inspection is up to the voluntary basis of the building owner.

For inspection and certification on architectural designs, these are required before applying for a construction permit, repair permit, demolition permit or a new occupancy certificate.

For inspection and certification on structural designs, these are required before applying for a construction site opening permit for new construction, modification and demolition works or before applying for a repair permit for the repair work.

In doing so, the construction owner may need to engage a qualified licensed inspector and certifier by signing a service contract (some minimum terms and conditions of contract are provided by sample contract in Prakas 109's annex).

Upon completion and all inspection and certification requirements are fulfilled, the inspector and certifier shall

provide a report of inspection and certification together with a certificate of compliance to construction owner.

Prakas 126 on formalities for inspection and certification of construction and demolition dated 30 December 2021 ("Prakas 126")

This Prakas sets forth the formalities of certification of construction and demolition works for architectural and structural designs following Sub-Decree 225.

According to Prakas 126, inspection and certification works are required for all construction types in which the construction permits are issued by MLMUPC and the Governor of Capital/Provincial levels. It does not apply to inspection or demolition of mechanical, electrical and plumbing works, which would be subject to a separate Prakas.

To carry out inspection and certification works, the construction owner shall engage a qualified certifier licensed by MLMUPC. The inspection and certification works shall be carried out during construction or demolition works to ensure the compliance with design plan, construction technical regulations and other applicable regulations.

Once the inspection and certification works are complete, the certifier shall provide the construction owner with a report and certificate of compliance if all inspection and certification requirements are met. In case of damage caused by the certification works, the construction owner has the right to file a complaint to the Dispute Settlement Committee for Construction under MLMUPC; and then the complaint is referred to court for settlement.

In compliance with the Construction Law, the government has issued the new Sub-Decree No. 103 ANKr. BK on Organization and Functioning of the National Council for Building Technical Regulations dated 31 May 2022 and Sub Decree No. 104 ANKr.BK on Organization and Functioning of Secretariat General of the National Council for Building Technical Regulations dated 31 May 2022.

Currently, the Sub-Decree on the organization and functioning of the National Construction Laboratory is under draft in order to be in line with Article 22 of the Construction Law with respect to recognition and certification requirements for the construction materials, construction equipment, and construction products.



06

TAX

TRANSFER TAX

TAX ON IMMOVABLE PROPERTY

TAX ON UNUSED LAND

IMMOVABLE PROPERTY RENTAL TAX

TAX ON CAPITAL GAINS

Transfer Tax

Transfer of Legal Title

Transfer taxation, also referred to as registration tax or stamp duty, is a 4% tax imposed when there is a transfer of legal ownership of immovable property. The seller of the immovable property must pay the tax within three (3) months of the transfer of immovable property. By law the 4% tax is the legal obligation of the purchaser of the immovable property however as the tax is typically declared and paid by the seller to the authorities it is often included in the consideration paid for the immovable property as set out in the sale and purchase agreement.

Transfer of Shares

Historically the transfer of shares in a Cambodian legal entity which holds immovable property was subject to a 0.1% transfer tax. The 0.1% transfer tax was calculated on the higher of the consideration paid for the shares under the share purchase agreement, the par value of the shares being transferred or the net asset value of the company in which the shares were transferred. The transfer tax is payable by the Cambodian legal entity in which the share transfer took place, as proxy for the purchaser of the shares, within three (3) months from the approval of the Ministry of Commerce of the share transfer.

A new Law on Taxation (LOT) was introduced in Cambodia in May 2023. The LOT revised the rate of transfer tax for the transfer of all/part of the shares in an Immovable Property Company from 0.1% to 4%. The LOT defines an Immovable Property Company as any company that directly or indirectly holds immovable property which makes up more than 50% of the total assets of the company.

Exemptions

The LOT also provides a range of exemptions with respect to transfer tax as follows:

- Acquisition of ownership or possession of land in the form of a government concession.
- Acquisition of ownership or possession of immovable and movable property to be recorded in the inventory of state institutions of Cambodia.

- Acquisition of ownership or possession of immovable and movable property by foreign diplomatic or consular missions, international organizations, and agencies of technical cooperation of other governments.
- Acquisition of ownership or possession of immovable property within a Relative Member.

With respect to the last point above the LOT defines a Relative Member as follows:

- Between parents and biological children,
- Between a husband and wife,
- Between grandparents and grandchildren,
- Between siblings and siblings,
- Between parents-in-law and children-in-law,
- Between grandparents-in-law and children-in-law.

Tax on Immovable Property (TIM)

TIM is imposed at the rate of 0.1% on the value of the immovable property that exceeds KHR 100 million (approx. USD 25,000). The definition of immovable property includes land, houses, buildings, and other construction.

The tax base on which TIM is calculated is based on the immovable property's value as determined by the Immovable Property Assessment Committee.

The owner, occupant or final beneficiary of the immovable property must register, declare and pay TIM by the due date of 30 September each year.

Exemptions for TIM include immovable property that is:

- Used as agricultural land,
- Owned by the Royal Government of Cambodia and ministries/institutions thereof,
- Owned by any organization/person established exclusively for religious, charitable causes where there is no private interest.

- Owned by a foreign diplomatic or consular mission, international organization and agencies of technical cooperation of other governments,
- Infrastructure such as roads, bridges, fresh water/electricity, airports, ports, railway stations – inclusive of buildings/offices that are directly involved with infrastructure activities.

Tax on Unused Land (TUL)

TUL is imposed on unused land with construction and without construction. Unused land tax is an annual tax which is levied at the rate of 2%.

TUL is calculated on the land value as determined by the Land Evaluation Committee for unused land tax. The owner, occupant or final beneficiary of unused land is obliged to submit and pay the annual TUL.

Immovable Property Rental Tax

Immovable property rental tax (IPRT) is imposed on immovable property rental in the Kingdom of Cambodia. IPRT applies to rental income that is received by the owner or beneficiary of immovable property who is not registered as a taxpayer under the self-assessment taxation regime. IPRT is levied at 10% of the immovable property rental (defined as the gross amount agreed between the property owner and lessee based on market value).

An owner or beneficiary must register with the tax administration in the Khan where the immovable property is located within fifteen (15) days from the date of signing the lease or from the date of any contractual changes to the lease agreement.

A rental bill must be issued to the tenant for each payment. The owner or beneficiary must submit a property rental tax declaration to the tax administration no later than the 20th day of the following month in which the contract requires monthly payment, or no later than the 20th day of the following month in which a pre-payment for a period longer than one month is received.

For the purpose of determining IPRT “immovable property” is defined to include:

- Buildings and other construction such as house, factories, hotels, office with its appendix
- Manual tools are equipped with industrial institutions.
- Industrial and commercial installation established in place, large building, or warehouse.
- Floating houses used as accommodation or doing miscellaneous business.
- Free land (land without buildings).

Exemptions for IPRT include rental income that is received from:

- Immovable property owned by the Royal Government of Cambodia and ministries/institutions thereof,
- Immovable property owned by any organization/person established exclusively for religious, charitable causes where there is no private interest.
- Immovable property owned by a foreign diplomatic or consular mission, international organization and agencies of technical cooperation of other governments,
- The amount of refundable deposit that is paid by a lessee,
- Rental income that has already been subjected to withholding tax by a lessee who is a self-assessment taxpayer.

Tax on Capital Gains

The LOT imposes a capital gains tax at the rate of 20% on a physical (an individual) resident taxpayer who receives capital gains within or outside of Cambodia. The definition of capital includes the transfer of immovable property or a lease. A non-resident taxpayer, either a physical or legal person, is also required to pay capital gains tax on gains made from the transfer of immovable property or a lease within Cambodia.

The LOT defines a capital gain as the taxable income that results from the revenue received from the sale or transfer of capital *less allowable expenses*. A taxpayer can either use a determination-based deduction of 80% of the revenue received from the sale or transfer of immovable property or the actual expense method.

Immovable Property:

Capital gains is triggered with respect to immovable property when:

- The immovable property is sold or transferred.
- At the time the transfer of ownership is registered with the authorities in Cambodia; or
- At the time a decision is made to transfer ownership of the immovable property through a court judgment.

When determining the amount of gain that would be subject to 20% capital gains tax on the sale or transfer of immovable property, first the sale/transfer value of the immovable property needs to be determined.

The revenue received from the sale/transfer of immovable property is based on the price indicated in the sale and purchase agreement of the immovable property and other supporting documents. If the GDT determines that the price indicated in the sale and purchase agreement is lower than the market price, the GDT can re-assess the sale/transfer price of the property in accordance with:

- The market value; or
- The value attributed to the immovable property based on its location and characteristics as detailed in the Annex attached to the Prakas on the Transfer of Ownership or Occupancy Right over Immovable Property; or
- A value determined by the committee for the evaluation of capital gains tax on immovable property.

Once the sale/transfer value of the immovable property is determined then a taxpayer can choose to deduct expenditure from the sale/transfer value based on two methods:

(1) Determination Based Expense Deduction

Under this method, a taxpayer can deduct 80% from the revenue received from the sale or transfer of the immovable property without needing to provide supporting documentation for the expense.

(2) Actual Expense Based Deduction

Under this method, a taxpayer may deduct expenses actually incurred in acquiring, holding, and transferring the immovable property which qualify as deductible expenses, i.e., expenses that have occurred, that relate to the property and can be evidenced with invoices or other supporting documents.

The costs that fall under an actual-expense-based deduction can include:

- The cost of the property and expenses incurred during its purchase, occupation, and subsequent sale/transfer, including but not limited to:
 1. Consulting fees;
 2. Registration tax paid when the property was purchased;
 3. Expenses relating to cadastral administration or land management fees;
 4. Expenses relating to commercial advertising of the property for sale;
 5. Commission fees;
 6. Property evaluation fees;
 7. Expenses on administrative fees to obtain a loan to purchase the property;
 8. Interest expenses relating to a loan used to purchase the property paid during the occupancy of the property;
 9. Property maintenance and renovation; and
 10. Expenses on the creation or protection of property occupancy rights.

Exemptions with respect to Immovable Property

Capital gains tax is exempted on the sale/transfer of:

- Immovable property owned by a public institution;
- Immovable property owned by a diplomatic mission, foreign consul, international organization or technical cooperation agency of other governments;
- The residence which is the principal place of residence for a taxpayer for at least five (5) years prior to the sale/transfer. If the taxpayer has more than one residence or a taxpayer and their spouse have different residences, only one residence shall be permitted as a principal residence,
- The transfer of immovable properties among relatives as stated in the transfer tax regulations, excluding the transfer of ownership or right to occupy immovable properties between biological brothers/sisters, parents-in-law and children-in-law and grandparents-in-law and grandchildren-in-law,
- Immovable properties sold or transferred for the public interest in accordance with the Law on Expropriation.

Tax Declaration

Taxpayers are required to submit a prescribed tax return and pay capital gains tax to the GDT within three (3) months after the capital gain has been triggered as outlined above. It is important to note that the transfer of legal title or occupancy rights of immovable property shall be null and void if the capital gains tax has not been paid on the sale or transfer.





07

REIT (REAL ESTATE
INVESTMENT TRUST)

REIT (REAL ESTATE INVESTMENT TRUST)

A REIT is a kind of trust operated under the collective investment scheme (“CIS”) - or more likely, an investment vehicle - in which money is taken from investors and administered by a licensed trustee company with the purpose of investing in real estate. A trustee company licensed by Securities and Exchange Regulator of Cambodia (SERC)/Trust Regulator will be appointed to act on behalf of the investors who are the beneficiaries of the trust. The trustee company will not undertake any investment as its principal purpose is to protect the interest of the trustor in the trust, hence a REIT Manager will carry out portfolio investment with the trust fund to return for beneficiaries. In an overall view of REIT, it can be both tradable and non-tradable in stock exchange but with common features: fewer steady returns with high volume payout of the trust’s profit.

In Cambodia, the context of REIT is quite new and we are not aware that a REIT has been set up and approved by the SERC.

However, the Trust Law was just promulgated on 2 January 2019 which aims to govern all trusts created in Cambodia. As mentioned in the above section, a trust may be created by a trustor or by applicable regulations. In the event that the trust is created by the trustor, the trustor must transfer its property or funds to the trustee through the trust instrument by specifying the specific purpose of the trust and/or the identity of the beneficiary. A trust must have lawful purposes and not be contrary to public order.

Under Trust Law, trusts are classified as following:

1. **Public Trust:** It is established for the benefit of Cambodian citizens;
2. **Social Trust:** It is established when a trustor contributes their property to the trustee for general social purposes such as cultural, educational, human, religious or scientific purposes.

3. **Personal Trust:** It is created by trustor or trust creator for the interest of trustor/person specifically determined by trustor in order to transfer their asset or fund to trustee to manage, administrate or safe keep instead of the trustor. Personal Trust binds the right, obligation and responsibility between trustor, trustee and beneficiary by a trust instrument; and
4. **Commercial Trust:** It is established for the purpose of seeking the profit for the benefit of the contributor to the trust or of any specific individual determined by the contributor to the trust. The properties or funds that are transferred to a trustee to be held on behalf (and for the benefit) of a third party and the trustee must transfer such property or fund back to the third party upon the occurrence of certain events. The Commercial Trust includes pension funds, education funds (or other similar funds), employee share scheme, and commercial trust for other purposes. It also includes the retention services such as the retention of property or fund by a notary office or law office, or accounting company, or a property holding or deposit fund for the benefits of the investor, the restate buyer and for other commercial operation.

Based on information provided by the Trust Regulator on 3 August 2023, 612 trusts were registered in Cambodia with a total investment fund of USD 1,166,458,547. Commercial trusts accounted for the majority of registrations, with 594 trusts and a total investment fund of USD 729,782,498. The financial trusts and individual trusts had nine and seven registrations, respectively, with investment capital of around USD 369 million and USD 2 million. One public trust was registered with a capital investment of USD 64 million, while one social trust registered USD 1 million.



08

REAL ESTATE FINANCE

REAL ESTATE FINANCE

Permitted Finance

Investors whose properties (movable-immovable properties or tangible-intangible property) are in Cambodia may use them as collateral given to local or foreign lenders for securing their loans. The immovable properties include land, buildings, and all fixtures attached to the land. The land ownership rights or perpetual lease rights (for a term of 15 to 50 years) over the land may also be used as collateral to secure the borrower's repayment obligations in any project finance in Cambodia.

Under the Civil Code, the security rights are classified as: (i) right of retention, (ii) preferential right, (iii) pledge and (iv) hypothec (aka mortgage) and (v) security interest by transfer/assignment³.

The hypothec (mortgage) has been known as one of the most commonly used security in real estate finance.

Mortgage

Under the Civil Code, a real security right must be established in order to secure an existing or future debt, if it can be specified. When the holder of a real security right does not receive satisfaction of the secured claim, the right holder may enforce the real security right in accordance with procedures established by the applicable regulations. The registration mechanisms for the aforementioned security rights have been put in place in accordance with the Joint-Prakas 30.

Under the Civil Code, lenders may hold a hypothec (similar to a mortgage) over the land or the perpetual lease rights.

The registered land with a hard title is subject to the hypothec where the registration process would take place at the Municipal/Provincial Department of Land Management Urban Planning Construction and Cadastre ("DLMUPC") where the land is located. It is critical that lenders conduct a proper due diligence on a hypothecator's land to ensure that it holds a valid title, and the hypothec is registrable.

With regard to the legal regime governing hypothecs, a hypothec (or a creditor) is entitled to obtain satisfaction of its claim in preference to other creditors out of the

immovable property offered as security by the debtor or a third party without transfer of possession. A perpetual lease or usufruct may also be the object of a hypothec.

A hypothec may not assert the hypothec against a third party other than hypothecator (debtor) unless the security creation instrument is notarized or made by a competent official and registered in the Land Registry. A hypothec extends to all things attached to and that forms part of the land comprising the object of the hypothec when the hypothec was created, including buildings and things attached to the land after its creation. In the event of a failure to perform on a debt, a hypothec may apply to the court for compulsory sale of all the hypothecated land with one exception. This is where buildings, owned by a third party, attached to the hypothecated land are subject to a perpetual lease or leasehold agreement registered in the land registry. In such a case, the hypothec may not demand the compulsory sale of the building together with the hypothecated land. Based on the Civil Code, multiple hypothecs over immovable property are permissible. In case of a multiple hypothecs have been created on one immovable property in order to secure multiple debts, the order of their property shall be based on the order of their registration date.

Other Security Interests

A pledge is one of the security rights which also applies to real estate finance. Under a pledge, a pledgee is entitled to hold possession of the item they have received from the debtor or a third party as security for their claim and to obtain satisfaction of the pledge's claim from such an item in preference to other creditors.

Unless otherwise provided, the pledgee of an immovable property (i.e., land) may use and receive profits of the land in accordance with its ordinary use, pay the costs of management thereof, and will bear all other charges pertaining to such land, and may not demand interest on the secured claim. The pledge of the land cannot exceed five years and is renewable.

The registration process of a pledge over the land is determined under Joint-Prakas 30 of which matters to be included in the application form are at least: (i) debtor's name, (ii) term, (iii) principal amount and (iv)

³ This is essential the same as a common law "chattel mortgage," and only applies to movables.

compensation of damage, and (v) conditions attached to secured claim, if any.

A security over movable property may be governed either by the Civil Code or the Law on Secured Transactions dated 24 May 2007 (“LST”). While it is possible to take a pledge or assignment by way of transfer under the Civil Code, such forms of security are rarely used due to the burdensome requirements often entailed. The LST, on the other hand, provides creditors with a robust and efficient framework within which they may take security over movable property.

Subject to some restrictions, movable property that may be given as collateral under the LST includes both tangible and intangible assets/properties such as rights, claims, instruments, accounts, and secured sales contracts, and a security interest may secure one or more obligations. Security Interests over movable property may be created and perfected by filling initial notice against the relevant collateral and securing parties with the Secured Transactions Filing Office (“STFO”) at the MOC.

The STFO was established under the provision of the LST, under the direction and supervision of the MOC. Security interests over movable property may be registered, amended, extended, corrected, and terminated in

In case of any default on the part of the hypothecator/borrower, the hypothec or lender may apply to the court for compulsory sale of the hypothecated immovable properties. The procedures for the compulsory sale are specified under the Code of Civil Procedure of Cambodia. However, without the process of the compulsory execution by the court, the foreign lender may not make the direct ownership over the immovable properties of the hypothecator.

accordance with the LST and the Joint Prakas No. 1217 on Provision of Public Service of Ministry of Commerce (“Joint Prakas 1217”).

Nonetheless, the LST cannot be used to take security over immovable property, and the Civil Code remains the primary governing legislation in this respect.

Foreign Lender Restrictions

Presently, there is no specific regulation to restrict any lender from overseas to grant a loan to a local borrower in Cambodia. The facility agreement may be governed by any regulations besides Cambodian regulations; however, those provisions of the facility agreement shall be ensured to be applicable and enforceable under Cambodian laws. Most investors may reach out to a local lawyer to review the drafted facility agreement if it is governed by a foreign law.

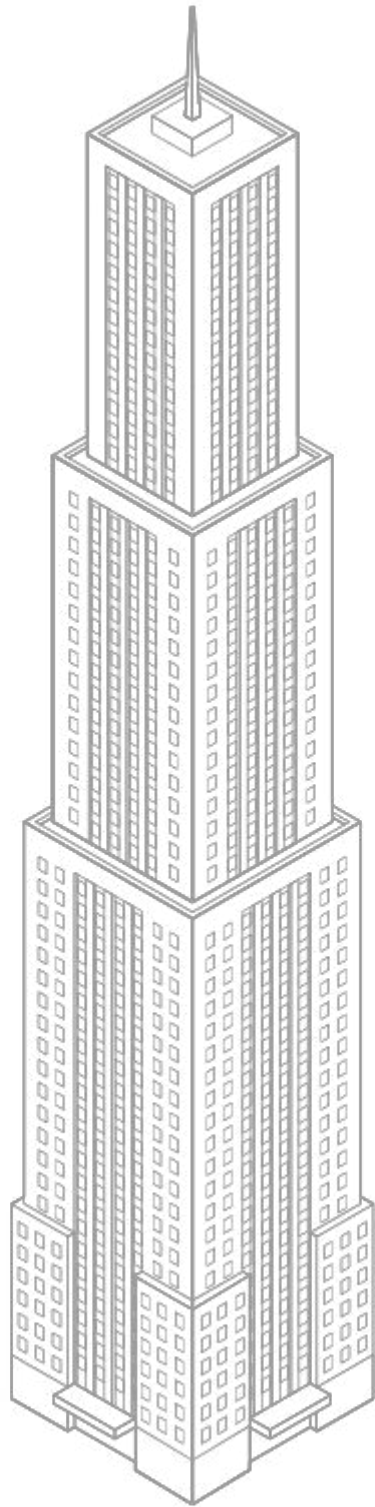
With respect to the security over the immovable properties (i.e. hypothec), a foreign lender can be registered as the lender on a hard title with the relevant DLMUPC. To ease enforcement of security (hypothec) over the immovable properties in Cambodia, a local bank is assigned to be the security agent for the enforcement process with the Cambodian court.



CASE STUDY

An investor wishes to borrow funds from a bank to raise funds for investment in a business. Can real estate be used as collateral for loaned funds?

Yes. An individual or legal entity may enter into a loan for consumption agreement and a hypothec creation agreement with the lender which uses real estate as collateral to secure repayment of loan. This applies to real estate which is freehold owned as well as real estate that is subject to a perpetual lease (Article 843, Civil Code). If the borrower is the perpetual lessee of the leased land (with the lease term of 15 years and with a lease certificate), the borrower can hypothecate his/her leasehold right in favour of the lender as the hypothec. Moreover, a hypothec cannot be enforced against a third party unless the hypothec creation agreement has been notarized and registered with the land registry (Article 845, Civil Code). The hypothec application documents will be filed with the land office where the land is located.



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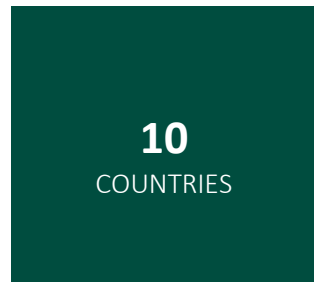
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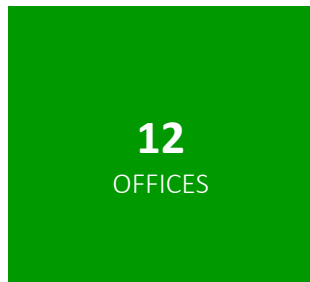
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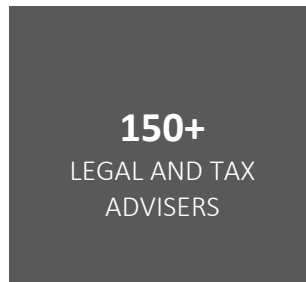
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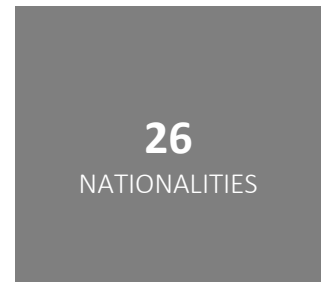
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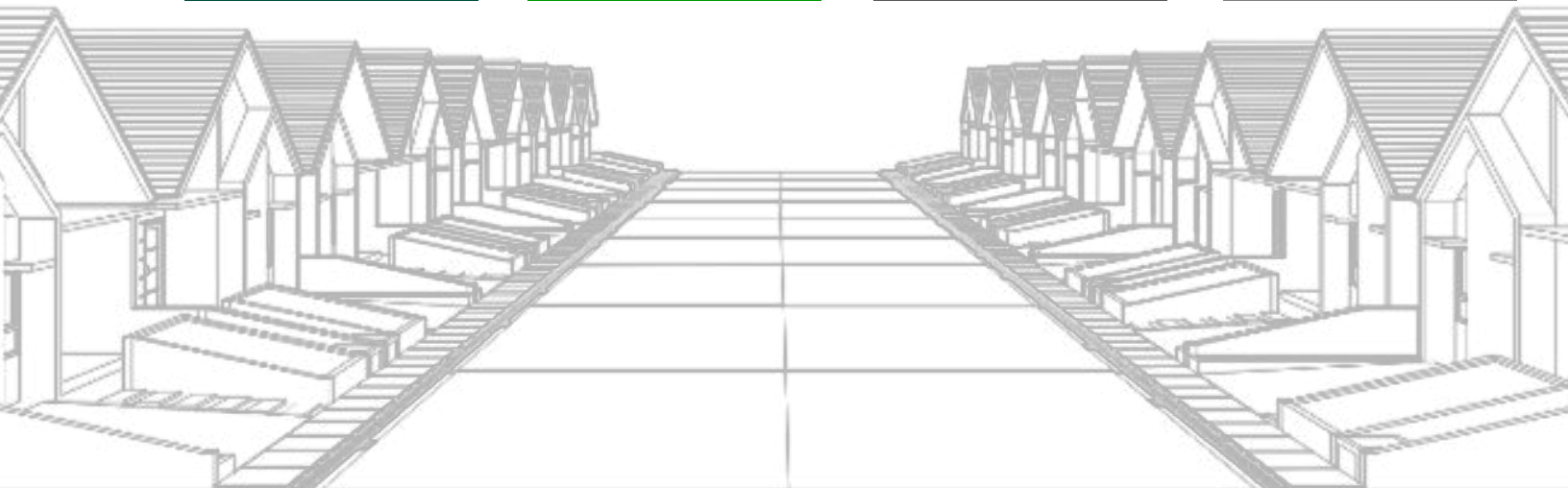
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