

FEBRURY 2024

MONTHLY UPDATE

I. OVERVIEW

The Kingdom of Cambodia recorded 22 new qualified investment projects with the total investment capital of approximately USD 444 millions in the first 15 days of February 2024 according to the press release of the Council for the Development of Cambodia. Industrial sector consists of 15 investment projects, while other sectors such as infrastructure, agriculture, agro-industry, and others are accounted for 7 investment projects.

Amid the inflow of foreign investment, the Royal Government of Cambodia has made significant progress toward the improvement of legal framework which could be of the investor interest. This monthly update will cover the new regulations in the area of environment, trust, insurance, tax, construction, and industry.

II. ENVIRONMENT

ENVIRONMENTAL IMPACT ASSESSMENT CONSULTING COMPANY

On 02 February 2024, Ministry of Environment (“MOE”) issued a Prakas on the Conditions and Procedures for the Registration of Environmental Impact Assessment Consulting Company (“EIA Consulting Company”) which determines the conditions, procedures, and qualifications for the registration as well as the de-registration of the aforesaid consulting company.

EIA Consulting Company’s Registration

An EIA Consulting Company which aims to study and prepare the environmental and social impact assessment report (“ESIA Report”) in Cambodia must register with the MOE or through online registration as per the instruction from the MOE. The company may obtain the registration permit provided that the company has satisfied all the required formalities and site visit result.

Conditions and Formalities for EIA Consulting Company’s Registration

The company shall submit the following documents such as (i)- application form, (ii)- certificate of incorporation, (iii)- address certification letter by the local authority, (iv)- firm’s article of incorporation, (v)- firm’s structure, (iv)- company’s background, (vi)- related documents and other experiences. The structure of EIA Consulting Company shall have minimum structure which include firm director, general manager, chief of technical team, technician, and technical assistant which possess qualification as per this Prakas.

A foreign consulting company which aims to study and prepare ESIA report in Cambodia must satisfy the above requirement and cooperate with the EIA Consulting Company.

Validity, Suspension, and Deregistration of Registration Permit of EIA Consulting Company

Registration Permit of EIA Consulting Company has 05 (five) years validity. The company must submit the application for renewal of the registration permit 03 (three) months prior to the expiration date. The aforesaid registration permit shall be subject to suspension or deregistration as per article 19 and article 20 of this Prakas respectively. The company is forbidden from applying for the registration permit for 05 (five) years upon the above deregistration.

Existing EIA Consulting Company

Any EIA Consulting Company which has registered with MOE prior to August 2023 must re-register with the MOE. In the case that the company fails to obtain the registration permit, the company must finish all the ESIA Report within 06 (six) months upon the effective date of this Prakas.

ENVIRONMENTAL ENGINEERING SERVICE COMPANY FOR SOLID WASTE TREATMENT

On 25 January 2024, Ministry of Environment issued a Prakas on the Conditions and Procedures for the Accreditation of Environmental Engineering Service Company for Solid Waste Treatment (“Solid Waste Treatment Company”). This Prakas determines the conditions, procedures, and criteria for the issuance, suspension, and revocation of the accreditation letter for the above Solid Waste Treatment Company to strengthen the effectiveness of management, prevention, and reduction of water pollution for safety of public health, and preservation of biodiversity.

Accreditation Letter for Environmental Engineering Service

Solid Waste Treatment Company which aims to provide environmental engineering service at the location of production, business, and service by providing architectural design, construction, equipment installation for solid waste treatment and automated inspection system in Cambodia (“Environmental Engineering Service”) has the obligation to complete the formalities to obtain Letter of Accreditation from the MOE. The firm may obtain the aforesaid letter when the MOE is of the view that the firm has satisfied all the required formalities and site visit result.

Conditions and Criteria for Letter of Accreditation

The firm shall possess the following conditions: (i)- Certificate of Incorporation, (ii)- Certificate of Tax Registration (VAT) and Patent, (iii)- Management Structure and technician for the service, (iv)- Firm's background on the service, (v)- training plan, and (vi)- environmental protection agreement and the contribution to environmental and social foundation. A Solid Waste Treatment Firm shall have management structure which include firm director, general manager, chief of technical team and technician which possess qualification as per this Prakas.

Validity, Suspension, and Revocation of Solid Waste Treatment Company

The Letter of Accreditation has 05 (five) years validity. The company shall submit the application for renewable of the aforesaid letter 45 (forty-five) days prior to the expiration date. The aforesaid letter shall be subject to suspension or revocation as per article 14 and article 15 of this Prakas respectively. The firm is forbidden from applying for the Letter of Accreditation for 05 (five) years upon the above revocation.

Existing Solid Waste Treatment Company

Any Solid Waste Treatment Company which has registered with MOE prior to the effective date of this Prakas shall re-apply for the Letter of Accreditation with the MOE. In the case that the company fails to obtain such letter, the company is required to complete all the existing works within 01 (one) year.

III. TRUST

ADMINISTRATIVE SANCTIONS AND MONETARY FINES IN TRUST SECTOR

On 03 January 2024, the Non-Banking Financial Services Authority (“NBFSA”) issued Prakas on the Formalities and Procedures for the Imposition of Administrative Sanctions and Monetary Fines in Trust Sector. This Prakas covers the administrative sanctions and monetary fines to be imposed by trust inspector official on the violation of conditions in license, permit, registration, and the recognition from Trust Regulator in the Kingdom of Cambodia.

General Principles

The trust inspector official shall have the authority to impose the penalties for the violation of applicable law and regulation in trust sector. Such penalties cannot be imposed in the following cases: (i)- insufficient legal ground and the non-compliance with the due process, (ii)- the death of offender, (iii)- mental disorder of the offender, and (iv)- repeated punishment on the same violation.

The penalties for the violation herein may subject to aggravating circumstances or mitigating circumstances as per article 7 of this Prakas.

Payment of Fines and Monetary Fines

The trust inspector official shall issue the penalties with the amount set out in the applicable law and regulation. The amount shall be double in the case of repeated violation or causing harm to the public, customer, or any party. The payment of fines or provisional fines shall be paid no later than 15 (fifteen) days after the decision of such penalties. The late payment shall be subject to additional penalties.

Administrative Sanctions

Any violation to the conditions of license, permit, registration, and the recognition from Trust Regulator and the applicable law and regulations in Trust Sector may subject to administrative sanctions by the trust inspector official. The administrative sanctions may include (i)-warning, (ii)-guided correction, (iii)-restriction suspension or revocation of license, permit, registration, and recognition, (iv)- restriction on disposition, management, and/or management of trust property, (v)-suspension or dismissal of director, senior executive, and/or violated executive. The Trust Regulator may impose additional administrative sanctions in the cases set out in article 19 of this Prakas.

Due Process

Prior to the issuance of any measure, the trust inspector official shall allow the offender to explain in verbal or written format within a specific period. The inspector may decide whether to impose any penalties. In the case of imposition of penalty, the inspector shall deliver the decision, notice, and/or related documents to the offender's address or headquarter. The offender may appeal this decision with the Trust Regulator and the competent court respectively. The inspector may publicly publish the decision or notify to any party of the decision, administrative sanction letter or monetary fines. The close case shall be stored for 10 (ten) years.

AUDITING FIRM IN TRUST SECTOR

On 3 January 2024, the Non-Bank Financial Services Authority, an independent entity under the Ministry of Economy and Finance responsible for overseeing and regulating non-bank financial services, including the trust sector, issued a Prakas regarding the accreditation of auditing firms within the trust sector. This Prakas set forth the conditions and procedures for the accreditation as well as the rights and duties of auditing businesses aiming to ensure the quality and legal compliance of the audit. According to the Prakas, both legal entities and individuals have the qualities to be recognized as accredited auditors by the NBFSA.

Specific responsibilities of recognized auditors are defined, particularly in cooperating with the NBFSA to identify any risks or irregularities associated with the subjects under audit. In addition, the NBFSA also possesses the authority to suspend or revoke the accreditation of auditors who are found to have breached their duties, committed criminal acts, or been involved in money laundering, terrorist financing, or the financing of the proliferation of weapons of mass destruction. Any violations of provision outlined in the Prakas by any auditor may be subject to penalties, including administrative punishments, fines, and potentially criminal charges, if deemed necessary.

IV. INSURANCE

THE GOVERNANCE OF INSURANCE COMPANY

On January 15, 2024, the Non-Bank Financial Services Authority issued Prakas No. 005 on the Governance of the Insurance Company. This Prakas defines the composition, qualifications, roles, duties of the board of directors, committee of board of directors, chief executive, and insurance premium calculation expert to ensure good governance of insurance company in Cambodia.

Board of Directors (“BoD”)

An insurance company shall have at least 05 (five) members of BoD, at least three of whom are the independent directors. The insurance company is required to request for approval from the Insurance Regulator of Cambodia (IRC) for any appointment or replacement of directors no later than 15 (fifteen) days after the decision of the shareholders. One of the members shall be voted as a chairman by the BoD. The chairman, director, and independent director of the BoD shall possess qualification as set out in this Prakas. The roles and duties of the BoD, the chairman, director, and independent director are stated in this Prakas.

BoD Committee

The audit committee shall be composed of at least three members, majority of whom are independent directors, and the other members shall not hold executive positions in the insurance company or its parent company or subsidiary. The audit committee shall consist of the chairman of the audit committee as an independent director and shall be composed of at least one member of the audit committee with expertise and experience in financial auditing. The insurance company is required to request for prior approval from the IRC on the establishment and appointment of the audit committee no later than 12 months after the date of obtaining the insurance business license. In the event of a change in the composition of the audit committee, the insurance company shall request the approval of the IRC within 30 working days after receiving the decision of the board of directors of the company. The roles and duties of this committee is stated in this Prakas.

Chief Executive Officer (CEO)

The insurance company is required to request for prior approval from the IRC on the appointment or replacement of the CEO within 15 (fifteen) working days after receiving a decision from the board of directors. In case of resignation or the immediate termination of the CEO, the insurance company shall notify the IRC on such matters along with the approved appointment of the interim CEO. The new CEO shall be appointed no longer than 06 (six) months and shall obtain the approval from IRC after the decision of the BoD. The qualification, roles, and duties of the CEO is set out in this Prakas.

Insurance Premium Calculation Expert

The insurance company is required to appoint an insurance premium calculation export by requesting prior approval from the IRC. Any change to the aforesaid expert shall require the approval from the IRC after the decision of the BoD. The qualifications, roles, and duties of the expert is set out in this Prakas.

Others

The existing chairman, director, independent director of the BoD, member of the audit committee, CEO, the insurance premium calculation expert are still be approved until any new change even after the entry into force of this Prakas. The mandate of the independent director approved by the IRC shall commence from the effective date of this Prakas.

Any non-compliance to the obligations under this Prakas may subject to the guidance, written warning, public notice, and order to change. Other penalties may also be applied in accordance with the applicable law and regulation.

INSURANCE INSPECTION

On 18 January 2024, the Non-Bank Financial Services Authority (NBFSA) issued a Prakas on the Formalities and Procedures for Inspection of Insurance. This Prakas sets out the procedures and formalities for insurance inspections with legality, transparency, efficiency, and effectiveness to promote and strengthen the implementation of laws and regulations related to the insurance sector in Cambodia.

Insurance Inspector

The Insurance Regulator of Cambodia (IRC) appoint insurance inspectors to oversee any insurance inspection case. The insurance inspector shall exercise one's power, roles, and duties with respect to the applicable law and regulation. The insurance inspection shall be conducted by the insurance inspector to oversea and monitor the financial status and market operation of the insurance entity and related individual offering service in insurance sector in order to oversea, research, monitor, and investigate crimes in insurance sector.

Insurance Inspection Procedures

The insurance inspection shall be conducted regularly or on case-by-case basis without any prior notice as per the discretion of the chairman of the board of directors of NBFSA. The inspectors may inspect locations related to the case and may request any documents, reports, lists, and records that are helpful for the inspection. The inspector may also invite the individual subject to the inspection to clarify, explain, or provide related information. The insurance inspector who gains qualification as a judiciary police may conduct preliminary investigation in the case of the receipt of report, claim, or suspicion of any crime or criminal activities related to the Law on Insurance with respect to the Code of Criminal Procedure of Cambodia. The entity undergoing the inspection shall comply with the inspector's request and cooperate with the investigation and inspection. Entities undergoing the insurance inspection that do not agree with the course of action of the inspector can appeal to the IRC in accordance with the Law on Insurance.

V. TAX

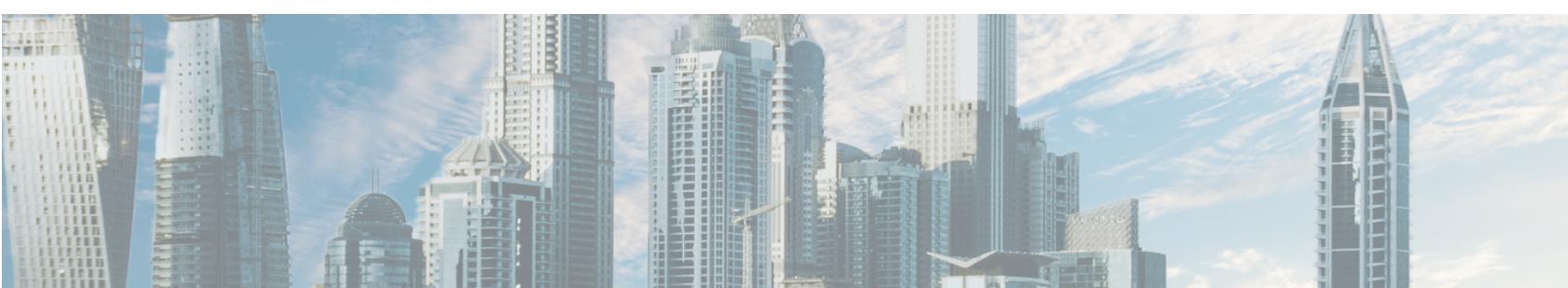
INCENTIVES FOR VOLUNTARY REVISION OF TAX RETURNS

On 30 January 2024, the Ministry of Economy and Finance issued a Prakas on Incentives for Voluntary Revision of Tax Returns, which is an amendment to Prakas 217 dated 14 March 2022 on Incentives for Voluntary Revision of Tax Returns to provide exemption on administrative sanction with respect to the intervention measures of the government.

Taxpayer or withholding tax agent who volunteer to revise accounting book and tax return documents shall be exempted from administrative sanctions such as additional tax, interest, and monetary fines until the end of June 2024 which applicable to the followings:

- Any voluntary revision of accounting book and tax return documents for the transaction took place before January 2024. The later shall not be applicable.
- Any voluntary revision of accounting book and tax return documents during tax audit before the tax auditor found the taxpayer or withholding tax agent's fault.

In the case of revision on the tax return documents on the tax audit result which is found by the tax auditor during the tax audit, the taxpayers or withholding tax agent shall be subject to 10% additional tax and 1.5% late interest with respect to the applicable law. The paid additional tax and late interest through this voluntary revision can be used to offset the additional tax and late interest from the result of tax audit.



VI. CONSTRUCTION

CONSTRUCTION MEASURES ON SPECIAL PROGRAM TO PROMOTE INVESTMENT IN PREAH SIHANOUK PROVINCE 2024

On 12 February 2024, the Ministry of Land Management, Urban Planning and Construction (“MLMUPC”) issued a notification on the implementation of Special Program to Promote Investment in Preah Sihanouk Province 2024 which aims to facilitate the procedure and shorten the application process of Construction Permit, Construction Site Opening Permit, Construction Site Closing Permit or Certificate of Construction Occupancy for construction owners in Preah Sihanouk Province. To ensure the effectiveness of this program, MLMUPC will assign the specialized officers to conduct the inspection and certify architectural design, construction structural design, construction works, and construction quality and safety for the construction owner which does not possess letter or certified report from the construction certifier.

VII. INDUSTRY

PRODUCT REGISTRATION OF MINERAL WATER COMPANY, FACTORY, ENTITY AND HANDICRAFT

On 15 February 2024, the Ministry of Industry, Science, Technology, and Innovation issued a Notification on Product Registration of Mineral Water Company, Factory, Entity and Handicraft which aims to encourage the product registration at Institute of Standards of Cambodia for every mineral water company, factory, entity and handicraft by the end of July 2024. This registration will ensure the quality, safety, welfare and encouraging the marketing sale for each product in Cambodia. The non-compliance for this registration shall be subject to the measures set out in the Law on Standard of Cambodia and its subsequent amendment from August 2024.

This Monthly Update is a general information only and is not considered as legal advice or opinion. If you require any further information or have any questions, please contact Mr. HOUN Vannak, managing partner of RHTLaw Cambodia.

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