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CAMBODIA

White Book 2017

Trade and investment policy recommendations



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EuroCham Cambodia was inaugurated on June 2nd, 2011 with the support of three founding European Business Organizations: the Chambre de Commerce Franco-Cambodgienne (CCFC), the British Business Association in Cambodia (BBAC) and the German Business Group, Arbeitskreis Deutsche Wirtschaft (ADW). EuroCham was established with the objectives of promoting the interests of European businesses operating in Cambodia, facilitating the entry of European companies into the market and creating an extensive support network among corporate and individual members.

The European Chamber of Commerce in Cambodia is grateful to our contributing member companies for their inputs and support in making this edition of the White Book possible.

European Chamber of Commerce in Cambodia

eurocham-cambodia.org
info@eurocham-cambodia.org
+855 23 964 141

#30 Preah Norodom Blvd
Bred Bank building 3rd floor
Khan Daun Penh, Phnom Penh, Cambodia



The White Book 2017 is a collective expression of the views of EuroCham member companies on specific aspects of the business environment in Cambodia. The information and views put forward in this publication are solely intended to promote constructive dialogue and offer suggestions for the improvement of Cambodian–European business relations. EuroCham has made all efforts to ensure that the information contained in the White Book 2017 is accurate at press time to the best of our knowledge and belief. However, EuroCham does not assume and it hereby disclaims any liability or responsibility to any party for the contents of the White Book 2017 and/or the outcome of any decision as a result of this publication.

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Methodology

This second edition of the *White Book* presents 76 policy proposals intended to improve the business environment and regulatory framework in Cambodia.

We developed these proposals after extensive consultations with EuroCham members participating in our nine Sectoral Committees.

Since our intention is to serve as a constructive partner to the Royal Government of Cambodia, every issue raised comes with a realistic solution that could be implemented by the concerned authorities within the short to medium-term.

As such, our recommendations take the following format:

Recommendation status

Indicates a policy proposal has been either **RETAINED** or **UPDATED** from last year, or it is a **NEW** proposal for 2017.

Previous policy recommendation & response

Summarizes last year's policy recommendation and the subsequent response given by Royal Government

Issue description

Details the present-day situation and how it affects the private sector.

Impact on Cambodia

Illustrates why it is in the interest of the Royal Government to address the issue.

2017 Recommendation

Presents specific actions that could improve the situation for all parties.

TAXATION | Value added tax

22

Value Added Tax when exporting services

UPDATED

2016 RECOMMENDATION

Provide more specific guidance on VAT requirements for exported services.

POLICY RESPONSE

In a letter to the Chairman of the European Chamber of Commerce in Cambodia dated 19 July 2016 (reference 12240 APD), the General Department of Taxation has committed to conduct further research in order to provide a clearer definition of "exported services" and to ensure that the application of VAT on export of services is aligned with the evolution of businesses and technology.

ISSUE DESCRIPTION Article 63 of the Law on Taxation specifies that services are considered to 'take place' within Cambodia if the service 'is performed' within the Kingdom, unless the service provided relates to immovable property located abroad or the provision of transportation services abroad. Article 64 subsequently details that services rendered outside of the Kingdom of Cambodia (exported services) are subject to a VAT rate of 0%.

IMPACT ON CAMBODIA Ambiguity creates regulatory risks for companies exporting services from Cambodia as there is not enough specificity within the Law to be able to confidently know whether VAT will be due on their services. This lack of clarity requires tax officials to make ad-hoc assessments without clear guidelines which can lead to inconsistency or opportunities for non-transparent practices.

2017 RECOMMENDATION ✓ Provide more specific guidance on VAT requirements for exported services.

Provide more specific guidance on what it means for services to be "used or consumed outside the Kingdom of Cambodia". Our recommendation would be to provide a definition that is generous towards service providers claiming that their services are consumed abroad, as this can help to attract investment in new sectors.

Message from the Chairman

Arnaud Darc

In the name of EuroCham Cambodia and the businesses we represent, I am pleased to introduce our second White Book, a set of policy recommendations developed collectively by our members for consideration by the Royal Government. We revise and update this publication every year in support of their continued efforts to improve Cambodia's attractiveness for trade and investment. We are confident that, over time and as a result of this collective effort, ever greater numbers of European companies and entrepreneurs will make the move towards investing in Cambodia thanks to the important changes being made to the business environment.

With the Kingdom on the cusp of achieving lower-middle economic status following a decade of outstanding economic development, the need for greater competitiveness and structural transformations has become more acute than ever. As national growth will increasingly rely on revenues from the private sector, the Kingdom needs to find new ways of attracting investment and generating jobs for its largely young population. In this regard, while the Royal Government has undertaken an ambitious framework of policy reforms that will enable further economic growth and improve the ease of doing business in Cambodia, it is our strong belief that the private sector should contribute to these efforts by providing constructive inputs and feedback to policymakers.

In support of this objective, EuroCham last year published its first White Book which was warmly received by all stakeholders and especially by the Royal Government which was very responsive to our suggestions. Indeed, the fact that more than half of our recommendations were addressed (either via direct replies to EuroCham or through the content of policy

decisions), illustrates the seriousness with which the Royal Government has endeavored to address the various challenges faced by the private sector in Cambodia's fast-growing economy.

In addition, the release of last year's White Book paved the way for EuroCham to contribute to a large number of sector-specific public-private conferences. During these consultations, our members were able to represent the private sector by further elaborating upon our policy proposals and providing inputs directly to government officials from across a range of ministries.

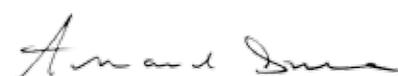
Recognizing these efforts by the Royal Government to incorporate the feedback and concerns of the business community into their decision-making, this year's White Book begins with a presentation of all of the policy responses to the recommendations contained within last year's edition. This 'Policy Response Table' includes analysis of the impact that these responses have had upon the issues raised by our members. It is fair to say that, while there are still further improvements that can be made around many of the challenges we highlighted, the changes that have been implemented so far are a testament to the Government's commitment to improving the ease of doing business in Cambodia.

This year's White Book comprises 78 new, updated, or carried-over policy recommendations across a similar range of sectors to last year. Though each cross-sectoral and sectoral committee raises issues specific to their area of expertise, common features can easily be identified including the need for a more level playing field, a modernized administration, and a clearer and updated legal framework. Furthermore, this year's edition introduces a new chapter giving an overview of the necessary investment

protection mechanisms that would enable the Kingdom to strengthen its overall competitiveness. While both the Royal Government of Cambodia and the Kingdom's private sector share the common goal of fostering a compliant, competitive, and sustainable economy, our members still consider that the positive impacts of the timely reforms initiated by the Royal Government are yet to be felt in their daily operations. This can be seen in the responses to this year's EuroCham Business Confidence Survey, in which our members rated unfair competition as their second largest area of concern. The vast majority said they continue to consider that the ease of doing business has not significantly improved as compared to last year.

Within this context, it is our hope that this second White Book will once again be welcomed by the Royal Government and all of our partners as a basis for further dialogue. Such partnership will help to further improve Cambodia's capacity to increase international trade and attract investment, particularly from the European Union and we look forward to a productive collaboration on specific issues with the relevant ministries.

Finally, I would like to express EuroCham's appreciation to all those who have contributed to the elaboration of this White Book. We are, as ever, committed to continuing to work hand in hand with the Royal Government to ensure sustainable growth for Cambodia and to bring about the benefits that this can offer to wider society. We encourage all of our members to take the opportunity to contribute to this important endeavor by participating in the public-private dialogue over the coming year.



2017 Policy Recommendations

An overview of the proposals EuroCham members made in 2017.

INVESTMENT PROTECTION

- | | |
|--|--|
| Legal review mechanisms | <ol style="list-style-type: none">1. Create independent review mechanisms within relevant ministries and public bodies responsible for processing applications and approvals for private entities, and a Supreme Administrative Court.2. Ensure that future laws and regulations incorporate practical transitional provisions, and that new legal instruments are not applied to impose retrospective penalties for non-compliance. |
| Development of new laws | <ol style="list-style-type: none">3. Prioritize the passing of a Law on Commercial Contracts after effective private sector consultation.4. Consult with the private sector to develop a Competition Law that is clearer and more comprehensive than existing drafts.5. Offer greater guarantees, incentives and assistance to investors through a new Law on Investment incorporating recommendations from the private sector. |
| Protection of intellectual property rights | <ol style="list-style-type: none">6. Introduce a pre-registration gazetting requirement for new trademark applications.7. Develop a more detailed legal framework to enable stronger provisional measures in the protection of IPR.8. Grant more power at the administrative level to the General Department of Customs and Excise (GDCE) to prevent counterfeit goods and parallel imports from entering Cambodia.9. Consult with the private sector to develop legal instruments to define specific remedies for IPR infringement cases.10. Create a formalized Alternative Dispute Resolution process to address trademark rights infringement cases through relevant ministries. |

HUMAN RESOURCES

- | | |
|-------------------------------------|---|
| Supporting economic diversification | <ol style="list-style-type: none">11. Support greater proliferation of collective bargaining agreements to interpret the Labor Law at an industry level. |
| Employing foreign staff | <ol style="list-style-type: none">12. Permit employers to submit a formal copy of their contracts with foreign employees, in Khmer language, as an alternative option to completing the pre-defined contractual template required by the Ministry of Labor and Vocational Training. |
| Enterprise infirmaries | <ol style="list-style-type: none">13. Revise requirements for businesses employing 50+ employees to have their own on-site infirmaries. |

Skills and training	<p>14. Support the private sector in developing national qualifications frameworks for Technical Vocational Education and Training at an industry level.</p> <p>15. Ensure that skills developed through non-formal learning and informal learning are incorporated into such frameworks.</p>
<hr/>	
Public-private sector communication	<p>16. Provide additional support to the private sector to increase understanding of new laws and regulations.</p>
<hr/>	
Apprenticeship training requirements	<p>17. Publish an approved set of practical implementation guidelines for the training of apprentices that provides clear guidance on the Ministry's requirements for employers to demonstrate compliance.</p> <p>18. Avoid fining businesses on this issue prior to the publication of practical implementation guidelines from the Ministry, and ensure that retrospective fines in relation to this subject will not be applied.</p>

TAXATION

Supporting compliant companies during the tax formalization process	<p>19. Revise the Kingdom's Withholding Tax regulations to place less of a burden on tax-compliant businesses.</p> <p>20. Stop the practice of charging both Withholding Tax and VAT on properties rented from companies.</p> <p>21. Provide clarification on Withholding Tax liabilities for payments made for management and technical services to non-resident taxpayers.</p>
<hr/>	
Value added tax	<p>22. Provide more specific guidance on VAT requirements for exported services.</p> <p>23. Permit businesses making both taxable and non-taxable supplies to offset 100% of their Input Tax paid against Output Tax collected.</p> <p>24. Ensure that businesses meeting the documentation requirements of the General Department of Taxation are able to secure VAT refunds in a timely manner and independently of whether suppliers have complied in submitting their own documents and payments.</p> <p>25. Consider introducing VAT provisions for travel agents that recognize 'agency relationships' so as to more fairly reflect the nature of these businesses.</p>
<hr/>	
Tax on profits	<p>26. Consider applying fringe benefit tax exemptions based on employee seniority rather than a fixed exemption amount for every employee in a company, and clarify the requirements for businesses to have such exemptions approved.</p> <p>27. Ensure that the progressive rates of Tax on Profit prescribed in the Law on Financial Management 2017 be applied to all business entities in Cambodia so as to ensure a level playing field and encourage reinvestment of profits.</p> <p>28. Consider revising Cambodia's QIP incentives relating to Tax on Profit so as to offer more competitive tax advantages to investors.</p> <p>29. Consult with the private sector to consider how a capped allowance for tax-deductible entertainment expenses could be introduced and structured.</p>
<hr/>	
Request for new tax regulations	<p>30. Consult with the private sector in order to develop a clear and unambiguous set of regulations on transfer pricing.</p>

CUSTOMS, TRANSPORT and LOGISTICS

Customs	<ul style="list-style-type: none">31. Expand the List of Fees and Charges to include out-of-hours services and reasonable expenses for Customs officials.32. Provide clearer guidelines on the process through which suppliers to QIPs can benefit from import tariff exemptions applicable to the QIP.33. Prioritize the implementation of a secure online payment system and expansion of online document capabilities for Customs.34. Create a clear and systematic procedure through which the private sector can escalate issues and request decision reviews by the General Department of Customs and Excise.35. Fully implement MEF Directive No. 004 to enact a 'de minimis' value regime, and engage with express forwarders to better facilitate the Customs clearances of time-sensitive deliveries.
Transport and logistics	<ul style="list-style-type: none">36. Continue to address the high cost of international shipping to and from Cambodia.37. Permit companies other than KAMSAB to offer shipping agency services for marine cargo.38. Assist shipping lines in recovering containers holding abandoned cargo.
Special economic zones	<ul style="list-style-type: none">39. Require SEZs to facilitate regular meetings between investors, GDCE, and other relevant public bodies, and consider trialing new tools for public-private collaboration within SEZs.

AUTOMOTIVE

Import regulations	<ul style="list-style-type: none">40. Implement regulatory measures to prevent the import of cars unsuitable for the Cambodian environment.
Consumer protection	<ul style="list-style-type: none">41. Require the Department of Land Transport to notify authorized distributors, on a quarterly basis, of the contact information for all new vehicle registrations or used-vehicle transfers so as to enable product recalls.42. Better implement existing technical check requirements.
Taxation policy	<ul style="list-style-type: none">43. Rationalize taxation policy for automobiles so as to support the growth of the formal sector.

DIGITAL *and* NEW TECHNOLOGIES

Supporting the development of new technology industries	44. Formally review the format for public-private sector consultations within ICT.
E-commerce	45. Develop a legal and regulatory framework to support the growth of e-commerce, including an E-Commerce Law and a new Law on Consumer Protection.
Telecommunications	46. Engage in substantive consultation with the private sector prior to implementation of the telecommunications re-licensing process. 47. Structure a future Universal Service Obligation scheme and R&D Funding scheme to support the growth of the sector. 48. Introduce a screening process for bidders on future spectrum auctions. 49. Review the method of calculating taxable revenues for telecommunications companies.

GREEN BUSINESS

Renewable energies	50. Assist sustainable biomass companies operating in the formal sector to be price competitive. 51. Implement tax incentives and consider a trial net metering scheme to support the development of the solar industry in Cambodia. 52. Develop a Government-approved national quality assurance program for solar energy products.
Responsible business practices	53. Provide clear and public guidance on how businesses can best prepare for upcoming Environmental Impact Assessment legislation, and assurances that there will be a suitable transition period upon enactment of the legislation. 54. Ensure that nationality requirements for EIA consultancies are not included in the final Environment and Natural Resources Code of Cambodia or subsequent legal instruments, and consider accreditation applications based only upon the competencies of the applicant company. 55. Require local authorities to emphasize sustainability considerations within performance reviews for waste management contractors, ensure that sustainable practice plans be prioritized in future waste management service tenders, and enhance implementation of water quality laws.
Energy efficiency	56. Create a public-private technical working group focusing on the labelling of energy-efficient products. 57. Consider introducing a 'Green Industry Award' to recognize businesses who have demonstrated excellent practices in energy efficiency.
Green buildings	58. Explore the creation of a Cambodian Green Building Council.
Green financing	59. Develop a centralized information point for all green financing programs that may be applicable to the private sector and disseminate through an appropriate tool such as an online portal.

HEALTHCARE

Parallel imports	60. Implement additional measures to prevent parallel importing of pharmaceutical products.
Registrations and renewals	61. Introduce a process for obtaining exceptional import licenses for products that have an ongoing registration or renewal application. 62. Issue an official tariff list for the administrative processes concerning post-registration variations. 63. Publish a list of countries or institutions from which laboratory tests of healthcare products can be accepted in lieu of laboratory testing in Cambodia. 64. Publish a clear schedule of sittings of the Ministry of Health's registration and renewal committee. 65. Define a clear list of product categories for medical equipment with details of the procedures and documents required for each, and publish formal procedures for the registration of reagents.
Over-the-counter products	66. Review and update the OTC list so that it better reflects the evolution of products available on the market.
Public tenders	67. Exclude companies that do not have the capacity to provide ongoing aftermarket care on medical equipment from public tenders.
Public-private sector communication	68. Introduce a formalized public-private sector forum for healthcare, improve availability of legal information relating to the sector, and consider the creation of a cross-ministerial public-private sector dialogue platform focusing specifically on parallel importing.

REAL ESTATE and CONSTRUCTION

Cadastral and real estate development	69. Further develop fiscal controls within the real estate and construction sector so as to define stronger minimum capital requirements and licensing regimes for development projects outside of the residential sector. 70. Place an obligation upon developers to apply for freehold strata titles on behalf of property purchasers. 71. Introduce financial controls that limit the speculative buying of property within Cambodia. 72. Prescribe a set of universal standards of measurement for the real estate industry.
Land management and urban planning	73. Consider permitting a 'model project' to showcase to prospective investors that coastal development under international standards is a viable possibility in Cambodia.
Construction	74. Consult with the private sector to ensure a practical set of building standards. 75. Create a sub-committee under the National Committee for Health and Work Safety focusing specifically on occupational health and safety on construction sites. 76. Prior to the realization of the Building Code, consult with the private sector to define an intermediary set of fire safety criteria to be referred to during all stages of the construction permitting process and to be implemented by operational businesses.

2016 Policy Responses

A summary of the Royal Government's responses to our our policy recommendations in 2016.

HUMAN RESOURCES



Supporting economic diversification

1.

Support greater proliferation of collective bargaining agreements to interpret the Labor Law at an industry level.

RESPONSE

The Law on Trade Unions has since been promulgated by the Royal Kram NS/RKM/0516/007 on 17 May 2016. Amongst its provisions, this Law defines the criteria under which unions can apply to the Ministry of Labor and Vocational Training to be recognized as the 'Most Representative' union within a workplace and therefore secure the exclusive right to negotiate on behalf of employees and to engage in Collective Bargaining Agreements with employers. Recognizing that there are no instant solutions and that unions will need time to organize themselves in order to secure 'Most Representative' status in accordance with the provisions of the Law, having the legal framework in place is a positive first step towards the realization of effective Collective Bargaining Agreements (CBAs).

Work permits for foreign employees

2.

Remove the requirement for employers to complete a pre-defined contractual template when registering the employment contract of foreigners at the Ministry of Labour and Vocational Training.

NO RESPONSE

3.

Introduce a process to allow individuals working in Cambodia but without a regular employer to apply for their own work permits.

RESOLVED

The Ministry of Labor and Vocational Training (MLVT) has introduced a new online system for registration of foreign workers (fwcms.mlvt.gov.kh) which includes an option for self-employed individuals. Provided that the online system functions as intended and is accessible for users, this resolves the issue over foreign individuals working in Cambodia without a regular employer.

Enterprise infirmaries

4.

Revise requirements for businesses employing 50+ employees to have their own on-site infirmaries.

NO RESPONSE

Skills and training

5.

Prioritize the implementation of a national qualifications framework that incorporates vocational education and training programs.

RESPONSE

Our members report positively on developments towards a national framework for recognizing vocational skills. In particular, there have been a lot of positive steps taken within the tourism sector to facilitate the implementation of the ASEAN Mutual Recognition Arrangement on Tourism Professionals and to promote training based on ASEAN Competency Standards on Tourism Professionals.

6.

Ensure that this framework includes skills developed through non-formal learning and informal learning.

RESPONSE

Again, there is good progress in the tourism sector. A framework has been provided for the certification of some tourism professionals through the Notification No. 391 SCN.GTC dated 21 September 2016 on Assessment on Recognition of Prior Learning of Tourism Professionals in Hotel Industry. Furthermore, temporary evaluation centers are being established in Phnom Penh to provide opportunity for professionals—especially those who do not have a professional certificate or degree—to evaluate their practical experience, knowledge, and skills, and to get a certificate or diploma for tourism professionals in accordance with national and ASEAN standards.

Public-private sector 7.
communication

Provide easier access to English-language information about Labor Law regulations and responsible persons with the Ministry of Labor and Vocational Training.

RESPONSE

Improved lines of communication with business associations, better dissemination of information about new regulations, and clearer delineation of responsibilities between the Ministry and Phnom Penh Municipality have been reported by our members.

TAXATION



Tax registration 8.

Formally revise the requirement for the Chairman of a company to be physically present at the GDT for tax registration purposes.

RESOLVED

The Ministry of Economy and Finance has issued Prakas on Tax Registration no. 496 SHV, dated 06 April 2016. This Prakas modifies the requirements for the tax registration process and states that "...any company's board chairman or owner of foreign nationality, who resides outside the Kingdom of Cambodia and is unable to physically present himself/herself to be photographed or to scan fingers, shall issue a written authorization to a company's board representative already recognized by the Ministry or other relevant institution to act on their behalf by having his/her picture taken and fingers scanned..."

9.

Revise requirements for lessees to provide immovable property tax receipts for their registered office when registering a company.

RESOLVED

In a letter to the Chairman of the European Chamber of Commerce in Cambodia dated 19 July 2016 (reference 12240 APD), the General Department of Taxation have confirmed that it is not obligatory for lessees to attach evidence of immovable property tax payments for their registered office. In the event that a company is unable to obtain a copy of tax receipt from the property owner, it (company) shall declare in writing to the General Department of Taxation that the property owner has refused to provide it with a copy of their tax receipt.

Withholding Taxes 10.

Reconsider the principle of Withholding Tax on services, which unfairly penalizes tax-compliant companies.

RESPONSE

In their July 2016 letter to EuroCham, the General Department of Taxation (GDT) reaffirmed the requirement for tax-compliant businesses to continue transmitting Withholding Tax when purchasing services from companies outside of the self-assessed regime. However, the GDT also emphasized their ongoing efforts to disseminate taxation regulations through seminars and various media, and to develop mechanisms through which to conduct inspection of roadside enterprises and encourage unregistered entities to register under the self-assessed regime. Such efforts, if successful, will significantly lessen the burden of Withholding Tax.

11.

Stop the practice of charging both Withholding Tax and VAT on properties rented from companies.

RESPONSE

On 03 November 2016 the GDT issued Instruction 18410 which clarifies that, where real estate companies lease immovable property from its owner and then sub-lease to a third party, only the sub-lessor will be required to pay 10% Withholding Tax on lease payments whereas the third party sub-lessee will not be required to pay Withholding Tax on their rent payments. However, except for the above case where a third party is renting from a sub-lessor, the fundamental principle of paying both Withholding Tax and Value Added Tax on immovable property owned by a registered company remains unchanged.

Value added tax 12.

Provide more specific guidance on VAT requirements for exported services.

RESPONSE

In their July 2016 letter to EuroCham, the GDT committed to conduct further research in order to provide a clearer definition of "exported services" and to ensure that the application of VAT on the export of services is aligned with the evolution of businesses and technology. Furthermore, the GDT clarified that, according to their current practices, for services to be certified as having been fulfilled or consumed outside the Kingdom of Cambodia, they must be supported by documents such as a service supply contract and evidence showing that the payment transaction was made through an overseas bank.

Value added tax 13.

Permit business making both taxable and non-taxable supplies to offset 100% of their Input Tax paid against Output Tax collected.

RESPONSE

In their July 2016 letter to EuroCham, the GDT provided a detailed explanation of the current regulations relating to this issue, referencing Sub-Decree number 114 on Value Added Tax, dated 24 December 1999, Articles 32 to 40. We appreciate this clarification and we agree that the existing regulations are clear and unambiguous. This being the case, we maintain that the content of these regulations place excessive additional burden on companies for whom a large proportion of their sales is to tax-exempt customers. These companies in effect pay higher rates of VAT than other businesses.

14.

Reiterate the timeframe within which VAT refund applications should be processed and emphasize the importance of this timeframe being followed.

RESPONSE

In their July 2016 letter to EuroCham, the GDT has confirmed that it is adjusting its processes and modernizing its IT system so as to be able to store all tax-related information in one place and link it with other relevant units and institutions, such as the General Department of Customs and Excise and the Ministry of Commerce. Through this upgrade the GDT expects to be able to process tax refunds quicker than before.

Tax on profits & minimum tax

15.

Consider revising Cambodia's QIP incentives relating to Tax on Profit so as to offer more competitive tax advantages to investors.

RESPONSE

In their July 2016 letter to EuroCham, the GDT acknowledged our recommendation and emphasized that the 'clawback mechanism' on dividends is intended to encourage QIPs to reinvest retained earnings in Cambodia. For the time being there is no commitment to offer more competitive tax incentives under the QIP scheme, though the Royal Government continues to engage in public-private consultation as it drafts the new Law on Investment.

16.

Consider revising Minimum Tax requirements for businesses with lower profit margins.

RESOLVED

During the EuroCham Tax Forum in September 2016, the GDT announced that they will consider exempting tax-compliant companies from the obligation to pay a revenue-based Minimum Tax. The subsequent Law on Financial Management 2017 states that the obligation to pay Minimum Tax will be placed only upon those companies that do not keep a proper record of accounts. In July 2017, in support of this article, the Ministry of Economy and Finance issued Prakas No. 638 MEF.Prk on "Criteria of Improper Accounting Records and Procedures for Paying Minimum Tax" so as to provide clear and unambiguous guidelines describing how taxpayers can qualify for the Minimum Tax exemption.

17.

Introduce a capped allowance for tax-deductible entertainment expenses.

RESPONSE

In their July 2016 letter to EuroCham, the GDT expressed reluctance to consider permitting businesses to claim any entertainment expenses as they are concerned that this may provide opportunity for expenses to be artificially inflated so as to reduce Tax on Profit payments. This year, we request the Royal Government to be open to consulting with the private sector to consider how an allowance for entertainment expenses could be structured in such a way so as to avoid the potential for abuse.

Tax administration 18.

Revise punitive measures for incorrect invoicing set out in the GDT's Instruction 1127.

RESOLVED

In their July 2016 letter to EuroCham, the GDT emphasized the necessity of enforcing such measures so as to enable their drive towards the formalization of the Kingdom's taxation regime. Our members report that a fair and reasonable transition period was afforded so as to provide time for businesses to adapt to the new requirements. Most tax-compliant companies have now successfully adapted to the GDT's invoicing requirements and this issue is no longer a pressing concern.

TRANSPORT, LOGISTICS, and CUSTOMS



Customs

19.

Expand the List of Fees and Charges to include out-of-hours services and reasonable expenses for Customs officials.

RESPONSE

The GDCE has produced a 'draft zero' Prakas on Customs fees for tasks performed outside of regular working hours, which also covers tasks completed outside of office by Customs officials. The Prakas is intended to provide a legal basis for businesses to pay additional charges and expenses for such services and to receive formal receipts for these payments. There have been pro-active efforts on the part of the Ministry of Economy and Finance and the GDCE to consult with the private sector on this piece of legislation, including a consultation with the Cambodian Chamber of Commerce and the European Chamber of Commerce on February 22, 2017.

20.

Provide clearer guidelines on the process through which suppliers to QIPs can benefit from import tariff exemptions applicable to the QIP, particularly where the market price is different to the Master List price.

RESPONSE

On 26th November 2016, the GDCE issued Notification 1969/16 AKR which included the following statement:

"For import by businessmen with QIP entitlement where the burden of duty and tariff is born by the state, all customs and excise units must take for calculation of duties the values of goods as stated in the import document only, irrespective of any margin of error from the master list or other data used during the conduct of customs inspection. However, in case there is duty and tariff relief to be carried by the state, the calculation of import duty will become the subject for value verification to determine duty to be paid as dictated by the existing laws."

This clarifies the issue raised last year whereby companies with QIP status were encountering challenges when the market price of the imported goods does not match the price on the Master List. However, this year's chapter retains our recommendation that suppliers to QIPs should be provided greater guidance on how to access import tariff exemptions applicable to their customers.

21.

Prioritize the implementation of a secure online payment system and expansion of online document capabilities for Customs.

NO RESPONSE

Transport & logistics

22.

Reduce the high cost of international shipping to and from Cambodia.

RESPONSE

There has been some movement over the past year to address the high cost of international shipping. Following consultation with the Royal Government, Sihanoukville Autonomous Port and Phnom Penh Autonomous Port agreed to reduce their lift-on/lift-off (LoLo) charges by 10% and 5% respectively, while the mandatory shipping agency Kampuchea Shipping Agency and Brokers (KAMSAB) also agreed to reduce fees by 10%. However, the impact upon Cambodia's overall competitiveness is minimal and the reductions are seen as a largely symbolic gesture. This being the case, a newly-created Logistics Advisory Board (LAB), under the supervision of the Ministry of Public Works and Transport, has the potential to become a very productive mechanism through which to address issues within the transport and logistics sector.

23.

Permit companies other than KAMSAB to offer shipping agency services for marine cargo.

RESPONSE

While there has not been any commitment on the part of the Royal Government to consider companies other than KAMSAB to offer shipping agency services for marine cargo, there has been some degree of progress with KAMSAB agreeing to provide additional services. Whereas previously it would be the shipping lines that took responsibility for on-board clearance (taking public officials on board to check documents and clear cargo), KAMSAB has now agreed to take responsibility for providing this service. It is hoped that this will help to reduce opportunities for non-transparent practices and therefore offer greater value to KAMSAB's clients.

24.

Assist shipping lines in recovering containers holding abandoned cargo.

RESPONSE

GDCE has acknowledged our concerns on this matter and has proven willing to engage with shipping lines on the issue. However, no concrete progress has been realized at this time.

Special economic zones

25.

Require SEZs to facilitate regular meetings between investors, GDCE, and other relevant public bodies and consider trialing new tools for public-private collaboration within SEZs.

NO RESPONSE

AUTOMOTIVE



Import regulations

26.

Implement regulatory measures to prevent the import of cars unsuitable for the Cambodian environment.

RESPONSE

Cambodia participates in the Automotive Parts Working Group (APWG) of the ASEAN Consultative Committee on Standards & Quality (ACCSQ). The APWG is currently discussing the introduction of a Mutual Recognition Agreement (MRA), which would prescribe conditions for recognition of testing and certification of automotive components by the 10 ASEAN Member States. In participation of this MRA, the Cambodian Ministry of Industry and Handicraft has published 'Prakas No 150 MIH/2016 on 19 Technical Regulations for Automotive Products', in which the Ministry informs of its intention to adopt 19 international technical standards (based on the 1958 UN/ECE Agreement) relating to vehicle components, vehicle systems and emissions requirements. EuroCham's Automotive Committee welcomes the Ministry's stated intention to "make automotive products safe and to prevent disaster on human, environment, and society", though there remains some ambiguity over the implementation mechanisms that will be used to enforce these standards. In April 2017, the Ministry of Industry and Handicraft's Announcement No.662 issued a 'grace period' for compliance with these regulations until 14 June 2019, by which time we hope to have supported the Ministry in developing a practical set of implementation guidelines.

Consumer protection

27.

Require the Department of Land Transport to notify authorized distributors, on a quarterly basis, of the contact information for all new vehicle registrations or used-vehicle transfers for product recall purposes.

NO RESPONSE

28.

Better implement existing technical check requirements.

NO RESPONSE

Taxation
policy

29.

Rationalize taxation policy for automobiles so as to support the growth of the formal sector.

RESPONSE

The Royal Government has proven willing to engage the EuroCham Automotive Committee and other industry bodies on this issue over the past year, though unfortunately there has been no progress towards a more rationalized taxation structure for the automotive sector.

DIGITAL AND NEW TECHNOLOGIES



Supporting the
development of
new technology
industries

30.

Review the current format for public-private sector consultation within ICT.

RESPONSE

This past year has seen some more substantive engagement between the Ministry of Posts and Telecommunications (MPTC) and the private sector. For example, the MPTC has reached out to a number of business associations to disseminate a draft Prakas on a new ICT licensing scheme and to receive feedback from the private sector prior to releasing a final version. However, the development of the sector would be better served by the creation of a formalized framework for public-private dialogue on this subject.

E-commerce

31.

Engage the Cambodia eBusiness Working Group to support the growth of e-commerce.

RESPONSE

The Royal Government has generally been willing to engage in consultation with the private sector on issues relating to the development of e-commerce. However, we are yet to see the passing of an E-Commerce Law which is having a detrimental effect on the sector's development in the Kingdom.

Telecommunications 32.

Engage in substantive consultation with the private sector prior to implementation of the telecommunications re-licensing process.

RESPONSE

A draft Prakas describing the application process and fee structures for the re-licensing process was shared with private sector stakeholders in early 2017. We encourage ongoing consultation with the private sector prior to implementation of the re-licensing process.

33.

Structure a future Universal Service Obligation scheme to support the growth of the sector.

RESPONSE

Draft Sub-decrees for both a 'Universal Service Obligation Fund' and a 'Capacity Building and Research and Development Fund' were released towards the end of 2016. Industry stakeholders are providing feedback and advocating that principles of good governance be applied to each Fund.

34.

Introduce a screening process for bidders on future spectrum auctions.

RESPONSE

A Sub-Decree covering spectrum planning, allocation, assignment and monitoring is being finalized. Towards the end of 2016, the Ministry of Posts and Telecommunications successfully allocated some spectrum via a comparative tender process, which is a viable alternative to spectrum auctions.

35.

Review the method of calculating taxable revenues for telecommunications companies.

NO RESPONSE

GREEN BUSINESS



Renewable energies 36.

Assist sustainable biomass companies operating within the formal sector to be price competitive.

RESPONSE

The latest draft of the Environment and Natural Resources Code of Cambodia (dated 25 July 2017) contains some supportive articles demonstrating the Royal Government's recognition of the benefits to be gained by supporting a competitive and sustainable biomass industry. In particular, Book 8 of the Code, which relates to economic measures, accounts, fees and funds for the environment, stipulates monetary incentives to encourage businesses to invest in sustainable energy sources, explicitly including biomass.

37.

Consider VAT exemptions and the introduction of a trial net metering scheme to support the development of the solar industry in Cambodia.

RESPONSE

As with the biomass sector above, Cambodia's solar energy sector is set to benefit from the provisions of the latest draft of the Environment and Natural Resources Code of Cambodia (dated 25 July 2017) through the introduction of tax incentives for companies that incorporate solar energy into their energy generation mix, that commercialize, install or provide technical support or maintenance for solar energy devices, or that import, produce, distribute or sell devices that produce sustainable energy or increase energy efficiency.

38.

Endorse the Good Solar Initiative as a national quality assurance program for solar energy and create a transition plan to eventually assume responsibility for management of the program.

RESPONSE

The draft Environment and Natural Resources Code of Cambodia (dated 25 July 2017) also contains provisions for the Electricity Authority of Cambodia (EAC) to establish an independent entity tasked with controlling the quality of energy generation devices supplied and used for the national market in order to ensure that they comply with health, safety, and environmental standards. The independent entity, possibly drawing upon ISO standards, shall ensure that energy generation products passing through Customs are verified before being imported into Cambodia, and that products sold in Cambodia for energy generation have received a certification of quality before they are commercialized.

Environmental impact assessment

39.

Provide clear and public guidance on how EIA legislation will be enforced until the Environmental Code and/or new EIA law are signed and implemented.

NO RESPONSE

40.

Remove the nationality requirement for EIA consultancies from future EIA legislation.

RESPONSE

The issue has been raised to the Royal Government by the Directorate General for Trade of the European Commission. The Ministry of Environment subsequently agreed to take the Directorate General's concern into consideration, and the nationality criteria was omitted from some recent drafts (Draft 6 on 20 November 2016 and Draft 7 on 31 December 2016). However, the clause has now been reintroduced in the latest draft (dated 25 July 2017). EuroCham will continue to encourage the Royal Government to consider removing this condition from the finalized Environment and Natural Resources Code of Cambodia.

Energy efficiency

41.

Work towards a mandatory energy efficiency labeling system for certain products sold in Cambodia.

RESPONSE

The latest draft of the Environment and Natural Resources Code of Cambodia (dated 25 July 2017) contains provisions for the creation of a voluntary environmental labelling system by the Ministry of Environment in cooperation with the Ministry of Industry and Handicraft. This 'ecolabel' concept is to include information on environmental burden, including but not limited to material content, energy inputs, and outputs. The Ministry of Environment is to determine categories of products and services to be recognized, criteria and standards, and a process for certification and auditing within one year of the passing of the Code, and the Royal Government commits to favoring products with 'Ecolabel' certification in public procurement processes.

42.

Consider introducing a 'Green Industry Award' to recognize businesses who have demonstrated excellent practices in energy efficiency.

NO RESPONSE

Green buildings

43.

Begin exploring the creation of a Cambodian Green Building Council.

NO RESPONSE

HEALTHCARE



Parallel imports

44.

Implement additional measures to prevent parallel importing of pharmaceutical products.

RESPONSE

The Ministry of Commerce has published Prakas 186 on Procedures to Record and File Permission Letters for Imported Goods Bearing Exclusive Trademarks (31 May 2016). Whereas previously Cambodia did not permit companies or individuals to hold the exclusive right to import any particular product, owners of trademarks registered in Cambodia and their distributors can now apply to the Ministry's Department of Intellectual Property Rights to have their commercial relationship recognized as an exclusive dealership. Under the provisions of the Prakas, companies with registered exclusive dealership status have the right to request enforcement actions against parallel importers of their registered trademark. However, it is not yet clear what recourse companies with registered exclusive dealership status will have when reporting infringement of their trademarks, and which processes they will have to follow in order to initiate enforcement actions.

Registrations and renewals

45.

Introduce a process for obtaining exceptional import licenses for products that have an ongoing registration or renewal application.

NO RESPONSE

46.

Publish a list of countries or institutions from which laboratory tests of healthcare products can be accepted in lieu of laboratory testing within Cambodia.

NO RESPONSE

47.

Publish a clear schedule of sittings of the Ministry of Health's registration and renewal committee.

NO RESPONSE

Registrations and renewals 48.

Define a clear list of product categories for medical equipment with details of the procedures and documents required for each.

NO RESPONSE

Over-the-counter products 49.

Review and update the OTC list so as to align with the classification systems of other ASEAN countries.

RESPONSE

There has been a strengthening over the past year of the controls on the dispensing of medicines. In accordance with Notification 410 of the Ministry of Health, dated 21 July 2016, pharmaceutical companies are now only permitted to dispense medicines to doctors holding a valid pharmaceutical license.

This provision is to be welcomed as it decreases the risk of consumers obtaining certain pharmaceuticals without the necessary consultation with a professional. However, the limitations on marketing and promotional activities caused by an outdated OTC list persist.

Public tenders 50.

Exclude companies that do not have the capacity to provide ongoing aftermarket care on medical equipment from public tenders.

NO RESPONSE

Public-private sector communication 51.

Introduce a formalized public-private sector forum for healthcare and improve availability of legal information in English language on the Ministry of Health website.

NO RESPONSE

REAL ESTATE *and* CONSTRUCTION



Cadastral
and real estate
development

52.

Define a set of fiscal controls during project development.

RESPONSE

The Ministry of Economy and Finance has issued Prakas No. 965 on the Management of Residential Development Business, dated 24 August 2016. The Prakas includes a number of revisions and clarifications relating to the licensing regime and reporting obligations of development projects intended for residential use. The Prakas sets the minimum capital requirement for such projects at 2 billion KHR (approximately 500,000 USD), and provides more specific regulations on phases of development and commencement of sales. Sentiment among the private sector more generally is that regulations for project development in Cambodia are moving in the right direction.

53.

Place an obligation upon developers to apply for freehold strata titles on behalf of property purchasers.

RESPONSE

While there has been no formal revision to the laws relating to foreign ownership, the Ministry of Land Management and Urban Planning has taken measures towards stronger implementation of existing laws, particularly with regard to the registration of soft titles. This further emphasizes the importance of having legally compliant and formalized processes in place for the registration of all forms of property ownership in Cambodia.

54.

Introduce financial controls in order to limit the speculative buying of property within Cambodia.

NO RESPONSE

55.

Officially prescribe a universal standard of measurement.

NO RESPONSE

Land management and urban planning 56.

Consider permitting a 'model project' to showcase to prospective investors that coastal development under international standards is a viable possibility within Cambodia.

RESPONSE

On 23rd December 2016 an International Public-Private Conference on "Cambodia's Coastline Development" was held in Sihanoukville, which was organized by the National Committee for the Management and Development of Cambodia's coastline and attended by a number of high-level representatives from the Royal Government including the Ministry of Land Management, Urban Planning and Construction and the Ministry of Tourism. The output of the forum was a set of recommendations to enhance sustainable management and development of Cambodia's Coastline which was endorsed by both the Royal Government and the private sector. Of particular significance was the Conference's recommendation that a model development project be supported in the Cambodian coastline zone as a pilot project to gain experience in using a public-private partnership mechanism to enable a private company to invest in basic infrastructure for the public interest.

Construction 57.

Consult with the private sector to ensure a practical set of building standards.

RESPONSE

While the Construction Law and accompanying Building Code remain in the drafting phase, the Ministry of Land Management, Urban Planning and Construction has formally expressed interest in receiving further technical and scientific support from the European Union in the development of the Building Code and supporting sub-decrees under the Construction Law.

58.

Implement short-term measures to address fire safety prior to the passing of the Building Code.

NO RESPONSE

Government - Private Sector Forum

Tourism Working Group

Tourism and Hospitality

Public-Private Consultations

The current White Book is a compilation of policy recommendations formulated by all EuroCham Sectoral Committees with one notable exception: Tourism.

While the tourism and hospitality sector still faces many challenges, EuroCham and the Ministry of Tourism have been working hand in hand for the past two years to address issues faced by the industry within the framework of the **Government-Private Sector Forum Working Group B** – dedicated to Tourism. These challenges and results-based solutions are being discussed and acted upon on a regular basis by the Ministry of Tourism and the private sector. The structure of this public-private consultation mechanism, and the role played within it by EuroCham, is described below.

UNDERSTANDING THE GOVERNMENT-PRIVATE SECTOR FORUM (G-PSF)

The Government Private Sector Forum (G-PSF) was established in 1999 at the initiative of the Prime Minister of Cambodia, with the purpose of providing a **reliable dialogue mechanism between the Royal Government and the private sector** for consultations on trade and investment-related issues.

Organized around a series of thematic Working Groups, each one of them is co-chaired by a Minister of the Royal Government from a specific sector and an elected representative of the private sector. The G-PSF provides an officially sanctioned platform for the business community to collectively raise challenges and put forward possible solutions to their Royal Government counterparts. Issues that cannot be solved at the Ministerial level are transmitted to the G-PSF Plenary Session which normally meets once a year and is chaired by the Prime Minister himself.

The Council for the Development of Cambodia (CDC) acts as the Secretariat of the G-PSF while the Cambodia Chamber of Commerce ensures the coordination of the various Working Groups.

Ten Working Groups meet regularly throughout the year:

- A. Working Group on Agriculture & Agro-industry
- B. Working Group on Tourism
- C. Working Group on Manufacturing and Small and Medium Enterprises and Services
- D. Working Group on Law, Tax and Governance
- E. Working Group on Banking and Financial Services
- F. Working Group on Transport and Infrastructure
- G. Working Group on Export Processing and Trade Facilitation
- H. Working Group on Industrial Relations
- I. Working Group on Unhusked Rice/Rice
- J. Working Group on Power and Mining Resources

G-PSF TOURISM WORKING GROUP

On 3 August 2015, EuroCham successfully nominated the Chairman of our Tourism Committee, renowned Cambodian Master Chef Luu Meng, to be elected as Co-Chairman of the **Working Group on Tourism (Working Group B)**. Consequently, EuroCham was entrusted with ensuring the Secretariat of this Private Sector Working Group and subsequently invited the Cambodia Tourism Federation to join in the coordination of the group. This ensures that the private sector's contributions to Working Group B are drawn from a wide and diverse range of tourism and hospitality businesses.

Following the first public-private meeting on 3 September 2015, H. E. Dr. THONG Khon, Minister

of Tourism, and Chef Luu Meng agreed to create seven specific task forces within Working Group B to facilitate more targeted public-private dialogue. Each task force comprises technical officials from the Ministry of Tourism and industry representatives designated by the Private Sector Co-Chairman.

For the past two years, these seven public-private task forces have been meeting regularly under the coordination of the Secretariat, to identify and address ideas to promote Cambodia as a prime tourism destination and to improve the business platform of the tourism and hospitality sector.

In August 2017, the Minister of Tourism proposed the establishment of a new Task Force focusing on the Ministry's 'China Ready' strategy. The Ministry and private sector also recognized the importance of domestic tourism and have split the existing Marketing and Promotion Task Force into 'Domestic' and 'International' groups. There are now nine task forces:

- Tourism industry
- Training
- Cleanliness and Green Tourism
- Research and Development
- Domestic Marketing and Promotion
- International Marketing and Promotion
- Investment and Tourism Products Development
- China Ready
- Safety and Transportation

DEVELOPING CAMBODIA'S COASTLINE

In addition to the ongoing work of the Task Forces, EuroCham and the Ministry of Tourism jointly assisted the National Committee for the Management and Development of Cambodia's Coastline to organize a Public-Private Conference on Cambodia's Coastline Development. This took place in Preah Sihanouk Province on 23 December 2016. Following a full day of consultations, the Conference adopted 19 recommendations which were endorsed by the Senior Minister for Land Management, Urban Planning and Construction, Chairman of the National Committee, in his closing remarks. It is the private sector's expectation that these recommendations will be reflected in the Royal Government's upcoming policy measures to promote Cambodia's coastline as a sustainable international tourism destination and to encourage investment in the sector.

GOING FORWARD

EuroCham welcomes the continued commitment of the Ministry of Tourism to reach out to the private sector in addressing sector-wide challenges, and we look forward to realizing further collective achievements through the aforementioned consultation mechanisms under the framework of the G-PSF Working Group B. While the White Book acts as a basis to support and promote public-private discussions aimed at improving the ease of doing business in Cambodia, these types of consultations are already well underway in the tourism and hospitality sector. Acknowledging this ongoing collaboration and keeping in mind its current duty as Secretariat of G-PSF Working Group B, EuroCham chose not to include policy recommendations for tourism and hospitality in this publication.

Policy Recommendations

for trade and investment in Cambodia

INVESTMENT PROTECTION

Within the cross-sectoral chapters of this year's White Book we have included an additional set of recommendations under the bracket of 'Investment Protection'. The Royal Government has been making a series of significant reforms over recent years which are having a cumulative effect of improving the level of security that the business community perceives when investing in the country. This being the case, the Kingdom's legal framework remains a work-in-progress as Cambodia progresses towards full World Trade Organization compliance and seeks to harmonize its laws with best practices from across ASEAN in order to capitalize upon the opportunities presented by the ASEAN Economic Community. This section takes a more detailed look at the Kingdom's legal system with particular reference to how the content, application, or absence of certain legal provisions impacts upon Cambodia's investment environment and overall attractiveness to prospective investors.

The first section of this chapter introduces two **legal review mechanisms** that would provide greater security to investors. Cambodia has not yet introduced a recourse mechanism through which companies that perceive decisions of public institutions to be irregular or inconsistent with the Kingdom's laws can apply to have their case assessed by an independent review mechanism. The Government-Private Sector Forum (G-PSF) is intended to consider sector-wide issues rather than to address administrative challenges encountered by specific private entities. Such mechanisms have been introduced within the majority of Cambodia's regional neighbors and provide additional security to investors who can be confident of fair treatment under the country's laws. Furthermore, we raise concerns from our members relating to the possibility of future laws being applied retrospectively or without sufficient transition time, which serves to increase regulatory risk and should be discouraged.

The second section addresses the need for the **passing of new laws** in certain areas, including a Law on Commercial Contracts to provide better protections to both lessors and lessees of commercial properties, as well as a Law on Competition to ensure a properly functioning economy and protect against anti-competitive practices by companies. Finally, we emphasize key articles that should be integrated into the upcoming revisions to the Law on Investment in order to foster confidence among prospective investors and, particularly, lending institutions. We reiterate EuroCham's commitment to continue participating in consultations with the Royal Government concerning this key piece of legislation.

The final section of the chapter contains a detailed review of Cambodia's legal and administrative framework for the **protection of Intellectual Property Rights (IPR)**. In an increasingly knowledge-driven economy, the extent to which

a country's legal system can provide sufficient guarantees and securities over IPR is a key consideration for prospective investors. As the economy expands and Cambodia's consumer class increases in size and income, new products, brands, and creative works and designs are rapidly entering the market. At the same time, counterfeit goods and parallel imports are widespread throughout the market and are regularly reported by our members to be a key concern.

Cambodia has recently been introducing new regulations intended to enhance the protection of IPR. For example, Prakas No. 186 of the Ministry of Commerce, dated 31 May 2016, on Procedure for Recording and Filing of Letter Granting Exclusive Distribution Right of Product Bearing Trademarks, has made it possible for companies to register as an exclusive distributor of products bearing trademarks that are registered in Cambodia. This will provide a stronger legal

basis for challenging parallel imports. Cambodia has also created a number of specialized committees focusing on IPR issues, including the Committee for Combating Against Counterfeit Products of High Risk for Health and Social Security (the “Anti-counterfeiting Committee”), and the Committee for Suppression of Copyright Infringement (CSCI), which aims to provide support to businesses in enforcing their IPRs. These specialized committees have competency to investigate infringement and to collect evidence to support cases considered by the courts.

While the legal framework for the protection of IPRs is improving, there remain challenges around the enforcement of IPR, and support from relevant administrative authorities can be limited. Where businesses are in a situation in which their trademarks are being illegally exploited, the onus falls on the trademark owner to file a claim in the

Kingdom’s courts and/or competent authorities and to gather evidence in support of their claim. The exploitation of trademarks without authorization or consent from their owners is sometimes undertaken by powerful individuals, and foreign companies in particular can be cautious about taking the case to the courts as they fear that they may be subject to retributive action by the perpetrator(s). To effectively address this issue, reforms need to be introduced throughout three stages of the IPR protection regime:

- At the registration phase, a review of the Kingdom’s public gazetting requirements could improve efficiency by enabling pre-registration objections against new trade mark applications.
- Furthermore, there is a need to adopt a more comprehensive legal framework governing the enforcement procedures of relevant

administrative authorities in cases of IPR infringement. We present a case that IPR could be better protected in Cambodia by providing more competency to various administrative authorities including the Ministry of Commerce (as in-country enforcement agent) and the General Department for Customs and Excise of the Ministry of Economy and Finance (to prevent the entry of counterfeit goods and parallel imports).

- Finally, we consider how the development of specific laws relating to IPR damages in civil cases could help to serve as a deterrent to potential infringement activities. We also emphasize the role that relevant ministries, particularly the Ministry of Commerce, could play by providing a formalized Alternative Dispute Resolution mechanism for IPR cases.

We hope that the Royal Government will consider these proposals which, if adopted, would help to enhance Cambodia's investment framework, bringing it closer to international best practices and encouraging greater FDI inflows over the coming years.

Availability of an independent review mechanism for the application of laws

NEW

ISSUE DESCRIPTION

In some specific cases, investment projects can be hindered or significantly delayed where access to normal government services such as registration and licensing can be denied despite the investors seemingly meeting the required criteria. A recent and quite problematic example of this is the business registration process with the Ministry of Commerce; there is no ‘maximum response time’ that the Ministry must keep to, and some investors have had their registration delayed or withheld without any apparent grounds. Furthermore, the new online business registration process does not always function as designed—users are often required to provide paper copies of their supporting documentation in addition to completing the online templates, or to resubmit their application due to errors in the system. This further adds to the delays that are being experienced.

At present, there is no mechanism through which businesses can request to have decisions or actions taken by public officials independently reviewed to ensure that they are in accordance with the Kingdom’s laws and regulations, and to establish whether these legal instruments are being applied consistently and indiscriminately.

Many countries, including regional neighbors such as Thailand and Vietnam, have in place a system of Administrative Courts through which private individuals or businesses that perceive themselves to have been treated irregularly by a public body can make an appeal and request to have their case independently reviewed.

IMPACT ON CAMBODIA

The lack of an independent review mechanism for the application of laws increases the level of regulatory risk perceived by prospective investors in their evaluation of Cambodia, which has a negative impact upon investment inflows. In particular, international banks and lending institutions are much less willing to offer funding for investments in Cambodia if regulatory risk is perceived to be too high.

To introduce such a mechanism would enhance investor confidence and, furthermore, would strengthen the capacity of the Royal Government to ensure effective implementation of its own laws and regulations.

✓ **Create independent review mechanisms within relevant ministries and public bodies responsible for processing applications and approvals for private entities, and a Supreme Administrative Court.**

2017 RECOMMENDATION

- a. We recommend the creation of an independent review mechanism for cases involving disputes between public institutions and private entities. Whereas a Supreme Administrative Court would serve as the final appeals destination, we suggest that independent dispute resolution mechanisms should be introduced within each Ministry and public authority that processes applications and approvals for private entities. We cite the new Committee of Tax Arbitration (CTA), established last year by Sub-Decree No. 03 SD on The Organization and Function of the Committee of Tax Arbitration (6 January 2016), as an institution that can potentially serve as an example of such dispute resolution mechanisms. Through the CTA, taxpayers can appeal interpretations of tax regulations made by the General Department of Taxation or General Department of Customs and Excise in relation to their tax liabilities, and can have their case independently reviewed.
- b. In particular, we recommend the implementation of Articles 18.2 and 24.7 of The Sub-Decree implementing the Trademark Law, which prescribes that any interested party who is not satisfied with the Registrar’s decision on trademark registration, invalidation or cancellation of a registered trademark may appeal to an “Appeal Board” of the Ministry of Commerce within 3 months starting from the date of the decision. Until now this Appeal Board has not been created and appeals relating to IPR must be brought directly to the Court. An Appeal Board would be specialized in IPR issues and would therefore be a less costly and time-consuming means of resolution than proceeding through the courts. In this regard, a Prakas on Establishment of the Appeal Board should be prepared and adopted, detailing the composition and jurisdiction of the Appeal Board and the procedures for dispute settlement.
- c. Furthermore, we request that the Ministry of Commerce commits to a ‘maximum response time’ for business registration applications and agrees to have cases independently reviewed where this time is exceeded.

Protection against retrospective implementation of new laws

NEW

ISSUE DESCRIPTION Concern about the possibility of retrospective implementation of new laws has been raised in multiple EuroCham sectoral committees and features within several chapters of this White Book. Examples include:

- Uncertainty over the upcoming Building Code and Environmental Impact Assessment requirements, whereby developers are unclear about what their obligations will be under these regulations. In particular, there is concern that penalties for non-compliance may be applied against projects that have been completed prior to the regulations, or that there may not be a sufficient transition period to allow such projects to be altered and brought into compliance before penalties are applied.
- Within Human Resources, there is ambiguity for companies deemed unable to comply with the requirements for the training of apprenticeships. In this case, the applicable Prakas was issued in 2000, though there has historically been a lack of both enforcement and understanding, and little public-private dialogue about how businesses can be compliant. While we welcome the Ministry of Labor and Vocational Training's intention to now enforce this legislation in full, we also argue that retrospective fines in relation to this topic should not apply when there have not previously been practical implementation guidelines available.

Additionally, where new regulations are announced, there can be a lack of prior notice provided to the private sector which can create challenges in ensuring immediate compliance. Such an example is raised in this year's Healthcare chapter, in which the Ministry of Health's Notification 410, which limits the dispensing of medicines by pharmaceutical companies only to doctors holding a valid pharmaceutical license, was announced by the Ministry to be effective immediately and provided no time for pharmaceutical companies to review their distribution lists to ensure compliance. In some cases, laws are not published and disseminated in a timely fashion and, indeed, can come into effect before being released to the public.

IMPACT ON CAMBODIA Businesses require foresight and predictability in their legal obligations in order to engage in effective long-term strategic and financial planning. Where the regulatory environment is unpredictable and new laws can be applied retrospectively or with insufficient transition periods, this creates regulatory risks and additional costs for businesses which ultimately has a negative impact upon Cambodia's competitiveness and investment environment.

✓ **Ensure that future laws and regulations incorporate practical transitional provisions, and that new legal instruments are not applied to impose retrospective penalties for non-compliance.**

2017 RECOMMENDATION

We recommend that the Royal Government ensures that future laws and regulations incorporate practical transitional provisions, including where necessary a period of time from the passing of the new provisions to allow businesses reasonable opportunity to adapt their practices so as to be compliant. Processes for publishing and disseminating new laws would need to be reviewed to ensure that the private sector has sufficient and timely awareness of upcoming laws.

In particular, we recommend that the Royal Government adopts the general principle that new legal instruments should not be applied to impose retrospective penalties for non-compliance, and that any penalties would only come into effect after a well-defined transition period.

Passing of a Law on Commercial Contracts

NEW

ISSUE DESCRIPTION Businesses that need to lease commercial property in Cambodia regularly encounter problems in securing reliable long term leases. There are high levels of speculation in the Cambodian commercial property market, and commercial tenants are often faced with landlords that are only willing to commit to short term leases and that seek to considerably increase rental fees upon each renewal negotiation.

This practice is particularly problematic for foreign businesses who do not have the right to own landed property in the country, though is also of concern for local businesses that do not have the capital to purchase their commercial premises outright.

In many other countries, commercial lease agreements can be secured through specialized contracts that offer additional protection for the tenant against the above practices, such as an extended guaranteed minimum term and/or an automatic right to renewal. In some cases, companies are able to acquire a saleable lease, which provides them security to invest in enhancing the premises and adding value to their business.

For these specialized contracts to be legally applicable, a supporting legal framework must be in place. The Royal Government of Cambodia has recognized the need for a Law on Commercial Contracts and we understand a draft law to have been under consideration several years ago, though so far there has been no concrete progress towards passing of such a law.

IMPACT ON CAMBODIA A lack of protection from opportunistic practices by landlords creates unpredictability and instability for companies doing business in Cambodia, preventing them from executing long-term planning. There have been many examples of successful SMEs that have had their development hindered by the loss of their premises where their landlords have demanded excessive rental increases. Had these companies been afforded more protection, they may have grown into larger businesses creating additional jobs and tax revenues. This type of unpredictability will also be considered by prospective investors when considering Cambodia as an investment destination.

✓ **Prioritize the passing of a Law on Commercial Contracts after effective private sector consultation.**

2017 RECOMMENDATION

We urge the Royal Government to prioritize the passing of a Law on Commercial Contracts, and to engage with experts from the private sector to ensure that the provisions of this coming law serve to enhance security for businesses and provide fair rights and protections to both landlords and tenants.

Passing of a Competition Law

NEW

ISSUE DESCRIPTION A draft law to provide the legal framework for the Kingdom's competition regime has been developed and made publically available ¹. However, it is our understanding that regulations to provide more detailed instruction on the implementation of the Law have not yet been developed. The draft law as it stands contains several significant aspects that require clarification and more specific guidance, or that have been left for future implementing directives.

In particular, the following issues remain unspecified:

- Presumptive market share thresholds
- Guidance on market share determinations
- Broadening of exemptions and leniency policies to all substantive prohibitions
- Treatment of SMEs
- Abuse of market dominance
- Non-structural business combinations

Furthermore, there is a need to consider how the implementation of the Law can be staggered so as to permit adequate time for the regulator and private sector to improve their understanding of its provisions and capacity to ensure compliance and effective implementation.

IMPACT ON CAMBODIA Enactment and proper implementation of a Competition Law is one of the pillars of ensuring a properly functioning market economy and protecting against anti-competitive conduct by companies. Indeed, Cambodia is the only country in ASEAN to have not yet introduced a Competition Law.

Furthermore, the introduction and implementation of an effective competition regime is a requirement under Cambodia's WTO and ASEAN obligations.

✓ **Consult with the private sector to develop a Competition Law that is clearer and more comprehensive than existing drafts.**

2017 RECOMMENDATION

We encourage the Royal Government to consult with the private sector so as to provide more detailed regulation on the outstanding issues listed above.

Furthermore, we strongly recommend that all supporting legal instruments be finalized or in near-final form prior to the enactment of Cambodia's competition law to ensure that the law will be comprehensive and effective. This will also permit for amendments to be made to the Law if a need becomes apparent during the drafting of the supporting instruments.

Increasing investor confidence through an updated Law on Investment

NEW

ISSUE DESCRIPTION Cambodia's Law on Investment was passed in 1994 and amended in 2003 at a time where Cambodia's economic development was at a much lower level than we see today. With increasing inflows of Foreign Direct Investment (FDI) into larger and more complex projects, the Royal Government has recognized the need to update the Law on Investment and has been consulting with the private sector over the past few years to develop a new Law suitable to Cambodia's present-day economic context. As the Royal Government continues the consultation process, we would like to raise some recommendations in the following four areas:

1. Role of the Council for the Development of Cambodia (CDC)

The existing Law on Investment (1994) and Law On The Amendment To The Law On Investment (2003) describe the CDC as a 'One-Stop Service' that serves as "the Royal Government's "État-Major" responsible for the evaluation and the decision-making on all rehabilitation, development and investment project activities." In practice, investors often find that the CDC provides assistance only with the initial business registration and does not appear to be responsible for providing assistance in obtaining licenses required by various Ministries. Difficulties in obtaining operational licenses from Ministries can cause considerable cost and delays to investment projects that have already been approved by the CDC.

2. Investment Guarantees

Cambodia has ratified the ASEAN Comprehensive Investment Agreement (ACIA), which commits the ten Member States of ASEAN to provide various protections to investments made by ASEAN-based juridical persons. ACIA represents a rigorous sets of commitments that, if fully implemented by Member States, would contribute significantly to fostering a free and competitive investment environment within ASEAN. Cambodia is still working towards full implementation of ACIA and, consequently, is yet to maximize the potential economic gains that the Agreement can enable. Cambodia also has bilateral investment protection treaties with eleven Member States of the European Union, though this leaves the remaining seventeen Member States outside the scope of protection.

3. Investment Incentives

Chapter 5 of the existing Law on Investment (1994) and Law On The Amendment To The Law On Investment (2003) contains Investment Incentives to be offered to Qualified Investment Projects (QIPs). However, a 'clawback mechanism' within Article 23 of the Law on Taxation considerably reduces the level of incentive that the QIP scheme can offer, and indeed can deter prospective investors from entering the market. This issue is discussed in detail within the Taxation chapter of this White Book, under "Tax on Profit incentives for Qualified Investment Projects".

4. Prohibited Fields of Investment

The Royal Government has identified four ‘Prohibited Fields of Investment’ which are defined in Annex I (“The Negative List”) of “The Sub-Decree No. 111 on the Implementation of the Law on the Amendment to the Law on Investment”. This Sub-Decree prohibits investment in the following areas:

- Production/processing of psychotropic substances and narcotic substances;
- Production of poisonous chemicals, agriculture pesticide/insecticide and other goods by using chemical substances prohibited by international regulations or the World Health Organization, that affect the public health and environment;
- Processing and production of electrical power by using any waste imported from a foreign country;
- Forestry exploitation business prohibited by Forestry Law.

“The Negative List” is important to investors because it implies that other activities not on the List (and not in breach of other Cambodian Laws) should be subject to an open investment policy. At present, “The Negative List” is prescribed only by Sub-Decree and is not enshrined into Law - this increases the level of regulatory risk perceived by prospective investors to Cambodia who have lesser guarantees that their business activity will remain permissible and open into the future.

The updating of the Law on Investment represents an opportunity for Cambodia to attract greater levels of FDI by integrating international best practices in investment policy into its legal framework and providing greater protection and assurances to prospective investors.

IMPACT ON CAMBODIA

Furthermore, the update creates opportunity to expedite the implementation of Cambodia’s international commitments by integrating the substance of these commitments into Law.

✓ Offer greater guarantees, incentives and assistance to investors through a new Law on Investment incorporating recommendations from the private sector.

2017 RECOMMENDATION

EuroCham emphasizes our commitment to continue to contribute to the drafting of a revised Law on Investment that serves to foster confidence among prospective investors and, particularly, lending institutions. In this spirit, we offer the following recommendations to be taken into consideration:

- a. The new Law on Investment should expand the role of the CDC so that it has a legal basis through which to become a true ‘One-Stop Service’ for foreign investors. We recommend that provisions be introduced through which the CDC, as the Royal

Government's 'État Major' for significant foreign investment projects, can commit to liaising with Ministries (particularly the Ministry of Agriculture, Forestry and Fisheries, the Ministry of Industry and Handicrafts, and the Ministry of Energy) so as to ensure that approved projects are able to obtain the necessary licenses in a timely manner.

- b. The Kingdom's investment framework would be significantly enhanced if the investment protection standards of the ASEAN Comprehensive Investment Agreement were to be integrated into the new Law on Investment. This being the case, Cambodia should also be seeking to attract investors from other regions and should ensure that the Law guarantees to such investors conditions that are no less advantageous than those enjoyed under ACIA. Cambodia needs to compete with more developed regional competitors to attract global FDI, and to unilaterally offer higher level of protection to all investors regardless of origin or nationality would help to enhance competitiveness.
- c. We would like to draw attention to our "Tax on Profit incentives for Qualified Investment Projects" issue within the Taxation chapter, and we recommend that Article 23 of the Law on Taxation should be reconsidered in parallel with the new Law on Investment.
- d. To reduce regulatory risk perceived by prospective investors, we recommend that Cambodia's "Negative List" of prohibited investment activities be integrated into the new Law on Investment.

Introducing a pre-registration gazetting requirement for new trademark applications

NEW

Cambodia's IPR regime provides opportunity for individuals or companies to file notices of opposition to a trademark registration within 90 days from the date of publication of a registered trademark. The opposition may be filed on the grounds that a party has registered a trademark in Cambodia for which the opposing party considers itself to be the rightful trademark owner. At present, public gazetting of new trademarks occurs only after a successful registration. This does not provide other parties any opportunity to review the applied trademarks prior to their registration.

ISSUE DESCRIPTION

To create opportunity for other parties to review applied trademarks prior to their registration would enable any interested party to oppose applications for registrations of trademarks that are identical or confusingly similar to their own marks. This would provide additional security to legitimate brand owners and would help to streamline administrative processes within the Department of Intellectual Property (the "D/IPR") as it helps D/IPR to refuse registration of trademarks that are identical or similar to existing registered trademarks in Cambodia and potentially removes the need for arduous post-registration reassessments.

IMPACT ON CAMBODIA

✓ Introduce a pre-registration gazetting requirement for new trademark applications.

2017 RECOMMENDATION

Following best practices from neighboring ASEAN countries and elsewhere, we recommend the introduction of a requirement to publicly gazette all new trade mark registrations requests 2 to 3 months prior to a decision being taken by the D/IPR, providing opportunity for notices of objection by other interested entities or third parties before a decision of registration is reached.

Developing a detailed legal framework to enable stronger provisional measures in the protection of IPR

NEW

ISSUE DESCRIPTION Cambodia's current regime of provisional measures, as prescribed under the Trademark Law, does not provide detailed and clear procedures to enable relevant administrative authorities to provide support to businesses that are having their marks infringed upon:

- Under Cambodian law, provisional measures against IPR infringement may only be ordered by a competent court - a judicial judge is the only authority with competence to approve urgent measures. Court proceedings in Cambodia are perceived to be costly and time-consuming, and it is questionable whether the trademark right holder may obtain prompt and timely provisional measures for preventing an actual or imminent infringement and/or to preserve evidences.
- Furthermore, the Trademark Law and its implementing regulations do not prescribe the types of provisional measures that could be ordered by the Court upon request of the rights holder. Cambodian courts have little experience in solving trademark infringement cases, and it is questionable whether the judge may order an efficient interim relief that is adapted suitably to each infringement case.

In many other countries, the state takes a greater responsibility for investigating incidents of trademark infringement, and it is the responsibility of the enforcing institution to initiate proceedings against infringing companies. For example, in Thailand, the Department of Special Investigations (DSI), which sits under the Ministry of Justice, takes responsibility for investigating economic crimes of high complexity or technology, including IP infringement cases above a certain monetary value threshold. The DSI is able to bring cases to a specialized intellectual property court. Similarly, in scenarios where enforcement action needs to be taken swiftly, such as where a counterfeit production site or warehouse has been identified, enforcement agents in Vietnam have the authority to temporarily confiscate the goods, means, and instruments used for such infringement while an investigation is undertaken. By contrast, in Cambodia, injunctions are available only upon application by the brand owner to the courts, which can take longer and therefore decrease the effectiveness of the injunction.

IMPACT ON CAMBODIA The Royal Government recognizes the importance of protecting IPR not only for meeting Cambodia's international trade agreement obligations but also to provide the necessary security and protections to enable further private sector investment. Where robust IPR laws are being passed yet enforcement is more limited, this lessens the positive effect that Cambodia's developing IPR framework can have on the Kingdom's investment environment and national economy.

✓ **Develop a more detailed legal framework to enable stronger provisional measures in the protection of IPR.**

2017 RECOMMENDATION

We request the Royal Government, through the relevant ministries and authorities, to play a greater role in the investigation of IPR infringement cases and in bringing such cases to court. The following two recommendations would help to realize this objective:

- a. The Trademark Law and its implementing regulations should define what constitute effective provisional measures for preventing an actual or imminent infringement and preserving evidence. Provisional measures such as the seizure of alleged counterfeit goods for evidence purposes, the seizure of stock, and the freezing of assets and bank accounts of alleged counterfeiters, should be provided under Cambodian law.
- b. Furthermore, consideration should be given to reviewing the exclusive competence of the court to order such provisional measures. Empowering relevant administrative authorities to undertake provisional measures without needing to await a court order would help to support trademark rights owners in time-sensitive scenarios where the immediate imposition of an injunction would help to cease IPR infringement activities and keep evidence to be later presented to the courts. The prescribing and monitoring of additional powers to be granted to these administrative authorities could be administered through a ‘Sub-Committee for Enforcement’ under the existing National Committee for Intellectual Property Rights.

Regarding this latter recommendation, it is worth noting that the Committee for Combating Against Counterfeit Products of High Risk for Health and Social Security is already mandated to take necessary actions to eliminate counterfeit products of high risk for health and safety which are circulating in the Cambodian market. In such scenarios, the Committee is authorized to confiscate such products and to prepare a case file to be submitted to the Court. Thus, the Committee is implicitly empowered to implement provisional measures consisting of confiscation of counterfeit products. Similar power should be extended to other specialized committees for the suppression of infringement or to other enforcement agencies.

Empowering Customs in preventing counterfeit goods and parallel imports from entering Cambodia

NEW

ISSUE DESCRIPTION At present, officials of the General Department of Customs and Excise (GDCE) have relatively limited powers when it comes to enforcing IPR at the Kingdom's borders. Customs does not have ability and power to investigate and/or conclude the counterfeit character of the relevant goods, and may only order the destruction of counterfeit goods under a suspension procedure issued by a competent court.

Where a brand owner or copyright holder becomes aware of a shipment being sent to Cambodia containing goods that infringe upon their IPR, that owner can file a complaint to Customs who in turn can have incoming shipments suspended for a maximum of 10 working days. Within this period, it is the responsibility of the right holder to file a complaint to the court requesting implementation of provisional measures and/or to initiate court proceedings leading to a decision on the merits of the case. If the case is not brought to the court within this time limit, the suspended shipment shall be released by the Customs upon expiration of the suspension period.

A period of up to 10 working days often proves to be insufficient time for the right holder to initiate court proceedings to authorize continued suspension of the shipment and/or to have the counterfeit character of the suspended goods confirmed. In such cases, it is most likely that the alleged counterfeit goods will be released after the expiration of the initial suspension period, and that the effort of the trademark owner in finding the necessary evidence will therefore be void.

Counterfeits and parallel imports could be better prevented by a Customs department that has the authority to review complaints filed by the registered owner of a mark or the lawful owner of copyright and take necessary actions to protect the right holders. To fulfil this responsibility effectively, Customs would need to possess all the necessary information regarding the registered marks in Cambodia and its relevant products, as well as the information relating to right owners. At present Cambodia has no trademark recordal system that allows brand owners to record the registration of their trademarks with the Customs authorities so that officials can conveniently access trademark ownership information via a central database. This has been identified as a limitation within EuroCham's sectoral committees where, for example, Customs officials do not have simple access to the registered specifications for pharmaceutical products to determine whether incoming shipments should be cleared.

As discussed above, the protection of IPR is a fundamental pillar of economic growth and is recognized by the Royal Government as a priority. An empowered GDCE has the potential to provide a strong ‘first line of defense’ against counterfeit goods and parallel imports being sent to Cambodia from overseas, which can significantly reduce the penetration of counterfeit goods on the market and thereby improve the Kingdom’s IPR regime.

✓ **Grant more power at the administrative level to the General Department of Customs and Excise (GDCE) to prevent counterfeit goods and parallel imports from entering Cambodia.**

We recommend that the Royal Government revises the initial timeframe for suspension proceedings and provides trademark owners with a more reasonable time limit to initiate court proceedings leading to a decision on the merit of the case or to implementing provisional measures. However, it should also be noted that the extension of the initial suspension period could be exploited to delay the importation of shipments that do not contain trademark infringing products. To deter such action, the security payment to be deposited by the rights holder may be increased, and higher pecuniary reparations could be due to the importer if no case of infringement is proven.

Furthermore, we propose that the Royal Government considers granting more power at the administrative level to the GDCE, drawing best practice examples from neighboring countries to enhance the authority and capacity of Customs to assess incoming shipments and determine counterfeit or parallel import status. In this regard, it is suggested that the Customs authority be entitled to investigate the alleged counterfeit goods; to conclude the case by conducting hearings and determining the counterfeit character of the goods under suspension procedure; and to destroy the suspended goods, without needing to await a court decision, once their counterfeit character has been confirmed. This would enable more timely action and enhance Cambodia’s IPR enforcement.

Finally, in order to support the GDCE in efforts to better enforce IPR, we recommend the creation of a Trademark Recordal System. Under such a system, trademark owners would continue to apply for ownership to the D/IPR, and then subsequently have the option to record their trademarks with the GDCE to enable easier access to their trademark information by Customs officials. The Recordal would be executed on a voluntary basis by the trademark right holder or his lawful agent, and would provide to the GDCE the certificate of trademark registration, the list of registered products with the available samples, and detailed information of the right holder and/or his agent (including the contact information). Such information would enable Customs to better detect potential counterfeit products during Customs clearance procedures, and to suspend the clearance of potential counterfeit goods and inform the rights holder so that further legal action can be taken within the prescribed procedures.

Introducing specific remedies for IPR infringement cases

NEW

ISSUE DESCRIPTION Many countries, including Vietnam, have introduced articles into laws to prescribe the damages that can be claimed through the courts by brand owners against entities that have infringed upon their IPR. Such damages may include ‘material damages’ such as revenue opportunity losses, as well as ‘spiritual damages’ in which the actions of the infringing party have damaged the brand owner’s non-monetary assets such as the prestige and reputation of the brand. Profits retained by the offending party as a result of the infringing actions are often required to be returned to the brand owner.

Cambodia does not have such provisions - the courts use normal Civil Code provisions when considering damages for IPR infringement cases. This formulation tends to result in lower levels of compensation than would be expected in an equivalent case in many other countries. Furthermore, the Civil Code does not contain any provisions that require profits retained by the offending party as a result of the infringing actions to be returned to the brand owner.

IMPACT ON CAMBODIA The lack of specific remedies for IPR infringement cases, resulting in relatively low levels of compensation being awarded to brand owners through the courts, means that the risk of having to pay damages to the brand owner does not serve as a large deterrent effect to entities considering engaging in IPR infringement. Indeed, as profits can be retained by the offending party, there can be an economic incentive to engage in such activity. This lessens the array of tools available to protect the IPR of legitimate brand owners.

✓ **Consult with the private sector to develop legal instruments to define specific remedies for IPR infringement cases.**

2017 RECOMMENDATION

We recommend that the Royal Government consults with the private sector to develop legal instruments to define specific remedies for IPR infringement cases. The objectives of such instruments should be to more fairly compensate the brand owner for damages incurred and to act as a deterrent against prospective IPR infringement activities.

Specifically, amendments to relevant IP laws should be made so as to clarify the following issues in relation to IPR cases:

- The basic elements to take into account for the calculation of civil compensation;
- The modality for determining damages;
- Types of reparatory damages.

Furthermore, the option of introducing punitive damages in case of large-scale infringement or infringement committed by organized crime groups should be considered. Note that punitive damages aim at punishing the defendant in a civil lawsuit and deterring them from committing other infringing acts in the future. Thus, in addition to damages for actual prejudices caused by the infringing act, the judge may order the defendant to return all the profits resulting from infringement to the rights holder. This may include all the material and equipment used for committing infringement.

Provision of a formalized Alternative Dispute Resolution process through relevant ministries

NEW

ISSUE DESCRIPTION The D/IPR of the Ministry of Commerce has developed a special ‘hybrid’ procedure that aims to help to find solutions to cases of trademark rights infringement through an alternative dispute resolution - the Preliminary Alternative Disputes Resolution (PADR). The implementation of PADR has been remarkably successful.

However, the certainty, predictability and transparency of the PADR could be questionable because there is currently no regulation detailing its procedures and the responsibilities of each party in the process.

IMPACT ON CAMBODIA The PADR process carries the potential to significantly improve Cambodia’s IPR landscape by providing an efficient and cost-effective means of resolving trademark rights disputes between parties under the oversight of the Ministry. This being the case, some businesses are likely to be cautious about engaging in a PADR process where there is no regulation specifying its procedures and clearly describing the role to be played by the D/IPR. To introduce a more formalized process would help make PADR a more viable option for the support of a greater number of trademark rights owners.

2017 RECOMMENDATION

✓ **Create a formalized Alternative Dispute Resolution process to address trademark rights infringement cases through relevant ministries.**

We recommend that the PADR procedure of the D/IPR be formalized by adoption of regulation specifying the PADR procedures and the roles of the D/IPR during the process of the PADR.

Furthermore, we propose that the formalized PADR undertaken by the D/IPR should in future be used as a model for other relevant administrative authorities including the Department of Industrial Property of the Ministry of Industry and Handicraft as well as the Department of Copyright of the Ministry of Culture and Fine Arts. There is a need for these relevant administrative authorities to adopt their own regulations to implement the PADR for various types of IPRs.

HUMAN RESOURCES

For the second year, EuroCham has engaged with private sector representatives across a broad range of industries on the topic of human resources and issues relevant to employers in the Kingdom. We are able to report on positive steps that have been taken in each of our three subcategories: matters relating to laws and regulations, the need to facilitate further vocational training amongst the domestic workforce, and a desire to foster enhanced communication between the Ministry of Labor & Vocational Training and the private sector.

We are pleased to have been able to remove one recommendation from this year's chapter – the 'lack of work permit provisions for independent workers'. The Ministry of Labor and Vocational Training (MLVT) has introduced a new online system for registration of foreign workers (<https://www.fwcms.mlvt.gov.kh/>) which includes an option for self-employed individuals. However, an issue relating to the registration of employment contracts of foreign workers remains unchanged.

The year has seen a number of significant developments, including the implementation of the second phase of the expanding National Social Security Fund. Funded by both employee and employer contributions and focusing initially on workers in Phnom Penh, Kandal, and Kampong Speu provinces as part of a nationwide rollout plan, the scheme ensures that all persons covered by the Labour Law will have access to health insurance in addition to the existing workplace injury insurance. Furthermore, the Law on Trade Unions has been passed, which amongst other important provisions offers clear guidance on the criteria under which unions can be recognized as 'Most Representative'. While we understand the need for additional time in order for unions to be able to organize themselves under the provisions of the Law, we nonetheless welcome the introduction of a legal framework that can help to facilitate the realization of Collective Bargaining Agreements.

On skills and human capacities, there have been some positive actions taken to promote Technical

Vocational Education and Training (TVET) across a range of industries in Cambodia but particularly within the tourism sector which is arguably the most advanced in terms of recognition of vocational skills and of skills acquired through informal education. Recognizing that the development of an overarching national qualifications framework incorporating TVET is a long-term project, we believe that the progress being achieved in the tourism sector can serve as an example that can be translated into other sectors. As ever, the private sector expects to be involved in developing new skills amongst the Cambodian workforce and seeks opportunities to further engage with the Royal Government in order to coordinate training activities that maximize benefit to the national economy.

In terms of communication between the MLVT and the business community, the need for enhanced information-sharing practices and for clear and unambiguous regulations remains a priority. This is particularly true following the

publication of Joint Prakas 659 prescribing monetary fines for Labor Law violations as businesses are concerned that ambiguous regulations can increase the risk of unintended non-compliance. We have accordingly updated our recommendations and included new requests specifically relating to the Ministry's requirements for the training of apprentices.

Provisions for industry-specific requirements

UPDATED

2016 RECOMMENDATION

Support greater proliferation of Collective Bargaining Agreements to interpret the Labor Law at an industry level.

POLICY RESPONSE

The Law on Trade Unions has since been promulgated by the Royal Kram NS/RKM/0516/007 on 17 May 2016. Amongst its provisions, this Law defines the criteria under which unions can apply to the Ministry of Labor and Vocational Training to be recognized as the 'Most Representative' union within a workplace and, therefore, secure the exclusive right to negotiate on behalf of employees and to engage in Collective Bargaining Agreements with employers.

Recognizing that there are no instant solutions and that unions will need time to organize themselves in order to secure 'Most Representative' status in accordance with the provisions of the Law, having the legal framework in place is a positive first step towards the realization of effective Collective Bargaining Agreements (CBAs). While the first CBAs will be negotiated among the employers and employees of particular companies, we maintain the recommendation that in future such agreements could be sought between industry associations and union federations at an industry level that can help employers and employees to agree upon interpretations of the Labor Law in a way that is relevant to the specificities of their industry.

ISSUE DESCRIPTION

Amongst our members there is a broad consensus that Cambodia has laws that, in most cases, are easy for foreign businesses to understand and provide a fair amount of protection to both employer and employee.

This being the case, it is very difficult for any employment law to cover the range of different scenarios and requirements that can emerge within a variety of industrial contexts. A consistent theme that has emerged from our enquiries amongst our membership is the perception that the Labor Law appears to have been written with the country's dominant garments industry in mind and the concern that stipulations that are clearly sensible when applied to the garments sector do not translate well to other industries. As a result, certain articles of the Labor Law and other applicable pieces of legislation can prove challenging or burdensome for our members to comply with as they sit uneasily with the particular context of the industries within which these businesses operate.

While it would not be productive to list every issue raised, we would nonetheless take this opportunity to mention a few examples in order to illustrate the issue:

- **Example A:** Article 68 of the Labor Law prescribes different maximum permissible probationary periods for ‘regular’, ‘specialised’ and ‘non-specialised’ workers though there are no clear guidelines as to how employers should categorize employees, which creates a situation of ambiguity for both employers and employees. This is particularly problematic for higher-end hospitality companies for whom one or two months is insufficient time to be able to provide training to the employee and assess whether they are capable of meeting the professional standards required by the role.
- **Example B:** All businesses are required to register their internal disciplinary measures with the Ministry of Labour and Vocational Training, including a list of punishable actions and prescribed disciplinary responses, which must be deemed ‘proportionate’ by the authorities. A client-facing services industry such as the hospitality sector will have different expectations of employees compared to, for example, an employer within low-skilled manufacturing. Accordingly, some members report to us difficulties in registering internal disciplinary measures and having them recognized as ‘proportionate.’

As Cambodia seeks to diversify the economy and move towards having a greater variety of industrial sectors, there is a need for labor laws to be applied in a way that recognizes the different challenges and requirements encountered by different sectors in order to increase both efficiency and compliance.

Featuring prominently in the Industrial Development Policy 2015-2025, the Royal Government has a commitment to enhancing economic diversification within the Kingdom in order to support sustained economic growth. In a best case scenario, labor laws and other bodies of legislation can be used as a tool to ensure the fair and sustainable development of a range of sectors within Cambodia, and would not create burdensome obstacles that can deter investment. The Royal Government, and in particular the Ministry of Labor and Vocational Training, would therefore benefit from adopting measures that support application of laws in ways that are conducive to economic diversification.

IMPACT ON CAMBODIA

The issues raised to us were varied, as are the benefits to be gained by the Royal Government and the private sector in their resolution. In Example A above, the ambiguity within Article 68 creates a need to seek further consultation outside the content of the Law itself in order to understand the Article’s intent and application. It represents a hindrance to companies seeking to be fully compliant as the Article could be interpreted in a plurality of ways. If the hospitality sector could clear up this ambiguity and, furthermore, were provided sufficient time to assess a new employee and their compatibility for the role, companies within the industry would be more likely to offer long-term labor contracts to employees. They would thus be providing secure, stable and legally-compliant employment and having positive effects on the national economy.

At a top level, investors from industries that are not currently prominent in Cambodia would perceive less regulatory risk in entering Cambodia as a new market or manufacturing hub if they could see that the Royal Government is conscious of the need to account for the particular context of specific industries.

2017 RECOMMENDATION

✓ **Support greater proliferation of collective bargaining agreements to interpret the Labor Law at an industry level.**

- a. Building upon the legal foundation provided by the Law on Trade Unions, we recommend that the Ministry of Labor and Vocational Training actively encourages greater proliferation of collective bargaining agreements (CBAs) at an industry level between employer associations and labor unions. CBAs can be an effective tool through which groups of employers and employee representatives from particular industries can agree upon an interpretation of the laws in a way that is optimal to both sides, and subsequently have these interpretations recognized by the Ministry.

In illustrating how CBAs could prove to be useful, we consider how a CBA for the hospitality sector could help employers within this sector to be compliant in a way that is unambiguous and not unnecessarily burdensome. For Example A above, an agreement could be reached as to how to define ‘regular’, ‘specialised’ and ‘non-specialised’ workers within the industry and detail the specific skills that would qualify an individual for each category. Within Example B, employers and employees could agree upon a list of punishable actions and proportionate disciplinary measures, which could then be recognized by the Ministry.

- b. The provisions of any industry-level CBA would recognize the Labor Law as the foundation document detailing the employers’ and employees’ responsibilities to one another, and would respect Article 98 which states that the terms of an agreement cannot be less favorable to workers than laws and regulations already in effect.

This being the case, there will be scenarios in which the provisions of the Law are ill-suited to the specific requirements of each industry. In these cases we suggest that a mechanism be introduced through which industry-specific provisions can be recognized. Such a mechanism would function similarly to the existing provision under Article 265 of the Labor Law, through which companies that can demonstrate a business need to employ foreign workers above the mandated 10% threshold can apply to the Ministry of Labor and Vocational Training for special authorization to do so.

Thus referring back to Example A, in which higher-end hospitality companies require longer probationary periods to evaluate the suitability of staff to a role, companies or a representative industry association could apply to the Ministry to authorize a provision within their employment contracts that specified a longer probationary period for employees fulfilling specific roles. Implementation of such a mechanism would require consultation between the Ministry and the private sector to develop clear role descriptions applicable to each sector.

Registration of employment contracts of foreign employees with the Ministry of Labor and Vocational Training

UPDATED

According to Prakas 196, Article 3, owners or directors of companies employing a foreign national must register the employment contract of the foreign employee with the Department of Employment and Workforce of the Ministry of Labour and Vocational Training or its municipal/provincial departments. In practice, the Ministry requires employers to complete a template contract for each foreign employee. However, the template is somewhat simplistic and does not provide sufficient detail on areas that employers would normally expect to cover within a contract. The requirement for employers to complete this contractual template has been maintained in the new online system for the registration of foreign workers.

ISSUE DESCRIPTION

As the contract template required by the Ministry of Labour and Vocational Training is insufficiently detailed, employers are unable to formally register the full details of their agreements with employees. In practice, employers need to sign with employees a separate, more detailed contract which lacks formal recognition. The status quo is inefficient for both the Royal Government and employers – authorities do not have full visibility of agreements between employers and employees, while employers have no recourse to having their contractual agreements with employees recognized by the Royal Government.

IMPACT ON CAMBODIA

✓ Permit employers to submit a formal copy of their contracts with foreign employees, in Khmer language, as an alternative option to completing the pre-defined contractual template required by the Ministry of Labor and Vocational Training.

2017 RECOMMENDATION

We request that the Ministry of Labour and Vocational Training permit employers to submit a formal copy of their contracts with foreign employees, in Khmer language, as an alternative option to completing the pre-defined contractual template that would allow them to have more detailed clauses of the contract recognized by the Ministry.

Such an alternative would not be incompatible with Article 3 of Prakas 196 which states simply that *“The owner or director of enterprise/establishment using foreigners shall take the written employment contract of each foreigner to register with the Department of Employment and Workforce of the Ministry of Labour and Vocational Training for those who are located in Phnom Penh and with Municipal/Provincial Departments of Labour and Vocational Training for those who are located in cities and provinces.”*

The creation of enterprise infirmaries in medium-sized businesses

UPDATED

ISSUE DESCRIPTION Prakas No. 330 concerning the Creation of Enterprise Infirmaries states that *“An employer of an enterprise or establishment as stipulated in Article 1 of the Labour Law that employs 50 or more workers shall set up a permanent infirmary in his or her enterprise.”* The infirmary must include a full-time on-site doctor, paid by the employer, and depending on the size of the company may require additional full-time on-site healthcare staff.

While recognizing the importance of this provision for businesses located in rural areas far away from hospitals, for businesses in Cambodia’s urban areas this seems an unnecessary provision that places additional costs upon the employer. For businesses in central Phnom Penh, there are a number of NSSF-contracted hospitals nearby so it is not clear what additional benefit the on-site infirmary offers.

IMPACT ON CAMBODIA This provision requires the hiring of at least one full-time medical professional whose salary is paid for by the employer. In instances where such an infirmary is unnecessary, this policy can create substantial additional costs to employers with little practical benefit, which ultimately erodes Cambodia’s international competitiveness. Cambodia is in need of more well-trained healthcare professionals and those placed in unnecessary on-site infirmaries could be applying their skills to occupations of greater public benefit.

2017 RECOMMENDATION

✓ **Revise requirements for businesses employing 50+ employees to have their own on-site infirmaries.**

- a. Only require on-site infirmaries to be established for businesses employing 50+ employees in areas without access to NSSF-contracted hospitals. For businesses that fall under the provisions of the Prakas and that are in proximity to NSSF-contracted hospitals, we propose that the requirement to hire a full-time on-site doctor be replaced with a requirement to appoint at least one employee as a dedicated person to take charge of first-aid arrangements. Individuals fulfilling this role would need to undergo specific training approved by a competent government authority, and their responsibilities would include the provision of first aid for minor injuries and liaison with medical facilities to ensure access to the necessary medical services in the event of a more serious workplace incident.

- b. Noting that the Prakas does allow for a single enterprise that has multiple workplaces within a 5km range to establish one shared infirmary to serve all of these workplaces, we propose that the MLVT permit multiple enterprises that have workplaces far from NSSF-contracted hospitals yet in geographic proximity to one another (eg. within SEZs, industrial parks, or within a specific geographic area) the option to pool resources and establish one shared infirmary.

Recognition of vocational skills

UPDATED

2016 RECOMMENDATION

Prioritize the implementation of a national qualifications framework that incorporates Vocational Education and Training programs.

POLICY RESPONSE

Our membership has provided largely positive feedback on the actions taken over the past year by the Royal Government to enhance Cambodia's framework for recognizing vocational skills. In particular, a lot of positive work has been undertaken within the tourism sector with our members recognizing a strong commitment on the part of the Royal Government to facilitate the implementation of the ASEAN Mutual Recognition Arrangement on Tourism Professionals and to promote training based on ASEAN Competency Standards on Tourism Professionals.

Significant milestones include the inauguration of the Academy of Culinary Arts, the Kingdom's first public-private partnership in vocational training that offers a two-year diploma accredited by the ASEAN Secretariat through the Cambodian Ministry of Tourism. It is hoped that the positive steps being taken within the tourism sector can provide lessons learned and a methodology to enhance vocational training in other sectors of the economy.

ISSUE DESCRIPTION

There are a wide number of ongoing initiatives to provide skills-based vocational training in Cambodia. These are provided by public institutions, private companies, industry associations and a large number of NGOs. Vocational skills development programs inevitably focus on different skills for different industries, while their objectives and method of delivery is variable. However, in many sectors, there is no framework in place through which the training provided, skills developed, and qualifications awarded, can be assessed and certified in a nationally consistent way.

IMPACT ON CAMBODIA

The lack of a formal framework for recognition of vocational skills within many industries limits the extent to which vocational training programs can contribute to the enhancement of Cambodia's human resources. Without any method of developing a clear picture of what level of training is being provided by which entities, there is a missed opportunity for coordinating programs in order to develop the types of skills demanded by the market. For both employers and prospective employees, it is difficult to assess suitability for particular roles where the training received by the employee has not been subject to any nationally recognized quality control system. This contributes to the widely-mentioned 'skills gap' and has a negative impact on Cambodia's international competitiveness and economic development.

✓ **Support the private sector in developing national qualifications frameworks for Technical Vocational Education and Training at an industry level.**

2017 RECOMMENDATION

- a. Recognizing that the development of an overarching national qualifications framework incorporating TVET is a long-term project, a ‘building up’ approach can be achieved through the development of qualifications frameworks at an industry level. As has been seen within the tourism sector, and where such agreements exist, ASEAN Mutual Recognition Agreements can provide structure and serve as a foundation for the development of sector-specific vocational skills curriculums at the national level.

Likewise for industries where no such ASEAN-wide agreements are in place, such as human resources professionals, we would encourage the articulation of similarly comprehensive competency profiles describing the skills that professionals within each role should be able to fulfil. Such profiles should be developed in consultation with national industry associations and can draw upon vocational skills frameworks implemented in other countries.

- b. For each industry, qualifications based on the identified competency profiles will need to be accredited by assessors that have been certified by a relevant authority, who are equipped with standardized assessment tools and who can ensure consistency and quality control within the system.
- c. Recognizing that vocational careers still suffer from somewhat of an ‘image problem’, whereby Cambodian families perceive jobs in vocational roles to be less prestigious and to offer more limited earning opportunities, we welcome plans for the Ministry of Education, Youth and Sport to introduce career counselling into high school curriculums and would encourage tie-ins with the private sector to provide students the opportunity to learn of the career paths that a vocational qualification can offer. To facilitate the realization of this objective we propose the development of an institutionalized public-private collaboration mechanism focusing specifically on TVET. This mechanism could focus on raising awareness of TVET opportunities among students approaching graduation from general secondary school, and could feed ideas and proposals to the industry-specific Sector Councils under the Ministry of Economy and Finance’s new Skill Development Fund Committee.

Recognition of skills gained through non-formal and informal learning

UPDATED

2016 RECOMMENDATION

Ensure that this framework includes skills developed through non-formal learning and informal learning.

POLICY RESPONSE

As with the recognition of vocational skills, there have within the tourism sector been some positive initiatives undertaken in the recognition of non-formal and informal learning that can serve as an example to be applied within other industries. A framework has been provided for the certification of some tourism professionals through the Notification No. 391 SCN.GTC dated 21 September 2016 on Assessment on Recognition of Prior Learning of Tourism Professionals in Hotel Industry (Front Office and services, food and beverages). This framework has been supported by a dissemination workshop with high-level support from the Ministry of Tourism. Furthermore, temporary evaluation centers are being established in Phnom Penh to provide opportunity for professionals—especially those who do not have a professional certificate or degree—to evaluate their practical experience, knowledge, and skills, and to get a certificate or diploma for tourism professionals in accordance with national and ASEAN standards.

ISSUE DESCRIPTION

Many of our members provide on-the-job training to employees and seek to promote from within wherever possible. There is no reference point through which to recognize non-formal and informal learning.

- **Non-formal learning** refers to organized programs of instruction that do not lead to any formal qualification such as in-house training provided by a private company.
- **Informal learning** refers to skills developed outside of any organized training program through experience developed in the workplace.

The majority of skilled workers currently in Cambodia have been trained through these more informal methods. For example, according to the National Committee for Tourism Professionals, a full 80% of the 620,000 skilled individuals within the tourism sector are non-certified.

A lack of reference point relating to recognition of skills gained outside of a formal training program limits upward mobility and career development for employees that are talented yet lack formal qualifications. As an example, consider a mid-ranking manager who has performed well for the same company for ten years and now wishes to gain new skills through a vocational training program in order to be better equipped for a promotion. He/she lacks formal qualifications and therefore, despite their existing skills and knowledge, would be unable to access vocational training courses without first attending night school to gain the required formal qualifications. This slows down the employee's career development, making it more costly and time-consuming to develop new skills (and potentially discouraging them from doing so). The result is negative for both employer and employee – the employer is unable to benefit from the employee gaining new skills, and the employee misses the opportunity to improve their career and earn a higher salary.

✓ **Ensure that skills developed through non-formal learning and informal learning are incorporated into such frameworks.**

Ensure that skills developed through non-formal learning and informal learning are included in a national qualifications framework. Drawing from the positive initiatives being undertaken in the tourism sector, provide guidelines on how recognized competency standards can be demonstrated in lieu of formal qualifications in other industries.

Accessibility of information

UPDATED

2016 RECOMMENDATION

Provide additional support to the private sector to increase understanding of new laws and regulations.

POLICY RESPONSE

There has been improved communication between the Ministry of Labor and Vocational Training and the business community over the past year. The Ministry has enhanced its lines of communication with business associations and has been proactively engaged in activities to disseminate information to the private sector about new regulations and initiatives.

Additionally, there has been some clearer definition between the responsibilities of the Ministry and those of the Phnom Penh Municipal Department of Labor and Vocational Training. For example, the Municipal Department is no longer accepting applications to exceed the foreign worker quota as these competencies have been centralized within the Ministry. Such centralization helps with the issue of overlapping responsibilities identified in the previous White Book.

ISSUE DESCRIPTION

In some instances, the private sector needs a greater availability of information and advice in order to be compliant with the Kingdom's Labor Law and regulations. In particular:

- In areas where there is scope for multiple interpretations of the Law, there can be a lack of consistency in the interpretations of the Law made among the 24 inspection teams of the Ministry of Labor and Vocational Training and, in Phnom Penh, the inspection teams of the Municipal Department of Labor and Vocational Training. Our members would appreciate greater clarity on such matters in order to prevent cases of unintended non-compliance.
- Dissemination practices for new laws can be inconsistent. Documentation is sometimes, though not always, being made available on the Facebook page of the Ministry of Labor and Vocational Training or the page of the Minister. Informal translations into English can then be provided by business associations.
- A lack of online availability of standardized templates for documentation (i.e. application forms, etc.) that needs to be provided to the Ministry can be a barrier to compliance for smaller businesses who may lack the knowledge and resources to create documents for themselves to the satisfaction of the Ministry.

Improved communication and availability of information would decrease the amount of time and resources spent by both Ministry and businesses in relation to administrative processes, and would increase compliance with the Labor Law and other applicable regulations.

Furthermore, the private sector having a more complete understanding of their obligations under the Kingdom's laws and regulations would reduce opportunities for non-transparent practices.

✓ **Provide additional support to the private sector to increase understanding of new laws and regulations.**

2017 RECOMMENDATION

- a. Ensure a more consistent and systematic method of disseminating information about new laws and regulations.
- b. Train and require labor inspectors to provide advice to businesses who have been found to be non-compliant with the provisions of the Law and to advise to these companies which changes need to be made in order to become compliant. This would complement the punitive measures levied against non-compliant companies in order to increase overall compliance.
- c. In the longer term we would encourage the further development of online platforms to make it easier for businesses to submit required documentation to the Ministry, though we recognize that this requires time and financial resources. In the intermediary period, we suggest that making available online a set of standardized and practical common templates for download would help to create smoother and more efficient processes.
- d. Wherever possible, include English-language translations of applicable laws, regulations, circulars, and notices on the website of the Ministry of Labor and Vocational Training. In particular, greater availability of circulars (official advice to the administration on interpretations of the Labor Law) would be an effective way of providing clarity to businesses about their responsibilities and to clear up any ambiguity when it comes to labor inspections.

Requirements for the training of apprentices

NEW

ISSUE DESCRIPTION Prakas No 004, dated 05 January 2000, prescribes requirements by which companies with more than 60 employees must ensure that their workforce includes a certain percentage of ‘apprentices’, defined as “a person who entered into contract for skill training with employer or craftsman with whom the contract is entered into that employer shall train or use someone to train and apprentice shall work for employer only according to the conditions and time of the contract”. The Prakas describes obligations that must be met by the employer including the teaching of skills to the apprentices, the arrangement of an examination at the end of the apprenticeship, and arrangement of inspections of the training with a Ministry representative.

Our members feel that there is a lot of ambiguity within the regulations that makes it challenging to ensure that their apprenticeship schemes are fully compliant. For example, it is common practice for our members to provide on-the-job training to new employees to provide them the skills needed to fulfil their role. A subsequent Instruction on The Enforcement on Prakas 04 (No. 042/15, Ministry of Labor and Vocational Training) dated 27 November 2015 states that “Enterprises or establishments facing difficulties in selecting people to be an apprentice, can select the worker in probation, or workers required to equip new skill to apprentice to fulfill the yearly apprenticeship obligation based on the actual inquiry of the enterprise, establishment”. Whereby such employees are not on a specific apprenticeship contract, it is unclear which additional documents or evidence the Ministry of Labor and Vocational Training would require in order to formally recognize these employees as contributing to the business’ obligation to provide apprenticeships.

Similarly, the Prakas requires companies to create a neutral examination board to implement an exit examination for apprentices, that will include a representative from MLVT. However, the Prakas and subsequent Instruction provide little detail about what the examination at the end of the apprenticeship should entail and what information the business needs to provide in order to demonstrate that this examination is in accordance with the requirements of the Law.

IMPACT ON CAMBODIA It is in the interests of both the Royal Government and the private sector to have clearly-defined laws and regulations in which the obligations of employers and employees are unambiguously defined. Whereby there is ambiguity over the obligations of the employer and the evidence that they are required to provide to the Ministry, this represents a hindrance to compliance and creates risk and uncertainty for the company.

✓ **Publish an approved set of practical implementation guidelines for the training of apprentices that provides clear guidance on the Ministry's requirements for employers to demonstrate compliance.**

2017 RECOMMENDATION

We request that the MLVT collaborate with the private sector in order to publish an approved set of practical implementation guidelines for the training of apprentices that provides clear guidance on the Ministry's requirements for employers to demonstrate compliance with these regulations.

Fines relating to apprenticeship training requirements

NEW

ISSUE DESCRIPTION For those companies deemed unable to comply with the requirements for the training of apprenticeships, there is uncertainty over the fines that will be due. Article 8 of Prakas No. 004 states that such companies shall pay fees to the MLVT at the rate of 1% of the total value of annual salaries paid by the company to employees. These fees are to be deposited in a cash fund that MLVT will use for training with the Ministry of Economy and Finance and other relevant institutions informed. However, the Annex to Joint Prakas 659 on Monetary Fines for Those who Violate the Labour Law dated 06 June 2016 sets out a fixed fine for those who violate provisions relating to apprenticeships.

It is also unclear from the regulations whether the Ministry intends to apply retrospective fines for companies that are considered to have been unable to comply with the requirements of Prakas No. 004 since it was issued in 2000.

IMPACT ON CAMBODIA While the Ministry is now seeking to fully implement the provisions of Prakas No. 004, requirements for the training of apprenticeships have not received as much attention from the Ministry since the passing of the Prakas in 2000. As described above, the regulations relating to the training of apprentices are somewhat ambiguous and, consequently, there has been a lack of dialogue and understanding about how businesses can be compliant.

This is of particular concern following the Joint Prakas 659 on Monetary Fines dated 06 June 2016, as our members are concerned that a lack of information about their obligations may result in them being subjected to retrospective fines that may be considered unreasonable given the ambiguity over their responsibilities.

2017 RECOMMENDATION

✓ **Avoid fining businesses on this issue prior to the publication of practical implementation guidelines from the Ministry, and ensure that retrospective fines in relation to this subject will not be applied.**

Provide assurances to the private sector that fines relating to inability to meet the requirements for the training of apprenticeships will be imposed only after publication of practical implementation guidelines from the Ministry, and that retrospective fines in relation to this subject will not be applied.

TAXATION

The Taxation chapter of last year's White Book received very positive engagement from the Ministry of Economy and Finance and the General Department of Taxation. Indeed, the two institutions provided a written letter to the Chairman of EuroCham, dated 19 July 2016, which provided a detailed response to each of the policy recommendations made in last year's edition. We are very encouraged by this level of productive dialogue, which we believe will make a significant contribution to Cambodia's trade and investment environment. It is our hope that other line ministries will follow the MEF and GDT in providing written responses to recommendations raised within the White Book.

We are very pleased to have been able to remove three 'resolved' issues that were raised in 2016. Firstly, our request to formally revise the requirement for the Chairman of a company to physically present at the GDT for tax registration purposes was met with the issuance of Prakas on Tax Registration no. 496 SHV, dated 06 April 2016, by the MEF which provides the option for Chairmen based overseas to appoint an authorized representative in their place. Secondly, in response

to challenges encountered during the business registration process by companies leasing commercial property that were unable to obtain immovable property tax receipts from their landlord, the letter from the MEF and GDT confirmed that such companies can avoid further delay by declaring in writing to the GDT that the property owner has refused to provide this evidence. Finally, our recommendations relating to Minimum Tax were taken on board and the General Department of Taxation announced that they would consider exempting tax-compliant companies from the obligation to pay this revenue-based tax during the EuroCham Tax Forum in September 2016. This announcement was formalized with the subsequent Law on Financial Management 2017, which states that the obligation to pay Minimum Tax will be placed only upon those companies that do not keep a proper record of accounts. In July 2017, in support of this article, the Ministry of Economy and Finance issued Prakas No. 638 MEF.Prk on "Criteria of Improper Accounting Records and Procedures for Paying Minimum Tax" so as to provide clear and unambiguous guidelines describing how taxpayers can qualify for the Minimum Tax exemption.

Our recommendations for this year fall under four major categories, the first of which is the need to support compliant companies during the tax formalization process. While the GDT is making excellent progress in increasing public revenues and formalizing the Kingdom's taxation regime, the methods employed can at times be particularly burdensome on tax-compliant companies. As Cambodia remains in transition it can still prove difficult to identify tax-compliant providers for some services, and we would argue that the emphasis needs to shift towards chasing down these non-compliant businesses rather than penalizing those who are complying. Included within this section are our concerns relating to Withholding Tax, as well as the decision of the GDT to disallow expense claims that are not accompanied by a correctly completed VAT invoice from the supplier.

The next section highlights a number of issues relating to the application of Value Added Tax to specific scenarios, including ambiguity over the definition of 'exported services', challenges in obtaining VAT refunds, and the method of calculation used for the liabilities of travel agencies. The third section on Tax on Profits includes a number

of new recommendations relating to fringe benefits and ensuring a level playing field. The final section, requesting new regulations, emphasizes the need for a formal set of guidelines on transfer pricing between related parties in order to ensure consistency and predictability in transaction valuations.

Furthermore, we also note and welcome the GDT's intention to classify taxpayers based on their level of tax compliance. We believe that this system, if well implemented, can help to create more streamlined and predictable transactions between the GDT and those companies that have earned the right to be trusted through their consistent tax compliance. We encourage the MEF and GDT to consider how this new system of classification can be applied to some of the issues raised in this chapter, such as the right to claim some limited entertainment expenses.

We look forward to another round of fruitful discussions on the basis of this year's Taxation chapter.

Protecting tax-compliant businesses during the tax formalization process

UPDATED

2016 RECOMMENDATION

Reconsider the principle of Withholding Tax on services which unfairly penalizes tax-compliant companies.

POLICY RESPONSE

In a letter to the Chairman of the European Chamber of Commerce in Cambodia dated 19 July 2016 (reference 12240 APD), the General Department of Taxation highlighted its ongoing efforts to disseminate taxation regulations through seminars and the media such as TV, radio, and GDT's official website. In addition to this, the General Department, aiming to strengthen tax-paying culture and curb tax evasion, is in the process of developing mechanisms through which to conduct inspection of roadside enterprises and encourage unregistered entities to register under the self-assessed regime based on the types of their business.

However, the GDT reaffirmed the requirement for compliant businesses to continue transmitting Withholding Tax when purchasing services from companies outside of the self-assessed regime.

ISSUE DESCRIPTION

The General Department of Taxation is registering considerable success in its drive towards the formalization of the Kingdom's taxation system, as evidenced by the strong year-on-year increases in tax revenues that far exceed annual GDP growth. This being the case, a large proportion of goods and service providers in Cambodia remain unregistered, and for some products or services it can prove incredibly difficult for tax-compliant businesses to identify a tax-compliant supplier. A number of existing regulations in effect place a financial penalty on tax-compliant businesses who have to deal with non-compliant businesses, which in our view constitutes an unreasonable burden.

The principle of Withholding Tax on services is one example of this trend. Withholding Taxes have been designed as a mechanism for taxes to be collected from services provided by businesses unregistered for VAT. Tax-compliant companies making payments for services rendered by individuals or companies that are unable to provide a valid VAT receipt are required to withhold 15% of the agreed fee from the service provider and to pay this proportion as tax. Unregistered service providers may have little understanding or concern for the taxation system and, in practice, they are rarely prepared to accept having a proportion of their fee withheld. As such, tax-compliant companies end up paying 115% of the fee – the full fee plus an additional 15% in Withholding Tax. If the service provider were tax-compliant, the hiring company would need to pay 10% VAT which could be offset against VAT received.

Another example is the punitive measures introduced in Instruction No. 1127, dated 26 January 2016, in which the GDT stipulated that companies will be unable to register expense claims with respect to Tax on Profit if the goods or services in question are not accompanied by a VAT invoice completed in accordance with the GDT's templates and requirements. Again, the concern here is that tax-compliant businesses may have little choice but to obtain certain goods and services from non-compliant businesses, and that the GDT's decision to disallow such expenses from use as an expense claim for Tax on Profit purposes effectively places upon the purchaser a penalty equivalent to 20% of the sale price through the artificial inflation of their profit figures.

The initiatives currently being undertaken to work towards the formalization of the economy and bringing all businesses under the GDT's umbrella will, in time, help to reduce the burden that the issues raised above currently place on compliant businesses. However, during the transition period, these measures place additional burdens upon tax-compliant companies and unfairly advantage non-compliant businesses.

Taking Withholding Tax on services as an example, the tax-compliant company incurs additional expense when contracting an unregistered service provider, whereas an unregistered business or non-compliant businesses who hire them incur no such costs. Such penalties make it more difficult to do business in Cambodia and can have a negative impact upon perceptions of Cambodia as an investment destination by the compliant companies that the Kingdom should be seeking to attract.

IMPACT ON CAMBODIA

✓ **Revise the Kingdom's Withholding Tax regulations to place less of a burden on tax-compliant businesses.**

2017 RECOMMENDATION

During this transition towards formalization we recognize the need for the Royal Government to maintain and increase tax revenues, however we propose that this objective can be achieved through year-on-year improvements in the rates of tax compliance and enforcement rather than through a system that unfairly penalizes tax-compliant companies. Accordingly:

- a. We retain our recommendation that the Royal Government reconsider the principle of Withholding Tax on services and consider abolishing the system of Withholding Taxes.
- b. We request that companies purchasing mixed services (incorporating both goods and services, such as t-shirts that have had a company logo printed onto them) be permitted to distinguish between the value of the goods and the value of the service and to only pay Withholding Tax on the service element. This principle is already applied for VAT calculations.

- c. For some service providers, such as tuk-tuk drivers, it is unrealistic to expect that they will be able to provide valid tax invoices in the correct format within the near future. Accordingly, we request that the Ministry of Economy and Finance consult with the private sector in order to determine a list of services that are exempt from Withholding Tax and that can be claimed as business expenses with an alternative form of receipt.

Furthermore, we emphasize that in transmitting Withholding Tax, the compliant company has been required to include the name and services provided by the unregistered service providers for which they are paying the Withholding Taxes. The General Department of Taxation therefore has opportunity to use this information to identify companies that are providing services without having undertaken tax registration and to take the necessary actions to ensure that these companies become tax-compliant.

Withholding Tax on renting a property

UPDATED

2016 RECOMMENDATION

Stop the practice of charging both Withholding Tax and VAT on properties rented from companies.

POLICY RESPONSE

On 03 November 2016 the GDT issued Instruction 18410 which clarifies that where real estate companies lease immovable property from its owner and then sub-lease to a third party, only the sub-lessor will be required to pay 10% Withholding Tax on lease payments whereas the third party sub-lessee will not be required to pay Withholding Tax on their rent payments.

However, except for the above case where a third party is renting from a sub-lessor, the fundamental principle of paying both Withholding Tax and Value Added Tax on immovable property owned by a registered company remains unchanged. Thus whilst this clarification is to be welcomed, the underlying issue remains unresolved.

Taxes due by lessees who are renting movable or immovable property directly from the property owner depend upon the status of the property owner:

ISSUE DESCRIPTION

- If renting a property owned by an **individual person**, the lessee is required to withhold 10% of rental fees due and to pay to the GDT as Withholding Tax.
- If renting a property owned by a **registered company**, the lessee must pay **both** Withholding Tax at a rate of 10% and VAT at a rate of 10%. In such a case, the lessee is permitted to use VAT paid as an Input Tax Credit to offset against the Output Tax of their taxable supplies.

As with the provision of services, landlords are in practice often unwilling to accept a 10% reduction in their rental fees and the cost of the Withholding Tax is thus borne by the lessee who incurs total expenses equivalent to 110% of the agreed rental fees if the property is owned by an individual person. If the property is owned by a company and VAT is due as well, total expenses equate to 120% of the agreed rental rate.

As is the case with Withholding Tax on services, Withholding Tax on rent creates an additional tax burden and increases costs for compliant businesses while unfairly advantaging non-compliant businesses. The provisions are particularly burdensome for companies of foreign ownership as they are unable to own land and therefore more often have a need to rent property.

IMPACT ON CAMBODIA

In the case of a property being owned by a registered company, the current requirements are contradictory to the principle of Withholding Tax. Withholding Tax as a concept is supposed to allow the Royal Government to collect tax revenues in lieu of VAT in instances where the provider of the goods or services is unregistered. Whereby the company owning the property can provide a valid VAT receipt one would therefore assume that Withholding Taxes should no longer be required.

Property rental is one of the major components of most businesses' expenditures, and therefore a taxation policy that increases expenses borne by lessees by up to 20% is damaging to Cambodia's international competitiveness. Indeed, few other ASEAN countries require Withholding Taxes to be paid on rental fees. The countries that do withhold taxes do so at a considerably lower rate - in Thailand, lessees must pay only a 5% Withholding Tax where the owner is a tax resident of Thailand, plus 7% VAT on furnishings rental and property services.

2017 RECOMMENDATION

✓ Stop the practice of charging both Withholding Tax and VAT on properties rented from companies.

While we maintain that the system of Withholding Tax in general places unfair penalties upon tax-compliant companies and should be abolished, we emphasize that the requirement to pay both Withholding Tax and VAT when leasing movable or immovable property directly from a registered company is especially burdensome. We therefore propose that this requirement be amended.

Clarifications on Withholding Taxes on payments made for management and technical services to non-resident taxpayers

NEW

Article 26c of the Law on Taxation states that resident taxpayers who make payment to a non-resident taxpayer as ‘compensation for management or technical services that shall be determined by Prakas of the MEF’ shall be required to pay Withholding Tax at a rate of 14%.

ISSUE DESCRIPTION

No Prakas has since been passed to provide clarification as to which services should be considered to fall under this category, though Withholding Tax may still be required on services deemed to be applicable according to the interpretation of the tax official. In practice, the GDT may interpret all expenditure for services abroad including, for example, advertising and commissions paid to hotel booking sites, as being subject to Withholding Tax.

A lack of clear guidance on this subject from the Ministry can create ambiguity for tax-compliant businesses, who are unable to determine with any certainty which of their payments should be subject to Withholding Tax and cannot guarantee that these transactions will not be subject to a reassessment by the GDT.

IMPACT ON CAMBODIA

With no Prakas in place, it is left to individual tax officials to interpret the Law, which can lead to inconsistency and, potentially, unfair competition.

✓ **Provide clarification on Withholding Tax liabilities for payments made for management and technical services to non-resident taxpayers.**

2017 RECOMMENDATION

We request that the MEF prioritize the issuance of a Prakas to clarify Article 26c of the Law on Taxation. We observe that the Cambodia-Singapore Double Taxation Agreement does contain a clear and unambiguous definition of ‘management and technical services’, and suggest that it would be expedient to formally incorporate this definition into the domestic tax regulations.

Value Added Tax when exporting services

UPDATED

2016 RECOMMENDATION

Provide more specific guidance on VAT requirements for exported services.

POLICY RESPONSE

In a letter to the Chairman of the European Chamber of Commerce in Cambodia dated 19 July 2016 (reference 12240 APD), the General Department of Taxation has committed to conduct further research in order to provide a clearer definition of “exported services” and to ensure that the application of VAT on export of services is aligned with the evolution of businesses and technology.

Furthermore, the GDT clarified that, according to their current practices, for services to be certified as having been fulfilled or consumed outside the Kingdom of Cambodia, they must be supported by documents such as a service supply contract and evidence showing that the payment transaction was made through an overseas bank.

ISSUE DESCRIPTION

Article 63 of the Law on Taxation specifies that services are considered to ‘take place’ within Cambodia if the service ‘is performed’ within the Kingdom, unless the service provided relates to immovable property located abroad or the provision of transportation services abroad. Article 64 subsequently details that services rendered outside of the Kingdom of Cambodia (exported services) are subject to a VAT rate of 0%.

VAT leaflet No. 13 of the General Department of Taxation provides further guidance, stating that *“To qualify for zero rating as an export, an exporter of services has to be able to demonstrate that the service he has provided was used or consumed outside the Kingdom of Cambodia.”*

However, the Law and subsequent public announcements provide no specific guidance on how to define what it means for a service to be ‘used or consumed’ abroad. This creates a certain amount of ambiguity for some service providers over whether VAT should be due or not. Consider for example a company that provides outsourcing services building smartphone applications for companies based in Europe. The work is conducted by employees in Cambodia but the final product is provided to the European company and distributed by that company within Europe. There is thus a reasonable case to be argued that the service is consumed outside of Cambodia though there are no formal criteria against which this argument can be assessed. It is our understanding that, at the current time, tax officials determine whether VAT is due for such services on a case-by-case basis.

Ambiguity creates regulatory risks for companies exporting services from Cambodia as there is not enough specificity within the Law to be able to confidently know whether VAT will be due on their services. This lack of clarity requires tax officials to make ad-hoc assessments without clear guidelines which can lead to inconsistency or opportunities for non-transparent practices.

IMPACT ON CAMBODIA

In practice, companies providing services to clients located abroad are sometimes required by the GDT to pay VAT on these services. This represents a drag on Cambodia's international competitiveness and can discourage investment in export-orientated service industries. Regional competitors such as Vietnam do not require VAT to be paid on exported services consumed outside of the country.



Provide more specific guidance on VAT requirements for exported services.

2017 RECOMMENDATION

Provide more specific guidance on what it means for services to be *“used or consumed outside the Kingdom of Cambodia”*. Our recommendation would be to provide a definition that is generous towards service providers claiming that their services are consumed abroad, as this can help to attract investment in new sectors and therefore contribute towards the goal of diversifying the Cambodian economy.

Calculation of Input Tax for businesses making both taxable and non-taxable supplies

UPDATED

2016 RECOMMENDATION

Permit businesses making both taxable and non-taxable supplies to offset 100% of their Input Tax paid against Output Tax collected.

POLICY RESPONSE

In a letter to the Chairman of the European Chamber of Commerce in Cambodia dated 19 July 2016 (reference 12240 APD), the General Department of Taxation has confirmed that it is adjusting its processes and modernizing its IT system so as to be able to store all tax-related information in one place and link it with other relevant units and institutions, such as the General Department of Customs and Excise and the Ministry of Commerce. Through this upgrade, the General Department of Taxation will be able to process tax refunds quicker than before.

ISSUE DESCRIPTION

Upon making a tax declaration, VAT due to the tax authorities is defined as 'Output Tax - Input Tax', meaning the total amount of VAT charged on supplying of goods or services to customers minus VAT paid on import of goods or the VAT on locally purchased goods or services.

Articles 57 and 58 of the Law on Taxation define the types of products and services that are non-taxable supplies including provisions to hospitals, diplomatic missions, international organizations, and other non-profit organizations recognized by the Ministry of Economy and Finance as acting in the public interest.

Some businesses make taxable supplies only (e.g. supplies to private companies), but in some cases work with VAT-exempt customers such as diplomatic missions or hospitals. According to the existing regulations, such businesses are to calculate the value of taxable sales as a percentage of the value of total sales. The company is permitted to offset only this percentage of their total VAT inputs against 100% of their VAT outputs.

Consider the example below of Business X, for whom 75% of the value of total sales is made to tax-exempt customers:

- Whereby products were imported for a tax-exempt entity, Business X pays no VAT at the point of importation and receives no VAT at the point of sale. Net effect is zero.

- If selling to a tax-exempt entity a product for which Business X has paid VAT, such as that paid on locally-sourced inputs or products imported without a specified tax-exempt end customer, it is permitted for Business X to collect VAT from the tax-exempt entity. In this case, Output Tax will equal 100% of the VAT received, whereas Input Tax will equal only 25% of the VAT paid (as this is the proportion of the value of taxable supplies against the value of all supplies).
- Whereby Business X is selling to a tax-paying entity, the same applies. Output Tax will equal 100% of the VAT received, whereas Input Tax will equal only 25% of the VAT paid.

The net effect is that an additional tax burden is placed upon companies who provide to tax-exempt customers. Whereas a business that serves only taxable supplies is due to the tax authorities 100% of VAT received minus 100% of VAT paid for inputs, Business X is required to pay 100% of the VAT that it has collected from customers but is only allowed to offset 25% of the VAT it has paid for inputs.

This practice has a significant financial impact upon those companies for whom a large proportion of their sales is to tax-exempt customers. It represents an additional burden that is inconsistent with the spirit of the provisions of the Law on Taxation. In principle, VAT is a tax that should be passed between companies throughout the production and distribution process, and received by the Royal Government upon final consumption of the product or service, hence the allowance for Input Tax to be offset against Output Tax. In the example of Business X above, they collect no VAT on the majority of their sales (to tax-exempt customers) and yet the value of these sales serves as the basis of the calculation to determine the proportion of their VAT expenditure that they can claim as Input Tax. Thus from a VAT perspective, their provision of non-taxable supplies does not confer upon them any undue benefit (net VAT effect is zero on these transactions) and yet they are being penalized with a reduction in the amount of Input Tax that can be claimed for offsetting.

IMPACT ON CAMBODIA

Beyond the perceived unfairness of the principle of this method of calculation, the practice has additional negative implications. For one, it forces tax-compliant providers to incorporate the additional VAT burden into their pricing for tax-exempt customers who typically serve a public interest. Tax-exempt customers thus have to allocate more resources to these products and services or otherwise source from a non-tax-compliant vendor which is against the Royal Government's formalization objectives.

Furthermore, whereby products imported for a tax-exempt customer are not liable for VAT yet products sourced locally are, this discourages local sourcing and thus limits opportunity for Cambodian businesses to participate in the product value chain.

2017 RECOMMENDATION

✓ **Permit businesses making both taxable and non-taxable supplies to offset 100% of their Input Tax paid against Output Tax collected.**

Notwithstanding the clarification received from the MEF and GDT on existing regulations relating to this issue, we hope to have demonstrated that the content of these regulations place excessive additional burden on companies for whom a large proportion of their sales is to tax-exempt customers, and how these companies in effect pay higher rates of VAT than other businesses.

Accordingly, we recommend that where businesses generate both taxable and exempt sales and have aligned their VAT collection with the provisions of the Law on Taxation regarding taxable and non-taxable supplies, such businesses should be permitted to offset 100% of their Input Tax paid against Output Tax collected and due to the Royal Government.

Value Added Tax refunds process

UPDATED

2016 RECOMMENDATION

Reiterate the timeframe within which VAT refund applications should be processed and emphasize the importance of following this timeframe.

POLICY RESPONSE

In a letter to the Chairman of the European Chamber of Commerce in Cambodia dated 19 July 2016 (reference 12240 APD), the General Department of Taxation has confirmed that it is adjusting its processes and modernizing its IT system so as to be able to store all tax-related information in one place and link it with other relevant units and institutions, such as the General Department of Customs and Excise and the Ministry of Commerce. Through this upgrade the General Department of Taxation will be able to process tax refunds quicker than before.

Tax-registered companies able to provide valid tax invoices demonstrating that their VAT input credits are higher than their VAT output credits are eligible to apply to the GDT for a VAT refund.

ISSUE DESCRIPTION

However, many of our members report that the response time of the GDT in processing VAT refund claims is much longer than they would expect and that ultimately obtaining a VAT refund is very challenging. There are already clear guidelines in place for applying for VAT refunds as prescribed by Circular 004 (2005) of the Ministry of Economy and Finance.

Furthermore, according to current practices, purchasers that have paid VAT for the delivery of goods and services report that they are not permitted to claim these expenses as VAT input credits until the supplier has made their self-assessment to the GDT and transmitted the applicable VAT. As of 20th December 2016 and in accordance with GDT Notification 21406, companies wishing to claim VAT input credit are required to attach a valid VAT invoice provided by the supplier in accordance with the format specified in Instruction No. 1127 GDT. Where the company claiming the VAT input has complied with these provisions, they may nonetheless incur delays in receiving their VAT refund if the seller has not submitted documents and payments in accordance with the GDT's requirements.

The principle of issuing VAT refunds is commonly accepted across the tax regimes of most countries and obtaining a VAT refund upon provision of the required documents is usually a relatively simple process. Whereby the Cambodian tax administration renders it difficult

IMPACT ON CAMBODIA

to obtain VAT refunds this effectively adds costs to doing business in the Kingdom and has a negative impact upon Cambodia's international competitiveness.

Given that a company claiming a VAT input credit is now required to provide a valid VAT invoice from the supplier, it seems unreasonable to withhold their claim based on the non-compliance of the supplier. This practice can continue to cause delays to the VAT refund process even after planned ICT infrastructure upgrades are completed.

2017 RECOMMENDATION

✓ **Ensure that businesses meeting the documentation requirements of the General Department of Taxation are able to secure VAT refunds in a timely manner and independently of whether suppliers have complied in submitting their own documents and payments.**

While welcoming the expressed intentions of the GDT to enhance its processes and ICT infrastructure to enable a faster and more efficient VAT refund process, we request that companies be permitted to claim VAT input credits provided that they have complied with GDT Notification 21406 and made available a valid VAT invoice from the supplier. This principle should be applied independently of whether the supplier has submitted their own documents and payments in accordance with the GDT's requirements.

Value Added Tax provisions relating to travel agents

NEW

Travel agents play an important role in developing Cambodia's tourism industry by promoting Cambodia overseas and acting as intermediary between local service providers and foreign customers. Travel agencies generate profits by taking a commission or booking fee on the transactions that they facilitate between suppliers and end-users. The customer in most cases pays the entire price (services plus commission) to the travel agent, who in turn pays the majority of this sum to Cambodia-based hotels, restaurants, transportation companies, and travel service providers. As such, travel agents typically have high revenues, but low margins.

ISSUE DESCRIPTION

Within the European Union, VAT liabilities for travel agents are calculated according to a 'margin taxation scheme' in which VAT is required to be paid against the value of gross margins rather than revenues. Several Asian governments, including China and Indonesia, also recognize the specificities of the travel agency business and have implemented special VAT regulations in this field. However, in Cambodia, travel agents are required to pay VAT based on revenues, which inevitably has a strong negative impact upon profitability.

This problem is compounded where many of the Cambodia-based suppliers that these travel agents work with are not currently tax-registered, which means that the payments made for their services cannot contribute towards the Input Tax Credit of the travel agent. As has been discussed above, it can be very challenging to identify tax-compliant goods and service providers in some sectors and it tends to be the tax-compliant company that bears the burden for the non-compliance of suppliers.

Consider the example below, in which we assume that 60% of service providers used by a travel agency are not able to provide valid VAT invoices. The net result is that VAT accounts for the very high figure of 34% of this operator's gross margin.

Total Sales	\$1,000,000
Cost of Sales	(\$800,000)
Gross Margin	200,000
VAT Output Credit (10%)	(\$100,000)
VAT Input Credit (10% from only 40% of suppliers)	\$32,000
VAT due	(68,000)
VAT due as a % of gross margin	34%

IMPACT ON CAMBODIA

In the example above, the travel agent incurs VAT to the value of 34% of their gross margin, and must also pay the usual Tax on Profit and Withholding Taxes. It therefore becomes very challenging for a tax-compliant travel agents to be economically viable within Cambodia.

This heavy tax burden can actually have a negative impact upon tax revenues, with some agencies feeling compelled to consider relocating their registered office to less burdensome tax regimes such as Singapore and invoicing their foreign clients from there. If this were to happen, Cambodia would only collect VAT paid by travel agents to resident goods and service providers, and therefore total public revenues from the sector would decline.

Conversely, reformed VAT provisions relating to travel agents could help to increase revenue collections by decreasing the cost of compliance and enabling travel agents to declare all generated revenues without incurring such a heavy burden.

2017 RECOMMENDATION

✓ Consider introducing VAT provisions for travel agents that recognize ‘agency relationships’ so as to more fairly reflect the nature of these businesses.

Referring to similar regulations within the European Union and examples from Asia, consider introducing VAT provisions for travel agents that have clear ‘agency relationships’ so that VAT can be based upon a margin taxation scheme or a significantly reduced percentage of revenues so as to more fairly reflect the nature of these businesses.

Recognition of mission allowances when taxing fringe benefits

NEW

The Royal Government permits employers to provide a number of ‘Fringe benefits’ to employees (including transportation and housing allowances, National Social Security Fund contributions, and infant daycare allowances) exempt of fringe benefit tax, providing the exemptions comply with the Law of Taxation. It is also common for employers to offer some additional benefits, such as meal allowances and contributions to health or life insurance programs.

ISSUE DESCRIPTION

Circular No. 011, dated 06 October 2016, from The Ministry of Economy and Finance on “The Implementation of Withholding Tax on Fringe Benefits” specifies that these benefits (as well as indemnities for the lawful termination of contracts) shall be exempted from Tax on Salary calculations and the Withholding Tax due on ‘Fringe Benefits’.

However, under the current regulations, employers can only claim deductible expenditure on the payment of such benefits at the same rate for all employees within the company regardless of their duties and position – the company can only make tax-exempt fringe benefits to its CEO at the same rate as it does to its entry level employees.

Furthermore, there are some ambiguities within the regulation, particularly relating to which documents an employer must provide in order to secure the exemption, and a lack of clarity over whether these provisions apply to benefits paid to employees that are not Cambodian nationals.

The requirement that all employees receive equal allowances regardless of their role within the company can prove restrictive. Cambodia-based businesses need to be able to offer attractive compensation packages to their employees in order to retain and acquire talent and enhance innovation and productivity. If unable to do this, then the best talents (both Cambodian and foreign) will be more likely to consider employment opportunities overseas that provide less economic benefits to the Kingdom. The provision of more generous fringe benefits to senior staff, such as comprehensive health insurance or premium childcare facilities, is one way that businesses can enhance their offer to employees while also supporting service providers within the national economy. However, in providing such benefits, the company at present takes on a substantial amount of additional tax as it is only able to access tax exemptions to the value of the benefits paid to the lowest-earning employees.

IMPACT ON CAMBODIA

2017 RECOMMENDATION

- ✓ **Consider applying fringe benefit tax exemptions based on employee seniority rather than a fixed exemption amount for every employee in a company, and clarify the requirements for businesses to have such exemptions approved.**

While embracing the Royal Government's decision to allow companies to obtain an exemption on Tax on Salary and Withholding Tax for some fringe benefits, we suggest that the supporting regulation can be further rationalized in order to enhance Cambodia's international competitiveness.

- a. We request that, on this issue, the Royal Government replicate its existing tiered allowance system based on seniority for domestic and international travel allowances for government employees. Under the Royal Government's "Mission Allowance" program, detailed in Sub Decree 216 on Mission Allowances inside and outside the country for National and Sub-National Administration (22 July 2014), allowances for food, pocket money, and accommodations are based on the rank of the government employee - the higher the seniority, the higher the allowance. Accordingly, the Royal Government already recognizes the principle of tiering levels of compensation and benefits to its employees based on seniority and rank. We therefore ask the GDT to consider applying exemption of fringe benefit tax, such as for insurance policies and employee meals, on the basis of seniority of the employee, rather than a fixed exemption amount for every employee in a company regardless of their position and level.
- b. Furthermore, we seek clarification on the documents that must be provided by businesses to the GDT in order to have their tax exemptions approved, and confirmation as to whether these exemptions include fringe benefit payments made to all employees, including non-Cambodian staff.

As a longer-term objective, we would suggest that as the country transitions towards middle-income status, it will in future be advisable to consider permitting tax exemptions for other types of fringe benefit. In particular, enabling employers to make tax-exempt contributions to employees' pension schemes would help to develop Cambodia's 'savings pillar' and enhance the financial security of its citizens.

Equal Application of Progressive Tax on Profit Rates

NEW

Cambodia's Law on Financial Management 2017 introduces a set of higher thresholds for progressive Tax on Profit rates applicable to individuals, sole proprietorships, and general partnerships. As of 1st January 2017, such entities are required to pay less than the standard 20% Tax on Profit rate up to their first 150m KHR:

ISSUE DESCRIPTION

KHR	USD EQUIVALENT	TAX ON PROFIT RATE
From 0 to 12,000,000	0 – 3,000	0%
From 12,000,001 to 18 000 000	3,001 – 4,500	5%
From 18,000,001 to 102,000,000	4,501 – 25,500	10%
From 102,000,001 to 150,000,000	25501 – 37,500	15%
150,000,000+	37,500+	20%

It is understood that these provisions are intended to facilitate and smoothen the integration of smaller businesses into the formal taxpaying regime. These more advantageous Tax on Profit rates are not available to limited companies, which must automatically register as medium taxpayers regardless of their profitability.

While recognizing the importance of bringing all business actors into the formal economy, we also stress that this formalization should serve to ensure a level playing field. Many limited companies register low levels of profits during their early years as they invest and develop their business. Such companies are required to pay a Tax on Profit rate of 20% on all profits, which effectively places them at a disadvantage compared to small businesses that are paying reduced levels of Tax on Profits. Indeed, this disparity may disincentivize some entrepreneurs from growing their business, which would require them to become a limited company and forego the more favorable tax conditions afforded to a smaller business.

IMPACT ON CAMBODIA

✓ **Ensure that the progressive rates of Tax on Profit prescribed in the Law on Financial Management 2017 be applied to all business entities in Cambodia so as to ensure a level playing field and encourage reinvestment of profits.**

2017 RECOMMENDATION

We recommend that the progressive rates of Tax on Profit prescribed in the Law on Financial Management 2017 be applied to all business entities in Cambodia so as to ensure a level playing field and encourage reinvestment of profits during the formative years of a business.

Tax on Profit incentives for Qualified Investment Projects

UPDATED

2016 RECOMMENDATION

Reiterate the timeframe within which VAT refund applications should be processed and emphasize the importance of following this timeframe.

POLICY RESPONSE

In a letter to the Chairman of the European Chamber of Commerce in Cambodia dated 19 July 2016 (reference 12240 APD), the General Department of Taxation has confirmed that it is adjusting its processes and modernizing its IT system so as to be able to store all tax-related information in one place and link it with other relevant units and institutions, such as the General Department of Customs and Excise and the Ministry of Commerce. Through this upgrade the General Department of Taxation will be able to process tax refunds quicker than before.

ISSUE DESCRIPTION

Cambodia's Law on Investment (1994) plus subsequent sub-decrees and amendments allow for investment projects to apply for 'Qualified Investment Project' status which grants a number of investment incentives such as preferential tax treatment and faster administrative procedures.

One of the most commonly-cited benefits of obtaining QIP status is a 'profit tax exemption' valid for between 3 and 9 years depending upon the size and financial performance of the project. The official website of the Council for the Development of Cambodia (CDC) describes QIPs benefiting from a 'profit tax exemption' or 'tax holiday period'¹.

However, to name this particular incentive a 'profit tax exemption' is potentially confusing. While Article 20.4 of the Law on Taxation prescribes a 0% Tax on Profit rate for "qualified investment project during the tax exemption period as determined by CDC", Article 23 of the Law on Taxation states that:

"An additional profit tax shall be paid in the amount of 20/100 upon distribution of retained earnings or annual profit after tax, if an enterprise is distributing retained earnings or profit that were subject to a tax rate of 0% according to paragraph 4 of Article 20(new) of this Law."

Companies who have not enjoyed QIP tax incentives are not subject to this additional profit tax on dividend distributions. Therefore, Article 23 of the Law on Taxation effectively provides a 'clawback' mechanism – if a QIP has retained earnings during the 'profit tax

exemption' period, the 20% tax rate that they would have been paying if not holding QIP status is applied at the point that they seek to repatriate dividends.

The majority of companies that apply for QIP status are foreign investors who are likely to attempt to repatriate profits at some point. For these companies, Article 23 of the Law on Taxation essentially negates the effects of the 'tax holiday period'. While they do benefit from the opportunity to postpone tax dues which can help with cash flow and investment in growing the business, they are ultimately subject to the same 20% rate of tax as non-QIP companies provided that they attempt to issue dividends.

The 'clawback' rate within Article 23 negates much of the perceived benefit of the 'tax holiday period' provision and thereby reduces the effectiveness of the investment incentive. As Cambodia has now transitioned into lower-middle income status and its competitive advantages provided by preferential treatment by key markets such as the EU and USA will eventually erode, Cambodia needs to be competitive compared to other countries from ASEAN and elsewhere to attract foreign investment. While a 'race to the bottom' isn't necessarily the most effective strategy for attracting investment, whereby regional neighbors such as Myanmar are offering genuine tax holidays without the 'clawback' provision Cambodia's incentive system may be seen as less competitive.

IMPACT ON CAMBODIA

✓ **Consider revising Cambodia's QIP incentives relating to Tax on Profit so as to offer more competitive tax advantages to investors.**

2017 RECOMMENDATION

Consider revising Cambodia's QIP incentives relating to Tax on Profit so as to offer more competitive tax advantages to investors who successfully apply for QIP status.

Entertainment expenses

UPDATED

2016 RECOMMENDATION

Introduce a capped allowance for tax-deductible entertainment expenses.

POLICY RESPONSE

In a letter to the Chairman of the European Chamber of Commerce in Cambodia dated 19 July 2016 (reference 12240 APD), the General Department of Taxation expressed reluctance to consider permitting businesses to claim any entertainment expenses as they are concerned that this may provide opportunity for expenses to be artificially inflated so as to reduce Tax on Profit payments.

ISSUE DESCRIPTION Article 19.1 of the Law on Taxation states the following:

“For the provisions for the Tax on Profit, expenses that shall not be allowed as a deduction are: Any expense on activities generally considered to be amusement, recreation, or entertainment or the use of any means in connection with such an activity.”

Many of our members operate within the services sector, within which entertaining clients can be described as an essential part of account management and client retention. As such, expenses relating to entertainment represent a significantly larger proportion of their overall business expenses.

IMPACT ON CAMBODIA Companies operating within the services sector typically have higher expenditure on entertainment than companies conducting industrial activity. Whereby these companies are unable to claim expenses relating to entertainment for Tax on Profit purposes, this artificially inflates their stated profit and thereby subjects them to a higher tax burden. Cambodia is therefore a less competitive destination for such business models.

✓ **Consult with the private sector to consider how a capped allowance for tax-deductible entertainment expenses could be introduced and structured.**

2017 RECOMMENDATION

Recognizing the need to ensure transparency and honest reporting by businesses across all of their tax affairs, we would nonetheless argue that an allowance for entertainment expenses can be structured in such a way so as to avoid the potential for abuse. As mentioned last year, several neighboring countries set a cap on the total amounts that can be claimed - Thailand's Revenue Code caps the total deduction at 0.3% of total gross revenues for the accounting period, whereas in Laos the cap is set at 0.4%.

Cambodia could alternatively consider introducing other stipulations such as a cap on per diem expenditure, a maximum percentage threshold for entertainment as a proportion of total expenses, and/or a listing specific entertainment activities that are claimable. For example, Cambodia could permit entertainment expense claims on coffee shop receipts and a capped expenditure on meals, but exclude expenses on alcohol and KTVs. The right to claim entertainment expenses could also be one of the privilege incentives afforded under the new Gold-Silver-Bronze classification system based on tax compliance.

We request that the MEF be open to consulting with the private sector on this issue.

Regulations on transfer pricing between related parties

NEW

ISSUE DESCRIPTION Transfer pricing is a mechanism employed by governments to protect their tax base from the erosion of profits due to non arm's length pricing on the purchase and sale of goods and services between related parties in a cross border context.

Currently the GDT uses Article 18 of the Law on Taxation to adjust income, deductions, and other benefits among enterprises in order to prevent the avoidance or evasion of tax through non-arm's length pricing. Cambodia does not have any formal transfer pricing regulations in place and, as such, the methods used to evaluate whether pricing on related party transactions meets the arm's length standard can be contentious. To date there has been limited information shared on the 'comparables' used by the GDT to perform benchmarking and there is no approved industry database which may be used by taxpayers to test the arm's length nature of related party transactions. This can create inconsistency in the reassessments made by the GDT and its branches, which may draw upon the judgments of individual tax officers as to what a 'reasonable' value would constitute.

IMPACT ON CAMBODIA The lack of clear regulation and guidance on transfer pricing creates additional uncertainty for Cambodia-based businesses who have little options available to enable them to mitigate against the risk of reassessment of their related-party transactions. As such, they are unable to safeguard themselves against the possibility of additional Tax on Profit and VAT liabilities. Businesses need to factor in such risk to their financial and investment plans, and accordingly a lack of predictability on tax liabilities can hinder investment in Cambodia.

2017 RECOMMENDATION

✓ **Consult with the private sector in order to develop a clear and unambiguous set of regulations on transfer pricing.**

We request that the Ministry of Economy and Finance consult with the private sector in order to develop a clear and unambiguous set of regulations on transfer pricing, including which databases taxpayers may use for determining an arm's length price on related party transactions. Regulations should also include a description of the transfer pricing methodologies the GDT will accept for benchmarking, which will enable the private sector to calculate the upper and lower quartiles for the values of different goods and services and therefore to protect themselves against revaluation of their transactions.

Furthermore, due to the limited availability of data on local independent companies that taxpayers could use for benchmarking purposes, we propose that the GDT provide a list of countries from which they will accept comparable data for benchmarking purposes.

CUSTOMS, TRANSPORT *and* LOGISTICS

EuroCham’s Customs, Transportation and Logistics chapter seeks not to provide an exhaustive account of Cambodia’s needs in infrastructure and logistics development, but to relay to the Royal Government a series of specific issues that our members consider to be relevant to their business that could be addressed with short-term actions. This year we have sought to interview a broader range of stakeholders in consultation for this chapter, through which we have confirmed the relevance of our updated and retained recommendations and developed additional recommendations on the escalation of Customs issues and the need to implement a ‘de minimis’ value regime.

We are pleased to be able to report on some important initiatives that have been taken over the past year in relation to issues relating to Customs raised in last year’s chapter. In particular we look forward

to the imminent issuance of a Prakas on Customs fees for tasks performed outside of office and regular working hours, which is being developed in consultation with private sector representatives. Furthermore, we have been able to remove part of our recommendation relating to companies with QIP status that encounter Customs clearance challenges where the market price of the imported goods does not match the price on the Master List—a notification issued by the General Department of Customs and Excise (GDCE) in November 2016 clarified that the invoice price should be prioritized. We have also been able to elaborate upon the opportunities that customs modernization can create in specific transport sectors (shipping and air cargo), and have included new recommendations as mentioned above.

Within transport and logistics, we note some relatively small developments over the past year

including a reduction in lift-on/lift-off charges at the ports and increasing willingness from KAMSAB to offer additional services. This being the case, we are more encouraged by the creation of the Logistics Advisory Board (LAB), under the supervision of the Ministry of Public Works and Transport, which includes representatives from EuroCham and has already undertaken some of the international comparisons and benchmarking that we have encouraged in order to identify priority areas of cost reduction in Cambodia's transport and logistics sector.

Finally, looking at the Kingdom's Special Economic Zones and recognizing the growing and particular needs of investors in these zones, we push for some organizational changes within applicable ministries and public institutions, including those not already assigned to SEZ One Stop Service Centres, so that a high-level individual within

each public institution can take overall responsibility for overseeing the body's interactions and consultations with investors in SEZs.

We have been encouraged by our positive and productive engagement with relevant public bodies on these issues over the past year, particularly the GDCE and the Ministry for Public Works and Transport, and hope that this year's recommendations can be considered and acted upon in order to improve Cambodia's overall trade competitiveness.

Formal payments to Customs officials for out-of-hours service and travel expenses

UPDATED

2016 RECOMMENDATION

Expand the List of Fees and Charges to include out-of-hours services and reasonable expenses for Customs officials.

POLICY RESPONSE

The GDCE has produced a 'draft zero' Prakas on Customs fees for tasks performed outside of regular working hours, which also covers tasks completed outside of office by Customs officials. The Prakas is intended to provide a legal basis for businesses to pay additional charges and expenses for such services and to receive formal receipts for these payments.

There have been pro-active efforts on the part of the Ministry of Economy and Finance and the GDCE to consult with the private sector on this piece of legislation, including a consultation with the Cambodian Chamber of Commerce and the European Chamber of Commerce on February 22, 2017. We intend to continue supporting the drafting of this Prakas and, subsequently, facilitating dialogue with the authorities about its implementation.

ISSUE DESCRIPTION

The General Department of Customs and Excise (GDCE) has a List of Fee and Charges relating to services provided by the department such as processing fees and inspection fees. The list is publically available and can be found in Annex B of the Handbook on Customs Clearance.

Meeting shipping deadlines and delivery schedules is of critical importance to manufacturers in the Kingdom, some of whom are integrated into regional production value chains that are dependent upon their input. At the current time, the working hours of GDCE officials do not always facilitate the achievement of these operational necessities, leading companies to request Customs services outside of the formal working schedule. However, the existing list does not specify any fees for out-of-hours services nor for other supplementary charges such as compensating the travel expenses of the Customs official.

IMPACT ON CAMBODIA

The private sector recognizes that Customs officials should be compensated for providing out-of-hours services and is open to paying reasonable additional service fees in exchange for assistance in meeting their delivery schedules.

However, the lack of a formal mechanism through which such payments can be provided creates concerns from a governance and transparency perspective as Customs officials have no process through which to document and provide formal receipts for these services.

✓ **Expand the List of Fees and Charges to include out-of-hours services and reasonable expenses for Customs officials.**

2017 RECOMMENDATION

We welcome the responses taken thus far by the Ministry of Economy and Finance and GDCE on this issue and we hope to see the Prakas issued in 2017 after a robust public-private consultation process.

Importing products subject to tax exemption through Qualified Investment Project schemes

UPDATED

2016 RECOMMENDATION

Provide clearer guidelines on the process through which suppliers to QIPs can benefit from import tariff exemptions applicable to the QIP, particularly where the market price is different to the Master List price.

POLICY RESPONSE

On 26th November 2016, the GDCE issued Notification 1969/16 AKR which included the following statement:

“For import by businessmen with QIP entitlement where the burden of duty and tariff is born by the state, all customs and excise units must take for calculation of duties the values of goods as stated in the import document only, irrespective of any margin of error from the master list or other data used during the conduct of customs inspection. However, in case there is duty and tariff relief to be carried by the state, the calculation of import duty will become the subject for value verification to determine duty to be paid as dictated by the existing laws.”

This clarifies the issue raised last year whereby companies with QIP status were encountering challenges when the market price of the imported goods does not match the price on the Master List. However, companies importing products that are to be supplied to QIPs still report challenges in accessing the QIP exemptions that should be applicable to them.

ISSUE DESCRIPTION

Projects meeting the criteria defined by the Council for the Development of Cambodia (CDC) can apply for Qualified Investment Project (QIP) status and benefit from a number of investment incentives including import tariff exemptions.

In order to benefit from import tariff exemptions, QIPs are required to submit to the CDC a Master List of goods that they are likely to require for the project including a schedule of quantities and values. Upon approval by the CDC, this Master List serves as the basis of the import tariff exemption and must be submitted to the GDCE at the point of importation alongside regular import documents. Products not listed on the Master List are subject to regular import tariffs.

Notification 1969/16 AKR clarifies the issue raised last year about divergence between the Master List price and the actual value at the time of importation. However, there are still some challenges around suppliers that are importing products to provide to a QIP. Whereas under existing laws these suppliers should be able to benefit from the import tariff exemptions applicable to the QIP, there is a perception that officials within Customs have a low level of awareness and understanding of this process which can make it difficult for providers to benefit from the tariff exemptions that they are entitled to.

Where there are unclear processes, or when public officials and the private sector lack understanding of these processes, this limits the ability for QIPs to benefit from the investment incentives granted to them. QIPs are able to negotiate lower prices with suppliers on the basis of their import tariff exemptions, and where these QIPs (or their suppliers) are unable to access such benefits it is likely to cause them unexpected costs or operational disruption and reduce their confidence in Cambodia as an investment destination. Likewise, it will reduce the credibility of the incentive in the eyes of prospective investors who gain knowledge of such obstacles.

Furthermore, where it is burdensome for QIPs to assist their compliant suppliers in demonstrating eligibility for import tax exemption, this can encourage end consumers to opt instead to purchase from the informal sector.

✓ **Provide clearer guidelines on the process through which suppliers to QIPs can benefit from import tariff exemptions applicable to the QIP.**

2017 RECOMMENDATION

Appreciating that our issue relating to divergence between the Master List price and the actual value at the time of importation has now been addressed, we retain our request that clearer guidelines be published on the process through which suppliers to QIPs can benefit from import tariff exemptions applicable to the QIP.

In support of such an initiative, we would request that training be undertaken with the relevant Customs officials to ensure that these guidelines and processes are effectively implemented.

Customs modernization

UPDATED

ISSUE DESCRIPTION Our members welcome the ongoing efforts of the GDCE to modernize customs procedures and, in particular, to continue to introduce enhanced automated processes supporting already in-place online systems. There is a general perception that Customs procedures are indeed becoming easier as a result of recent automation initiatives such as the roll-out of the ASYCUDA system.

As the GDCE recognizes in its Strategy and Work Program on Reform and Modernization 2014-2018, there is opportunity to realize further time and cost savings through expanding use of electronic transactions. The existing capabilities for GDCE to receive and accept documents electronically are limited and in many cases there is still a need for a representative of the owner of the cargo to be physically present at an ASYCUDA center in order to answer queries from customs officials or provide additional documentation in hard copy. This is the case across multiple types of transportation:

- Within the shipping sector, Customs clearance procedures require documentation to be provided for the cargo of each container. Shipping lines are required to consolidate documents obtained from each of their clients and to provide both hard copies (in person) and soft copies (manually uploaded) to Customs. The vessel number included on the documents is already known when the cargo is inspected by Customs at the warehouse and, if the necessary systems were in place, Customs should be able to access these documents through ASYCUDA. This would remove the need for shipping lines to upload the documents manually, a duplicative procedure which represents an administrative burden.
- Within air cargo, Customs require carriers to provide the necessary clearance authorization papers in hard copy and there is no system of electronic Air Waybills, which is becoming increasingly common across Customs authorities worldwide and is supported by a number of airlines currently active in Cambodia. Annex D of the revised Recommended Practice 1670 (IATA RP1670) describes how electronic Air Waybills can help to simplify the interface between shippers and carriers even among signatories to the Warsaw Convention (including Cambodia), which requires paper documentation.
- More generally, where additional documentation such as revisions to Master Lists needs to be submitted to Customs, such documents would be quicker to provide electronically rather than in person.

Furthermore, where customs service fees are due, there is currently no system through which payments can be made electronically. A secure online payment system would again reduce the need for representatives to make themselves physically present.

To introduce more opportunities for representatives to provide documents and payments online would offer multiple benefits. For one, it would help to streamline and further systematize Customs processes and provide efficiency gains for both GDCE and private companies. There would be reduced risk of losing documents and greater traceability of potential errors, and time savings would be created—by enabling cargo approvals to be made in advance, for example.

IMPACT ON CAMBODIA

Furthermore, enhanced online systems will support the Royal Government's ongoing efforts to promote transparency by reducing face-to-face transactions and making it easier to trace payments and accountability.

✓ Prioritize the implementation of a secure online payment system and expansion of online document capabilities for Customs.

2017 RECOMMENDATION

GDCE has an ambitious reform program designed to transform the department into a modern Customs Administration applying best practices that meet international standards. This initiative incorporates multiple reform programs as part of a broader long-term project. In the implementation of this reform program there is a need to establish priorities in order to allocate finite resources to the most beneficial projects. We hope to see a secure online payment system introduced this year, and encourage our comments above on the documentation processes for marine shipping and air cargo to be taken into consideration as the GDCE continues to update its online documentation capabilities.

Procedure for escalation of issues

NEW

ISSUE DESCRIPTION GDCE has a Public Relations Unit which is generally very active and responsive, and we are also very grateful that the GDCE has been helpful in addressing specific issues raised by EuroCham. This being the case, there are at the current time no clear guidelines on how businesses, particularly SMEs, can escalate issues encountered with Customs officials and request to have Customs decisions reviewed where they feel that regulations have been applied or interpreted inconsistently, or where there is a lack of clear regulation on a specific issue which can be an impediment to their business.

IMPACT ON CAMBODIA A lack of a clear process for escalating issues encountered with Customs creates a feeling of insecurity for businesses, who have no obvious right to appeal decisions made by individual Customs officers. To enable such recourse would enhance the confidence of current and prospective investors in Cambodia, and would help to ensure that the Kingdom's laws and regulations are applied fairly and consistently across all businesses and in all circumstances.

2017 RECOMMENDATION

✓ **Create a clear and systematic procedure through which the private sector can escalate issues and request decision reviews by the General Department of Customs and Excise.**

We request that the GDCE create a clear and systematic procedure through which the private sector can escalate issues and request that some interpretations of regulations made by lower-level officials be reviewed by appropriate supervisors higher up within the GDCE's hierarchy. The procedure should be widely disseminated among Customs officials and among the private sector.

Implementing a ‘de minimis’ value regime

NEW

Many countries around the world have ‘de minimis’ value regimes that permit goods below a certain monetary value to enter the country through simplified procedures and without duties and taxes being collected.

ISSUE DESCRIPTION

Cambodia has a ‘de minimis’ value regime by law but not in practice. MEF Directive No. 004, issued 24 July 2012, establishes a de minimis threshold of USD 50 and prescribes a declaration procedure for shipments which are below USD 50. However, this directive has yet to be implemented, and incoming goods worth less than USD 50 continue to be subject to regular Customs tariffs. Furthermore, there are no simplified procedures for low-value shipments, all of which have to be formally cleared with full data and documentation requirements, and there are no clear guidelines on the Customs processing fees that should be applicable for shipments below the ‘de minimis’ threshold.

The lack of implementation of MEF Directive No. 004 can cause significant delays. This in particular can have a negative impact upon shipments which require express clearance due to short transit times, just-in-time manufacturing, or time-sensitive customer requirements.

The status quo can render it unviable to send low-value shipments to Cambodia whereby the monetary and administrative costs associated with clearing Customs are disproportionate to the value of the shipment itself.

Where a ‘de minimis’ value regime is not being implemented, this has a negative impact upon Cambodia’s ability to integrate into the global economy – manufacturers in Cambodia and neighboring countries will be wary of uncertainty and additional costs at clearance, and consumers will have less access to international e-commerce vendors if simple low-value goods cannot be passed through Customs without supporting documentation and fees. The costs to Cambodia, through both lost trade opportunities and the resources required of Customs to undertake full clearance procedures on low-value items, arguably exceed the actual revenues collected as tariffs on these items.

IMPACT ON CAMBODIA

Furthermore, implementation of a ‘de minimis’ value regime and accompanying simplified procedures is part of Cambodia’s international commitments including the WTO Agreement on Trade Facilitation and the WCO Guidelines for the Immediate Release of Consignments.

2017 RECOMMENDATION

✓ Fully implement MEF Directive No. 004 to enact a 'de minimis' value regime, and engage with express forwarders to better facilitate the Customs clearances of time-sensitive deliveries.

- a. We request that MEF Directive No. 004 be implemented in full and that, accordingly, shipments of a value less than 50 USD can be imported into Cambodia duty-free and with simplified clearance procedures. There should be sufficient dissemination and awareness-raising provided to both Customs officials and the private sector prior to implementation.
- b. Engage in particular with express forwarders so as to consider how Customs procedures can accommodate the specific time-sensitive requirements of their customers. This may include new provisions such as allowing for pre-arrival submission and the processing of consolidated declarations so as to expedite clearance and release.
- c. Clearly detail the applicable processing fees for the clearance of low-value 'de minimis' shipments by Customs officials.

Addressing the high cost of international shipping

UPDATED

2016 RECOMMENDATION

Reduce the high cost of international shipping to and from Cambodia.

POLICY RESPONSE

There has been some movement over the past year to address the high cost of international shipping. Following consultation with the Royal Government, Sihanoukville Autonomous Port and Phnom Penh Autonomous Port agreed to reduce their lift-on/lift-off (LoLo) charges by 10% and 5% respectively, while the mandatory shipping agency Kampuchea Shipping Agency and Brokers (KAMSAB) also agreed to reduce fees by 10%. There have also been some industry-specific measures, such as an announcement by the Ministry of Economy and Finance that reduced port costs for rice containers to help boost the competitiveness of exports.

These measures are welcome yet, given that LoLo charges at Sihanoukville Autonomous Port were already considerably higher than those at ports in neighboring countries (see below), the impact upon Cambodia's competitiveness is minimal and the reductions are seen as a largely symbolic gesture.

This being the case, we are pleased to see the creation of the Logistics Advisory Board, under the supervision of the Ministry of Public Works and Transport, which we believe has the potential to become a very productive mechanism through which to address issues within the transport and logistics sector.

Cambodia's recent economic growth has been built upon support for export-oriented businesses. At the same time, the economy is not yet sufficiently advanced so as to have an integrated domestic supply chain. Accordingly, many businesses in Cambodia are reliant upon international shipping via Sihanoukville Autonomous Port (or for smaller vessels, Phnom Penh Autonomous Port) to import production inputs and export their finished products.

ISSUE DESCRIPTION

Port costs and other costs relating to international shipping are significantly higher in Cambodia than most other ASEAN countries. EuroCham would be happy to share cost benchmarking exercises conducted by some of our members that demonstrate how port dues and charges relating to comparable vessels are approximately 3.5 times higher at Sihanoukville than at Cai Mep, Vietnam. The difference is even higher compared to other ports in the region such as Port Klang, Malaysia.

While it may be unrealistic to expect Cambodia to reach the same cost per unit as ports in larger markets that benefit from greater economies of scale, the data provided to us suggests significant differentials in pricing for comparable services. For example, a 2014 invoice from Sihanoukville Autonomous Port lists lift-on lift-off (LO/LO) charges for a laden

20-foot container as costing 4.75 times more than the published tariffs for the same service at Cai Mep International Terminal (CMIT) as of 1 January 2013.

IMPACT ON CAMBODIA

High port fees and charges force shipping lines and freight forwarders to share this cost burden with end customers who are supporting the Cambodian economy by directly or indirectly creating jobs and improving the Kingdom's balance of trade.

Given the aforementioned importance of international shipping to many companies doing business in Cambodia, port costs that are significantly higher than those of regional competitors have a direct impact upon assessments of Cambodia as a prospective investment destination. Furthermore, they make Cambodian exports less competitive as exporters will incorporate transport and logistics costs into their quotations to clients abroad.

2017 RECOMMENDATION

✓ **Continue to address the high cost of international shipping to and from Cambodia.**

As the Royal Government continues to address the issue of high costs of international shipping to and from Cambodia, we suggest that detailed cost benchmarking activities against other ports within the region be undertaken so that those elements of the current fees and charges levied by Sihanoukville Autonomous Port that are of greatest variance from regional averages can be identified. These cost centers could then be prioritized for cost reduction activity. EuroCham Cambodia would be happy to facilitate the sharing of benchmarking data with the Royal Government, potentially through the Logistics Advisory Board.

In the longer term, we recommend that the Royal Government adopt a stance of encouraging greater competition for Sihanoukville Autonomous Port. As the Kingdom's only international and commercial deep seaport, and as a wholly government-owned entity, there would appear to be little pressure on port management to reduce fees and charges. In neighboring Vietnam there are both publically and privately owned ports which fosters price competition. Greater involvement by the private sector in managing Cambodian ports, whether that means an additional port or through partial privatization of Sihanoukville Autonomous Port, would provide greater impetus towards reducing fees and charges and improving quality of services and infrastructure.

Mandatory use of KAMSAB as a shipping agent for marine cargo

UPDATED

2016 RECOMMENDATION

Permit companies other than KAMSAB to offer shipping agency services for marine cargo.

POLICY RESPONSE

While there has not been any commitment on the part of the Royal Government to consider companies other than KAMSAB to offer shipping agency services for marine cargo, there has been some degree of progress with KAMSAB agreeing to provide additional services. Whereas previously it would be the shipping lines that took responsibility for on-board clearance (taking public officials on board to check documents and clear cargo), KAMSAB has now agreed to take responsibility for providing this service. It is hoped that this will help to reduce opportunities for non-transparent practices and therefore offer greater value to KAMSAB's clients.

All marine cargo vessels approaching Cambodian ports are required to enlist the services of Kampuchea Shipping Agency and Brokers (KAMSAB) as shipping agent to represent the vessel when dealing with port authorities. Only KAMSAB is authorized to request the port to release containers from its control.

ISSUE DESCRIPTION

Feedback from our membership is that KAMSAB is relatively costly and has traditionally provided little in terms of value-added services. In some cases there are overlapping responsibilities between KAMSAB and port authorities – for example, we understand that some members have been required to pay fees to both entities for the completion of tally sheets (inventory of containers checked at the dock).

The mandatory use of a state-owned shipping agent is not common practice in the region – within ASEAN, only Myanmar has a similar requirement. In other countries, it is permitted for shipping lines to select a shipping agent from a number of privately-owned service providers or for the shipping line to communicate directly with port authorities.

The mandatory use of one shipping agent imposes additional costs on shipping lines that would otherwise be able to conduct communication with the port themselves or select a more cost-efficient service provider from the private sector. As mentioned above, such costs are ultimately shared with end users and therefore increase the cost of doing business in Cambodia and have a negative impact upon the country's international competitiveness.

IMPACT ON CAMBODIA

✓ **Permit companies other than KAMSAB to offer shipping agency services for marine cargo.**

2017 RECOMMENDATION

While recognizing that some improvements are being made in terms of the services offered by KAMSAB, we maintain that prohibiting any other company from offering shipping agency services protects KAMSAB from any competitive pressure. In other countries, competition between shipping agents creates incentive to improve prices and services, which ultimately enhances the competitiveness of the country's transport and logistics sector. Therefore, we maintain our request that the Royal Government permit companies other than KAMSAB to offer shipping agency services for marine cargo.

Process for recovery of shipping containers in cases of unclaimed goods

RETAINED

2016 RECOMMENDATION

Assist shipping lines in recovering containers holding abandoned cargo.

POLICY RESPONSE

GDCE has acknowledged our concerns on this matter and has proven willing to engage with shipping lines on the issue. However, no concrete progress has been realized at this time.

Several of our members report to us difficulties for shipping lines to recover shipping containers in instances where the cargo has been abandoned by the end customer. Abandoned cargo can be kept in containers at the port for an extended period without clear guidance on how the container can be reclaimed.

ISSUE DESCRIPTION

Under Article 54 of the Cambodian Law on Customs, there are clear guidelines in place relating to unclaimed goods:

“Where the owner of the goods has been determined, Customs must immediately notify owners of unclaimed goods that such goods will be sold at public auction in accordance with the provisions of Article 55 of this Law, if not claimed within a period of sixty (60) days from the date the notification was issued.

In the case where no owner can be found, a public notice shall be made in a time and manner determined by the Director of Customs to notify owners.

Owners have sixty (60) days from the date of such notice to make a claim for their goods. If such period of time is exceeded, the goods will be sold at public auction in accordance with the provisions of Article 55 of this Law.”

This Law refers to the unclaimed goods but makes no mention of the containers within which they have been stored. Furthermore, feedback from our members is that the process required by the Law is not being implemented and that, subsequently, unclaimed goods and their containers can sit unprocessed in the port for long periods of time. Some members have been requested to pay undocumented fees in order to have the contents of their containers processed.

IMPACT ON CAMBODIA

Ambiguity and uncertainty over the process for recovering containers holding abandoned cargo makes it more difficult for shipping lines to recover such containers. Where unable to recover the containers, the shipping line incurs both opportunity costs and, potentially, storage costs payable to the port. Such costs are ultimately spread and shared with end customers which, as in the two recommendations above, increases the cost of doing business in Cambodia and has a negative impact upon the country’s international competitiveness. In this instance the costs incurred are relatively small, but nevertheless impacts several of our members and could be fixed relatively quickly and inexpensively if additional guidance were provided.

Furthermore, addressing this issue would reduce opportunities for non-transparent practices, thereby supporting the Royal Government’s ongoing transparency initiatives.

2017 RECOMMENDATION

✓ **Assist shipping lines in recovering containers holding abandoned cargo.**

- a. We request that the Royal Government provide clarification as to what is required from shipping lines in order to reclaim containers that have been used for storing unclaimed goods.
- b. Clarify who is responsible for charges associated with unclaimed goods, and whether proceeds from auction can be used to offset storage charges that may be made to the shipping line.
- c. In relation to Article 54 of the Law on Customs, ensure that the relevant officials are aware of this process and that it is being implemented according to the timelines provided within the Law.

Communication between public bodies, SEZs, and investors

UPDATED

A 2016 working paper published by the Asian Development Bank ¹ concluded that Cambodia's Special Economic Zones have "attracted significant levels of foreign investment into Cambodia that would not have been present otherwise, creating around 68,000 jobs, with equal or better pay and better prospects than the alternatives that would otherwise have existed". This success was attributed in part to the Royal Government's decision to permit private sector developers to establish and manage the zones, which the ADB considers more efficient than publicly managed SEZs.

ISSUE DESCRIPTION

An SEZ hosts multiple industrial investors who share common infrastructure and, in principle, benefit from streamlined administrative procedures. Dedicated officials from relevant Ministries are physically situated within each SEZ. The SEZ, by design, contains a greater proportion of tenants that are industrial businesses and/or that are linked to international supply chains than is the case amongst the private sector in general. As such, there do arise circumstances in which the investor requires an interpretation of how the Kingdom's laws should apply to the specificities of their business operation, or in which the existing public administrative processes can prove impractical in this particular setting which can lead to significant time delays.

Accordingly, there is a need for enhanced communication between public bodies, SEZs, and investors to facilitate dialogue and creative thinking that can help to resolve such challenges. Indeed, the somewhat unique nature of the SEZ provides opportunity to implement practical working procedures within a fixed scope that can help industrial investors to have faster and simpler interactions with public bodies.

Enhanced communication would create greater opportunity for investors to understand the interpretation and application of relevant laws and processes, and likewise for the Royal Government to better understand the specific needs of industrial investors. Obstacles to doing business can therefore be more quickly identified and addressed, which in turn supports the performance of the investing company and the economic benefits to be realized by the Royal Government.

IMPACT ON CAMBODIA

As Cambodia looks to attract a greater diversity of industrial investors, there are likely to be greater numbers of instances in which the status quo of administrative procedures could make it challenging for investors to meet their performance targets. Demonstrating capacity for strong levels of communication between SEZ tenants and the Royal Government will enhance the value proposition of investing in a SEZ, which can come to represent a greater incentive for prospective investors as they compare the benefits of investing in Cambodia versus its competitors.

2017 RECOMMENDATION

✓ **Require SEZs to facilitate regular meetings between investors, GDCE, and other relevant public bodies, and consider trialing new tools for public-private collaboration within SEZs.**

- a. We suggest that the Royal Government requires SEZ operators to facilitate regular meetings between investors and relevant public bodies.
- b. Acknowledging that the industrial nature of the SEZs can create a particular set of business needs that may differ from the business community at large, we propose that each relevant public body organize its human resources so that a high-level individual within that organization can be assigned as ‘SEZ expert’ and assume responsibility for that body’s interactions and consultations with investors in SEZs. The SEZ Operator can play a role to facilitate these interactions.

This recommendation applies equally to institutions not already assigned to SEZ One Stop Service Centres (OSSCs) such as the Ministry of Environment, the Ministry of Land Management, Urban Planning, and Construction, and the General Department of Taxation. For these institutions, enhanced interaction with SEZs could be realized in the form of a “SEZ Window” at the Ministry, or by making regularly scheduled visits to the SEZ OSSC where the Operator would provide a consultation space.

Duties of the ‘SEZ experts’ would include defining the responsibilities and decision-making authorities of individual officials located within SEZs, ensuring consistency in approach and application of laws across SEZs, to communicate official positions on common issues faced by SEZ tenants, and to play a deciding role in dispute resolution.

Furthermore, these individuals would develop an expertise on the specificities of the SEZ environment and would therefore be able to engage SEZ operators for consultation during the drafting of new laws likely to affect their tenants. To help facilitate these interactions, we suggest that the Cambodia SEZ Association (CSEZA) be structured to serve as the body for consultation. Ultimately, these “SEZ experts” from each ministry would be well-positioned to submit proposals to their ministry and the Cambodia Special Economic Zone Board for approval to trial and implement innovative processes within the contained environment of the SEZ which would enhance the ease of doing business for industrial tenants.

AUTOMOTIVE

EuroCham has been pleased to have the opportunity to discuss our recommendations for the automotive sector with the Royal Government through multiple forums over the past year. Specifically, we have raised our proposals in private meetings with the Ministry of Economy and Finance and the General Department of Customs and Excise, as well as through the Working Group D on Law, Tax and Governance of the Government-Private Sector Forum and through the Customs-Private Sector Partnership Mechanism. We do recognize that working towards a more rationalized taxation regime for the automotive sector is a long-term objective that cannot be implemented overnight, and we look forward to continuing our dialogue with the Royal Government on this important subject in collaboration with like-minded associations such as the Cambodia Automotive Industry Federation (CAIF).

In concrete terms, there has been little improvement in the automotive sector over the past year, and indeed it has become even harder for authorized importers of new brands to be competitive in Cambodia as Sub-Decree Number 192 ANKR.BK on the Adjustment of Customs Duty and Excise Tax has come into effect and increased

Special Tax rates on new cars. There has, however, been some movement towards introducing more robust technical standards on automotive imports; the Ministry of Industry and Handicraft has announced its intention to enforce UN/ECE Regulations on 19 components, vehicle systems and emissions requirements in line with other ASEAN countries. As described in our 'Import Regulations' subchapter, EuroCham welcomes this move and seeks to continue our close collaboration with the Ministry of Industry and Handicraft to ensure that these regulations are enforced in a practical and universal manner and can serve to enhance the safety and quality of the Cambodian automotive sector.

Through this type of public-private sector cooperation, we hope to enhance the attractiveness of the Cambodian car market to multinational companies and to create a favorable environment for increased foreign direct investment (FDI) inflows, which in turn create jobs and contribute to government tax revenues. European brands already established within the Kingdom (in partnership with local companies) include Audi, BMW, MG, Mercedes Benz, Jaguar, Land Rover, Rolls-Royce, Porsche and Volkswagen. EuroCham members alone have invested over \$100,000,000 in the

automotive sector in showrooms, service facilities, and ongoing training of their Cambodian staff.

Our Automotive chapter recommendations focus on three specific areas:

- import regulations,
- consumer protection,
- and taxation policy.

However, we would like to take this opportunity to emphasize our vision for the Cambodian market in the longer run. At a top level, we seek to work alongside the Royal Government in order to help the Cambodian automotive market transition from a predominantly informal, unregulated market to a formalized market with effective regulations and quality assurance that has a positive effect for the Royal Government, consumers, and authorized dealers alike. These include:

For the Royal Government

- The potential to significantly increase tax revenue collection from the automotive sector
- Incentivize greater levels of investment in the sector and create skilled jobs within showrooms, aftermarket services and, potentially, parts manufacturing

- Contribution to the Royal Government's goals of preparing low-carbon policies¹ and encouraging efficient use of energy in the transportation sector²
- Providing the necessary oversight and transparency in order to implement ASEAN agreements to harmonize standards, including any Mutual Recognition Agreements agreed with the ASEAN Consultative Committee for Standards and Quality Automotive Product Working Group (ACCSQ-APWG)

For consumers

- Protection against unknowingly exposing themselves to safety risks by driving cars deemed not roadworthy in other countries.
- Greater access to warranties and aftermarket services, offering greater long-term value that unauthorized importers cannot provide.

For authorized dealerships

- A level playing field that enables fair and transparent market competition and enables increased levels of participation in the economy.
- Better ability to track vehicle ownership which is important in the case of a product recall to protect consumer safety.

For these considerable benefits to be realized, a coordinated effort would be needed between both public and private sector in order to build the core infrastructural and regulatory components conducive to a successful automobile market in Cambodia. These include:

1. Physical Infrastructure. Consumer demand can be generated through the development of a greater number and quality of roads. EuroCham recognizes and welcomes the Royal Government’s ongoing efforts to invest in roads, to reduce traffic congestion, and to coordinate road upgrades with other investments in transport infrastructure ³.

2. Financing and leasing. At present, only a limited pool of potential consumers has access to sufficient funds to invest in a new automobile from an authorized dealer. In order to make automobiles more accessible to greater segments of the population, there is a recognized need to develop

a regulatory framework that will enable leasing and hire-purchase agreements. Such a framework entails coordinating policies across the areas of accounting, legal, tax and bankruptcy.

3. Retail channels. There is a need for a healthy mix of new and used car outlets. While stressing the benefits of purchasing new cars from an authorized dealer, we also recognize the need for a second-hand market in order to improve accessibility and affordability. However, the second-hand car market needs to be effectively regulated—a 2012 study inspected cars at 30 used car dealerships around Phnom Penh and found 40% of vehicles to be insurance write-offs considered not roadworthy in their country of origin. Furthermore, a full 80% had had their odometers tampered with so as to misrepresent the vehicle’s mileage ⁴. With this in mind, it is worth recognizing that Cambodia has the lowest used car import restrictions in ASEAN (see chart).

COUNTRY	USED CAR IMPORT RESTRICTION	REMARK	RESTRICTION
Indonesia	Completely prohibited	–	
Laos	Completely prohibited	–	
Thailand	Prohibited with exception	Approved only for government / re-export / private usage	
Philippines	Prohibited with exception	Approved only for private usage with permission	
Vietnam	Huge import tax (70%-80%)	Impossible to run used car import business practically	
Malaysia	Need import license	Prohibited for selling/business from Jan 2016	
Singapore	Within 3 years aged / Euro3	Several inspections required for approval	
Brunei	Restriction on volume and age of car	Volume: up to 20% of TTL registration last year Age: within 3 years (passenger) / 4 years (commercial)	
Myanmar	Need import license (new and used)	Need to scrap/replace the old car (more than 20 years) Must get import license for both new and used cars	
Cambodia	No restriction	Superficial vehicle check only	

4. Taxation policy. The automotive sector represents a significant proportion of Cambodia's total tax revenues. In 2014, passenger cars and commercial vehicles accounted for 23% of the value of all imports into Cambodia and generated over 250 million USD in tax revenues⁵. While recognizing and welcoming the contributions that taxes on vehicles sold in Cambodia can make to the development of the country, for the automobile market to develop further there is a need for a tax and fee policy that strikes a balance between tax collection and consumer affordability. This does not necessarily mean a net reduction in tax revenues for the Royal Government from the automobile industry – a higher level of regulation and transparency would enable greater tax collection from second-hand car imports and used car sales, which represent over 90% of annual automobile sales in Cambodia.

5. Environment and recycling. The Committee welcomes the vision laid out in the Climate Change Strategic Plan 2013-2024 that “Cambodia develops towards a green, low-carbon, climate-resilient, equitable, sustainable, and knowledge-based society”. While the Royal Government does have legislation prescribing specific gas emission standards for motor vehicles⁶, better regulation of second-hand and ‘junkier’ imports is needed to enforce these standards – older vehicles are generally less fuel-efficient and release more pollutants into the atmosphere. Furthermore, regulations to ensure responsible treatment of batteries can make a large difference to the environmental impact of the automotive industry.

6. Consumer protection. Cambodia's Law on the Management of Quality and Safety of

Products and Services (2001) contains a number of provisions designed to protect consumers from products that could potentially cause them harm. In an informal economy, there is no way of monitoring the safety standards of products being sold. In particular, we are concerned by the importation of written-off cars and by cars assembled from a variety of parts imported as scrap. Such vehicles have inherent structural deficiencies which can prove fatal or very serious for the consumer in the event of an accident. Accordingly, we encourage the implementation of mandatory safety checks for all cars on the road and we hope to see new technical standards based on UN/ECE Regulations being applied so as to contribute to a safe and secure automotive market.

7. Parts availability. Owners of automobiles sold by unauthorized dealers at times find themselves frustrated by the lack of available parts. Whereas authorized dealerships offer full warranties and aftermarket services, there are no such guarantees in the informal market. Furthermore, some consumers are unaware that manufacturers design and build vehicles for different parts of the world in order to cater for variables such as climate and fuel quality. As such, even a branded part may be inappropriate for the vehicle at hand and can lead to sub-optimal performance or reliability issues. The development of reliable and regulated aftermarket services for both new and second-hand cars is thus a further requirement for long-term growth of the market.

With these longer-term objectives in mind, we respectfully request the Royal Government to consider the following recommendations:

Importation of vehicles not suitable for the Cambodian environment

UPDATED

2016 RECOMMENDATION

Implement regulatory measures to prevent the import of cars unsuitable for the Cambodian environment.

POLICY RESPONSE

Cambodia participates in the Automotive Parts Working Group (APWG) of the ASEAN Consultative Committee on Standards & Quality (ACCSQ), through which the ten ASEAN Member States consider proposals to harmonize components of their regulatory systems through identification of suitable international standards. The APWG is currently discussing the introduction of a Mutual Recognition Agreement (MRA), which would prescribe conditions for recognition of testing and certification of automotive components by Member States. A draft MRA proposes that Member States voluntarily align their standards to the technical requirements of the regulations published under the 1958 UN/ECE Agreement⁷. The APWG has identified 19 UN/ECE Regulations for components, vehicle systems and emissions requirements for the initial application of this MRA.

Cambodia's Ministry of Industry and Handicraft has expressed its intention to adopt these 19 UN/ECE Regulations via Prakas Announcement No 150 MIH/2016 on 19 Technical Regulations for Automotive Products with the stated aim being to "make automotive products safe and to prevent disaster on human, environment, and society."

In principle, the EuroCham Automotive Committee welcomes this initiative to introduce more rigorous technical standards to Cambodia's automotive sector which has until now been the least regulated car market in the region. This being the case, there remains some ambiguity over the implementation mechanisms that will be used to enforce these standards, which need to be applied universally and in a practical manner if they are to prove effective. In April 2017, the Ministry of Industry and Handicraft's Announcement No.662 issued a 'grace period' for compliance with these regulations until 14 June 2019, by which time we hope to have supported the Ministry in developing a practical set of implementation guidelines.

ISSUE DESCRIPTION

At the time of publication, prior to implementation of Announcement No 150 MIH/2016, there are insufficient regulations governing the type, age, origin, and/or condition of vehicles imported into the country. As a result, there are many vehicles on the roads that are not suitable for the Cambodian environment and, in some cases, pose a safety risk to drivers, their passengers, and those around them. Examples of such vehicles include:

- **Cars subject to insurance write-off.** Many vehicles on the road today were involved in accidents overseas, written off by insurance companies, sold as scrap metal, and exported to Cambodia for repair/assembly into a working car. Insurance companies write off cars not just when they are too expensive to repair, but also when they have serious structural issues making them unsafe to drive – even if repaired. Buyers of such cars cannot be aware of the history of the vehicle nor are they trained to identify signs of accident repair.

- **Cars not designed for the Cambodian context.** The majority of vehicles imported into Cambodia by non-authorized importers source their vehicles from countries using fuel that meets Euro 5 or Euro 6 standards, which is a fuel with a very low level of sulfur and impurities. Fuel currently available in Cambodia is suitable for vehicles with Euro 3 or Euro 4 engines. Authorized importers work with this knowledge to provide vehicles adapted to the Cambodian environment with suitable engines and exhaust systems so that the vehicles perform properly once imported. Other alterations include enhanced air-conditioning systems and suspension modifications to increase ride height (distance between the ground and the underside of the car). Of particular concern is the fact that, if cars have engines designed for Euro 5 or Euro 6 fuel, they are very likely to encounter poor engine performance and engine stalling when driven in Cambodia. Indeed, engines fitted with selective catalytic reduction systems (using diesel exhaust fluids such as AdBlue to reduce harmful emissions) will stop working completely if not equipped with the correct fuels. Customers are generally unaware of this issue and are often shocked and angry when faced with a quotation to undergo expensive work to get a Euro 5 or Euro 6 engine back into working order.
- **Stolen cars.** Authorized dealers often are the only source of replacement keys and on-board computers. They are required to verify vehicle ownership before replacing theft-sensitive parts. If a customer comes to an authorized workshop requesting a new key, it is possible they may be turned away if there is a record that the car was reported stolen. Again, without reliable checks at the point of importation, consumers buying from a non-authorized importer have no way of knowing whether the vehicle has been reported stolen. Indeed, even grey market dealers themselves have no real way of verifying whether or not a car has been stolen.

Such unsuitable vehicles would be highly unlikely to meet the 19 UN/ECE Regulations within Announcement No 150 MIH/2016 and therefore, in principle, the introduction and effective enforcement of these regulations can help to improve the safety and quality of Cambodia's automotive market provided that they are applied consistently to all incoming vehicles.

However, consideration needs to be given to how these technical standards can be implemented in a practical manner. By the letter of the law, the UN/ECE Regulations would require a 'certificate of conformity' to be issued by the manufacturer for each of the 19 parts; this would be impractical in an industry where certificates of conformity are usually issued to vehicles rather than parts. This question mark over the implementation of these standards applies across the region (not uniquely to Cambodia), and as an intermediary measure, some other ASEAN Member States have introduced their own homologation tests at ports of entry to regulate vehicles coming into their countries while regional discussion on regulatory harmonization continues. EuroCham hopes to have opportunity to provide inputs and technical assistance to the Institute of Standards of Cambodia, which sits under the Ministry of Industry and Handicrafts, in developing a suitable set of standards tests that will support the Royal Government's objective of improving safety on the roads.

IMPACT ON CAMBODIA

The lack of measures to restrict the importation of vehicles not suitable for the Cambodian environment makes Cambodian vehicles and roads less safe. In addition to the inherent safety risks, consumers purchasing cars that have not been sufficiently regulated at the point of import will most probably encounter issues of poor engine performance, fake mileage readings and lack of service support.

As Cambodia does not have a domestic automobile production industry, the implementation of effective measures to prevent the importation of vehicles not suitable for the Cambodian environment would ensure that only safe and reliable cars are available for sale in Cambodia. Consumers would still have access to imported used cars, but the vehicles imported would be suitable for Cambodia and less likely to encounter the safety and performance issues identified above.

Consumers would be protected against unknowingly driving vehicles that have been deemed unsafe in their country of origin. Prospective buyers would have the peace-of-mind of knowing that vehicles sold in Cambodia are not listed as stolen and will not require expensive repairs caused by their incompatibility with current Cambodian fuel quality levels.

Safer cars on the road would contribute to the objective of Cambodia’s National Road Safety Committee to halve road fatalities by 2020. Furthermore, a better-regulated and more context-appropriate automobile market in Cambodia will increase confidence in the industry for both consumers and investors.

2017 RECOMMENDATION

✓ Implement regulatory measures to prevent the import of cars unsuitable for the Cambodian environment.

In order to realize these benefits, we request that the Royal Government consider the following recommendations:

- a. Consult with the private sector to develop a practical set of implementation guidelines for the implementation of Announcement No 150 MIH/2016 on 19 Technical Regulations for Automotive Products. In particular, we emphasize that any technical tests and administrative requirements relating to standards and quality must apply to all vehicles entering the Cambodian market.
- b. Introduce and effectively implement a ban on the importation of flood-damaged cars, stolen cars, insurance write-offs, and other conditions that result in unsafe vehicles being on the road.

Enabling authorized dealerships to implement service measures and product recalls

RETAINED

Every global manufacturer has a strict product-quality monitoring regime which includes monitoring of safety-related issues after production and sale. It is routine practice for manufacturers to issue a “product recall” – in effect announcing a safety-related issue, identifying affected vehicles, and notifying customers to return to authorized workshops for repair. As standard practice, authorized dealers check each vehicle visiting an authorized workshop to ascertain if there are any outstanding service measures/recalls waiting to be performed. The cost of repair work, both labor and parts, is generally covered by the manufacturer at no cost to the owner. However, owing to low levels of regulation of automobile imports and the large number of vehicles imported by non-authorized dealers, authorized dealers are unaware of what vehicles are in Cambodia and are unable to provide timely notification in the event a vehicle is included in a manufacturer-announced service measure or recall. Failure to perform service measures means that potentially un-roadworthy vehicles remain in use.

ISSUE DESCRIPTION

In a better-regulated market, authorized dealers would have greater knowledge of vehicles on the road in Cambodia and would enable manufacturer service measures and recalls to be implemented in a timely manner. This would contribute to ensuring greater safety on Cambodian roads, with benefits as described in the first recommendation of this section.

IMPACT ON CAMBODIA

✓ **Require the Department of Land Transport to notify authorized distributors, on a quarterly basis, of the contact information for all new vehicle registrations or used-vehicle transfers so as to enable product recalls.**

2017 RECOMMENDATION

Require the Department of Land Transport to notify authorized distributors, on a quarterly basis, of the contact information for all new vehicle registrations or used-vehicle transfers. Information to be provided should include: vehicle brand, model, model year, vehicle identification number (VIN), customer name, address, and telephone number.

Implementation of existing technical check requirements

UPDATED

ISSUE DESCRIPTION Article 49 of the Law on Land Traffic (2015) provides clear guidance on the intervals within which different types of land vehicles are required to undergo technical checks administered by the Ministry of Public Works and Transport or by companies accredited by the Ministry. The type of technical checks required are determined by Prakas.

However, many cars encountered on the road or coming in for servicing at authorized dealerships have not been subject to such technical checks. This is in part due to the aforementioned lack of regulation of automobile imports, which makes it more difficult to document which cars are on the road and monitor when they are due for technical checks. It is also in part due to a lack of awareness amongst the public about the requirement for vehicles beyond a certain age to undergo technical checks.

IMPACT ON CAMBODIA Effective implementation of the requirement for technical checks on used vehicles beyond a certain age would provide the Ministry of Public Works and Transport greater oversight over what cars are on the road, and would ensure that unsafe vehicles are quickly identified so that repairs can be undertaken or, if beyond repair, the vehicle can be removed from the roads. This would contribute to ensuring greater safety on Cambodian roads, with benefits as described in the first recommendation of this section.

2017 RECOMMENDATION



Better implement existing technical check requirements.

Require a ‘certificate of roadworthiness’, demonstrating that a vehicle has passed the mandated technical checks, as a prerequisite for obtaining a vehicle tax certificate. The vehicle tax certificate is displayed on the car and it is easy for traffic police to identify cars driving without such certification. Drivers perceive a high level of monitoring of tax certificates by traffic police and therefore most drivers do undergo the necessary processes to obtain vehicular tax certificates. Accordingly, if drivers are unable to obtain a vehicular tax certificate without a ‘certificate of roadworthiness’, they will be more likely to voluntarily bring in their cars for technical checks.

In many countries a fee is charged for the administration of such technical checks, thus an increase in the number of technical checks being conducted would not need to consume the financial resources of the Ministry of Public Works and Transport.

Taxation policy as an instrument for developing the automotive sector

UPDATED

2016 RECOMMENDATION

Rationalize taxation policy for automobiles so as to support the growth of the formal sector.

POLICY RESPONSE

While the Royal Government has proven willing to engage the EuroCham Automotive Committee and other industry bodies on this issue over the past year, unfortunately there has been no progress towards a more rationalized taxation structure for the automotive sector.

Indeed, the gap between new cars from authorized dealers and less safe vehicles from used car importers or parallel importers has become even wider after the increase in Special Tax rates mandated within Sub-Decree Number 192 ANKR.BK on the Adjustment of Customs Duty and Excise Tax which entered into force on 01 April 2016.

The Cambodian automotive sector is currently comprised of three types of vendors:

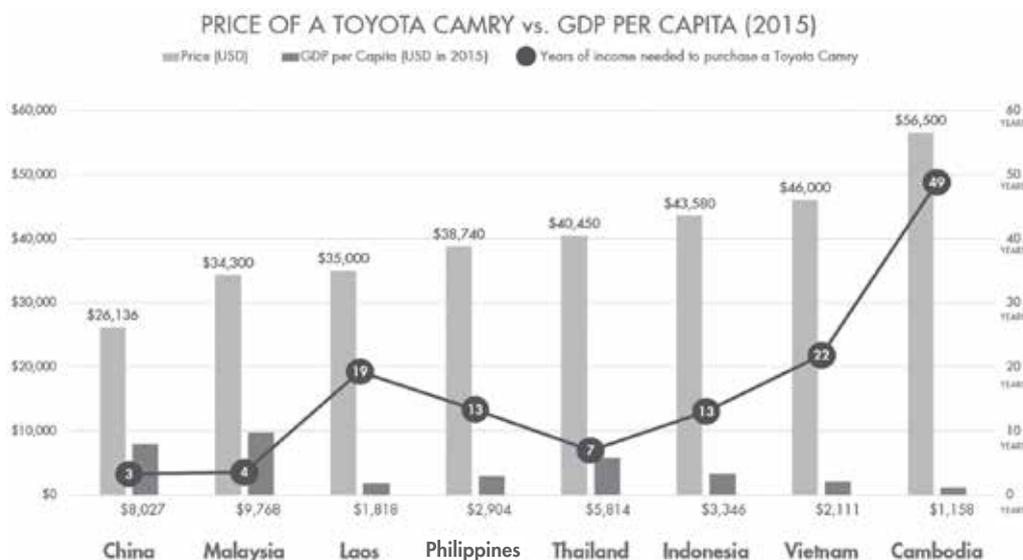
ISSUE DESCRIPTION

1. Authorized distributors who pay the required import tariffs and VAT and sell only cars that are appropriate for the Cambodian market.
2. Second-hand dealers of legitimately-imported used cars, or cars imported as new and subsequently sold by the original owner. The VAT compliance of these vendors is variable.
3. 'Grey market' dealers selling unofficially imported second-hand cars or cars rebuilt from scrap parts. These vendors contribute little if any taxes to the Royal Government and, furthermore, put unsuitable cars onto Cambodian roads.

By all approximations, this third 'grey market' category accounts for an overwhelming proportion of the market. Around 55,000 automobiles are added to Cambodian roads each year while, in 2015, there were approximately 4,000 new cars officially imported into Cambodia, which would represent less than 10% of cars being added to the roads.

That new cars represent less than 10% of the market is in part due to the high levels of taxation levied on imported new cars. When all charges are taken into account, the total tariffs for importing new passenger cars from outside of ASEAN into Cambodia can reach up to 145% of the value of the vehicle. New cars account for a disproportionate amount of the total taxes collected on automobile sales, which in turn account for one third of total government tax collection.

Under the current taxation system, high import tariffs on automobiles contribute to an affordability problem in the Kingdom. The graph below compares the price of a new Toyota Camry in Cambodia and other countries in the region and has been updated with the latest available car prices (2017) and GDP per capita values (2015). It demonstrates that, despite having the lowest GDP per capita of the countries listed, Cambodia also has the highest retail price for a car. Accordingly, the relative cost of the car (ie. The ratio of price : GDP per capita) continues to be more than twice as high in Cambodia compared to any other of the countries listed.



Thus, while taxes on new automobiles are an important source of public funds, they also render new automobiles unaffordable to most Cambodians. Accordingly, the vast majority of cars being sold in Cambodia are from the grey market and they generate little or no tax revenue for the Royal Government.

Optimizing a national taxation policy for automobiles requires a strong understanding of the industry and the multiple variables that influence consumer purchasing patterns. Higher taxes is not always an effective tool for increasing tax revenues, as was seen in Vietnam in 2011 when a 5% increase in automobile registration tax rates led to a 30% reduction in new car sales and thus a reduction in revenues for the state. However, Vietnam’s new car market subsequently boomed, increasing by 43% between 2013 and 2014 according to the Vietnam Automobile Manufacturers’ Association (VAMA) ⁸. Such growth can be attributed not only to economic growth and rapid urbanization, but in large part to the country’s strong regulation of second-hand imports.

Our goal is to work hand-in-hand with the Royal Government to develop a standardized, transparent tax and duty structure in which all parties are held to the same rules, action is taken against those who do not comply with Cambodian laws, and the automotive sector as a whole contributes a greater net amount to state revenues.

The Royal Government’s Industrial Development Policy recognizes that an optimized taxation system carries multiple benefits, expressing a commitment to “Review the tax and customs system by transforming it into a tool not only for revenue collection but also for promoting industrial development.”

The same principle applies within a consumer market such as automobiles. We believe that the taxation system for automobiles could be optimized in order to transition from the current status quo to a scenario in which only safe and context-appropriate cars are being sold in Cambodia, there are higher levels of tax compliance, and the policy framework is laid for the industry to grow and make greater contributions to the Cambodian economy.

In terms of revenue collection, the Royal Government would benefit by having a greater proportion of cars being sold by tax-compliant vendors. Under the existing scenario, over 90% of cars being sold in Cambodia are second-hand imports or cars reassembled from scrap metal and often sold by vendors who are not tax-compliant. If there were greater regulation to prevent the practice of selling reassembled cars, a greater proportion of cars being sold in Cambodia will have been subject to higher import tax thresholds. Consider the example below that compares the revenue that the Royal Government currently collects from an average 2.2 ton pickup reassembled from scrap metal versus one imported legitimately:

SCENARIO	CUMULATIVE TARIFFS	CUSTOMS EVALUTION	IMPORT TAXES DUE
Imported as scrap steel (code 7204.30.00)	17.7%	Assume 360 USD/ton	140.18 USD
Imported as new (code 8704.10.13)	77.1%	28,500 USD	21,973.5 USD

In this scenario, the pickup truck imported as new generates 156 times more revenue for the state. Accordingly, there are evident revenue collection opportunities to be realized in the formalization of the automotive sector.

✓ **Rationalize taxation policy for automobiles to support the growth of the formal sector.**

2017 RECOMMENDATION

To achieve greater tax compliance, greater tax revenues, and safer cars on the road, we recommend the simultaneous implementation of the following measures:

1. Limitations on the importation of cars that are inappropriate for the Cambodian environment (see ‘Import Regulations’ above), which will improve safety and quality as well as reducing opportunities for vendors who are not tax-compliant;

2. A rationalization of the import tariff structure on new cars so that authorized distributors can be competitive at a lower retail price, which will make new cars affordable to a greater number of consumers. Coupled with more effective enforcement of VAT requirements against all automobile vendors including second-hand car dealers, which will eliminate an unfair advantage in favor of vendors who are not tax-compliant.

It is important to reiterate that these measures can only work if they are simultaneous, as is evident in the hypothetical scenarios below:

SCENARIO A *Impact on the market*

“Improved regulation of imports without reforms to tax rates and enforcement”

Would improve the safety and reliability of cars entering the Cambodian market but would make the used car market more expensive while having no effect on the retail price of new cars. There would be less of a price gap between authorized dealers and vendors of used cars (legitimate or otherwise) - this would perhaps increase the number of new car sales, which generate more revenue per car for the Royal Government. However, the overall affordability of automobiles would be negatively impacted (new car prices remain constant and used car prices increase).

Impact on tax revenues

This may not impact tax revenues too heavily as grey market cars being sold under the current system do not generate very much tax revenue anyway. Nonetheless, reduced affordability is not a positive development for consumers nor for the automobile industry as a whole.

SCENARIO B *Impact on the market*

“Tariff reductions without improved regulations of imports”

Would enable authorized distributors to offer their cars at a lower price, which would be welcomed by consumers and authorized distributors alike and have some positive impact on new car sales. However, other vendors would continue to sell unofficially-imported and reassembled cars at significantly lower prices meaning that, even with import tariff reductions and with 10% VAT being paid by the second-hand dealers, authorized distributors would still struggle to be price competitive, and many unsuitable cars would continue to be introduced to Cambodia’s roads.

Impact on tax revenues

While there would be a greater quantity of new car sales, tax revenue on each new car would be less due to tariff reductions. As grey market vendors retain their unfair advantages, it is unlikely that the increase in the number of new cars sold would be able to offset the lost revenue from the tariff reduction.

Impact on the market

As in scenario B, authorized distributors would be able to offer their cars at a lower price, which would be welcomed by consumers and authorized distributors alike. As there would be better regulation of the type of cars being brought into the country, and as vendors of legitimately-imported used cars would be paying appropriate import tariffs and VAT, there would be a less distorted gap between the price of a new car and the price of a used car. Used cars would remain a cheaper option for price-conscious consumers, but would also be suitable for the Cambodian environment and would contribute to national tax revenues. New cars, which come with warranties and professional aftermarket care, would represent a more attractive economic proposition and sales would be likely to increase.

Impact on tax revenues

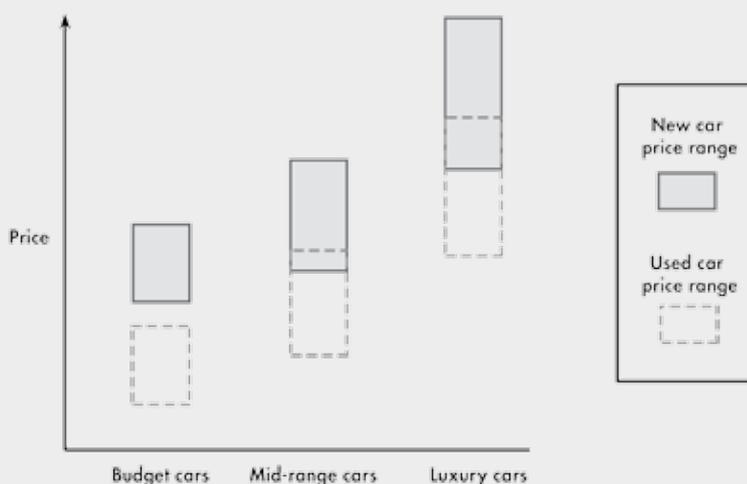
As the very cheapest cars currently on the market (unofficially imported and reassembled cars) would no longer be available, there could be some initial reduction in the total number of cars being sold in Cambodia each year. However, these grey market vehicles—currently accounting for the vast majority of cars sold in Cambodia—contribute little to national tax collection, so a reduction in their numbers would not result in a loss of revenue. The reduced price gap between new cars and used cars would be likely to incentivize consumers to make a longer-term investment in new cars, which now represent a more attractive economic proposition. The automobile sector as a whole could thus generate enough demand for new cars such that the quantity of sales would compensate for the reduction in tax collection per new car. Formalization of the used car market would also contribute towards a net increase in tax collection from the sector.

SCENARIO C

“A simultaneous improvement of import regulations coupled with a rationalization of the tax structure”

The Royal Government is quite rightly concerned about ensuring that automobiles are affordable for as large a segment of the population as possible and this is a concern shared by the private sector. While our proposals do entail the removal from the market of the very lowest-priced cars (reassembled vehicles that the Royal Government already recognizes as a safety risk and a means of avoiding taxes), we nonetheless believe that automobiles can be affordable in a better-regulated market. As the figure below demonstrates, there is no binary distinction between ‘expensive’ new cars and ‘cheap’ used cars – amongst CAIF members there are authorized distributors offering new cars in all price brackets, and even within a single brand there is a wide selection of vehicles available at different price points. In scenario C, we would see new cars being sold at a lower price than they are today and in competition with a healthy and tax-compliant used car market. An adapted taxation policy could make new cars more obtainable to a greater proportion of the population and can be designed to complement an overall government strategy of incentivizing investment in safe, efficient and environmental vehicles. At the same time, there would still be high levels of consumer choice and some consumers would opt for used cars in order to access

a higher-category vehicle or pocket the savings. Notwithstanding the removal of the most unsafe reassembled cars (which are indeed the cheapest) from the market, affordability for the cheapest brand of safe used cars would be largely unaffected as the price of a car will 'bottom out' after a certain number of years of operation regardless of whether it was initially imported under a formal tax regime or not.



Accordingly, in this scenario C, the net effect is a significantly higher proportion of total vehicles sold in Cambodia being brought into the formal economy. There would be increased sales of new cars which would compensate for the reduction in taxes per vehicle, and the used car market would offer a lower-priced option to consumers while still contributing to state revenues. We would thus expect an increase in net revenues for the Royal Government from taxation of the automobile industry.

In addition to the immediate budgetary benefits, Cambodia would benefit from having safer cars on the road and less casualties attributed to unsafe vehicles. Investment in newer cars and import regulations against unsuitable vehicles would result in less pollution of the local environment. Automotive brands, including those currently present in Cambodia as well as those yet to enter the market, will perceive a more level playing field which will encourage investment and the creation of skilled jobs.

Thus, we hope to have demonstrated that preventing the sale of reassembled cars while increasing the proportion of new and legitimately imported second-hand cars is more effective at increasing tax revenues than raising import taxes on new cars.

DIGITAL *and* NEW TECHNOLOGIES

During consultations with our members on the adoption of Digital and New Technologies within Cambodia, it has proven difficult to identify specific recommendations that could be implemented in the short term to enhance the relatively small industry (compared to regional neighbors) as a whole. The impact of new technologies can be so far-reaching and affects so many different aspects of doing business that to successfully adapt them to economic benefit requires public and private sector initiatives across a range of legal, regulatory, technical, and educational fields.

As such, the first two recommendations within this chapter are broader than most recommendations within the White Book. Focusing first

on the development of ICT-related industries in Cambodia, we highlight the need for, and potential gains from, deeper cooperation between government, private sector, and educational institutions and offer one central recommendation to reconsider the forum through which such strategic alignment is coordinated.

Our second recommendation focuses on e-commerce, a rapidly growing area within Cambodia that requires not only a legal and regulatory framework from the Royal Government but also cooperation between private sector stakeholders to collectively support the development of new market opportunities. To better understand this issue, EuroCham actively participates in the Cambodia eBusiness Working Group facilitated by the

British Chamber of Commerce. Over the past year we have heard of a lot of interest in Cambodia's e-commerce potential among foreign investors and development agencies, though their interest has been tempered by the delays to the passing of the E-Commerce Law, which we reiterate should be enacted as quickly as possible.

Finally, we include a series of recommendations specific to the telecommunications sector, recognizing that the economic benefits derived from new technology business models are dependent upon continued support for Cambodia's growing levels of connectivity. The industry is expected to face an increase in regulatory costs and fees as part of reforms that will be underway in 2017. This may include an increase in numbering fees,

introduction of spectrum auctions, restructuring of spectrum annual fees, revising of revenue share percentages, and so forth. The industry already pays a high proportion of its revenue to the Royal Government; in addition to telecom-specific taxation like revenue share, annual spectrum fees, regulatory and transit fees, the industry also pays general taxes such as corporate tax and specific tax on telecoms services. As such, we emphasize that upcoming reforms must strive to find the right balance between generating public revenues and ensuring the economic viability of the sector for existing and prospective investors.

Fostering an internationally competitive landscape

UPDATED

2016 RECOMMENDATION

Review the current format for public-private sector consultations within ICT.

POLICY RESPONSE

This past year has seen some more substantive engagement between the Ministry of Posts and Telecommunications (MPTC) and the private sector - for example, the MPTC has reached out to a number of business associations to disseminate a draft Prakas on a new ICT licensing scheme and to receive feedback from the private sector prior to releasing a final version. However, the development of the sector would be better served by the creation of a formalized framework for public-private dialogue on this subject.

ISSUE DESCRIPTION

Cambodia has considerable advantages that could be leveraged to create ICT jobs and benefit the national economy. Thanks to strong economic growth and good public and private investment in telecommunications infrastructure, Cambodia has the highest rate of internet connectivity growth in the Asia-Pacific region. Whereas 15 years ago limited infrastructure pushed costs to around 200USD per month for unlimited Internet service, digital technologies are now increasingly accessible to young Cambodians, facilitating the enhancement of baseline skills over the coming years. On the back of increasing connectivity and adoption of new technologies, Cambodian companies are able to offer related services such as developing software, building applications and outsourcing ICT services for foreign clients. This being the case, the development of the ICT sector in Cambodia is hindered by a number of limiting factors including a lack of skilled human resources, weak enforcement of intellectual property rights, and a lack of comparable tax incentives to support the growth of the sector as have been implemented in success stories such as Thailand and India.

IMPACT ON CAMBODIA

Previously, there has been limited opportunity for the business community to have a meaningful voice in reviewing draft legislation. For the private sector to be able to provide inputs into the policy-making process, they must be provided sufficient time to thoroughly review draft laws and to consult with affected parties—which was not always the case. This situation has been improving of late, with one example being the above-mentioned consultation initiated by MPTC with the private sector on a new ICT licensing scheme.

To support the development of a growth-creating ICT sector there must be strong coordination between government, private sector, and educational institutions. EuroCham and

our partner associations wish to continue to facilitate dialogue between these three essential components so as to support the greater development of the ICT sector in Cambodia. As an example of what can be achieved with effective public-private sector cooperation, we take lessons from the Quang Trung Software City (QTSC) in Vietnam which has government bodies, private companies and six educational institutions (both public and private) in a single location, and has 9,000 students at any given time whose curriculums are developed alongside the on-site employers specifically to meet their requirements.

In addition to job creation and contribution to tax revenues, a strong ICT sector has positive effects for the national economy at large. Increasing prevalence of and competition between ICT service providers translates into more companies adopting tools to increase productivity and save time and costs, ultimately improving their own service offering and financial performance.



Formally review the format for public-private sector consultations within ICT.

2017 RECOMMENDATION

Our one central recommendation for the development of the ICT sector is to formally revise the current format for public-private sector consultations within this domain. While, as described above, there have been improvements over the past year in communication between MPTC and the private sector, this consultation is on an ad-hoc basis at the request of the Ministry and there is no formalized framework through which the private sector can systematically provide inputs to assist in the development of the sector.

Development of an e-commerce framework

UPDATED

2016 RECOMMENDATION

Engage the Cambodia eBusiness Working Group to support the growth of e-commerce.

POLICY RESPONSE

The Royal Government has generally been willing to engage in consultations with the private sector on issues relating to the development of e-commerce. However, we are yet to see the passing of an E-Commerce Law which is having a detrimental effect on the sector's development in the Kingdom.

ISSUE DESCRIPTION

Internet accessibility and affordability is increasing rapidly in Cambodia – the Ministry of Posts and Telecommunications expects the number of citizens with regular Internet access to almost double to 9.5 million by 2020. Over the coming years, enhanced connectivity will continue to create new opportunities and platforms for Cambodian businesses to reach customers. If effectively harnessed, these opportunities can significantly improve financial performance and contribute to economic growth.

Cambodia has a nascent e-commerce market with a number of online shopping portals, but the sector remains limited compared to other ASEAN countries due to three types of obstacles:

- **Technical and operational factors.** Including the availability and price of telecommunications and Internet infrastructure, access to financial services, and logistical challenges relating to the delivery of goods. One of the most significant challenges is the need to introduce secure online payment gateways with adequate technical and legal protections; at present, e-commerce transactions in Cambodia take place mostly on a cash-on-delivery basis.
- **Socio-economic and cultural factors.** There is a need to raise awareness and educate people on using e-commerce platforms and, in particular, to build trust in such platforms in the eyes of consumers. For businesses, investment can be encouraged through the provision of accurate information about potential market size so as to inform business decisions and provide rationale for prospective investments in Cambodian e-commerce.
- **Legal and regulatory factors.** The development of the e-commerce sector requires a supporting body of laws and regulations to provide a framework for conducting such transactions in a way that provides adequate security and protection to consumers and businesses alike. This would include guidance on dispute resolution mechanisms

and their enforcement, and guidance on consumer protection and privacy laws which need to be robust yet industry-friendly. To this end the Royal Government is currently in the process of drafting an E-Commerce Law.

Of the three categories mentioned above, the ‘legal and regulatory factors’, specifically the delays in enacting the much-awaited E-Commerce Law, is the issue that is most holding back the development of e-commerce in Cambodia. Addressing these barriers as quickly as possible will help to create the favorable investment environment and supporting legal framework that will be needed to realize the potential of this sector in Cambodia. EuroCham and our partner associations, particularly the Cambodia eBusiness Working Group under the British Chamber of Commerce umbrella, seek to further develop a productive relationship with the Royal Government so as to assist in this process.

For a developing nation like Cambodia, e-commerce and e-business practices can be transformative to all stakeholders, including government and private sector actors. The Royal Government recognizes the growth potential offered by e-commerce, which the Ministry of Commerce has described as “the next big thing for our economy”¹.

IMPACT ON CAMBODIA

The successful development of the sector would benefit consumers who would see increased availability of (and competition to provide) products and services. For the private sector, adopting effective e-commerce strategies offers the promise of increased sales and revenues, improved cross-border marketing and trade, and reduced transaction and operational costs. In achieving these objectives, these companies will become sources of greater tax revenues for the Royal Government and provide additional economic benefits such as job creation.

Both multinational businesses and international development agencies undertake assessments of a country’s relevant bodies of legislation before investing in e-commerce ventures. The current lack of an E-Commerce Law in Cambodia serves as a considerable deterrent to these entities who could otherwise be helping to build the sector.

✓ **Develop a legal and regulatory framework to support the growth of e-commerce, including an E-Commerce Law and a new Law on Consumer Protection.**

2017 RECOMMENDATION

Recognizing that the growth of e-commerce in Cambodia is a long-term goal that encompasses a number of different development challenges, we emphasize the importance of establishing a supporting legal and regulatory framework and propose that this action be urgently prioritized. Specific legal instruments needed to facilitate the take-off of e-commerce include an E-Commerce Law and a new Law on Consumer Protection. The private sector will welcome the opportunity to provide inputs to this process and offer feedback on draft laws, and hopes to see these important pieces of legislation passed within the year.

Ensuring regulatory stability to support investment in the telecommunications sector

UPDATED

2016 RECOMMENDATION

Engage in substantive consultation with the private sector prior to implementation of the telecommunications re-licensing process.

POLICY RESPONSE

A draft Prakas describing the application process and fee structures for the re-licensing process was shared with private sector stakeholders in early 2017. We encourage ongoing consultation with the private sector prior to implementation of the re-licensing process.

ISSUE DESCRIPTION The Royal Government passed a new Telecommunications Law in December 2015 that includes a requirement for all businesses within the telecommunications sector to reapply for their operating licenses. The draft Prakas describing the application process and fee structures was released in early 2017 and is expected to be passed during the second half of the year. Most companies within the sector have existing long-term licenses and now find themselves subject to a certain amount of regulatory risk since there may be some changes to their rights and obligations under the new licensing regime.

IMPACT ON CAMBODIA To attract investment in telecommunications and in Cambodia more generally, it is important that the Royal Government provide investors a high level of regulatory stability and predictability. If the provisions of the new licensing system were to be significantly less advantageous than the current conditions under which the Kingdom's telecommunications operators have been working, this could have an impact on the image of Cambodia as an investment destination across all sectors; prospective investors will perceive higher risk of unfavorable regulatory changes.

✓ **Engage in substantive consultation with the private sector prior to implementation of the telecommunications re-licensing process.**

2017 RECOMMENDATION

We recommend that the Ministry of Posts and Telecommunications and the Telecommunications Regulator of Cambodia engage in substantive consultation with the private sector prior to the implementation of the re-licensing process.

Furthermore, we recommend that the Royal Government adopts the principle of ‘no worse off’ during the development and finalization of the sub-regulation—the new regime should honor terms agreed with existing investors and should not place excessive additional regulatory and cost burdens upon them. If taxes and regulatory costs were to be significantly increased, this would make telecommunications services less affordable to consumers and could have a negative impact on the sustainability of the sector.

Administration of the proposed Universal Service Obligation and Capacity Building / R&D Funds

UPDATED

2016 RECOMMENDATION

Structure a future Universal Service Obligation scheme to support the growth of the sector.

POLICY RESPONSE

Draft Sub-decrees for both a 'Universal Service Obligation Fund' (USOF) and a 'Capacity Building and Research and Development Fund' (CBRDF) were released towards the end of 2016. Industry stakeholders are providing feedback prior to their finalization.

ISSUE DESCRIPTION

The Ministry of Posts and Telecommunications will be introducing a 'Universal Service Obligation Fund' (USOF) and a 'Capacity Building and Research and Development Fund' (CBRDF) requiring telecommunications companies to remit to the Royal Government 2% and 1% respectively of their gross revenues related to telecommunications activity (with provisions for deductions). Funds raised from the USOF should in principle be used to lay the foundation for future growth within the industry by financing network and infrastructure developments in remote locations where it would otherwise be less economically viable for communications providers to establish services due to high set-up costs and the lower spending power of consumers.

Draft Sub-decrees for each fund were released towards the end of 2016. Industry stakeholders have provided feedback and, in particular, have been advocating to ensure that principles of good governance be applied to each Fund. Transparent fund management, a fair system of deductions, and clear mechanisms for reimbursement and/or utilization of the Funds to address the digital divide have been emphasized. The approved Sub-decrees are likely to be released by the second half of the year.

IMPACT ON CAMBODIA

Both schemes, if effectively managed and administrated, can serve as a useful tool in raising funds for projects of collective benefit such as improving connectivity in rural areas, increasing Internet speeds through infrastructural upgrades, and improving ICT literacy and capacity. Indeed, it can help to coordinate public and private sector initiatives aimed at developing underserved areas. In many countries, telecommunications companies are able to claim back their entire contributions for such Funds on the basis of their contribution to service expansion and sectoral development. Funding from CBRDF schemes in other

markets is often incorporated into public-private partnership projects, leading to increased numbers of programs and initiatives to improve ICT capacity building and R&D.

If, however, the money raised by both schemes is diverted away from the telecommunications sector towards other government activities, telecommunications businesses incur additional costs without gaining any additional benefits or growth opportunities. The Funds thus become an unproductive tax on the industry. Such a scenario is likely to hinder further investment and have a negative impact upon sustainable growth within the telecommunications sector.

✓ **Structure a future Universal Service Obligation scheme and R&D Funding scheme to support the growth of the sector.**

2017 RECOMMENDATION

The private sector welcomes the opportunity to contribute its fair share to national economic development. This being the case, it is important that feedback from industry be considered so that the finalized USOF and CBRDF schemes can complement the MPTC's vision of universal service, ICT capacity-building, and enhanced R&D.

In support of these development goals, payments or financial contributions must be collected from all licensees as required by the Law, and must be built around principles of good governance encompassing transparent fund management, periodic reporting and audits, and clear mechanisms for operators to utilize the funds. If both funds are structured this way, telecommunications businesses will incur additional costs through the levies yet these costs will be at least partly compensated by the new opportunities for revenue generation opened up by the projects funded by the scheme.

Allocation of spectrum

UPDATED

2016 RECOMMENDATION

Introduce a screening process for bidders on future spectrum auctions.

POLICY RESPONSE

A Sub-Decree covering spectrum planning, allocation, assignment and monitoring is being finalized. Towards the end of 2016, the Ministry of Posts and Telecommunications successfully allocated some spectrum via a comparative tender process, which is a viable alternative to spectrum auctions.

ISSUE DESCRIPTION

The Royal Government reserves the right to allocate and assign the use of defined wireless spectrum bands to telecommunication companies. At present there are many private sector entities holding spectrum in Cambodia, though some of these entities hold the spectrum exclusively while not actually providing any services. Wireless spectrum is a scarce natural resource and only a narrow range of this spectrum is suitable to deliver reliable wireless signals; a system of allocation that does not ensure effective utilization hinders the development of telecommunications services. The new Telecommunications Law requires a new Sub-decree to be developed to cover spectrum planning, allocation, assignment and monitoring.

It is our understanding that the Royal Government is considering introducing spectrum auctions which would allocate bands of spectrum via a competitive bidding process. This is an allocation method that is common in other countries. However, such auctions need to be subject to reasonable controls so as to avoid inflation of the price by speculative bidders who do not have the financial capabilities to pay their bid prices or the competencies to roll out services using the spectrum.

IMPACT ON CAMBODIA

The telecommunications sector in Cambodia would benefit from the Royal Government ensuring that spectrum is in the hands of service providers who will actually make use of it as these service-providing companies contribute more to tax revenues, job creation and increasing connectivity. Conversely, the hoarding of spectrum assets without offering services represents an opportunity loss for the Royal Government in the realization of its economic development objectives.



Introduce a screening process for bidders on future spectrum auctions.

2017 RECOMMENDATION

Should the Royal Government decide to introduce spectrum auctions, we would recommend that bidders be required to go through a pre-bidding procedure before participating in the auction from the Ministry of Posts and Telecommunications. Only those companies able to demonstrate serious intent to offer services on the spectrum that they are bidding on, for example by offering rollout plans and demonstrations of financial capacity, should be granted permission to participate in the bidding process. An alternative to this mechanism is allocation via comparative tender, which was successfully implemented by the Ministry towards the end of 2016.

Furthermore, as part of the upcoming finalization of the Sub-decree, we recommend that the existing spectrum allocations of current licensees should be maintained (unless not utilized at all), while minimal rollout obligations or similar controls should be considered to deter non-serious players. Moreover, more spectrum release for mobile services should be facilitated to support Cambodia's digital inclusion agenda.

Calculation of taxable revenues within telecommunications

RETAINED

ISSUE DESCRIPTION At present, the General Department of Taxation uses the value of phone credit sales as the basis for calculating the taxable revenue of telecommunications service providers.

This method of calculation is arguably inappropriate for certain types of business activity that contemporary telecommunications businesses engage in, particularly those involving the distribution of products and services via mobile devices. If, for example, a Cambodian telecommunications provider were to partner with a digital distribution platform so that Cambodian consumers could use their airtime to pay for mobile applications, the company would be taxed on the entirety of the value of the airtime despite receiving only a small percentage of that value as a commission from their partner.

As the market grows and the volume of transactions of this nature increases, the profit margin on each transaction tends to decrease. Therefore, the present revenue calculation model may in the longer term render certain types of business partnership that are common in other countries to be unviable in Cambodia.

IMPACT ON CAMBODIA Whereby the GDT's calculation methods make it unviable for Cambodian telecommunications companies to engage in distribution activities in partnership with other businesses this reduces consumers' access to these products and services and therefore represents a hindrance to economic growth.

Cambodia is already witnessing some of the benefits that mobile distribution of products and services can have. For example, telecommunication companies have played a major role in increasing the uptake of life insurance policies and personal accident coverage amongst the population and thereby contributed to increasing levels of financial security for many Cambodian families.

As discussed in the e-commerce section above, increasing levels of connectivity will over the coming years create plentiful new business opportunities within Cambodia. The Kingdom's tax regime needs to reflect the realities of contemporary business practices so that it can be directed as a tool to encourage rather than hinder product and service innovation in support of economic growth.

✓ **Review the method of calculating taxable revenues for telecommunications companies.**

2017 RECOMMENDATION

We request that the General Department of Taxation seeks consultation with the private sector to determine a more representative way of calculating taxable revenues for telecommunications companies consistent with international best practices.

GREEN BUSINESS

EuroCham is proud to have continued our substantive engagement with the Royal Government, through our Green Business advocacy committee, on issues relating to sustainable energy generation, energy efficiency, and responsible business practices. As in previous years, we are encouraged by the forward-looking approach taken by the Royal Government and its recognition of the benefits that renewable energy sources and sustainable business practices can provide to Cambodia's long-term sustainable development and economic growth.

We are able to report on some positive movements within the sector over the past year. In terms of market developments, there has been strong growth in solar energy generation with a significant increase in the number of installed residential and commercial systems within the Kingdom.

Furthermore, the Ministry of Mines and Energy has integrated solar energy into their strategic plan for national energy generation, and we have seen the successful completion of the Kingdom's first solicited tender for a solar farm project: a 10MW facility in Bavet, Svay Rieng, in partnership between the EDC and a private entity.

On the legislative side, the drafting and consultation process for the Environment and Natural Resources Code of Cambodia continues. The latest available draft (Version 9.1, dated 25 July 2017) contains some encouraging tax incentives for businesses engaged in sustainable energy generation, as well as those that provide services supporting sustainable energy devices or devices that enhance energy efficiency. However, we hope to have the opportunity to contribute to further revisions to the Code before it is finalized, particularly

provisions relating to the nationality requirements for Environmental Impact Assessment consulting firms, which remain a concern.

We maintain a positive outlook towards the development of green business within Cambodia; the Royal Government demonstrates an exemplary attitude and practical approach to this area, being willing to listen and giving due consideration to practical proposals to remove obstacles faced by our members. This year, having consulted with a broader range of stakeholders invested in Green Business, we have noticed a set of common themes that apply across multiple sub-sectors.

Firstly, the generation and adoption of sustainable energy practices in Cambodia would be enhanced by strategic interventions on behalf of the Ministry of Environment to help regulate the sector, ensure

quality, and protect against unfair competition. We would encourage continued public-private consultation in order to ensure that such regulations achieve their desired outcomes.

Secondly, and drawing upon the examples of other countries with greater adoption of green energy solutions, there is a need for more financial incentives on the part of the Royal Government to assist green businesses to be competitive against less sustainable counterparts. These incentives may require new policies and supporting legal instruments, such as a framework for enabling net metering for businesses generating solar energy. Finally, the sector would benefit from enhanced awareness-raising activities on the part of the Royal Government to educate the public about the benefits of adopting green business practices both at home and in business. If these three

principles can be put into practice as Cambodia continues to develop its infrastructure, it has the opportunity and potential to become a showcase for green business practices within Southeast Asia.

Specifically, our recommendations for the Royal Government within this sector are focused on five core areas:

Renewable energy sources. There is already strong private-sector involvement in renewable energy sources, particularly in solar energy and sustainable biomass. These sectors require government participation in order to be competitive against less sustainable energy sources, including financial assistance through favorable taxation rates, and the support of a robust regulatory system that can help to assure both residential and commercial households of the quality of solar products available in Cambodia.

Responsible business practices. Truly sustainable development must recognize the interplay between environmental and social risks. Indeed, the latest sustainability research finds that social responsibility and environmental responsibility actually go hand in hand. For example, many social issues (relating to livelihoods, health, education) derive from a lack of environmental responsibility (bad land use management, lack of wastewater treatment, projects affecting fisheries and other food sources), and vice-versa. As such, we welcome the development of comprehensive Environmental Impact Assessment legislation in Cambodia and encourage the Royal Government to ensure that companies have access to the necessary infrastructure to engage in sustainable waste management.

Energy efficiency. Alongside ensuring sustainable sources of energy, improving energy efficiency is a vital component of Cambodia's transition towards

a more sustainable and energy-independent society. While energy efficiency requires behavioral changes from individual consumers and businesses, there is more that the Royal Government can do to facilitate and encourage energy-efficient consumption.

Green buildings. Globally, the development and maintenance of the built environment accounts for between 40% and 60% of greenhouse gas emissions. As such, implementing policies that encourage best environmental practices within the construction sector would have a major impact on Cambodia's overall level of sustainability.

Green Financing. A range of multinational institutions, international partners, development banks, private investment funds, and some of the larger NGOs offer financial support to promote green business objectives in Cambodia. We have found that the private sector is largely unaware of

these funds and represents somewhat of a missed opportunity. The Royal Government is best positioned to compile and disseminate information about each of these funds to the private sector.

Support the competitiveness of sustainable biomass

UPDATED

2016 RECOMMENDATION

Assist sustainable biomass companies operating within the formal sector to be price competitive.

POLICY RESPONSE

The latest draft of the Environment and Natural Resources Code of Cambodia (dated 25 July 2017) contains some supportive articles demonstrating the Royal Government's recognition of the benefits to be gained by supporting a competitive and sustainable biomass industry. In particular, Book 8 of the Code, which relates to economic measures, accounts, fees and funds for the environment, stipulates monetary incentives to encourage businesses to invest in sustainable energy sources, explicitly including biomass.

Specifically, the draft law prescribes a reduction in income tax rates (for a defined period) for businesses generating above 20% of their energy for industrial activities using sustainable energy sources (or a proportionate reduction for companies generating less than 20% through sustainable energy sources). Likewise there are tax incentives for businesses that commercialize, install or provide technical support or maintenance for sustainable energy devices, and VAT exemptions for businesses that import, produce, distribute or sell devices that produce sustainable energy or increase energy efficiency.

The legal instrument for providing these exemptions is to be developed by the Ministry of Economy and Finance within one year of the approval of the Code.

ISSUE DESCRIPTION

Biomass, in particular firewood, is the primary energy source in Cambodia (71% of total primary energy supply in 2009)¹. Firewood and charcoal is used by up to 80% of households for their daily cooking needs, as well as by industry for the generation of electricity and heat for their production processes.

Reflecting forecasted increases in overall national energy demands over the coming years, biomass consumption is expected to keep growing in Cambodia with an upward trend for households continuing until at least 2030². Industry is increasingly adopting biomass gasification technologies to provide reliable energy at a lower price than the grid, while on a smaller scale these technologies represent viable solutions for rural electrification in off-grid areas.

In this context, biomass represents a valuable resource of energy for Cambodia. However, the biomass sector in the country at present is mostly unregulated and rarely sustainable. Biomass sources for industry are not always known and traceable, while at the household level it is almost 100% firewood and charcoal sourced directly from Cambodia's forests in an uncontrolled manner.

Companies providing sustainable biomass solutions in Cambodia struggle to be price-competitive compared to the informal sector, which benefits from the extremely low price of firewood and charcoal derived from traditional unsustainable sourcing practices. The informal sector procures wood unsustainably from Cambodian forests, pays extremely low wages, and sells its products in urban areas while evading any type of tax regime. This combination of advantages allows the informal biomass sector to sell wood and charcoal at lower prices than the formal sector which sources its material sustainably, complies with the Labor Law, and pays all applicable taxes.

Supporting biomass providers who operate within the formal economy and use sustainable sources would be beneficial for Cambodia. Given the high proportion of the country's total energy consumption that is derived from biomass, making the sector more sustainable represents a huge opportunity to achieve the goal of long-term energy independence. Biomass represents a valuable source of renewable energy only if the biomass resources (forests, woods, plantations, and agricultural/industrial biomass waste) are managed, harvested, and used sustainably. Informal sourcing of biomass, if not managed, could come to represent a dramatic and irreversible threat for the country's valuable natural resources and its ecosystem.

IMPACT ON CAMBODIA

✓ **Assist sustainable biomass companies operating in the formal sector to be price competitive.**

2017 RECOMMENDATION

We welcome the fiscal incentives described within the draft Environment and Natural Resources Code of Cambodia (dated 25 July 2017) and hope to see these passed into law over the coming year. We will be happy to provide support and share private sector inputs and feedback as the Ministry of Economy and Finance seeks to develop a legal instrument for the implementation of these exemptions.

Such initiatives help to reduce the price differential between the formal and informal sectors, enabling sustainable businesses to be more competitive and helping Cambodia transition towards more sustainable energy practices. Furthermore, we would stress that the adoption of these provisions need not result in a net loss in tax revenues for the Royal Government. Indeed, the increased competitiveness achieved through VAT exemption will foster a formalization of the sector, whereby informal businesses are encouraged to register since there is less financial benefit to remaining outside of the formal tax regime. The formalization, development and growth of the sustainable biomass sector would increase income from other applicable taxes (tax on profit, tax on salaries), which would be a large improvement on today's situation where the biomass sector is mostly comprised of informal companies that don't pay any taxes at all. Finally, fiscal incentives and a more formalized industry will be more likely to encourage greater levels of investment.

Support the competitiveness of solar energy

UPDATED

2016 RECOMMENDATION

Consider VAT exemptions and introducing a trial net metering scheme to encourage development of the solar industry in Cambodia.

POLICY RESPONSE

As with the biomass sector above, Cambodia's solar energy sector is set to benefit from the provisions of the latest draft of the Environment and Natural Resources Code of Cambodia (dated 25 July 2017) through the introduction of tax incentives for companies that incorporate solar energy into their energy generation mix, that commercialize, install or provide technical support or maintenance for solar energy devices, or that import, produce, distribute or sell devices that produce sustainable energy or increase energy efficiency.

Furthermore, Book 3, Title 6 (Sustainable Energy) introduces measures aimed specifically at developing the solar sector, including an import tariff exemption for all solar panels, batteries, and other components used in the installation of solar household systems. Significantly, the draft law contains a provision for Electricité du Cambodge to develop a legal instrument to allow for net metering and to develop a pilot feed-in-tariff system in which the government offers a fixed rate for the purchase of the renewable electricity generated from solar facilities or other renewable energy generation systems.

These measures, if implemented, would represent a major step in the right direction towards helping high-quality solar energy suppliers to make a more competitive offer in Cambodia, provided that they are supported and reinforced by appropriate actions by the Royal Government to ensure a level playing field and to limit the entrance of low-quality solar products to the market.

ISSUE DESCRIPTION

Solar power represents a source of energy that is complementary to the Royal Government's commitments to provide reliable energy sources to its population, to promote sustainable energy, and to transition towards a state of energy independence. Cambodia's territory receives strong Global Horizontal Irradiation (GHI) levels³, making solar energy a technically and commercially viable energy solution in much of the country. Solar energy can also help meeting the government's goals of reducing CO₂ emissions.

There are two scenarios where solar energy can be a viable alternative to conventional power sources:

1. Rural areas

Given Cambodia's high electricity costs and lack of distribution in rural areas, solar energy systems for residential homes in such areas provide long-term financial benefits for those who invest in them. It can prove more cost-effective than charging car batteries at costly

diesel-powered generators, which for some rural households is at present their only possible source of electricity. However, these rural areas also tend to have the lowest levels of disposable income, which makes the initial investment in solar energy more challenging and presents a significant obstacle to the greater adoption of solar energy in Cambodia. One other big challenge in rural areas is low-quality solar home systems. There are many informal companies selling bad quality materials damaging the image of solar technologies. On top of this, these companies are not tax-compliant and therefore create unfair competition to the compliant solar companies.

To date, where the Royal Government has been involved in the development of solar energy in Cambodia, the focus has tended to be on large-scale solar projects that can connect to the national grid. While the development of grid-connected solar is certainly a very worthwhile objective that can help to increase the proportion of domestically-produced energy in Cambodia and contribute towards Cambodia's Nationally Determined Contribution for emissions reductions to the UNFCCC, we seek to emphasize that off-grid solar also has an important role to play in meeting the energy demands of the people of Cambodia.

2. Urban areas and industry

Likewise for the industrial sector, businesses will only invest in solar energy if they expect to receive a return on investment within a reasonable time period. For areas that do have access to the national grid, solar systems of any size are suitable to be connected to it. Unlike stand-alone systems, grid-connected systems do not require batteries and are therefore cheaper and more cost effective. A grid-connected system fitted with an 'inverter' (to convert DC solar power into AC power) enables the consumer to use electricity supplied by either the solar system or by the grid.

Solar energy can be generated every day of the year. At times, the energy generated by the solar energy system exceeds the electricity usage of the consumer. A good example would be a grid-connected solar-equipped industrial factory that is closed on Sundays and national holidays – it generates the same amount of energy as working days but does not make use of it. At present, this surplus energy is simply lost, providing no benefit to the consumer nor to the national grid.

At this point we would like to stress that for both grid-connected and off-grid systems, solar energy is complementary to and not in direct competition with other sources of energy that Cambodia is investing in. Indeed, solar energy playing a greater role within the mix of Cambodia's energy sources would provide considerable advantages to the Kingdom's energy infrastructure.

IMPACT ON CAMBODIA

- Cambodia is still heavily dependent on imported electricity to meet its energy demands. An increase in the proportion of Cambodia's energy consumption being derived from solar energy would help to reduce the need for foreign energy imports.
- In recent years there has been heavy investment in large-scale hydropower projects within Cambodia. Such projects are significantly less productive during the hot, dry season, which coincides with the time when solar energy sources are at their most productive.

- Solar energy sources are productive during the day-time which is when the national grid is coping with peak demand. Electricity becomes more expensive to generate during peak periods and, therefore, solar represents an attractive alternative to reduce the need for peak load generation capacity.

In the case of off-grid systems, independent solar sources offer an independent source of energy in areas where it may not be economically viable to invest in the physical infrastructure needed to connect to the national grid. Extending the grid to a faraway village would cost the public sector thousands of dollars whereas a solar home system costs a fraction of this and can be paid for by the consumer. Accordingly, at a strategic level, a policy that encourages the proliferation of off-grid solar systems as decentralized solutions to electricity needs in rural areas can help the Royal Government to meet its rural electrification targets while it expands the capacity and coverage of the national grid.

In order for this important source of renewable energy to be successful in Cambodia, it must also be economically viable. This can be achieved through supportive government policies towards solar energy, both on the demand side and the supply side. We believe that it would be in the interests of the Royal Government to work alongside the private sector to enable fair competition between solar energy solutions and other energy sources. This would help to support the development of solar energy within Cambodia as part of a wider project of ensuring a suitable mix of energy sources to provide for the country's growing demand and making reliable sources of energy available to the entire population.

2017 RECOMMENDATION

✓ **Implement tax incentives and consider a trial net metering scheme to support the development of the solar industry in Cambodia.**

- Ensure that the final passing of the Environment and Natural Resources Code of Cambodia retains the tax incentives for sustainable energy sources contained in the current draft (dated 25 July 2017), and that an implementation mechanism is swiftly developed by the Ministry of Economy and Finance. This would help to address the affordability issue for home energy systems in lower-income areas and would help the solar sector to be economically competitive vis-à-vis less sustainable forms of energy production. It will also be an incentive for informal players to become compliant.
- Upon developing a legal framework to allow for net metering, as per Article 271 within Book 3, Title 6 of the draft Code, consider introducing a pilot scheme in which solar companies can each apply for permission to register a limited number of clients for a net metering scheme (or feed-in scheme). We suggest that this pilot scheme could be subject to the following conditions:

- The proposal is that the Ministry of Mines and Energy, the Electricity Authority of Cambodia and the Electricité Du Cambodge (EDC) would allow individual consumers who have access to the national grid to install a solar energy system and to connect to the grid behind the main switchboard inside the customer's premises. This means that during periods where a consumer is not using all the electricity generated by its solar facilities, surplus electricity flows back into the grid. In exchange, the consumer is rewarded with a correlating reduction in their monthly electricity bill; they receive back the value of the energy that they have contributed to the system.
- The scheme would not require EDC to pay households for surplus energy generated. If the consumer provides more energy to the grid than he or she consumes, the electricity supplier would benefit from this surplus electricity but would not have to pay the consumer. Where households supply more than they consume they may be required to nonetheless contribute a reduced fee to the EDC for maintenance and administrative fees.
- The proposal would not require (EDC) or any electricity supplier to invest in additional materials or infrastructure.

Net metering has already been embraced in other ASEAN countries including Indonesia and Thailand, each of whom recognize the concept's potential to considerably reduce the return-on-investment period for solar energy systems. The introduction of net metering schemes within Cambodia can make solar installations a far more attractive economic proposition and would increase the adoption of this sustainable energy source within the Kingdom.

Quality assurance for the solar energy sector

UPDATED

2016 RECOMMENDATION

Endorse the Good Solar Initiative as a national quality assurance program for solar energy and create a transition plan to eventually assume responsibility for management of the program.

POLICY RESPONSE

Articles 266 and 267 within Book 3, Title 6 of the draft Environment and Natural Resources Code of Cambodia dated 25 July 2017 contain provisions for the Electricity Authority of Cambodia (EAC) to establish an independent entity tasked with controlling the quality of energy generation devices supplied and used for the national market, in order to ensure that they comply with health, safety, and environmental standards. The independent entity, possibly drawing upon ISO standards, shall ensure that energy generation products passing through Customs are verified before being imported into Cambodia, and that the quality of the products sold in Cambodia for energy generation have received a certification of quality before they are commercialized. Article 268 stipulates that the independent entity will oversee and ensure that renewable energy product warranty standards are met and complied with.

These provisions represent a strong legal basis upon which a government-backed quality assurance program for solar energy can be developed in Cambodia.

ISSUE DESCRIPTION

While there is huge potential for solar energy in Cambodia, more could be done to help raise awareness and confidence in solar energy in the eyes of consumers. Many Cambodians are simply not aware of solar energy and the possible benefits it can provide to them, while others are aware of the technology but report low levels of trust based on bad experiences with low-quality products.

The creation of a quality assurance program for solar energy products, which can serve as an accreditation body to help consumers to differentiate between products of assured quality and those without guarantees, is an important component addressing the dual obstacles of consumer awareness and consumer confidence. Under such a system, solar suppliers can apply to the program's implementer for their products to undergo technical assessment and, if found to be to the required standard, have them recognized as a quality-assured solar product that can use the program's brand in its marketing. The program should include ongoing quality inspections in order to ensure that standards are maintained among suppliers using its brand. In parallel, it can work alongside local partners to implement awareness-raising activities to increase recognition of the brand as a recognized sign of high-quality solar products.

A reliable quality assurance program for solar energy represents an asset to the Cambodian energy sector. It can help to lay the foundations for the growth of the solar energy sector as part of Cambodia's overall energy generation plan, and ensure that this growth will be conducted in a sustainable manner by companies providing high-quality products and adhering to responsible business practices.

IMPACT ON CAMBODIA

✓ Develop a Government-approved national quality assurance program for solar energy products.

2017 RECOMMENDATION

We request the development of a national quality assurance program for solar energy that is endorsed and administered by the Royal Government and is recognized by the Cambodian population as a reliable sign of quality solar products. This could be achieved in coordination with international donors and, potentially, with the implementing organizations of existing assurance programs within the sector.

Application of Environmental Impact Assessment legislation

UPDATED

ISSUE DESCRIPTION We welcome the ongoing efforts of the Royal Government to produce a clear and comprehensive Environmental Code. In particular, we recognize the need for effective legislation to mandate Environmental Impact Assessments on projects that could have adverse effects on the environment and local communities so as to ensure that development projects are conducted in a sustainable manner.

At the current time, there are high levels of ambiguity over the current and future legal frameworks surrounding Environmental Impact Assessment legislation. Chapter III of the Law on Environmental Protection and Natural Resource Management (1996) requires that an environmental impact assessment (EIA) be conducted for projects likely to have an impact on the environment, whether they are public or privately funded, and the 1999 Sub-Decree #72 ANRK.BK on Environment Impact Assessment Process provides guidance on the procedural steps required when conducting an EIA.

A law specifically for Environmental Impact Assessment had been in the drafting phase since 2012, with several ‘draft law’ editions being made publically available online. It is our understanding that this Environmental Impact Assessment law has now been postponed and that EIA legislation is being incorporated into a broader Environmental Code which is yet to be formally approved.

It is not currently clear how the Code will be applied not only to future development projects but also retroactively against any project that does not comply with its requirements. The latest draft of the Environment and Natural Resources Code of Cambodia (dated 25 July 2017) states only that the Ministry of Environment will develop Guidelines to determine which existing and ongoing projects will be required to undergo an Initial Environmental Examination/Evaluation or Environmental Impact Assessment process.

With this in mind, our members are seeking guidance as to what action they can take now in order to meet the Royal Government’s expectations and avoid costly corrective procedures upon implementation of the Environmental Code.

IMPACT ON CAMBODIA A lack of clarity over what the Royal Government expects and requires from the private sector prevents businesses from knowing which actions should be taken in order to achieve full compliance. This creates additional legal and regulatory risks for current and prospective investors which must be incorporated into their calculations when considering Cambodia as an investment destination compared to other countries.

✓ **Provide clear and public guidance on how businesses can best prepare for upcoming Environmental Impact Assessment legislation, and assurances that there will be a suitable transition period upon enactment of the legislation.**

2017 RECOMMENDATION

- a. Provide clear and public guidance on how EIA legislation will be enforced until the Environment and Natural Resources Code of Cambodia and its supporting legal instruments have been developed and implemented.
- b. Provide assurances to the private sector that any retrospective implementation of EIA requirements within a new Environment and Natural Resources Code of Cambodia will include provisions for a transition period in which businesses will be afforded a reasonable period of time to take the necessary actions to become compliant prior to any punitive action.

Limited competition among Environmental Impact Assessment consulting firms

UPDATED

2016 RECOMMENDATION

Remove the nationality requirement for EIA consultancies from future EIA legislation.

POLICY RESPONSE

Within the White Book 2016 we raised the concern that the most recent draft of the Environment and Natural Resources Code of Cambodia contained requirements for any development project to conduct an EIA through an accredited company which must be of Khmer nationality. This 'nationality clause' is seemingly incompatible with non-discrimination commitments made by Cambodia to the World Trade Organization [WTO].

This issue has been raised to the Royal Government by the Directorate General for Trade of the European Commission. The Ministry of Environment subsequently agreed to take the Directorate General's concern into consideration, and the nationality criteria was omitted from some recent drafts (Draft 6 on 20 November 2016 and Draft 7 on 31 December 2016).

However, the 'nationality clause' has now been reintroduced in the latest draft (dated 25 July 2017). EuroCham will continue to encourage the Royal Government to consider removing this condition from the finalized Environment and Natural Resources Code of Cambodia.

ISSUE DESCRIPTION

The latest draft of the Environment and Natural Resources Code of Cambodia requires any new development project to conduct an EIA through an accredited company which must be of Khmer nationality.

According to Cambodia's WTO schedule of commitments, Cambodia allows foreign environment consulting services companies to offer EIA consulting services both cross-border and through local establishment (CPC 9409). The schedule has no additional restrictions or regulation requirements for offering environmental services in Cambodia.

Furthermore, the 'nationality clause' would serve to limit competition between Environmental Impact Assessment consulting firms by restricting market access. Limited competition would allow for inflated prices and a lack of incentive to provide a quality service.

On the basis of Cambodia's schedule of commitments to the WTO, as described above, articles that would restrict environmental consulting services to firms of Khmer nationality only, if approved to a law, would raise serious doubts about their compatibility with Cambodia's international commitments. This could ultimately damage Cambodia's credibility as an international trading partner and could discourage trade and investment.

IMPACT ON CAMBODIA

Furthermore, this issue can create additional costs and administrative burden for investors and have a negative impact upon Cambodia's attractiveness as an investment destination. Many of our members require EIAs from international consultants for their own internal governance procedures. For these companies, the legally-required EIAs by accredited consulting companies in Cambodia represent additional costs and little additional value.

✓ Ensure that nationality requirements for EIA consultancies are not included in the final Environment and Natural Resources Code of Cambodia or subsequent legal instruments, and consider accreditation applications based only upon the competencies of the applicant company.

2017 RECOMMENDATION

Ensure that the nationality requirement for EIA consultancies is not included in the final Environment and Natural Resources Code of Cambodia or subsequent legal instruments, and consider accreditation applications based only upon the competencies of the applicant company. Encourage accreditation applications from a greater number of consultancies in

Enabling responsible waste management practices

NEW

ISSUE DESCRIPTION Responsible businesses in Cambodia wish to manage their waste in a sustainable manner. However, there is little opportunity for them to achieve this objective given the current waste management infrastructure and practices in operation in the following areas:

- **Solid waste management.** Under the status quo, waste management contractors do not have facilities or systems in place through which companies can undertake some basic separation of their waste (for example, between papers and cardboards, biodegradables, and other waste such as plastics) and to have these treated in an environmentally responsible manner. Waste management contractors are selected by local authorities, who periodically undertake performance reviews of the selected contractor.
- **Waste water treatment.** There are presently no public facilities for waste water treatment. While some hotels and high-end developments have their own on-site treatment systems, a lot of waste water from both residential and industrial sites is directed into the waterways untreated. The Ministry of Environment has in the past issued some water pollution control standards, though implementation has been inconsistent. It is our understanding that an upcoming sub-decree on Management of Sewer System and Waste Water Treatment System, in the final stages of drafting, will allocate responsibilities for the development of sewer and waste water treatment systems and for the regulation of waste water outputs by residential and commercial sites.

IMPACT ON CAMBODIA As Cambodia becomes more urbanized and develops a greater consumer economy, the Kingdom's cities will produce greater quantities of solid waste. Indeed, Phnom Penh's daily output is expected to double between 2013 and 2030 with an increasing proportion of non-biodegradable waste such as plastics⁴.

The Royal Government has previously recognized the harmful environmental effects that can be caused without sustainable waste management practices and has expressed a commitment to reduce as far as possible the disposal of waste in landfills⁵. Best practices in sustainable waste management serve not only to meet the Kingdom's environmental commitments, but also to mitigate the associated risks to public health that come with less sustainable forms of treatment. This is equally the case when it comes to waste water treatment, where untreated waste can find its way into waterways used by nearby residents for their daily activities and cause public health issues.

Furthermore, there is economic opportunity to be found in effective waste separation, which enables different categories of waste to be incorporated into productive activities such as energy generation or composting.

✓ **Require local authorities to emphasize sustainability considerations within performance reviews for waste management contractors, ensure that sustainable practice plans be prioritized in future waste management service tenders, and enhance implementation of water quality laws.**

2017 RECOMMENDATION

- a. We request that the Royal Government require local authorities to include sustainability considerations as a criteria in performance reviews for waste management contractors, and that sustainable practice plans be considered as a priority in future waste management service tenders.

It is recognized that such an initiative would be necessary yet not in itself sufficient to achieve the desired results and would need to be coupled with public education initiatives around best waste management practices, stronger enforcement of solid waste management regulations, and investment in facilities such as recycling plants and composting sites.

- b. Full implementation of existing and upcoming water quality laws, in particular around mixed industrial-residential areas and when monitoring new development projects.

Labeling of products

UPDATED

2016 RECOMMENDATION

Work towards a mandatory energy efficiency labeling system for certain products sold in Cambodia.

POLICY RESPONSE

Book 3, Title 3 (Sustainable Consumption and Production) of the latest draft of the Environment and Natural Resources Code of Cambodia (dated 25 July 2017) foresees the creation of a voluntary environmental labelling system by the Ministry of Environment in cooperation with the Ministry of Industry and Handicraft. This 'ecolabel' concept is to include information on environmental burden, including but not limited to material content, energy inputs, and outputs. The Ministry of Environment is to determine categories of products and services to be recognized, criteria and standards, and a process for certification and auditing within one year of the passing of the Code, and the Royal Government commits to favoring products with 'Ecolabel' certification in public procurement processes.

While we would encourage a system of mandatory environmental labelling rather than a voluntary system, this initiative represents positive progress that, if successfully implemented and controlled, can help consumers to distinguish between energy-efficient and less efficient products.

ISSUE DESCRIPTION

At the present time, there is no requirement for products marketed and sold in Cambodia to carry any labeling denoting their energy efficiency. Some companies voluntarily display information about their products' energy efficiency levels based on frameworks from other countries, though many products sold in Cambodia display no such information. Accordingly, it is difficult for consumers to distinguish between energy-efficient products and less energy-efficient products. Energy-efficient products often represent more sophisticated, expensive technologies, and their higher retail prices can be difficult to justify to consumers who are uninformed about how the product's efficiency compares to other models. Consumers may also be unaware of the cost-savings that can be realized through investment in products that consume less electricity. Similarly, there are no requirements to display energy efficiency information for industrial products such as heavy machinery.

IMPACT ON CAMBODIA

Encouraging consumers and industrial operators to invest in energy-efficient products will be of utmost importance in realizing Cambodia's energy efficiency objectives as specified in the Climate Change Strategic Plan 2013-2024 amongst other strategic policy documents. Specifically, this recommendation relates to Strategic Objective 4, to promote low-carbon planning and technologies to support sustainable development.

Furthermore, the increased adoption of energy-efficient products would help to reduce Cambodia's reliance upon foreign fuel imports as part of a transition towards energy independence.

✓ **Create a public-private technical working group focusing on the labelling of energy-efficient products.**

2017 RECOMMENDATION

We propose the creation of a public-private technical working group to support the Ministry of Environment in developing an energy efficiency labelling system. The group's first objectives would be as follows:

1. The development of Cambodian guidelines and standards for an energy efficiency labelling system, in line with international standards, for certain products sold in Cambodia;
2. Strengthening of capacity for the testing and labeling of energy-efficient products and the enforcement of energy efficiency labelling regulations;
3. Awareness-raising among consumers and retailers about the Cambodian energy efficiency labelling system.

The technical working group can study regulation from other markets such as the European Commission's Energy Labelling Directive to inform the group's designs. The initial focus could be on standards for common products such as air conditioners, water heaters, refrigerators, ovens, cookers, and fans etc.

Awareness of energy efficiency

UPDATED

ISSUE DESCRIPTION Awareness about energy efficiency amongst the private sector could be enhanced, particularly in industry and the commercial and public services sectors. While industry and the commercial and public services sectors currently do not account for the largest shares of the total energy consumption in the Cambodian economy, at 16% and 7% respectively, these sectors account for much of Cambodia's actual and potential economic growth. Many businesses could not only reduce the environmental impact of their operations but make considerable cost savings by transitioning towards more energy-efficient equipment and processes, though awareness of such possibilities is sometimes low.

Many business owners do not have the skills, nor the personnel with the skills, to optimize their energy consumption. Suppliers of energy efficiency solutions are mistrusted and find it difficult to convince businesses of the economic case for investment in energy efficiency. Since most energy efficiency solutions require a higher up-front investment in order to achieve lower operational costs (OPEX), business owners need to believe in the OPEX reductions before taking the decision to invest. Improving information flows is crucial to this process.

IMPACT ON CAMBODIA Increasing energy efficiency levels within industry and the commercial and public services sectors is an important element in realizing Cambodia's energy efficiency objectives outlined in the Climate Change Strategic Plan 2013-2024 (along with other strategic policy documents). Specifically, this recommendation relates to Strategic Objective 5, to improve capacities, knowledge and awareness for climate change responses. Cambodia's Intended Nationally Determined Contribution (INDC) specifies that 7% of the country's GHG reductions to 2030 (or 727,000 tonnes of CO₂ equivalent) will be achieved by "promoting use of renewable energy and adopting energy efficiency for garment factory, rice mills, and brick kilns" (RGC, 2015).

In addition to the aforementioned contribution to Cambodia's energy independence, the cost savings that can be realized by the introduction of energy-efficient equipment and processes in industry will help to make Cambodian businesses more internationally competitive and thus have a positive impact upon economic growth.

✓ Consider introducing a 'Green Industry Award' to recognize businesses who have demonstrated excellent practices in energy efficiency.

2017 RECOMMENDATION

Consider introducing a 'Green Industry Award' to recognize businesses who have demonstrated excellent practices in energy efficiency. This could be supported by information campaigns targeted at industry and the commercial sector about the benefits of energy efficiency investments for businesses. The purpose would be to raise awareness of energy efficiency best practices and provide opportunity for businesses to learn about energy efficiency options available to them. The format could be similar to the "*Samdech Techo Hun Sen Prime Minister Eco-Business Awards for Tourism.*"

Considering the creation of a Green Building Council

UPDATED

ISSUE DESCRIPTION Cambodia is currently experiencing a construction boom and can expect heavy investment in its built environment over the next 10 to 15 years. For this reason, it is crucial that the Royal Government sets a policy direction that encourages best practices in architecture and construction in order to ensure the long-term sustainability of the construction industry and Cambodia's urban areas. Indeed, the Kingdom's relatively low levels of urbanization compared to other ASEAN countries provides an opportunity to bypass some of the urban planning problems encountered elsewhere, to take a leadership role and become a renowned model within ASEAN and the international community for sustainable building solutions.

Cambodia remains one of the last ASEAN countries without official guidelines and regulations on sustainable buildings. The creation of a national accreditation body for sustainable buildings to serve as the authority that gives ratings and awards based on the sustainable credentials of a building would be a major step in encouraging greater adoption of sustainable building practices.

IMPACT ON CAMBODIA 'Green buildings' are sometimes perceived as being considerably more expensive than regular construction projects, but this is not necessarily the case. A number of leading architectural design companies offer simple and cost-effective sustainable building solutions appropriate to the Cambodian environment. These solutions don't need to be 'high-tech' – they can be as simple as considering the positioning of the building in relation to the trajectory of the sun throughout the day or positioning openings so as to release heat and reduce the need for air-conditioning in this tropical climate.

Encouraging sustainable building practices would offer the Kingdom multiple benefits:

- **Quality of investors.** Green buildings provide greater financial benefits over an extended investment period. In addition to direct cost savings from reduced energy consumption, green buildings are considerably more likely to retain their asset value as investors and tenants become more educated and concerned by sustainability credentials and energy efficiency. Therefore, national policies that foster and require sustainable building practices encourage the medium- and long-term investors that Cambodia needs for its continued economic growth.
- **Productivity and competitiveness.** Multiple studies⁶ have found workers within sustainable buildings to be more productive and require fewer sick leaves due to their more comfortable working environment, which enhances competitiveness and benefits the national economy.

- **Supporting industries.** Wherever possible, green buildings make use of locally-sourced materials and therefore support the development of supporting industries for the construction sector within Cambodia.
- **Environmental impact.** Best practices in building and construction would make a major contribution to the Royal Government’s greenhouse gas mitigation targets – globally, the building sector represents between 40% and 60% of most countries’ GHG emissions.
- **Resource sufficiency.** Enhanced energy efficiency helps to reduce Cambodia’s dependence on foreign fuel imports and mitigates urban development challenges such as overconsumption of water supplies.



Explore the creation of a Cambodian Green Building Council.

2017 RECOMMENDATION

Create a public-private technical working group to begin exploring the creation of a Cambodian Green Building Council and the criteria that it would use for its accreditations. These criteria would need to be based on common sense, reflecting local specificities and providing realistic goals for existing as well as future buildings. The working group could include the National Council for Sustainable Development, the Ministry of Land Management, Urban Planning and Construction (Department of Construction), the International Finance Corporation (IFC), and representatives of the private sector.

We propose that once the working group is established, it sets a target of becoming a ‘prospective member’ of the World Green Building Council (<http://www.worldgbc.org/worldgbc/become-member/>) by 2018.

Furthermore, the working group’s expertise could be incorporated into longer-term national urban planning and other relevant projects such as the drafting of legal instruments supporting the Environment and Natural Resources Code of Cambodia, and Environmentally Sustainable Cities initiatives. Integration of the group’s work into these important projects would help to maximize the benefits that green buildings can provide to the national economy.

Disseminating information about existing green financing programs

NEW

ISSUE DESCRIPTION There are a number of ongoing projects, focusing specifically on Cambodia or including the Kingdom as part of a broader regional scope, that offer financing solutions for the private sector to invest in green energy. These programs are funded and administered by a variety of sources including agencies of multinational institutions, international partners, local and development banks, private investment funds, and some NGO associations. Each will have different criteria and performance indicators, focusing on different types of green energy solution or on specific themes and sectors.

To business owners unfamiliar with the world of green financing, it can be challenging to obtain information about which programs may be applicable to their company or what initiatives they could undertake that may render them eligible for financing through some of these programs.

The Royal Government is well-positioned to collect and disseminate information relating to green financing possibilities. The National Council for Sustainable Development has undertaken some positive initiatives in attempting to disseminate information about some programs, such as a mapping of selective donor programs for Climate Smart Agriculture⁷, though these initiatives have been ad-hoc and self-avowedly non-exhaustive.

IMPACT ON CAMBODIA A solution that could make it easier for the business community to be aware of green financing initiatives available to them would support the Royal Government's objectives of increasing private sector participation in Cambodia's mitigation and adaptation responses to climate change. It would also enable donors and development partners to have a greater understanding of existing programs applicable to the Kingdom so as to better coordinate their initiatives and more precisely identify areas and issues in need of support.

✓ **Develop a centralized information point for all green financing programs that may be applicable to the private sector and disseminate through an appropriate tool such as an online portal.**

2017 RECOMMENDATION

We propose that the National Council for Sustainable Development develops a centralized information point (such as an online portal) for all relevant green financing programs. This portal could be regularly updated with a listing of programs and funding sources along with their objectives, criteria, length of their mandates, and links to pages with more detailed information. We hope that this central information point would come to be seen by the business community as the initial 'go-to' when considering green financing possibilities in Cambodia.

HEALTHCARE

European healthcare brands are well-regarded in Cambodia, and pharmaceuticals are one of the major commodity categories that the EU exports to Cambodia (€56 million in 2015) ¹. EuroCham Cambodia represents a number of pharmaceutical and medical equipment companies within the healthcare sector, and we therefore welcome the open and reform-minded approach of the Ministry of Health and seek to collaborate with the Ministry and other relevant public bodies to help facilitate continued growth of the healthcare sector in Cambodia.

As in previous years, the Ministry has been open to dialogue with the private sector and has sought to be helpful in finding solutions to some of the challenges faced by our members, for example in importing bridging stock while waiting for product registration renewals to be authorized. While appreciating these efforts, we note that

the solutions have tended to be on an ad-hoc and case-by-case basis, and we suggest that to have long-term predictability and efficiency it would be better for solutions to be provided through formal legal instruments applied in all cases.

Parallel importing, which is pervasive in Cambodia, remains a major concern for our members in the healthcare sector. The Kingdom has a good body of legislation when it comes to healthcare but low levels of enforcement can create safety risks for patients. We stress that such practices can create serious health risks for consumers – this is not simply an issue of intellectual property but a real concern over the quality and safety of pharmaceuticals being made available to Cambodian citizens. We are encouraged by Prakas 186 of the Ministry of Commerce, dated 31 May 2016, which has made it possible for the first time to register as an exclusive dealership of

trademarks registered in Cambodia and will help to provide a stronger legal basis for challenging parallel imports. Combatting this problem will require high levels of cooperation and coordination between multiple public institutions and the private sector, and our Healthcare Committee looks forward to engaging the Royal Government on this topic.

Issues around the product registration and renewal process also remain as a major cause of administrative bottlenecks, and this chapter includes a number of recommendations that can help to render these processes more streamlined and efficient. In the longer term we understand that the Ministry will consider the implementation of an online registration system for healthcare products, which we would enthusiastically support.

The final sections of the chapter relate to specific issues regarding the Kingdom's Over-The-Counter list, which can impact upon promotion and marketing activities, and a recommendation to improve the public tendering process. Our proposals for a formalized public-private communication platform for healthcare have been updated to reflect some legislative developments from this year and to highlight the opportunity for inter-ministerial and cross-sectoral dialogue on the issue of parallel imports.

Prevention of parallel imports of pharmaceuticals

UPDATED

2016 RECOMMENDATION

Implement additional measures to prevent parallel importing of pharmaceutical products.

POLICY RESPONSE

The Ministry of Commerce has published Prakas 186 on Procedures to Record and File Permission Letters for Imported Goods Bearing Exclusive Trademarks (31 May 2016). Whereas previously Cambodia did not permit companies or individuals to hold the exclusive right to import any particular product, owners of trademarks registered in Cambodia and their distributors can now apply to the Ministry's Department of Intellectual Property Rights to have their commercial relationship recognized as an exclusive dealership. Under the provisions of the Prakas, companies with registered exclusive dealership status have the right to request enforcement actions against parallel importers of their registered trademark.

While the publication of this Prakas is clearly a positive step in the battle against the parallel importing of pharmaceuticals, it is not yet clear what recourse companies with registered exclusive dealership status will have when reporting infringement of their trademarks, and which processes they will have to follow in order to initiate enforcement actions.

ISSUE DESCRIPTION

Cambodia has a process in place for the registration of pharmaceutical products which mandates detailed technical specifications of both the product and its packaging. According to the law, only products that match the specifications registered with the Ministry of Health can be imported into Cambodia. Furthermore, as mentioned above, the Ministry of Commerce has now introduced a Prakas enabling the registration of exclusive dealership status for trademarks that are registered in Cambodia. This being the case, large quantities of parallel imports are openly on sale within some Cambodian pharmacies, which is indicative of a need for further implementation of existing laws.

For purposes of clarity, parallel imports are to be differentiated from counterfeit imports. Whereas counterfeits are 'fakes' that falsely adopt the name and branding of a registered product, parallel imports may indeed originate from the authorized product manufacturer and meet all of the product specifications within the country of manufacture. However, they nonetheless pose health risks when transported by a secondary entity into Cambodia. Multinational pharmaceutical companies take climatic conditions into account when designing their packaging and regularly modify their packaging for specific countries so as to protect the product in that country. Cambodia has a tropical climate and many of its pharmacies are not climate-controlled, meaning that pharmaceutical products require adapted packaging so as to prevent them from spoiling in the heat. Parallel imports originating from Europe will have packaging appropriate for the European environment which

may be inadequate and inappropriate for the Cambodian environment.

Additionally, products brought into Cambodia by parallel importers can be spoiled due to incorrect treatment during transit. One member raised an example in which parallel importers were bringing in insulin bearing the company's brand which proved to be of poor quality, resulting in health risks to consumers and damage to the brand's reputation. An investigation found the insulin to have been transported to Cambodia under inappropriate climatic conditions - insulin needs to be 'cold chain managed' (kept in storage and distribution facilities designed to maintain a specific temperature range) to prevent against spoilage.

Our primary concern on this issue relates to safety rather than revenues. Parallel imports represent a health risk to Cambodian citizens and residents as there are no means of assuring the quality of the product. The average consumer cannot be expected to have the technical knowledge to determine whether or not a pharmaceutical product is spoiled or not, therefore responsibility has to fall upon regulators to provide quality assurance through effective management of imports.

In most cases of parallel importing, the product manufacturer will have already registered the sale in another country and therefore does not incur any financial loss as a result of parallel importing. However, in the longer term, higher levels of parallel importing are likely to discourage investment by multinational pharmaceutical companies in the domestic economy. If the Cambodian subsidiary is unable to record a suitable financial performance due to parallel importing, they are unlikely to be granted a budget for activities such as consumer education and employee training.

IMPACT ON CAMBODIA

✓ **Implement additional measures to prevent parallel importing of pharmaceutical products.**

2017 RECOMMENDATION

With the legal instruments now in place to have exclusive dealerships recognized by the Ministry of Commerce, in addition to the technical specifications registered with the Ministry of Health, we request that the Ministries and GDCE cooperate with one another in order to take a more proactive approach in identifying and preventing parallel pharmaceutical products being brought into the country and alerting exclusive dealerships about such incidents. Measures that would facilitate this cooperation would include:

1. Ensure that the Ministry of Health issue import licenses for pharmaceutical products only where products match the registered specifications and are not being imported by any individual or company that would be infringing upon the rights of a registered exclusive dealership. Effective implementation of this principle would ideally require an inter-ministerial electronic platform to share the applicable information and documents.

2. Require that customs officials have simple access to the registered specifications for pharmaceutical products, including their packaging and artwork, so that they can more easily check for discrepancies between the registered specifications and any cargo being brought into Cambodia.
3. In relation to Prakas 186, issue supporting legal instruments to provide instruction on how exclusive dealerships can report evidence of parallel importing. Within these instruments, we strongly recommend that the reporting mechanism should be free of charge, and that clear processes and responsibilities are prescribed to relevant public bodies. This will ensure that appropriate enforcement actions are taken and that formal reports of the investigation are provided to the exclusive dealership.
4. Conduct regular inspections of pharmacies through authorized and competent bodies, and confiscate products that do not match registered specifications so as to encourage pharmacies to be more diligent in sourcing their products.

Process for the obtaining of exceptional import licenses

RETAINED

Products actively going through the renewals process are not automatically entitled to receive import licenses. Under normal circumstances, a product registration certificate is required in order to obtain an import license from the Ministry of Health. Consequently, when there are delays in the product registration process (which, as mentioned above, can take up to two years), companies are prevented from importing their products into Cambodia during this period.

ISSUE DESCRIPTION

The Ministry of Health has been helpful on this issue and has agreed to consider requests for exceptional import licenses on a case-by-case basis. Appreciating these efforts, our members would nonetheless benefit from a more formalized process through which they can apply for exceptional import licenses where a product registration has been delayed due to factors outside of the company's control.

Delays in product registration and renewal can prevent important and, in some cases, life-saving medicines and equipment from entering the country. This lowers the quality of healthcare available to Cambodian citizens and residents for two reasons: first, it prevents products benefiting from the most recent research and development from reaching Cambodia; second, it creates demand for counterfeit products. This also creates significant operational burdens for healthcare companies which reduces the Kingdom's attractiveness within this sector.

IMPACT ON CAMBODIA

✓ **Introduce a process for obtaining exceptional import licenses for products that have an ongoing registration or renewal application.**

2017 RECOMMENDATION

Create a formal application process through which healthcare companies in Cambodia can apply for exceptional import licenses for products that have an ongoing registration or renewal application being processed.

To ensure the utility of this process, we recommend publishing guidelines limiting the scenarios in which products may be eligible for exceptional import licenses, such as where there is an urgent medical need to help the product reach patients or where a valid registration certificate can be provided from one of a list of pre-approved countries.

Guidance on fees for post-registration variations

NEW

ISSUE DESCRIPTION Companies that have registered pharmaceutical products with the Ministry of Health at times need to make minor variations to pre-registered products in order to improve the product (eg. as a result of improved research and development) or to provide better information to doctors and patients by updating the usage and safety guidance. In such instances, the trademark owner is required to register these variations with the Ministry of Health, though their product retains the same product registration number.

At present, there are no guidelines on the official fees that are required to register these variations. Our members have found inconsistency in the fees being applied and would appreciate clarification.

IMPACT ON CAMBODIA The lack of guidance on official fees creates opportunity for discretionary decision-making on pricing which results in inconsistency and unpredictability for companies that are seeking to be compliant. Multinational companies are willing to pay to have their post-registration variations recognized and approved by the Ministry, though their global processes require evidence that fees being paid are in accordance with official tariffs. Where such a tariff list is unavailable, this can be a hindrance to compliance and can ultimately discourage companies from bringing their improved products and informational packaging to Cambodia.

2017 RECOMMENDATION

✓ **Issue an official tariff list for the administrative processes concerning post-registration variations.**

We request that the Ministry of Health issue an official tariff list for the administrative processes concerning post-registration variations.

Requirements for laboratory testing

RETAINED

Cambodia's processes for the registration of healthcare and pharmaceutical products are modeled upon the French system. While in principle this is a good system that should provide the necessary oversight and governance for health care products being consumed in Cambodia, in reality this system can create burdensome delays for product registration and renewals as Cambodia does not have the same facilities as those used in France. Consequently, the registration and renewals process is taking significantly longer than it should; our members report that renewing a product that should take six months is taking up to two years, and registering a new product regularly takes two years.

ISSUE DESCRIPTION

While recognizing and being fully in accordance with the need to ensure the quality of healthcare products being registered and imported into Cambodia, we believe that certain steps within the existing process could be removed or reduced in order to streamline the overall registration and renewals process.

Prolonged product registration and renewal processes make it more difficult for healthcare companies to do business in Cambodia and have a negative impact upon prospective investors' perceptions of Cambodia. More importantly, delays in product registration and renewal can prevent vital, life-saving medicines and equipment from entering the country.

IMPACT ON CAMBODIA

✓ **Publish a list of countries or institutions from which laboratory tests of healthcare products can be accepted in lieu of laboratory testing in Cambodia.**

2017 RECOMMENDATION

Amongst our membership are a number of multinational companies operating within healthcare, all of whom adhere to global quality standards. Pharmaceutical and other healthcare products are not manufactured within Cambodia, and any such product being imported into Cambodia will have already received laboratory testing within its country of origin. Where this is the case, the requirement to subject the product to laboratory testing within Cambodia can be seen as unnecessary. We understand that the Ministry sometimes accepts laboratory tests from certain countries (such as France) as evidence of product quality, but this is done on an ad-hoc basis. As such, we request the Ministry of Health to publish a list of countries or institutions from which laboratory tests of healthcare products can be accepted by the Ministry in lieu of laboratory testing within Cambodia.

Furthermore, we recommend that the Ministry consider removing the requirement for laboratory testing in cases of product renewal. Provided that no substantive changes have been made to the product, there is no reason that the quality or safety of the product should have changed since registration or the last renewal.

Scheduling of registration and renewal committee sessions

RETAINED

Decisions on product registration and renewal take place in Ministry of Health committee sessions. The committee receives all relevant documents from the applicant beforehand and reviews before making a decision. Our understanding is that the committee aims to meet four times a year but, at present time, there is no clear schedule for when registration and renewal committees are to be held. Our members are often unaware of when committee meetings are due to take place or only become aware of an upcoming meeting on short notice.

ISSUE DESCRIPTION

Greater visibility of the dates of registration and renewal committee sittings would enable healthcare companies to better coordinate their delivery of applicable documents which would help to reduce the aforementioned delays that are common in healthcare product registrations and renewals in Cambodia.

IMPACT ON CAMBODIA

✓ **Publish a clear schedule of sittings of the Ministry of Health's registration and renewal committee.**

2017 RECOMMENDATION

We encourage the Ministry of Health to publish a clear schedule of registration and renewal committee sittings on the Ministry of Health website.

Categorization of medical equipment for registration purposes

UPDATED

ISSUE DESCRIPTION The procedures and documents required to register medical equipment in Cambodia depend upon the Ministry's categorization of the product. At present, some medical equipment distributors perceive a lack of clear regulations relating to the registering of medical equipment. The guidelines provided appear to be based upon multiple regulatory systems from other countries; some of these guidelines can overlap with one another and create ambiguity over exactly what procedures and documents are required to register the product in question.

Reagents are substances added to a system to cause a chemical reaction, typically used in lab testing. Companies that provide medical equipment in Cambodia often also supply very specific reagents based on the activities of their clients; there can be many hundreds of reagents applicable to one piece of medical equipment. At the present time there appears to be inconsistency in the administrative procedures for registering reagents, with some companies permitted to register applicable reagents alongside a piece of medical equipment on one registration document (and therefore one registration fee), and others required to register each reagent separately.

IMPACT ON CAMBODIA Ambiguity in the categorization of medical equipment contributes to the aforementioned delays in the registration process for healthcare products in Cambodia as companies are unable to determine what the Ministry's requirements are for a specific medical equipment product. To improve this situation would result in less administrative burden for both the Ministry and the private sector.

The apparent inconsistency in the registration requirements for reagents can contribute to unfair competition - one registration process can cost around 100 USD, so being required to register many hundreds of reagents separately as opposed to collectively can be very costly for suppliers. It can also discourage suppliers from making some products available in Cambodia, which can have a negative impact upon health, operations efficiency, and research and innovation.

✓ **Define a clear list of product categories for medical equipment with details of the procedures and documents required for each, and publish formal procedures for the registration of reagents.**

2017 RECOMMENDATION

We respectfully request the Ministry of Health to define a clear list of product categories for medical equipment with details of the procedures and documents required for each. The list could be made available on the Ministry of Health website along with guidelines on how to clarify the categorization of a product where not immediately obvious.

Furthermore, we request that the Ministry of Health publish formal procedures for the registration of reagents and ensure that all suppliers of reagents are subject to the same registration requirements.

Classification of over-the-counter (OTC) products

UPDATED

2016 RECOMMENDATION

Review and update the OTC list so as to align with the classification systems of other ASEAN countries.

POLICY RESPONSE

While Cambodia's OTC list has not yet been updated, there has been a strengthening over the past year of the controls on the dispensing of medicines. In accordance with Notification 410 of the Ministry of Health, dated 21 July 2016, pharmaceutical companies are now only permitted to dispense medicines to doctors holding a valid pharmaceutical license.

While this provision is to be welcomed as it decreases the risk of consumers obtaining certain pharmaceuticals without the necessary consultation with a professional, the limitations on marketing and promotional activities caused by an outdated OTC list persist.

ISSUE DESCRIPTION Cambodia maintains a list of pharmaceutical products that are permitted to be sold over-the-counter (OTC). Private companies are permitted to undertake marketing and promotional activities in relation to these products.

The list was last updated in 2009 and, since that time, a number of new pharmaceutical products have been created that are considered suitable for OTC sale in other countries. Pharmaceutical products not listed on the OTC list are considered as ethical drugs (only legally available with a valid doctor's prescription) and there are restrictions on what marketing activities can be conducted in relation to such products.

IMPACT ON CAMBODIA The OTC list currently being used in Cambodia is outdated and, consequently, places unnecessary limitations on marketing activities relating to products that are treated as OTC in other countries.

Pharmaceutical companies who act in accordance with Cambodia's regulations are therefore limited in their marketing activities for new products. Introduction of new pharmaceutical products onto the Cambodian marketplace is thus hindered, which has a negative impact on sales and tax revenues while denying the Cambodian public access to the latest pharmaceutical innovations.

✓ **Review and update the OTC list so that it better reflects the evolution of products available on the market.**

2017 RECOMMENDATION

We suggest that the Ministry of Health review and update the OTC list so that it better reflects the evolution of products available on the market.

Eligibility for public tenders for medical equipment

RETAINED

ISSUE DESCRIPTION Until recently there were only a handful of medical equipment distributors within Cambodia. Today, a cursory glance at the Yellow Pages lists more than 150. There is concern that not all of these companies have the required technical expertise to provide aftermarket care on the medical equipment that they import. They are able to offer lower prices when competing for public tenders because they invest less in their facilities and human capacities but this means that they are then unable to maintain the equipment that they provide.

IMPACT ON CAMBODIA The selection of a medical equipment provider that cannot provide aftermarket care on its product is a wasteful use of public resources. When problems arise with the machinery and it needs repair or maintenance, the equipment will ultimately be rendered unusable if the equipment provider does not have the technical expertise to maintain its functionality.

2017 RECOMMENDATION

✓ **Exclude companies that do not have the capacity to provide ongoing aftermarket care on medical equipment from public tenders.**

We propose that companies that do not have the capacity to provide ongoing aftermarket care on medical equipment should be excluded from public tenders. Bidders on public tenders should be required to employ technical staff within Cambodia.

A formalized forum for public-private sector dialogue

UPDATED

The private sector is seeking more opportunity to engage the Ministry of Health over ongoing and much-welcomed initiatives to reform regulatory processes and to improve implementation of existing laws and regulations.

ISSUE DESCRIPTION

As the Ministry of Health continues to implement a reform agenda and to oversee a formalization of the healthcare sector, our members have at times felt that reforms or new guidelines have been issued on short notice and without the supporting information required to help them to comply. For example, if we consider the Ministry of Health's Notification 410, dated 21 July 2016 and described above in the 'Over-The-Counter Products' section, our members are in agreement that is an important and practical instruction that will help control the quality of medicines on the Cambodian market, but that it could have rolled out in a smoother fashion. As the Instruction was declared by the Ministry to be effective immediately, there was no opportunity for pharmaceutical companies to have time to review their distribution lists and to confirm the status of each of their customers. Therefore, healthcare businesses working with the best of intentions can struggle to be certain of their compliance, creating regulatory risk and administrative burden as they try to gather the necessary documentation.

In this example, had there been more consultation between the Ministry and the private sector, arrangements could have been made for a database of doctors with pharmaceutical licenses to be available to pharmaceutical companies to check against their client list, or at least for some advance notice so that they could make the necessary arrangements themselves.

Furthermore, members perceive a lack of clarity in certain parts of the registration and renewals process and in the interpretation of applicable laws and regulations. Indeed, some members have found that two public officials from the Ministry of Health may have a different understanding or interpretation of the guidelines, which results in ambiguity and a lack of security for companies seeking to be compliant.

Finally, and recognizing the efforts of the Royal Government to lay the foundations for combatting parallel imports as described in our policy development update above, there is opportunity to improve coordination between relevant public bodies and companies from a range of business sectors in addressing this common issue.

IMPACT ON CAMBODIA

A mutual effort between the public and private sector to improve communication over regulatory issues will help companies to be fully compliant with Cambodian laws. A more formalized forum through which healthcare businesses can discuss regulatory matters with the Ministry of Health and receive definite responses to their enquiries so as to clear up any areas of ambiguity would prove very useful, and would allow the Ministry to provide guidance that fully reflects the operational context within which regulations must be implemented. This would provide a greater sense of legal security for current and prospective investors.

Ambiguity over regulatory matters creates a need for individual interpretations on the part of public officials, which can in theory create opportunities for non-transparent practices. A more formalized forum through which public-private sector dialogue can take place would increase transparency for all parties.

2017 RECOMMENDATION

- ✓ **Introduce a formalized public-private sector forum for healthcare, improve availability of legal information relating to the sector, and consider the creation of a cross-ministerial public-private sector dialogue platform focusing specifically on parallel importing.**

To improve communication between the public and private sector we encourage the consideration of the following recommendations:

1. The creation of a formalized public-private sector forum for healthcare which could be modeled on the existing Government-Private Sector Forum Working Groups.
2. The publication of all healthcare-related Prakas on the website of the Ministry of Health, if at all possible with official translations into English language.
3. Inauguration of a cross-ministerial public-private sector dialogue platform focusing specifically on parallel importing, to include representatives of the Ministry of Health, Ministry of Commerce, Ministry of Interior, and the General Department of Customs and Excise.

REAL ESTATE *and* CONSTRUCTION

Cambodia continued to see strong growth in the real estate and construction sector during 2016, with data from the Ministry of Land Management, Urban Planning, and Construction revealing that the total value of the 2,636 projects approved last year reached \$8.5bn, which is more than double the 2015 figure. Equally encouraging, there have been a series of measures taken by the Royal Government over the past year to provide stronger regulation for the sector, which is essential in ensuring that Cambodia's property market can develop in a way that ensures safety, economic sustainability, and high quality standards.

We are pleased to be able to report on positive developments in each of the three subject areas on which this chapter focuses. Firstly, within **cadastrial and real estate development**, there has been

movement to ensure stronger fiscal controls of property development within residential development projects, which represent the majority of existing projects in Cambodia. Significantly, the Ministry has defined a minimum capital requirement of 2 billion KHR (approx. 500,000 USD) for developers of such projects, which will help to control against high-risk speculative projects that could have problematic effects for the sector and overall national economy. Furthermore, there have been efforts to better enforce existing laws on foreign ownership of strata titles, which we hope will help to shift emphasis towards more properties being registered under hard titles.

Within **land management and urban planning**, EuroCham has continued to coordinate the provision of legal and technical support through our

Real Estate and Construction sectoral committee and we have been encouraged by the joint recommendations issued by representatives of both the Royal Government and the private sector following the International Public-Private Conference on “Cambodia’s Coastline Development” in Sihanoukville on 23 December 2016. We trust that this type of dialogue will help towards the realization of our one central recommendation in this area - the implementation of a ‘model project’ as a pilot public-private partnership mechanism in Cambodia’s coastal area.

Finally, in the **construction** sector, the Ministry has formally requested EuroCham’s assistance in securing example regulations from the EU as Cambodia works towards the finalization of its Law on Construction and supporting Building

Code. We continue to support this initiative to ensure that the Law both provides adequate regulatory oversight and avoids creating too many obstacles to doing business. Furthermore, we highlight the need for shorter-term fire safety measures in the interests of public safety and the need to ensure effective Occupational Health & Safety regulations on construction sites.

Fiscal controls during project development

UPDATED

2016 RECOMMENDATION

Define a set of fiscal controls during project development.

POLICY RESPONSE

The Ministry of Economy and Finance has issued Prakas No. 965 on the Management of Residential Development Business, dated 24 August 2016. The Prakas includes a number of revisions and clarifications relating to the licensing regime and reporting obligations of development projects intended for residential use. The Prakas sets the minimum capital requirement for such projects at 2 billion KHR (approximately 500,000 USD), and provides more specific regulations on phases of development and commencement of sales. Sentiment among the private sector more generally is that regulations for project development in Cambodia are moving in the right direction.

ISSUE DESCRIPTION

In order to minimize financial risks with the real estate and construction sector, many countries have minimum capital requirements that must be met before a construction permit will be issued on a project. The developer must be able to demonstrate that it holds capital equivalent to a certain percentage of the value of the project. Such provisions do increase the cost of embarking on a project but prevent developers beginning projects that are financially dependent upon pre-sales money—such projects are at higher risk of running out of money prior to completion.

Over the past few years, a number of developers in Cambodia have been undertaking high-risk speculative projects due to the minimal provisions for fiscal controls on property developers that have been in place. It is expected that Prakas 965 on the Management of Residential Development Business, dated 24 August 2016, may help to address this issue for residential housing developments, though other types of development such as commercial property do not fall under the scope of this Prakas.

IMPACT ON CAMBODIA

Developers undertaking projects without sufficient starting capital represent a major risk to the Cambodian real estate market and by extension, the entire national economy. If one project were to financially collapse prior to completion, this would be likely to affect confidence in the market and have a knock-on effect in which pre-sales for other projects would decline or withdraw. If this were to occur, it could trigger a ‘domino effect’ on the Cambodian real estate sector and lead to a market crash.

Accordingly, it is within the interests of the Royal Government and of all stakeholders with interests in the sustainable growth of the Cambodian economy to introduce stronger fiscal controls to regulate development projects.

✓ **Further develop fiscal controls within the real estate and construction sector so as to define stronger minimum capital requirements and licensing regimes for development projects outside of the residential sector.**

2017 RECOMMENDATION

Recognizing the positive actions that have been taken by the Ministry of Economy and Finance in this regard over the past year, we recommend that the Royal Government further develop fiscal controls within the real estate and construction sector so as to define stronger minimum capital requirements and licensing regimes for development projects outside of the residential sector.

In setting such regulations it is beneficial to balance the need for regulatory oversight with the desire for investment-friendly government policy. As such, we recommend consultation with the private sector in order to gather relevant data and information so as to set the most appropriate thresholds; Cambodia can certainly continue having free flows of investment money and improve its ease of doing business while simultaneously also having effective regulatory controls.

Freehold strata titles application process

UPDATED

2016 RECOMMENDATION

Place an obligation upon developers to apply for freehold strata titles on behalf of property purchasers.

POLICY RESPONSE

While there has been no formal revision to the laws relating to foreign ownership, the Ministry of Land Management and Urban Planning has recognized that implementation of existing laws was not always being achieved and there is a trend towards greater enforcement.

For example, over the past year the Ministry has reiterated to khan chiefs within Phnom Penh the need to implement the 2010 Foreign Ownership Regulations, under which foreigners may only own properties above the first floor within co-owned buildings, with proper construction permits, under a 'strata' title. Previously, some sangkats had exercised discretion in registering soft titles under a foreigner's name, which is not permitted under Cambodian law. Khan Daun Penh officials have now announced that they will no longer transfer soft titled property into a foreigner's name, and soft title transfers are being verified through the national cadastral office to ensure that they are compliant with the Kingdom's laws.

Stronger enforcement of soft titling laws does not affect the issue raised below about freehold strata titles, but does serve to demonstrate the growing importance of having legally compliant and formalized processes in place for the registration of all forms of property ownership in Cambodia.

ISSUE DESCRIPTION

A large proportion of strata titles (properties that are not on the ground floor) are not being registered with the cadastral office of the Ministry of Land Management, Urban Planning and Construction. While there is a clearly-defined process for obtaining freehold strata titles from the Ministry, a large majority of purchasers are not currently going through the process of obtaining a formal strata title from the Ministry.

Under today's system, when construction is at least 80% finished and 100% payment has been made to the developer, the developer should issue a 'sales purchase agreement' to the buyer. It is then the responsibility of the buyer to go through the certificate of ownership application process with the Ministry's cadastral offices. In practice, many buyers are unaware of these processes and do not go through the necessary steps. This is particularly true for foreign investors, who are predicted to account for 70% of purchases of the approximately 14,000 new condominiums being built in Phnom Penh by 2018.

Where purchasers have not been through the certificate of ownership application process, buyers retain the 'sales purchase agreement' from the developer as their supposed proof

of ownership and may even sell the condominium to a second owner by transferring this document to their name. However, under such practices their ownership of the condominium is not legally protected; without a certificate of ownership from the Ministry, the condominium remains technically under the 'master plan' of the developer which could be transferred to a creditor if the developer were to go bankrupt.

Developers and investors should be following existing processes, particularly given the directive of the Ministry of Land Management, Urban Planning and Construction for the khans of Phnom Penh to better implement the 2010 Foreign Ownership Regulations (sometimes referred to as the Strata Law). Where such processes are not being followed, this creates additional risk to the Cambodian real estate market. If one developer were to go bankrupt and, as per the scenario above, a 'master plan' were transferred to a creditor, this would have a major impact on investor confidence and have a negative impact upon the market.

Furthermore, whereby 'titles' are being held outside of formal processes, the Royal Government is being denied the opportunity to levy property transfer taxes on the sale of these properties.

As such, taking further measures to improve compliance with formal processes for certificates of ownership will reduce financial risks and contribute to the Royal Government's ongoing efforts to enhance tax revenue collection.

IMPACT ON CAMBODIA

✓ **Place an obligation upon developers to apply for freehold strata titles on behalf of property purchasers.**

2017 RECOMMENDATION

To improve compliance relating to the application process for freehold strata titles, we suggest that obligation to apply for such titles be placed upon developers. We believe the application process could be streamlined by placing a trigger at a certain point of a project's development (e.g. phase of completion or number of sales) that requires the developer to bring sales purchase agreements with complete floor plans to the Ministry's cadastral office for conversion into certificates of ownership and handing to buyers. Such a process would enable faster processing of multiple strata title applications and would make it easier to monitor compliance levels.

Limiting financial risks caused by speculative property investment

RETAINED

ISSUE DESCRIPTION There is presently very little information about the extent of the speculative property investment problem within Cambodia. This lack of information is partly due to the lack of compliance with certificate of ownership application processes as described above. This being the case, the Ministry of Economy and Finance has already voiced concerns about the potential for such behaviors to create price bubbles within the Cambodian real estate sector and the feedback we have received from our members echoes this concern.

IMPACT ON CAMBODIA Short-term speculation is bad for the market as it artificially inflates demand and makes the market seem stronger than it is. Where a point comes that the system collapses, people are left with bad credit, representing a risk to the entire national economy.

A speculative market creates volatility whereas a transition towards an owner-occupied market would provide greater levels of stability within the sector.

2017 RECOMMENDATION

✓ **Introduce financial controls that limit the speculative buying of property within Cambodia.**

We recommend that the Royal Government introduce financial controls in order to limit the speculative buying of property within Cambodia. We suggest consultation with the private sector to deliberate upon the most effective means of control; constraints on when a property can be resold or additional taxation on properties resold within a certain time period could help to discourage speculative buying. However, such regulatory instruments would only prove effective if coupled with continued enhancement of compliance levels within the titling system (see above).

Standardized measurements

UPDATED

At present there is no standardized way of describing building measurements in Cambodia, or confirmation of which measurement type should apply to each property use type. This has led to a situation where there is considerable variation in the techniques employed and the definition of what constitutes the measured area is obscured. For example, some real estate actors utilize Gross Area when describing an item of property, but in some instances this might include areas such as lift shafts, stairwell voids and open-sided balconies, whereas another party may use the same wording 'Gross Area' but not include the items listed. Differences in definition makes comparing two property assets time consuming and confusing, creating issues for all parties, but particularly valuers, agents, occupiers and investors. Research shows that a property's floor area can deviate by as much as 24% depending upon the method of measurement used; and even a small variation can have a significant impact on the view taken of a property's value, thereby creating the potential to impact investment decisions of all scales.

ISSUE DESCRIPTION

In many countries a regulatory body sets out a series of measurement definitions and stipulates the appropriate way for each property type to be described. Increasingly, property measurement standards are becoming standardized at a global level in order to allow agents, investors, and developers to quickly and easily understand the basis upon which an asset has been measured and to compare it accurately with assets in another country.

A lack of standardized measurement techniques creates inefficiency in the market and, in the worst case, leaves the sector open to abuse. It is ultimately consumers who lose out from this ambiguity; This increases the likelihood of buyers and tenants losing confidence as a result of a bad experience, and can ultimately create difficulties for the market and Cambodia's investment environment as a whole. As cross border real estate investment increases, having a standardized measurement approach that is widely recognized will act to reduce barriers to entry and increase confidence.

IMPACT ON CAMBODIA

2017 RECOMMENDATION

✓ **Prescribe a set of universal standards of measurement for the real estate industry.**

Prescribing a set of measurement principles will help to foster a standardized approach across the country, improving transparency and allowing real estate professionals to more readily engender confidence in their advice and in the Cambodian real estate market.

While it will be for the Royal Government to decide which set of measurement definitions is most appropriate for Cambodia, it would be advisable to consider adopting the approach set out by the International Property Measurement Standards Coalition (IPMSC). IPMSC has emerged as a favored path for globalized measurement standardization and has been adopted by an international group of over 70 professional and not-for profit organizations, including the Asia Pacific Real Estate Association, the China Institute of Real Estate Appraisers and Agents, and the Royal Institute of Chartered Surveyors. The members of IPMSC work together to develop and embed a single property measurement standard with the aim of driving consistency and building confidence in global real estate. Information about this initiative can be found at ipmsc.org.

Coordinating public and private investment in coastal development

UPDATED

2016 RECOMMENDATION

Consider permitting a 'model project' to showcase to prospective investors that coastal development under international standards is a viable possibility within Cambodia.

POLICY RESPONSE

On 23rd December 2016 an International Public-Private Conference on "Cambodia's Coastline Development" was held in Sihanoukville, which was organized by the National Committee for the Management and Development of Cambodia's Coastline and attended by a number of high-level representatives from the Royal Government including the Ministry of Land Management, Urban Planning and Construction and the Ministry of Tourism. The output of the forum was a set of recommendations to enhance sustainable management and development of Cambodia's Coastline which was endorsed by both the Royal Government and the private sector.

Recommendations focused on four key areas:

1. Tourism Development Plan and Basic Infrastructure Development Plan
2. Master Plan and Legal Framework
3. Connectivity
4. Marketing and Promotion Strategy for Cambodia Coastal Tourism

Of particular significance was the Conference's recommendation that a model development project be supported in the Cambodian coastline zone as a pilot project to gain experience in using a public-private partnership mechanism to enable a private company to invest in basic infrastructure for the public interest.

The Royal Government recognizes the social and economic benefits that could be realized through effective development projects in the four coastal provinces of Kep, Kampot, Sihanoukville and Koh Kong. However, for these opportunities to be realized, there is a need for a supporting body of legislation and regulation relating to coastal development.

ISSUE DESCRIPTION

At present, the legal framework for development projects is based on a 1997 Sub-Decree that describes the type of construction projects that require construction permits from the Ministry of Land Management, Urban Planning and Construction or provincial or municipal authorities. It also provides instruction on the information that must be provided when applying for a permit. The Sub-Decree was issued at a time when Cambodia was at a lower level of economic development; there was no realistic prospect of the type of large-scale construction projects that developers and investors are now interested in. Accordingly, laws need to be reviewed and updated to meet today's requirements.

Public and private investment could be better coordinated to ensure mutual benefit and more effective development of designated areas. This would require the Royal Government to take more of a leadership role, setting a ‘master plan’ of what type of projects it would like to see developed and what infrastructure would need to be built to support these projects. An incentives structure could then be deployed that encourages private sector implementation of the master plan rewarding investors in private projects with tax concessions and other benefits in exchange for their participation in the development of public infrastructure within the designated area.

For this to be realized, there is a need for a more effective forum through which developers can understand the development priorities of the Royal Government, as well as legal tools to regulate the bidding process and define the terms and conditions of any public-private partnership. Such a framework would provide the government oversight over development projects and the capacity to ensure that private sector partners adhere to their public infrastructure commitments, while giving investors sufficient guarantees so as to feel secure in their investment. The lack of such a legal framework has proven to be a deterrent to developers considering major development projects within Cambodia.

EuroCham, through our Real Estate and Construction sectoral committee and based upon the terms of our Memorandum of Understanding with the Ministry, is currently providing legal and technical inputs to the National Committee for Coastal Area Management and Development in the elaboration of a legal framework for coastal development. Such a framework is intended to facilitate the development and provision of services to dedicated ‘development areas’, serving as an instrument through which public-sector planning can be aligned with implementation by the private sector. We welcome the Royal Government’s recognition of the importance of this project and its praxis-orientated approach to the development of such a legal foundation.

IMPACT ON CAMBODIA

Developers (and just as importantly, major international banks) perceive too much ambiguity within the current legal framework for development projects within Cambodia. For example, a development project built on state-owned land with a long-term lease has no real guarantees on the land and it is not entirely clear who owns the project. This reduces the amount of Foreign Direct Investment into Cambodian coastal development since banks perceive too much legal and regulatory risk and are unwilling to provide financing to developers. Whereby investors are unable to obtain financing from such sources, it is much more difficult to find suitable private sector partners to participate in infrastructure development.

Creating legislation to facilitate coastal development as well as creating public-private partnerships in such projects will provide significant benefits to the economy—not only will these areas see higher levels of investment, but ensuring coordinated development projects also maximizes the benefit to the local area.

Furthermore, a more coordinated approach to coastal development will enhance the offerings of the Cambodian tourism and hospitality sectors in terms of quality, diversity, and capacity. This would help to create new tourism areas (at present, few of Cambodia’s beautiful coastal islands have seen much development), boost national tourism figures, and encourage longer visitor stays in Cambodia beyond Siem Reap. Being able to offer

higher-quality hospitality options is also an opportunity to attract more affluent visitors and increase the average spend per tourist.

✓ **Consider permitting a ‘model project’ to showcase to prospective investors that coastal development under international standards is a viable possibility in Cambodia.**

2017 RECOMMENDATION

In accordance with the recommendations of the International Public-Private Conference on “Cambodia’s Coastline Development” on 23rd December 2016, we emphasize the benefits of implementing a ‘model project’ in which a designated area of land is developed according to international best-practice regulations. This pilot program would demonstrate that Cambodia can propose and oversee the implementation of projects to international standards, and would create opportunity to showcase to prospective investors that coastal development under international standards is a viable possibility within Cambodia.

The advantage of such a project is that it doesn’t require immediate legislative changes. The regulatory standards defining the roles of the stakeholders at each stage of the project, along with other standards and requirements, can be embedded into binding contracts between public authorities and private sector developers. EuroCham will be happy to assist in developing the bidding process for such projects and defining the deliverables that private sector partners must meet to be eligible for incentives like tax concessions. Upon the project’s completion, legislative and regulatory bodies will have a real-world project to analyze, allowing the lessons learned to shape a future coastal development legal framework.

Ensuring a practical set of building standards

RETAINED

2016 RECOMMENDATION

Consult with the private sector to ensure a practical set of building standards.

POLICY RESPONSE

The Construction Law and accompanying Building Code remain in the drafting phase and EuroCham has wherever possible been seeking to support the Ministry of Land Management, Urban Planning and Construction with legal and technical assistance. The Ministry has been actively collecting Building Codes from other regulatory systems in order to gain insights that may be applicable to the Cambodian Building Code. Furthermore, the Ministry has formally expressed interest in receiving further technical and scientific support from the European Union in the development of the Building Code and supporting sub-decrees under the Construction Law.

ISSUE DESCRIPTION

The Ministry of Land Management, Urban Planning and Construction is currently in the research and drafting phase of a Cambodia Building Code. One purpose of the Building Code is to provide more rigorous and effective regulation over safety standards within the Cambodian construction sector, as there are currently relatively limited provisions in place. At present, while the developers of large construction projects often voluntarily adhere to an international set of standards, it is not uncommon for developers and/or contractors to cut corners in pursuit of higher profit margins on smaller projects. As a result of poor construction standards, there have been a number of fatalities over recent years.

The Royal Government is currently in the process of drafting a Construction Law which will incorporate a Building Code setting safety and quality standards for construction projects. EuroCham welcomes this initiative and, based upon our Memorandum of Understanding with the Ministry of Land Management and Urban Planning and Construction, seeks to assist in the development of this Code through the provision of legal and technical expertise. In particular, we wish to continue to facilitate dialogue between the Royal Government and the private sector to ensure that the new standards will be robust yet also practical so as not to deter investment.

There is a need to further consider how to effectively implement the Code upon its completion. To monitor for compliance will require a body of trained staff who can independently check and verify the implementation of building standards on construction projects. In practice it can be challenging for government to develop the capacity to implement such checks, and governments in some other countries opt to authorize independent certification bodies from the private sector to carry out this task.

The Royal Government clearly understands the importance of introducing an effective Building Code to minimizing safety risks, protecting people in Cambodia, and encouraging investor confidence; Prime Minister Hun Sen has even publicly commented on the risks that lax building standards can pose to the Cambodian real estate sector's growth and sustainability.

In terms of the content of the standards, due consideration needs to be given to how standards compare to those in other countries—to create a set of standards unfamiliar to investors would create additional adaptation and certification costs and potentially discourage foreign investment. Conversely, a robust yet practical set of building standards would increase investor confidence without creating too many burdensome costs. The Ministry of Land Management, Urban Planning and Construction has been actively studying the construction standards of other markets and there is opportunity for Cambodia to incorporate insights from these best practices into domestic law. Indeed in some areas, such as energy efficiency, there is advantage in the low levels of existing regulations which provides opportunity to create an optimized law from the beginning.

Effective implementation is key to ensuring the success of the Building Code and to enhancing investors' perceptions of fair competition within Cambodia.



Consult with the private sector to ensure a practical set of building standards.

2017 RECOMMENDATION

- a. Base the Building Code upon an existing set of international standards that is familiar to current and prospective investors. From this base, adaptations can be made to better suit the specificities of the Cambodian context. For example, whereas a European standard of roof strength needs to be able to withstand heavy snowfall, this would be unnecessary in Cambodia. However, there may be other hazards to consider that are not accounted for in the base set of standards. The end product of this process will be a 'Cambodian standard' but we recommend that this standard is congruent with existing international standards.
- b. We suggest consultation with the private sector to determine what would be the most effective method of implementation of the new building code. The authorization of an independent certification body from the private sector may be one option to consider.
- c. To assist in implementation, consider including within the Building Code a requirement for all development projects to prominently display a signpost that lists the construction companies working on the project. This serves to increase transparency and enables appropriate regulatory bodies to ensure only licensed and certified companies are operating on a construction project.

Ensuring occupational health and safety on construction sites

NEW

ISSUE DESCRIPTION Cambodia has relatively few regulations pertaining to the occupational health and safety (OHS) of construction workers. Prakas 032 on the Management of Construction Sites (Ministry of Land Management, Urban Planning and Construction) prescribes some obligations on the part of proprietors and contractors, such as the provision of hard hats, gloves, boots and harnesses, as well as the maintenance of good standards of hygiene on the site, however in practice there is insufficient capacity to ensure implementation of these standards and many sites are able to operate with little oversight.

IMPACT ON CAMBODIA As with lax building standards, a lack of comprehensive and well-implemented occupational health and safety regulations to protect construction workers represents a risk not only to individual workers but also to the reputations of the contracting companies and to the Cambodian real estate sector at large. Fatalities and injuries on construction sites have in the past occurred too frequently within Cambodia which affects investor sentiment and confidence in the construction industry.

2017 RECOMMENDATION

✓ **Create a sub-committee under the National Committee for Health and Work Safety focusing specifically on occupational health and safety on construction sites.**

In November 2016 a new National Committee for Health and Work Safety (NCHWS) was created by Sub-Decree in order to give advice to the Royal Government on issues relating to OHS. The NCHWS will include representatives of various ministries, of unions, and of employers.

We recommend that a sub-committee be created under the NCHWS umbrella that would be specifically focused on OHS within construction sites. One of the first priorities of the sub-committee should be to provide inputs in support of the creation of a training centre for safety officers on construction sites, which would provide training to both public sector technical inspectors and managers from the private sector with OHS responsibilities.

Short-term measures to address fire safety

UPDATED

The Cambodia Fire Prevention Law, passed in 2013, lacks detailed regulations and compliance mechanisms. While recognizing that the aforementioned Building Code will include more specific provisions relating to fire safety, we are also aware that the Building Code is currently being drafted and there will be some time before it is fully implemented. Cambodia has known a number of fire-related tragedies in the recent past and we believe it important to take measures addressing fire safety as quickly as possible while awaiting the Building Code.

ISSUE DESCRIPTION

Delaying the Building Code's fire safety provisions increases the probability of tragedies taking place in the years leading up to its implementation. In addition to the pain and suffering caused, such incidents have negative economic consequences by affecting investor confidence in Cambodia.

IMPACT ON CAMBODIA

✓ **Prior to the realization of the Building Code, consult with the private sector to define an intermediary set of fire safety criteria to be referred to during all stages of the construction permitting process and to be implemented by operational businesses.**

2017 RECOMMENDATION

Prior to the realization of the Building Code, consult with the private sector to define an intermediary set of fire safety criteria to be referred to during all stages of the construction permitting process (planning, inauguration and completion) and to be implemented by operational businesses.

Acronyms

AC (POWER)	Alternating Current	KTV	Karaoke club
ACCSQ-APWG	ASEAN Consultative Committee for Standards and Quality Automotive Product Working Group	INDC	Intended Nationally Determined Contributions
ACIA	ASEAN Comprehensive Investment Agreement	IPMSC	Intl. Property Measurement Standards Coalition
ADB	Asian Development Bank	IPR	Intellectual Property Rights
ASEAN	Association of Southeast Asian Nations	LAB	Logistics Advisory Board
ASYCUDA	Automated System for Customs Data	LO/LO	Lift-On Lift-Off
CAIF	Cambodia Automotive Industry Federation	MEF	Ministry of Economy and Finance
CBA	Collective Bargaining Agreement	MIH	Ministry of Industry and Handicraft
CBRDF	Capacity Building, Research & Development Fund	MLVT	Ministry of Labor and Vocational Training
CDC	Council for the Development of Cambodia	MPTC	Ministry of Posts and Telecommunications
CEO	Chief Executive Officer	MRA	Mutual Recognition Agreements
CMIT	Cai Mep International Terminal	MRA-TP	Mutual Recognition Arrangement on Tourism Professionals
CSCI	Committee for Suppression of Copyright Infringement	NCHWS	National Committee for Health and Work Safety
CSEZA	Cambodia Special Economic Zones Association	NGO	Non-Governmental Organization
CTA	Committee of Tax Arbitration	NSSF	National Social Security Fund
DC	Direct Current	OHS	Occupational Health & Safety
D/IPR	Department of Intellectual Property	OPEX	Operating Expense
DSI	Department of Special Investigations (Thailand)	OSSC	One Stop Service Centres
EAC	Electricity Authority of Cambodia	OTC	Over-the-Counter
EDC	Electricité Du Cambodge	PADR	Preliminary Alternative Dispute Resolution
EIA	Environmental Impact Assessment	QIP	Qualified Investment Project
EU	European Union	QTSC	Quang Trung Software City
FDI	Foreign Direct Investment	RGC	Royal Government of Cambodia
GDCE	General Department of Customs and Excise	SEZ	Special Economic Zone
GDP	Gross Domestic Product	SME	Small and Medium-sized Enterprises
GDT	General Department of Taxation	TVET	Technical Vocational Education and Training
GHG	Greenhouse Gas	UN/ECE	UN Economic Commission for Europe
GHI	Global Horizontal Irradiance	UNFCCC	UN Framework Convention on Climate Change
G-PSF	Government-Private Sector Forum	USD	United States Dollar (currency)
IATA	International Air Transport Association	USOF	Universal Service Obligation Fund
ICT	Information and Communication Technology	VAMA	Vietnam Automobile Manufacturers' Association
IFC	International Finance Corporation	VAT	Value Added Tax
ISO	International Organization for Standardization	VIN	Vehicle Identification Number
KAMSAB	Kampuchea Shipping Agency and Brokers	WCO	World Customs Organization
KHR	Cambodian Riel (currency)	WTO	World Trade Organization

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European Chamber of Commerce in Cambodia
#30 Preah Norodom (corner st. 148)
Bred Bank building 3rd floor
Khan Daun Penh, Phnom Penh, Cambodia

+855 023 964 141
info@eurocham-cambodia.org

