



# MONTHLY LEGAL BRIEF

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**HBS LAW FIRM & CONSULTANTS**

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May 2010

Welcome to our Legal Brief for May which brings you a most interesting issue in Commercial Development in the Kingdom of Cambodia. This month we will mainly share with you the main laws and regulations regarding the Stock Market in Cambodia, the Law on Expropriation and the law relating to Real Estate Developers.

## **Stock Exchange:**

The Securities market in Cambodia was born in the second half of 2007 through the law on issuance and trading of Non-Government Securities, promulgated by Royal Kram No. NS/RKM/0107/028 dated 19 October 2007. To ensure the smooth functioning and governance of this market, the Securities and Exchange Commission of Cambodia (SECC) was established by the above mentioned law.

In order to guarantee the functioning of the Stock Market and to protect the rights of participants in this market, SECC has issued other regulations as follows:

### **I. Prakas No.001 SECC dated 15 January 2010 on the equity security issuance.**

It is to define the modality, mechanism, procedure and approval relating to the equity securities issuance in Securities Market of Cambodia. First of all, this Prakas distinguishes two types of equity securities issuance: private and public placement:

- Private placement refers to personal offer that shall be made to no more that 30 investors. In any case, either on commencement or finishing of the operation, the company shall make a report to SECC.
- Where on offer is made to more than 30 investors, it shall be deemed to be a public placement.

Any Public Limited Company or permitted company that wishes to conduct such business shall apply with the necessary information and documentations to SECC. In this regard, the applicant shall have a minimum capital of 5,000,000,000 (five billion) Riel, without prejudice to other requirements set by the Prakas. The offer and pricing for public placement shall be submitted to SECC for its approval. A report on both commencement of placement and ending of subscription shall be submitted to SECC.

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## **2. Prakas No.002 SECC dated 15 January 2010 on the corporate governance of listed companies.**

In order to ensure the good governance and compliance of any listed companies in the securities market of Cambodia, SECC issued this Prakas on Corporate Governance of Listed Companies. Its purpose is to determine the condition of execution of good corporate governance for issuance and trading securities firms. This Prakas shall apply to all PLC, issuing and trading companies in the Kingdom.

To realize this goal, this Prakas requires that good corporate governance shall be ensured by any PLC through the establishment of mechanism for protection of shareholders' rights, the organization of management structure and corporate governance, determination of the board of directors' rights and its obligations, and the establishment of an effective protective system. Also, in any case, the listed companies shall respect the Principle of Transparency in the market.

For any non-compliance of these requirements, such listed companies shall be seriously punished by postponing or closing its business of securities issuance and trading.

## **3. Prakas No.009 SECC/BRK dated 18 November 2009 on the licensing to securities firms and securities representatives:**

This Prakas is to determine the conditions and term for granting and renewing the license to securities firms and securities representatives in accordance with the law on issuance and trading of non-government securities.

A securities firm may conduct its business as follows:

- i. Securities underwriting business: advise (on pricing, issue amount, number of securities to be issued, description time line), subscribe all securities, subscribe the remaining securities and arrange the organization and functioning of securities issuance;
- ii. Securities dealing business: is a trading in securities for its own account and risk; and
- iii. Securities brokerage business: is the buying or selling of securities on behalf of and by orders of its clients for a commission fee.

Also a securities representative may conduct its business as an investment adviser.

Any PLC which wishes to operate as a securities firm and/or as a securities representative shall submit the application form, provided by SECC, for a license to SECC in compliance with this Prakas. Both licenses shall be valid for a period of 2 years with an unlimited number of renewals thereafter each for 3 years. Furthermore, the applicant shall pay a registration fee of:

- i. 40,000,000,000 (forty billion) Riel for securities underwriting business;
- ii. 25,000,000,000 (twenty five billion) Riel for securities dealing business;
- iii. 6,000,000,000 (six billion) Riel for securities brokerage business; and
- iv. 400,000,000 (four hundred million) Riel for securities representative business.

**4. Prakas No.011 SECC dated 01 December 2009 on the grant of approval to the operator of a securities market, the operator of a clearance and settlement facility, and the operator of a securities depository:**

This Prakas aims to define the requirements and procedure in order to grant the approval to persons as securities market operator, clearance and settlement facility operator or as the securities depository. It also defines the obligations of those operators.

Any person who wishes to run such above mentioned business shall apply for approval from SECC in compliance with the terms and conditions provided in this Prakas. Without prejudice to other conditions, the applicants shall meet the condition of minimum capital in their companies:

- i. 40,000,000,000 (forty billion) Riel for securities market operator;
- ii. 20,000,000,000 (twenty billion) Riel for securities clearance and settlement operator;
- iii. 20,000,000,000 (twenty billion) Riel for securities depository; and
- iv. 80,000,000,000 (eighty billion) Riel for any applicant who wishes to apply for approval for conducting securities market operator, securities clearance and settlement operator and securities depository.

The approval issued by SECC to the applicants for such above mentioned business shall have unlimited validity.

Furthermore, in order to facilitate the functioning of SECC, other Prakas on the management of administrative structure was adopted as follows:

- Prakas No.007 SECC/BRK dated 17 November 2009 on the organization and functioning of Administrative and Financial Department of the Securities and Exchange Committee of Cambodia;
- Prakas No.008 SECC/BRK dated 17 November 2009 on the organization and functioning of Legal Affairs Department of the Securities and Exchange Commission of Cambodia;
- Prakas No.012 SECC/BRK dated 01 December 2009 on the organization and functioning of Securities Issuance Management Department of the Securities and Exchange Commission of Cambodia.; and
- Prakas No.013 SECC/BRK dated 01 December 2009 on the organization and functioning of Supervision Department of Securities Regulations of the Securities and Exchange Commission of Cambodia.

## **Real Estate: Expropriation and Licensing of Independent Engineering Enterprises**

In this issue, we will discuss the law on expropriation and a Prakas on Licensing to Independent Engineering Enterprises for Management of Real Estate Development Business.

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## **1. Law on Expropriation**

“**Expropriation**” refers to the deprivation of rights of ownership or real rights of immovable property of a natural person, legal person or public legal person for the purpose of serving the construction, restoration and enlargement of infrastructure for public and national interests with the just and appropriate compensation. Property includes land, buildings and plantation.

For the above purpose, the Law on Expropriation was adopted by Royal Kram No 0210/003 dated 26 February 2010. This law defines the principles, mechanism and procedures of expropriation and the just and adequate compensation to the owners.

The types of building infrastructure projects covered by this law have been clearly listed in Article 5.

Also, such properties could be expropriated for urgent cases like earthquakes, fire fighting, flooding, forest fires, war, anti-terrorism and other matter determined by the government (Article 10).

The compensation will be evaluated by an Independent Evaluation Commission or Agency (which will be established by a later Sub-Decree) for land and immovable properties according to the land and market prices. Also, the legal procedure for claiming compensation will be determined by an awaited Sub-Decree.

An investigation as to the level of public interest of the infrastructure or building may be carried out upon the request of the land owner if he/she considers that the expropriation does not serve the purpose of the national benefit or public development.

## **2. Prakas on Licensing to the Independent Engineering Enterprises for Management of Real Estates Development Business**

Under Prakas on Housing Development Management issued late 2009, this new Prakas aims to authorize independent Engineering Companies to carry out their business in the housing sector.

Civil engineers who have been trained and experienced and given an accreditation on construction and planning feasibility business by the Ministry of Land Management, Urban Planning and Construction or are a member of Engineer Association, may apply for a license for operating such business at the Ministry of Economy and Finance’s Real Estate Transaction Office, Financial Industry Department.

Applying for this license costs the licensor 2,000,000 (two million) Riel contribution with 3 years validity from the execution date. Licensor shall renew its validity no later than 30 day prior to the expiry date.

The Prakas also includes the Rule of Conduct and Code of Ethics for an independent Engineer.

## **Also Gazetted by the Royal Government:**

### **Commercial Law**

1. Prakas No. 008 dated 26 January 2010 on the technical modalities and conditions regarding the opening, closure or relocation of beauty saloons.

### **Legal Personality**

1. Sub-Decree No. 192 ANKR.TT dated 22 February 2010 on the appointment of the composition of the National Council for Children.
2. Sub-Decree No. 197 ANKR.TT dated 22 February 2010 on the determination of the composition of the National Commission of Maritime Security, presided by H.E Tea Banh and attended by H.E Keat Chhun, Oum Yin Teang, Va Kim Hong, Chay Sang Yun, Pol Saroeung, Khan Saroeung, Neth Savoeung as Vice-Presidents as well as attended H.E Tea Vinh as Standby-Vice-President.
3. Sub-Decree No. 236 ANKR.TT dated 26 February 2010 on the appointment of Board of Director of the National Authorities for Protecting and Developing Natural and Cultural Sites of Prasat Preah Vihea.

### **Administrative Law**

1. Sub-Decree No. 30 ANKR.BK dated 09 March 2010 on the expansion of land size of 23.72 Hectares located in Northern and Eastern Diamond Island in addition to Sub-Decree No. 66 ANK.BK dated 11 June 2008 on the determination of the size of Diamond Island for implementing Diamond Island Development Project located in Sangkat Tonle Bassac, Khan Charm Karmon, Phnom Penh.
2. Decision No. 12 SSR dated 01 March 2010 on the amendment to Clause 1 and 5 of the Decision on the establishment of the Committee for Accrediting All Levels of Certificates.
3. Decision No. 13 SSR dated 04 March 2010 on the establishment of the Committee of Inter-Ministries to educate and reduce tobacco use presided by Mr. Morm Bun Heng and attended by Mr. Ing Phirun as Permanent Vice-President as well as attended by Mr. Iv Phally as Vice-President.
4. Decision No. 14 SSR dated 05 March 2010 on the amendment and organization of the amicable structure between the National Military Police Unit and Civil Institutions or Units.
5. Sub-Decree No. 31 ANKR.BK dated 12 March 2010 on the determination of the managed area within the natural protected area as the sustainable use area, located in managed area of Bottumsakor National Park, Koh Kong Province over land of 4,100 Hectares for

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granting L.Y.P Group Co., LTD to invest and develop the agriculture and agro-industry sectors.

6. Decision No. 15 SSR dated 09 March 2010 on the organization of the amicable partnership between the National Military Police Unit and Civil Institutions or Units.

### **By Royal Appointments:**

1. Royal Decree NS/RKT/1209/1187 dated 21 December 2009 on the Promotion of 5 Star General of the Cambodian Royal Armed Force to Samdech Ponhea Chakei Heng Samrin.
2. Royal Decree NS/RKT/1209/1188 dated 21 December 2009 on the Promotion of 5 Star General of the Cambodian Royal Armed Force to Samdech Moha Thormak Porthisal Chea Sim.
3. Royal Decree NS/RKT/1209/1189 dated 21 December 2009 on the Promotion of 5 Star General of Cambodian Royal Armed Force to Samdech Samdech Akkak Moha Sena Padei Techo Hun Sen.
4. Royal Decree NS/RKT/0210/155 dated 05 February 2010 on the appointment of Mr. Hong Heang as Ouknha.
5. Royal Decree NS/RKT/0210/174 dated 17 February 2010 on the appointment of H.E Chhim Chamroeun as advisor to the Ministry of Economy and Finance, with title equal to Under Secretary of State.
6. Royal Decree NS/RKT/0210/175 dated 17 February 2010 on the appointment of Mr. Thai Mengly as Ouknha.
7. Royal Decree NS/RKT/0210/176 dated 17 February 2010 on the appointment of Mr. Heang Sae as Ouknha.
8. Royal Decree NS/RKT/0310/192 dated 09 March 2010 on the appointment of Mr. Sar Leang as Ouknha.
9. Royal Decree NS/RKT/0310/201 dated 05 March 2010 on the appointment of H.E Hong Choeun as Ouknha.
10. Royal Decree NS/RKT/0310/202 dated 05 March 2010 on the appointment of Mrs. Ngov Moch and Mr. Sok Sras as Ouknha.

Sub-Decree 199 ANKR.TT dated 23 February 2010 on the appointment of the members of the Board of Directors of the Royal University of Agriculture.

## **What's new at HBS?**

Welcome to **Miss. LY Raneath** – she has joined us as an intern in HBS Notary Public & Consultants, Real Estate Sector, since the second half of April 2010. She is now studying Master Degree in Private Law specializing in Real Estate at the University Lyon, France.

**IP Law Enforcement Conference** – this month, HBS Law Firm & Consultants was honored that its specialists, **Mr. Ly Tayseng** and **Mr. NY Vichet**, were invited to participate in an ASEAN Conference on “*Advanced Workshop for Law Enforcement Investigators and Public Investigation and Prosecution of Hard Goods, Counterfeiting and Digital Piracy*”, from 18-21 May 2010 at Intercontinental Hotel. At this conference, **Mr. Ly Tayseng** was invited as a Speaker with other ASEAN Countries Representatives in cooperation with the FBI, the United States.

Notary Public – **Mr. TANGHEANG Davann**, Notary at HBS Notary Public & Consultants, was invited to join a Congress of Notary in Bordeaux, France, on “**Couple, Matrimony: The Challenge of Couple Life**” held from 30 May to 03 June 2010.

### **About HBS ...**

**HBS Law Firm & Consultants is one of Cambodia's largest fully registered law firms with fifteen lawyers and advisers admitted to the Bar Association of the Kingdom of Cambodia and with the present of expat lawyers and professionals. We provide a full range of Corporate, Commercial and Litigation Services. Learn more about our services and our team at [www.hbs.com.kh](http://www.hbs.com.kh).**

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