

White Book

Trade and Investment Policy Recommendations

2019

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The European Chamber of Commerce in Cambodia (EuroCham) was inaugurated on 2 June 2011 with the support of three founding European Business Organisations: 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.

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The White Book 2019 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 2019 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 2019 and or the outcome of any decision as a result of this publication.

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White Book 2019

Trade and Investment Policy Recommendations

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CAMBODIA

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Methodology

The third edition of the White Book presents 65 policy proposals intended to improve the business environment and regulatory framework in Cambodia.

We have developed these proposals through extensive consultations with EuroCham

members participating in our ten Sectoral Committees.

Our intention is to serve as a constructive partner to the Royal Government of Cambodia, and therefore every issue raised is presented with a realistic solution that could be implemented by the

relevant 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 2019.

Previous policy recommendation & response

Summarises last year's policy recommendation and the subsequent response given by Royal Government of Cambodia

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 of Cambodia to address the issue.

2019 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

On behalf of EuroCham and the growing number of businesses we represent, I am delighted to present the third edition of our White Book, a set of trade and investment policy recommendations that have been collectively developed by our members for consideration by the Royal Government of Cambodia. This updated publication is the result of a methodical revision over the last 18 months under the guidance and expertise of our ten sectoral committees, to provide realistic solutions to overcome the regulatory and structural barriers that exist when doing business in the Kingdom. We envisage that over the coming years, the reforms that we seek through this White Book, will enhance the Cambodian business environment, and ultimately drive greater flows of trade and investment to and from Europe and beyond.

As Cambodia continues to reinforce its position within the ever-turbulent global market, the Royal Government is acutely aware of the importance of undertaking meaningful transformations to ensure the Kingdom remains competitive. Early 2019 saw the Prime Minister aptly adopt the Royal Government's most ambitious package of reforms during the re-established Government-Private Sector Forum (G-PSF), which were aimed at strengthening competitiveness and improving trade facilitation to promote greater economic diversification. EuroCham widely welcomed these reforms and the decision for the Prime Minister to return to chairing the G-PSF, as this is a valuable and reliable mechanism for public-private dialogue that is importantly followed by concrete resolutions.

It was encouraging to see a number of issues that we have previously raised by our White Books addressed through this comprehensive reform agenda, most

notably within our Customs, Transport and Logistics chapter. This demonstrates the increasing recognition and appreciation of our White Book that enabled EuroCham to secure a 75% response rate from the Royal Government to the recommendations proposed by our members in 2017, a marked improvement from our first White Book. These responses have been presented in the Policy Response section, which also lists 11 recommendations that have been resolved as a result of changes implemented by the Royal Government. This impressive reception solidifies our belief that the private sector holds a privileged position as a key contributor to the development of policymaking by providing practical feedback and inputs.

This year's White Book contains 65 new, updated and retained policy recommendations across an expanded range of sectors, which sees the inclusion of our newest sectoral committee and corresponding chapter for Agribusiness. The expansion of our sectoral committees signals the business community's enthusiasm for closer collaboration with the Royal Government to overcome persistent regulatory challenges. Each sectoral and cross-sectoral committee has raised issues specific to their area of expertise and highlight how the suggested improvements will enhance compliance, competition and investment. Within this context, we have identified an underlying theme that a more level playing field can be achieved through stronger, consistent and transparent enforcement of the Kingdom's legal framework, which should also seek to recognise and encourage compliant practices. We believe that the adoption of our recommendations will ensure a

more robust and dynamic response from the private sector to the changing demands of the domestic and international market.

A willingness to welcome and embrace change through meaningful reforms is essential for Cambodia to navigate itself through the disruptive geopolitical landscape that threatens today's economy. Under these circumstances, it is EuroCham's hope that our third White Book will once again be welcomed by the Royal Government and all stakeholders in Cambodia's development, as a means to provoke and engage discussion. We look forward to another round of results-driven dialogue that will support the Royal Government to take a systematic and complementary approach to policymaking that enables a more conducive regulatory and business environment.

EuroCham would like to express our sincere thanks to those that have contributed to the development of this White Book, without their knowledge, expertise and steadfast support of our advocacy programme, this would not have been possible. We now call upon all members of the Cambodian business community to take advantage of the opportunity to have your voices heard by participating in the discussions and consultations that will take place over the next year. We remain emphatically committed to supporting the compliant private sector and to working in partnership with the Royal Government to ensure the continued growth and prosperity of the Cambodian economy.



2019 Policy Recommendations

An overview of the proposals EuroCham members made for 2019.

INVESTMENT PROTECTION

- | | |
|--|--|
| Legal Review Mechanisms | <ol style="list-style-type: none">1. Ensure that future laws and regulations incorporate practical transitional provisions, and that new legal instruments are not applied to impose retroactive penalties for non-compliance.2. Create an independent review mechanism within relevant ministries and public bodies responsible for processing applications and approvals for private entities, and a Supreme Administrative Court. |
| Development of New Laws | <ol style="list-style-type: none">3. Offer greater guarantees, incentives and assistance to investors through a new Law on Investment, incorporating recommendations from the private sector.4. Prioritise the finalisation of the Law on Competition, Law on E-Commerce, Law on Commercial Contracts and Law on Consumer Protection, and commit to adopting these laws before the end of 2019. |
| Protection of Intellectual Property Rights | <ol style="list-style-type: none">5. Introduce a pre-registration gazetting requirement for new trademark applications.6. Develop a more detailed legal framework to enable stronger provisional measures in the protection of intellectual property rights.7. Grant more power at the administrative level to the General Department of Customs and Excise to prevent counterfeit goods and parallel imports from entering Cambodia.8. Consult with the private sector to develop legal instruments to define specific remedies for Intellectual Property Rights infringement cases.9. Create a formalised Alternative Dispute Resolution process to address trademark rights infringement cases through relevant ministries. |

HUMAN RESOURCES

- | | |
|-------------------------------------|---|
| Employing Foreign Staff | <ol style="list-style-type: none">10. Replace the predefined contract template for foreign employees with a standardised online form containing the fundamental details of a formal employment contract. |
| Enterprise infirmaries | <ol style="list-style-type: none">11. Amend the Labour Law to revise the requirement that businesses employing more than 50 employees must have their own on-site infirmaries. |
| Apprenticeship Training Requirement | <ol style="list-style-type: none">12. Formally recognise suitable internship programmes as a viable alternative to an apprenticeship when assessing compliance with Prakas No. 004.13. Request that the Ministry of Labour and Vocational Training establish a consultative body to involve the private sector in the planning and management of funds collected from the Apprenticeship Tax.14. Permit businesses to deduct reasonable training expenses used to meet the Labour Law's apprenticeship requirement, on a pro-rata basis from the applicable Apprenticeship Tax. |

Public-Private Sector
Communication

15. Consider expanding the Foreign Workers Centralised Management System to enable all labour administrative procedures to be completed through the online service.

TAXATION

Development of Securities
Regulatory Framework

16. Consider adopting a Shareholder Continuity Test to determine the extent in which a change of ownership has occurred within a shareholding company.
17. Recognise that Stamp Duty should not apply when a capital increase is completed disproportionately by one shareholder, as the holdings of the remaining shareholders have not changed ownership.

Supporting Compliant Companies
During the Tax Formalisation
Process

18. Consider reducing the penalties applied to taxpayers who voluntarily disclose previous tax irregularities prior to an audit notification being issued.

Value Added Tax

19. Consider introducing industry-specific VAT provisions for travel agents so as to more fairly reflect the nature of these businesses.

Unfair Tax Treatment

20. Revise Instruction No. 003 MEF to remove the Cambodian nationality clause to ensure fair tax treatment of Seniority Indemnity Payments.

Qualified Investment Projects

21. Consider re-introducing the automatic exemption from Minimum Tax for Qualified Investment Projects during their tax holiday period.

CUSTOMS, TRANSPORT *and* LOGISTICS

Customs

22. Prioritise the adoption of the World Customs Organisation's Immediate Release Guidelines to simplify customs clearance procedures.
23. Prioritise the implementation of a secure online payment system and expansion of online document capabilities to facilitate customs procedures more effectively.

Transport and Logistics

24. Update the procedure through which the private sector can escalate issues and request decision reviews by the General Department of Customs and Excise.

AUTOMOTIVE

Import Regulations

25. Ensure that Prakas No. 150 is applied universally to all vehicles imported into Cambodia, in line with Prakas No. 99.

Consumer Protection

26. Request that the Department of Land Transport provide authorised automotive distributors with the Vehicle Identification Numbers of registered vehicles on a quarterly basis, to enable them to notify the Department in the event of a product recall.

Taxation Policy

27. Rationalise taxation policy for automobiles to encourage the use of more suitable and environmentally friendly vehicles in Cambodia.

AGRIBUSINESS

Banned Substances	28. Request that the Ministry of Agriculture, Forestry and Fisheries define the list of banned substances contained within the Law on Animal Health and Production, and ensure that the list specifically includes beta agonists.
Combating Illegal Agricultural Inputs	29. Request that the Ministry of Agriculture, Forestry and Fisheries implement stronger enforcement measures during their inspections at the point of distribution for agricultural input products.
Labour Regulations	30. Ensure that the Royal Government of Cambodia takes into consideration the additional benefits and conditions already provided by agricultural businesses when implementing new labour reforms.
Diversifying Agricultural Production	31. Consider permitting hybrid rice breeds to be legally grown and registered in Cambodia.
Mandatory Environmental Testing	32. Request clarification into whether it is mandatory for businesses to use the Ministry of Environment's laboratory facilities to conduct water quality testing.

INFORMATION *and* COMMUNICATION TECHNOLOGY

Supporting the Development of the Digital Economy	33. Prioritise the adoption of data protection and privacy laws, following an effective public-private consultation process. 34. Consider implementing mobile phone number portability and a broadband open access policy to encourage greater consumer choice and fairer competition. 35. Promote greater engagement between training providers and the private sector to improve ICT courses and accreditations to address the skills gap.
Telecommunications	36. Continue to engage in substantive consultation with the private sector prior to the adoption of the telecommunications re-licensing process and explore opportunities to incentivise investment in telecommunication infrastructure. 37. Request that future auctions are only utilised for the allocation of new spectrums and ensure that bidders are appropriately screened.

GREEN BUSINESS

Finalising the Environment and Natural Resources Code of Cambodia	38. Prioritise the finalisation of the Environment and Natural Resources Code of Cambodia. 39. Ensure that the incentives for solar energy use contained in Draft 11 of the Environment and Natural Resources Code of Cambodia are retained in the final version. 40. Ensure that the nationality requirement for Environmental Impact Assessment consultancies is not included in the final Environment and Natural Resources Code of Cambodia.
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Supporting the Transition to a Green Economy

41. Consider supporting the establishment of an independent Cambodian Green Building Council to enable its membership into the World Green Building Council.
42. Prioritise the establishment of a national environmental labelling programme in Cambodia.
43. Consider expanding the priorities of the new SME Bank to include investments in low-carbon developments by small and medium enterprises.
44. Develop fiscal and non-fiscal instruments to recognise, encourage and incentivise private sector initiatives to reduce, separate and recycle their waste.

HEALTHCARE

Access to Biological Products

45. Request that the Ministry of Health widen the acceptance of biological products to include those approved by the US Food and Drug Administration and or European Medicines Agency.

Over-the-Counter Products

46. Align the eligibility criteria and processes involved to reclassify a prescription pharmaceutical product as an Over-the-Counter product in Cambodia with ASEAN practices.

Restricting Unregistered Products

47. Prioritise interministerial coordination between the Ministry of Health and the General Department of Customs and Excise to implement additional measures to prevent unregistered and untested variations of registered pharmaceutical products from entering the Cambodian market.

Registrations and Renewals

48. Prioritise the implementation of the Ministry of Health's e-Registration and e-Importation online platform, and involve the private sector throughout its development.
49. Consider issuing regulations that would allow for the collective registration of multiple medical devices under a family or category registration.
50. Align medical equipment registration categories and guidelines with those defined by the ASEAN Medical Device Directive.
51. Request clarification of the guidelines that healthcare companies must follow to obtain approval from the Ministry of Health for their marketing activities.
52. Reinstate a channel for companies to obtain urgent import licences for medical products awaiting renewal or registration by adopting a formal application process with clear guidelines outlining eligibility.
53. Request that the Ministry of Health's Registration and Renewal Committee meet at least once a month, based on a published fixed schedule.

REAL ESTATE *and* CONSTRUCTION

Cadastral and Real Estate Development

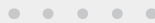
54. Consider requiring all consultants involved in construction projects in Cambodia to hold compulsory civil liability insurance.
55. Prescribe a set of universal standards of measurement for the real estate industry.
56. Consider increasing the financial controls set for residential development projects in line with other ASEAN Member States, to provide adequate protection to consumers in the event of a project collapsing.

Land Management and Urban Planning	57. Prioritise the adoption of the new legal framework for development and management of coastal areas and consider permitting a 'model project' to showcase to prospective investors that coastal development under international standards is a viable possibility in Cambodia.
Modernising Residential Property Regulations	58. Request clarification into the process to convert residential buildings constructed before Sub-Decree No. 126, into private units within a co-owned building, and outline how property owners can obtain their new respective co-ownership titles. 59. Adopt regulations that authorise developers to treat parking spaces within condominiums as private units, and allow for the issuance of private ownership certificates for parking spaces. 60. Consider adopting a regulatory framework to govern the property management industry in Cambodia, and consult with the private sector to develop a set of standard operating procedures. 61. Prioritise the digitalisation of the transfer process of immovable property by launching an online platform.
Construction	62. Consult with the private sector to ensure a practical set of building standards. 63. Prior to the realisation of the Building Code, consult with the private sector to define an intermediary set of fire safety criteria which will form the basis for the inspection and approval process required by Prakas No. 87. 64. Require all construction companies operating in Cambodia to have their designated Safety Officers undergo mandatory occupational safety and health training before starting a new project. 65. Consider implementing regulations that require structural building materials manufactured in Cambodia to undergo independent quality assurance testing prior to sale.

2017-2018 Policy Responses

A summary of the Royal Government of Cambodia's responses to our policy recommendations in 2017 and 2018.

INVESTMENT PROTECTION



Legal Review
Mechanisms

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.

NO RESPONSE

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.

NO RESPONSE

Development of
New Laws

3.

Prioritise the passing of a Law on Commercial Contracts after effective private sector consultation.

NO RESPONSE

4.

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

RESPONSE

The Ministry of Commerce is nearing completion of Cambodia's Competition Law, with the final draft currently under review by the Council of Ministers and Council of Jurists, and is expected to be enacted during the course of 2019.

Protection of Intellectual Property Rights

5.

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

RESPONSE

The Royal Government of Cambodia is currently in the process of updating the legal framework to govern foreign and local investment in Cambodia through its development of an amended Law on Investment and new Law on Special Economic Zones. It was confirmed during the Government-Private Sector Forum in March 2019 that the Council for the Development of Cambodia, which has led this process has committed to finalising the draft of the updated Laws by the end of June 2019, following which it will undergo a review by the Ministry of Economy and Finance, and then the Council of Ministers and Council of Jurists.

6.

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

NO RESPONSE

7.

Develop a more detailed legal framework to enable stronger provisional measures in the protection of Intellectual Property Rights.

RESPONSE

Following the agreement made between Cambodia and the European Patent Office (EPO) in January 2017, the Validation of European Patents Agreement came into force on 1 March 2018, marking Cambodia as the first Asian country to validate European patents. European patents granted by the EPO and validated in Cambodia will have the same legal effects as a corresponding Cambodian patent and will be subject to Cambodian patent law.

8.

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

RESPONSE

To improve competitiveness and reduce costs shouldered by businesses, the Ministry of Commerce's Cambodia Import-Export Inspection and Fraud Repression Directorate General (CAMCONTROL) has been relieved of its duties from all border checkpoints, seaports, special economic zones and other inspection zones. As of 1 February 2019, the General Department of Customs and Excise became the only administration authorised to carry out the inspection of goods at Cambodia's entry points.

9.

Consult with the private sector to develop legal instruments to define specific remedies for Intellectual Property Rights infringement cases.

NO RESPONSE

10.

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

RESPONSE

The Ministry of Commerce is currently in the process of drafting a new Prakas to establish a Board of Appeal to challenge intellectual property rights when interested parties are not satisfied with the decision taken by the Registrar regarding their trademark registration.

HUMAN RESOURCES



Supporting
Economic
Diversification

11.

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

RESPONSE

In their April 2018 letter to EuroCham, the Ministry of Labour and Vocational Training reaffirmed that unions must first apply to be recognised as the "Most Representative" union before representing employees in collective bargaining agreements, in accordance with the Law on Trade Unions. The Ministry confirmed that as of April 2018, no union had applied for or had been recognised as having the "Most Recognised" status, as per their interpretation.

Employing
Foreign Staff

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 Labour and Vocational Training.

RESPONSE

In their April 2018 letter to EuroCham, the Ministry of Labour and Vocational Training clarified that employers are not explicitly required to utilise the pre-defined contractual template provided by the Department of Employment and Manpower for foreign employees, rather this template is intended to act as the minimum standards required. While in principle, this clarification is the same interpretation of the law taken by EuroCham, our members report that this is not the case in practice and they must continue to use the template.

Enterprise
Infirmaries

13.

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

RESPONSE

In their April 2018 letter to EuroCham, the Ministry of Labour and Vocational Training acknowledged that while the Labour Law dictates that businesses employing more than 50 employees must have an on-site infirmary, this is impacting the private sector as Cambodia's economy grows. As the requirement is contained within the Labour Law, a review cannot be made without first amending the Law. The Ministry intends to take this recommendation into consideration during further discussions with the Operational Safety & Health technical staff.

Skills and Training

14.

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

RESPONSE

Building on the positive steps undertaken by the Royal Government of Cambodia to implement the ASEAN Mutual Recognition Agreement on Tourism Professionals, Cambodia; in collaboration with Thailand, has selected two priority occupations for the next Mutual Recognition of Skills (MRS) implementation, Masonry and Building Electrical Wiring. The International Labour Organisation has submitted a funding proposal to ensure continued support of the project with the Republic of Korea, after which a new action plan will be rolled out to continue implementation of the MRS between Cambodia and Thailand.

15.

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

NO RESPONSE

Public-Private
Sector Communication

16.

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

RESPONSE

In their April 2018 letter to EuroCham, the Ministry of Labour and Vocational Training highlighted its ongoing work to address this issue through providing capacity strengthening training to its Labour Inspectorate with additional sessions planned in the future. Alongside its proactive efforts to bring the applications for quotas and foreign work permits online, the Ministry now uploads applicable laws, regulations and forms to their website to simplify disseminating information and ensure greater accessibility.

Apprenticeship
Training
Requirement

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.

RESPONSE

In their April 2018 letter to EuroCham, the Ministry of Labour and Vocational Training reiterated the apprenticeship training requirement stipulated by the Labour Law, whereby a business with more than 60 people, must include a certain percentage of their total workforce employed as apprentices. To reinforce the implementation of Prakas No. 004, the Ministry provided specific instructions for businesses on their obligations regarding apprenticeship programmes to avoid sanctions, through Instruction No. 042/15.

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.

RESPONSE

In their April 2018 letter to EuroCham, the Ministry of Labour and Vocational Training clarified the fines that apply to businesses that fail to comply with the apprenticeship requirement of the Labour Law. The penalty applicable for non-compliance is set at 1,680,000 Riel (approximately US\$420). Alternatively, businesses can request an exemption by paying an apprenticeship training tax, which is equal to 1% of the annual salaries of all of their employees.

TAXATION



Supporting
Compliant
Companies
During the Tax
Formalisation
Process

19.

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

RESPONSE

In their April 2018 letter to EuroCham, the General Department of Taxation (GDT) upheld their commitment to maintaining the Withholding Tax system in Cambodia, referencing that it is common practice by other countries at similar stages of development. The GDT clarified in agreement with EuroCham that a supplier invoice must make a clear distinction between the price of goods and that of services, and that Withholding Tax shall only apply to the service element. The GDT was unable to provide a list of services exempt from Withholding Tax as the current Law on Taxation and associated regulations do not provide provisions to do so.

20.

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

RESPONSE

In their April 2018 letter to EuroCham, the General Department of Taxation confirmed that for rental properties, the lessor is responsible for paying withholding tax, while the lessee is responsible for paying VAT. Any VAT paid is regarded as a credit of monthly input tax for the lessor and the withholding tax is also credited to the lessor to offset tax on annual income. However, their response did not reference the conditions regarding rental of immovable property from a registered company.

21.

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

RESPONSE

In their April 2018 letter to EuroCham, the General Department of Taxation expressed its intention to issue specific instructions on what businesses will be required to submit as evidence that their services have been consumed abroad to enable the application of the appropriate tax liabilities. Provided that the upcoming instruction contains specific references to payments made for management and technical services to non-resident taxpayers and clarifies the Withholding Tax requirement, this may resolve this issue.

Value Added Tax 22.

Provide more specific guidance on VAT requirements for exported services.

RESPONSE

In their April 2018 letter to EuroCham, the General Department of Taxation expressed its intention to issue specific instructions on what businesses will be required to submit as evidence that their services have been consumed abroad to ensure that the VAT rate of 0% is applicable. Provided that the upcoming instruction specifically addresses the meaning of services to be “used or consumed outside the Kingdom of Cambodia” and that the application of VAT on exported services is aligned with current business practices, this should resolve this issue.

23.

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

RESPONSE

In previous correspondence with EuroCham, the General Department of Taxation provided a detailed explanation of the current regulations relating to this issue, referencing Sub-Decree No. 114 on Value Added Tax, dated 24 December 1999, Articles 32 to 40. We appreciate this clarification and agree that the existing regulations are clear and unambiguous. This being the case, we maintain that the content of these regulations places excessive additional burden on companies for whom a large proportion of their sales is to tax-exempt customers, who in effect pay higher rates of VAT than other businesses.

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.

RESOLVED

In June 2018, the Ministry of Economy and Finance issued Prakas No. 576 and 577 to effectively and efficiently refund VAT to businesses that are classified as medium or large taxpayers. These provisions detail the procedures and approval process for VAT refunds, eligibility criteria, expected timing and authorise the General Department of Taxation to issue VAT refunds. Tax compliant enterprises that have followed the defined processes and submitted the required documentation, can expect their VAT refund within approximately 40 business days for private sector businesses and 15 business days for not-for-profit entities (including NGOs, diplomatic missions and technical cooperation agencies), after submitting their request.

25.

Consider introducing VAT provisions for travel agents that recognise 'agency relationships' so as to more fairly reflect the nature of these businesses.

RESPONSE

In June 2018, the Ministry of Economy and Finance issued Prakas No. 597, which provided guidance and recognition of the relationship between agents that supply goods and services on behalf of a principal and their tax obligations. This Prakas only validates an agency relationship between an agent and a Cambodian resident taxpaying principal, and unfortunately does not recognise such a relationship with an overseas principal. Under the provisions of this Prakas, agents can limit their tax exposure to the commission earned on a sale, rather than the gross invoice.

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.

RESPONSE

In their April 2018 letter to EuroCham, the General Department of Taxation expressed their inability to grant fringe benefits tax exemptions based on employee seniority as requested, in order to ensure a fair application of the Circular No. 011 issued by the Ministry of Economy and Finance. While EuroCham recognises the importance of uniformly applying regulations, we maintain the position that rationalising such regulations would enhance Cambodia's international competitiveness.

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.

RESPONSE

In their April 2018 letter to EuroCham, the General Department of Taxation (GDT) reaffirmed that the progressive rates of Tax on Profit in the Law on Financial Management are only applicable to individuals, sole proprietorships and general partnerships. The GDT noted that this provision aims to encourage the development of small enterprises and support them to increase their capital during the early stages of their businesses.

28.

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

RESPONSE

The Royal Government of Cambodia is in the process of updating the Law on Investment to better reflect Cambodia's economic growth ambitions and has committed to finalising the new draft by the end of June 2019. EuroCham is eagerly looking forward to the updated Law, particularly on the revisions to Qualified Investment Project incentives so as to offer more competitive tax advantages to investors.

29.

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

RESPONSE

In their April 2018 letter to EuroCham, the General Department of Taxation (GDT), reaffirmed their reluctance to consider permitting businesses to claim any entertainment expenses as tax deductible as they are concerned that this may provide opportunities for expenses to be artificially inflated and reduce Tax on Profit payments. The GDT is currently unable to consider the alternative capped allowance system proposed by EuroCham, as Article 19 of the Law on Financial Management explicitly states that expenses may not be used for entertainment purposes.

Request for New
Tax Regulations

30.

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

RESOLVED

On 10 October 2017, the Ministry of Economy and Finance issued Prakas No. 986 MEF on the Rules and Procedures on Income and Expense Allocation among Related Parties. This Prakas; developed with technical support from the OECD and World Bank, outlines the guidelines and procedures for approved transfer pricing methods and penalties for non-compliance for enterprises that undertake transactions with related parties.

CUSTOMS, TRANSPORT *and* LOGISTICS



Customs

31.

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

RESOLVED

Announced as part of the comprehensive reform agenda to improve trade facilitation and competitiveness in January 2019, Prakas No. 1608 MEF on the official fees for out-of-hours service and outside expenses came into force from 1 April 2019. Importantly, it was also confirmed that payments for these services will be accompanied by an official electronic receipt from the General Department of Customs and Excise.

32.

Provide clearer guidelines on the process through which suppliers to Qualified Investment Projects can benefit from import tariff exemptions applicable to the QIP.

NO RESPONSE

33.

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

RESPONSE

The Royal Government of Cambodia is actively modernising customs procedures and continues to introduce enhanced automated processes through its ongoing development of Cambodia's National Single Window. This integration project will streamline and digitalise export processes and documentation requirements, in alignment with Cambodia's ASEAN commitments that will see the establishment of the ASEAN Single Window. The Royal Government of Cambodia intends to officially launch Cambodia's National Single Window in early June 2019.

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.

RESPONSE

During EuroCham's luncheon in November 2018, His Excellency, Dr Kun Nhem, Director General of the General Department of Customs and Excise reiterated the escalation process for issues relating to customs matters, as defined by the Law on Customs. This states that if a person is dissatisfied with the determination of a tariff classification, origin or customs value, they may object by writing to the Director General within 30 days of receiving the customs notice. Following which, the Director General shall make a decision within 60 days, otherwise the appeal will be deemed as accepted.

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.

RESOLVED

During 2018, the General Department for Customs and Excise fully implemented the 'de minimis' value regime for all shipments below the threshold of US\$50, and our members report that businesses are seeing vast improvements, particularly as the amount of documentation required for shipments has reduced significantly. Members further praised the success of the implementation, as freight forwarders are permitted to submit a consolidated manifest of all de minimis shipments each day, rather than individually as they initially expected.

Transport and Logistics

36.

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

RESOLVED

To offset the impact of external threats to Cambodia's preferential trading agreements, the Ministry of Economy and Finance unveiled an extensive agenda of reforms in January 2019. These include the elimination of export management fees and Certificates of Origin; dissolution of Kampuchea Shipping Agency and Brokers (KAMSAB); 50% reduced container scanning fees; the relieving of CAMCONTROL from its inspection duties at border checkpoints. These reforms are expected to result in a significant cost savings for businesses, with the Royal Government of Cambodia anticipating a loss of approximately \$60 million in annual revenue.

37.

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

RESOLVED

On 28 February 2019, the Royal Government of Cambodia dissolved KAMSAB, the state-owned organisation that previously held a monopoly on shipping agency services. The elimination of KAMSAB is responsible for an additional loss of approximately \$500,000 in annual revenue for the Royal Government of Cambodia.

38.

Assist shipping lines in recovering containers holding abandoned cargo.

NO RESPONSE

Special Economic Zones

39.

Require Special Economic Zones to facilitate regular meetings between investors, General Department of Customs and Excise, and other relevant public bodies, and consider trialling new tools for public-private collaboration within SEZs.

NO RESPONSE

AUTOMOTIVE



Import Regulations 40.

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

RESPONSE

On 25 March 2019, the Ministry of Industry and Handicraft issued Prakas No. 99, to extend the deferred enforcement of Prakas No. 150 on the 19 UN ECE Regulations for automotive products until 31 December 2019. Importantly, Prakas No. 99 also stated that any business involved in the production, transformation, importation and sale of automotive products must begin the implementation of the 19 UN ECE regulations by 1 January 2020. While the implementation programme will be determined by a separate announcement, this provision is certainly welcomed as it brings much needed clarity to the automotive sector.

Consumer Protection

41.

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

NO RESPONSE

42.

Better implement existing technical check requirements.

RESOLVED

The Ministry of Public Works and Transport has undertaken a number of significant initiatives to address the issue of unsafe vehicles in use in Cambodia, these include the expansion of mobile vehicle inspections to all provinces, the launching of the Online Automation System for Technical Vehicle Inspection Registrations and collaboration with the Japan International Cooperation Agency to improve vehicle inspection standards.

Taxation Policy

43.

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

NO RESPONSE

INFORMATION *and* COMMUNICATION TECHNOLOGY



Supporting the
Development of
New Technology
Industries

44.

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

RESPONSE

In their October 2018 letter to EuroCham, the Ministry of Post and Telecommunications acknowledged the essential role the private sector and consumers have played in contributing to the development of policy and regulations to manage Cambodia's emerging ICT sector and provided an overview of the consultative activities that have taken place. EuroCham's ICT Committee has recognised the considerable efforts of the Royal Government of Cambodia to engage with the private sector and is eager to continue to provide constructive advice and support to the relevant ministries on future legislation.

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.

RESPONSE

EuroCham is pleased to report on the enhanced engagement undertaken by the Ministry of Commerce towards the private sector regarding the ongoing development of the new E-Commerce Law. EuroCham's ICT Committee was given numerous opportunities to provide constructive feedback on the draft E-Commerce Law, in an effort to stimulate meaningful discussion around the aims and objectives of the incoming Law. Committee members were able to voice their concerns against each article of the draft Law and provide detailed suggestions to support the Royal Government of Cambodia in drafting legislation that will enable E-Commerce to prosper. Committee members' feedback was supportive in verifying the accuracy of technical details and to ensure that the contained provisions would not stifle innovation and Cambodia's emerging technology sector.

Telecommunications 46.

Engage in substantive consultation with the private sector prior to implementation of the telecommunications relicensing process.

RESPONSE

In their October 2018 letter to EuroCham, the Ministry of Post and Telecommunications detailed the numerous occasions in which the private sector was engaged with during the development of the new Telecommunications Law. The Ministry reaffirmed that they intend to continue to hold similar consultative meetings for future legislative changes and welcomes all feedback, input or concerns the private sector may have.

47.

Structure a future Universal Service Obligation scheme and Research & Development Funding scheme to support the growth of the sector.

RESOLVED

In November 2018, the Royal Government of Cambodia announced that 87% of telecommunication operators in Cambodia had fulfilled their obligations and contributed US\$13.5 million to the Capacity Building and Research & Development Fund and the Universal Service Obligation Fund to expand services and increase innovation. This level of compliance demonstrates that engagement with the telecommunication operators and the publishing of clear implementation guidelines, the private sectors' initial reservations around the management of the revenue have been resolved.

48.

Introduce a screening process for bidders on future spectrum auctions.

RESPONSE

In their October 2018 letter to EuroCham, the Ministry of Post and Telecommunications outlined that the draft Sub-Decree on the Organisation, Management, and Allocation of Radio Frequency Spectrum states that where bidders are unable to provide payment for their winning bid, the Ministry will reorganise a new auction within 90 days after the final payment reminder. However, this does not overcome the issue whereby a speculative bidder with limited financial capability can enter an auction and unnecessarily inflate the price of spectrums, which will cause further delays to the allocation and network expansion.

49.

Review the method of calculating taxable revenues for telecommunications companies.

RESPONSE

In their October 2018 letter to EuroCham, the Ministry of Post and Telecommunications clarified that the issue of taxable revenue was outside their remit, as taxation is the responsibility of the General Department of Taxation under the Ministry of Economy and Finance, and instead suggested that EuroCham consult with the relevant officials for a response.

GREEN BUSINESS



Renewable Energies

50.

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

NO RESPONSE

51.

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

RESPONSE

In January 2018, the Royal Government of Cambodia adopted its first related regulation on solar energy via the Electricity Authority of Cambodia (EAC), clarifying the general conditions for connecting solar photovoltaic generating sources to the national grid. According to the regulations, consumers are able to install solar systems with no restrictions, as long as the system does not require connection to the national grid. Only big (voltage above 380 volts up to 22,000 volts) and bulk (any voltage above 22,000 volts) consumers may connect their solar systems with the national grid, in which a tariff charge and other conditions would be applicable.

52.

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

RESPONSE

The Electricity Authority of Cambodia (EAC) issued a set of minimum technical standards within the regulatory framework for connecting solar photovoltaic generating sources to the national grid, which have been linked to the EAC's Grid Code 2009. The issuance of these regulations and minimum technical requirements demonstrates the sector's progress in developing recognised standards for solar energy in Cambodia.

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.

NO RESPONSE

54.

Ensure that nationality requirements for Environmental Impact Assessment 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.

RESPONSE

In January 2018, during EuroCham's luncheon with the Minister for Environment, His Excellency Dr Say Samal acknowledged that there may be an easing of the Cambodian nationality restriction placed on Environmental Impact Assessment (EIA) consultancies in the longer term due to Cambodia's World Trade Organisation commitments, however at this stage there were no plans to do so. His Excellency instead suggested that foreign companies wishing to offer EIA consulting services in Cambodia, should partner with a Cambodian company.

55.

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

RESPONSE

In October 2018, Phnom Penh Capital Administration (PPCA) launched the Phnom Penh Waste Management Strategy and Action Plan 2018-2035, developed through a collective effort with development partners. The Strategy will act as a strategic guide for PPCA to address key issues, needs and challenges associated with waste management in Phnom Penh.

Energy Efficiency

56.

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

RESPONSE

During the course of 2018, the Chinese Government provided capacity building support to the Ministry of Environment and National Council for Sustainable Development in their development of ecolabelling and to establish a national environmental labelling programme in Cambodia. The project was led by the China Environmental United Certification Centre, and drew on their experiences in developing the China Environmental Label and international best practice.

57.

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

NO RESPONSE

Green Buildings 58.

Explore the creation of a Cambodian Green Building Council.

RESPONSE

The Ministry of Environment has mobilised a technical working group on sustainable cities in which discussions around the development of green building guidelines are underway. As the aims of this initiative intersect with those of the Green Building Council, EuroCham was advised to organise a workshop to bring together relevant stakeholders from the Royal Government of Cambodia, private sector and development partners to discuss the establishment of a Cambodian Green Building Council.

Green Financing 59.

Develop a centralised 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.

NO RESPONSE

HEALTHCARE



Parallel Imports 60.

Implement additional measures to prevent parallel importing of pharmaceutical products.

RESPONSE

In their August 2018 letter to EuroCham, the Department of Drugs and Food reaffirmed that under Cambodian law, pharmaceutical companies cannot obtain the exclusive rights to import medical products into Cambodia. In instances where the Ministry of Health has issued import licences, they have done so because a product has already received market authorisation for distribution and is permitted to enter by the General Department of Customs and Excise. However, these rules do not apply to the parallel importation of vaccines, which is explicitly not permitted.

Registrations and Renewals

61.

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

RESPONSE

In their August 2018 letter, the Department of Drugs and Food informed EuroCham that the Ministry of Health will no longer consider granting exceptional import licence requests for medical products. The Department stated that going forward, no medical products will be allowed to enter Cambodia without having first received a valid registration licence, even products that are awaiting their licence renewal. The Department outlined that the Ministry will issue renewal certificates within 6 months of an accepted submission and that they are in the process of setting up a new online platform for e-registrations and e-importation to simplify this process.

62.

Issue an official tariff list for the administrative processes concerning post-registration variations.

RESPONSE

The Ministry of Health is currently finalising the draft guidelines on post-registration variations for pharmaceutical products, which are being drafted in alignment with the ASEAN Variation Guidelines. Once these guidelines have been approved, the Ministry intends to issue a Joint-Prakas with the Ministry of Economy and Finance on the fee structure for post-registration variations during the course of 2019.

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.

RESPONSE

In their July 2018 letter to EuroCham, the National Health Products Quality Control Centre (NHQC) under the Ministry of Health, expressed a reluctance towards accepting laboratory tests results for healthcare products from countries or institutions outside Cambodia in lieu of local testing. The NHQC noted that within ASEAN, there are no systems currently in place to recognise or guarantee laboratory tests for healthcare products from another member state. Similarly, due to Cambodia's tropical climate and the potential improper storage, transportation or distribution of healthcare products, the NHQC requires localised testing to ensure the quality and suitability of products for the Cambodian market.

64.

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

RESPONSE

In their August 2018 letter to EuroCham, the Department of Drugs and Food outlined that the Ministry of Health is unable to publish a precise schedule of the registration and renewal committee sessions in advance as these are dependent on the individual members' schedules. The Department was able to confirm that they intended to organise committee meetings between five to six times per year.

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.

RESPONSE

In their August 2018 letter to EuroCham, the Department of Drugs and Food outlined that the existing Prakas No. 1258 which governs the registration process for medical equipment in Cambodia, requires products to be individually registered, and does not permit products to be grouped and registered under a category. The Department conveyed that the Ministry of Health may consider issuing a Prakas on family registrations for medical equipment in an effort to reduce the required fees and burden placed on companies operating in Cambodia.

Over-the-Counter
Products

66.

Review and update the Over-the-Counter list so that it better reflects the evolution of products available on the market.

RESOLVED

In their August 2018 letter to EuroCham, the Department of Drugs and Food confirmed that they had identified the pharmaceutical products that are available over-the-counter and those requiring a prescription via the Drug Registrar of 2017. The Department added that the Ministry of Health is expected to update the registrar of OTC drugs in 2019, though this will require a committee meeting to determine what updates are necessary. In the meantime, companies may contact the Department to obtain the most up-to-date list.

Public Tenders

67.

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

68.

Introduce a formalised 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.

RESOLVED

In their August 2018 letter to EuroCham, the Department of Drugs and Food advised that companies should submit a formal request to the leadership of the Ministry of Health as the Department does not have the authority to create such mechanism. Fortunately, during the Government-Private Sector Forum (G-PSF) in March 2019, the Royal Government of Cambodia announced that the G-PSF Working Groups have been expanded to include a specific Working Group on healthcare, alongside education and construction.

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.

NO RESPONSE

70.

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

RESPONSE

While there has not been a formal revision to the process to apply for freehold strata titles, our members report that property purchasers are able to negotiate with developers to obtain strata titles on their behalf. This additional service is up to the discretion of the developers to offer and should be requested by purchasers when finalising the Sales Purchase Agreement.

71.

Introduce financial controls that limit the speculative buying of property within Cambodia.

NO RESPONSE

72.

Prescribe a set of universal standards of measurement for the real estate industry.

NO RESPONSE

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.

RESPONSE

EuroCham's Real Estate and Construction Committee has actively pursued collaboration with the Royal Government of Cambodia to draft the regulatory framework for the development and management of coastal areas, by facilitating the input of legal and technical support from foreign expertise. While this engagement was indeed beneficial in identifying priorities for the new legislation, including the adoption of new legal tools such as zoning regulations and the promotion of Public-Private Partnerships, there has been limited progress of the new regulations since then.

Construction

74.

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

RESPONSE

The Construction Law and accompanying Building Code remain in the drafting phase as the Ministry of Land Management, Urban Planning and Construction continues to actively review Building Codes from other regulatory systems to gain insights that may be applicable to the Cambodian Building Code. EuroCham also wishes to acknowledge the valuable technical assistance the Ministry and the Institute of Standards of Cambodia have received from the Japanese Government through their development agency, JICA which has regularly mobilised experts to support the development of the new Building Code.

75.

Create a sub-committee under the National Committee for Health and Work Safety focusing specifically on occupational health and safety on construction sites.

RESOLVED

On 16 July 2018, the National Committee on Occupational Safety and Health under the Ministry of Labour and Vocational Training established a consultative council to promote health and safety standards in Cambodia's construction sector, referred to as the Project Advisory Board. The Project Advisory Board has been developed through the support of the International Labour Organisation and Japanese Government, and is comprised of representatives from Royal Government of Cambodia, private sector, unions and non-government organisations. The intentions of the Board are to share best practice and develop a legislative framework via a consultative process, to implement adequate control measures to minimise accidents and injuries on construction sites.

76.

Prior to the realisation 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.

RESPONSE

On 25 June 2018, the Royal Government of Cambodia issued a new Sub-Decree to enhance the fire protection of buildings by requiring the owners of all commercial and mixed-use buildings in Cambodia to install suitable fire prevention systems to mitigate the damage and danger caused by fires. This Sub-Decree stipulates the standards for fire prevention and extinguishing systems, as well as the management and inspection by officials to ensure the systems meet the new requirements. However, it has not yet been determined what fire safety standards or systems building owners will be required to implement to pass the new inspections.

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 Sectorial 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 to address issues faced by the industry, within the framework of the **Government-Private Sector Forum Working Group B** – dedicated to Tourism. These issues, and proposals for their solution, are being discussed on a regular basis between the Ministry of Tourism and the private sector. The public-private consultation mechanisms that have enabled this ongoing discussion, and the role played within them by EuroCham, are described below.

UNDERSTANDING THE GOVERNMENT PRIVATE SECTOR FORUM

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 of Cambodia and the private sector for consultations on trade and investment-related issues.

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

During the 18th G-PSF Plenary Session in March 2019, the first to be held since 2013, the Prime Minister confirmed the G-PSF Plenary Sessions will once again take place annually and if necessary, will be held twice a year. The Prime Minister also announced the expansion of the G-PSF Working Groups, formally establishing three additional Working Groups on Education, Healthcare and Construction.

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. In March 2019, EuroCham was appointed Vice Chair of the Working Groups for Tourism; Law, Tax and Governance; and Mines and Energy, and we look forward to contributing to the constructive dialogue and to strengthen public-private collaboration in these sectors.

13 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 Mines and Energy
- K. Working Group on Education
- L. Working Group on Healthcare
- M. Working Group on Construction

In addition to these 13 Working Groups, a Tax-Private Sector Partnership Mechanism and Customs-Private Sector Partnership Mechanism complete the range of official public-private sector forums.

G-PSF TOURISM WORKING GROUP

In 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). EuroCham was consequently entrusted with ensuring the Secretariat of this Private Sector Working Group until 2018, when we transferred this responsibility to the Cambodia Tourism Federation, with the aim of strengthening the unified voice of this private sector representative body. This ensures that the private sector contributions to Working Group B are drawn from a wide and diverse range of tourism and hospitality businesses.

Working Group B has been structured into smaller additional subgroups to facilitate more targeted public-private dialogue on specific issues. Accordingly, the Group includes the Joint Secretariat, co-chaired by the Cambodia Tourism Federation and the General Department of Tourism, with seven thematic Task Forces, each co-led by a technical representative from the Ministry of Tourism and by an industry representative designated by the Private Sector Secretariat.

Since then, these seven public-private task forces have regularly met under the coordination of the Joint-Secretariat, with the view of enhancing efforts

to promote Cambodia as a prime tourism destination and to improve the ease of doing business in 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 and also the splitting of the existing 'Marketing and Promotion' Task Force into domestic and international functions. Consequently, there are currently nine Task Forces:

1. Tourism industry
2. Training
3. Cleanliness and Green tourism
4. Research and Development
5. Domestic Marketing and Promotion
6. International Marketing and Promotion
7. Investment and Tourism products development
8. China Ready
9. Safety and Transportation.

GOING FORWARD

EuroCham welcomes the continued commitment of the Ministry of Tourism to reach out to the private sector in addressing sector-wide issues, and we look forward to realising 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, EuroCham has chosen not to include policy recommendations for tourism and hospitality in this publication.

Policy Recommendations

For Trade and Investment in Cambodia

INVESTMENT PROTECTION

Since the release of our White Book 2017, the Royal Government of Cambodia has undertaken a series of ambitious structural reforms to improve trade facilitation and the Kingdom's international competitiveness, most of which were unveiled by the Prime Minister during the Government-Private Sector Forum (G-PSF) in March 2019. Whilst it appears that the pace of implementation for the reforms represents a timely response to external threats to Cambodia's preferential trading agreements, it confirmed that these reforms are consistent with the Royal Government of Cambodia's ongoing strategy for greater economic diversification. This cross-sectoral chapter intends to highlight specific areas of Cambodia's legal framework for review to further advance the Kingdom's competitiveness and the overall investment environment.

The first section of this chapter, Legal Review Mechanisms includes two updated

recommendations that if adopted, would provide greater security to investors. Concerns have been raised regarding the adoption of new retroactive laws or those without sufficient transition periods becoming more common, most notably seen by the promulgation of Prakas No. 443 on Seniority Indemnity Payment. Retroactive laws are a serious risk to the regulatory environment as their application significantly increases uncertainty for investors. Furthermore, Cambodia has still not yet introduced a mechanism to enable businesses to request a review of decisions or actions taken by public officials to ensure that they are in accordance with the Kingdom's laws. While we are certainly pleased to see the G-PSF re-established, this addresses sector-wide issues rather than specific administrative challenges encountered by individual private entities. Such a mechanism if introduced, would bring Cambodia in line with the majority of its regional neighbours and ensures fair and added protection for all investors.

The second section addresses the need to accelerate the development of new laws to provide investors with additional legal assurances as progress has been stalled for some time. We have provided a series of suggestions to the Royal Government of Cambodia to foster confidence among prospective investors and lending institutions by offering greater guarantees, incentives and assistance through the updated Law on Investment. Similarly, we emphasise the need to prioritise the adoption of a number of vital commercial laws as part of Cambodia's international commitments and to safeguard businesses and investors against potential opportunistic practices.

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). While the legal framework for the protection of IPR in Cambodia is improving, there remains challenges around the enforcement of IPR, and support from relevant

administrative authorities can be limited. Where businesses experience illegal exploitation of their trademarks, 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. However, compliant companies can be cautious about taking their cases to court to challenge this exploitation, with concerns that they may be subject to retributive action by perpetrators. To effectively address these issues, we have included five recommendations identifying where necessary reforms are required throughout the various stages of the IPR protection regime.

We hope that the Royal Government of Cambodia will consider the adoption of these proposals as they would comprehensively enhance Cambodia's investment framework, bringing it closer in line with international best practice and encourage greater foreign direct investment inflows over the coming years.

Protection Against Retroactive Implementation of New Laws

UPDATED

ISSUE DESCRIPTION Concerns regarding the implementation of new retroactive laws have been raised by numerous EuroCham Sectoral Committees and has been a key issue discussed within our White Books. Examples include:

Within human resources, the unexpected introduction of Prakas No. 443 on the Payment of Seniority Indemnity in September 2018 caused severe uncertainty for the entire private sector, largely due to the inclusion of a retroactive payment component. Prakas No. 443 now requires employers to compensate all employees on undetermined duration contracts with a biannual payment equivalent to 15 days of wages and other fringe benefits for each year of working, up to 12 years of service. Employers are also required to retroactively compensate employees for the length of their service accumulated before Prakas No. 443 was enacted, referred to as a back payment. Although businesses recognise the added protection this legislation would bring to workers in some industries, the retroactive application has created an unforeseen ongoing liability for all employers for a business decision that has not occurred, as prior to the legislation, compensation was only applicable if an employee was terminated, similar to most other countries.

Through the productive dialogue between the Royal Government of Cambodia and the private sector (including EuroCham, Cambodia Chamber of Commerce and 30 other business associations), the financial impact of Prakas No. 443 has been reduced for sectors outside the garment, footwear and textile industry. In March 2019, the Ministry of Labour and Vocational Training issued Instruction No. 042 to delay the enforcement of the retroactive component until December 2021, and reduced the number of days compensation is to be settled each year from 15 days to six days for every year of service before 2019.

Additionally, in the real estate and construction sector, uncertainty is mounting over the upcoming Construction Law with the incorporated Building Code and Environmental Impact Assessment requirements, as developers are unclear about what their obligations will be under these new 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.

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 retroactively or with insufficient transition periods, this creates regulatory risks and additional costs for businesses. New legislation such as Prakas No. 443 has been adopted with limited participation from the private sector, resulting in new and unprecedented and unanticipated financial burden for businesses, which could damage Cambodia's reputation as a business-friendly environment. This issue of retroactivity was also raised during the Government-Private Sector Forum (G-PSF) chaired by the Prime Minister in March 2019, as it negatively impacts Cambodia's competitiveness and discourages further investment, since businesses cannot be sure that they will remain unaffected by the consequences of retroactively applied future laws.

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

2019 RECOMMENDATION

We would like to acknowledge the consolatory and fair approach taken the Royal Government of Cambodia to alleviate the concerns raised by private sector regarding Prakas No. 443 on Seniority Indemnity Payment, and our members welcome the positive results that emerged from the constructive dialogue.

In respect to the development of future laws and regulations, we respectfully recommend that the Royal Government of Cambodia incorporates practical transitional provisions, including where necessary a period of time after the passing of the new legislation to allow businesses reasonable opportunity to adapt their practices to ensure compliance. Processes for publishing and disseminating new laws should be included in this review to ensure that the private sector has sufficient and timely awareness of upcoming laws. To increase trust and strengthen engagement with the private sector, we encourage the Royal Government of Cambodia to involve wider stakeholders in the development of new regulations where feasible, as this will promote a more considered and targeted approach to policy making.

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

Availability of an Independent Review Mechanism for the Application of Laws

UPDATED

ISSUE DESCRIPTION

In some specific cases, investment projects can be hindered or significantly delayed where, for any reason, access to normal government services such as registration and licensing can be denied despite the investors seemingly meeting the criteria for such access. One example, which has proven to be quite problematic over the past year, 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 neighbours 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 of Cambodia to ensure effective implementation of its own laws and regulations.

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

2019 RECOMMENDATION

- a. We respectfully 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 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 on The Organisation 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. Recognising that the Ministry of Commerce is already in the process of drafting a new Prakas to establish an Appeal Board in line with the Sub-Decree Implementation of the Trademark Law, we recommend that the Ministry involve the private sector during this development process. The active participation of the private sector will ensure that the Appeal Board accurately reflects the needs of the business community and will enhance the transparency and legitimacy of the mechanism once established.
- c. Furthermore, we request that the Ministry of Commerce commit to a 'maximum response time' for business registration applications and agree to have cases independently reviewed where this time is exceeded.

Increasing Investor Confidence Through the Updated Law on Investment

UPDATED

2017 RECOMMENDATION

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

POLICY RESPONSE

The Royal Government of Cambodia is in the process of updating the legal framework that governs foreign and local investment in Cambodia, with the development of an amended Law on Investment and new Law on Special Economic Zones currently underway. The Council for the Development of Cambodia (CDC), which has led this process held a consultative meeting in February 2019 to collect input from the private sector and multilateral partners to shape the incoming legislation.

During the Government-Private Sector Forum (G-PSF) chaired by the Prime Minister in March 2019, it was confirmed that the CDC has committed to finalising the draft amendments to the Laws by the end of June 2019, following which it will undergo a review by the Council of Ministers and Council of Jurists. Also announced during the G-PSF was the decision to move the Chapter on Investment Incentives from the Law on Investment to the National Budget Law. This is expected to provide the Royal Government of Cambodia with more flexibility to incentivise priority sectors depending on the needs of the economy.

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 of Cambodia has recognised 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 of Cambodia continues the consultation process, we would like to highlight concerns 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) describes the CDC as a 'One-Stop Service' that serves as "the Royal Government of Cambodia's 'Etat-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 can only provide assistance with the initial business registration and does not appear to be able to provide support in obtaining licences required by various Ministries. If the CDC was empowered and permitted to secure the necessary licences on behalf of investors for projects it has already approved, this process would be vastly more efficient and would reduce the costs and delays.

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 set 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 maximise 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. 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. This effectively negates the perceived benefits of the profit tax exemption period and may indeed deter prospective investors from entering the market.

4. Prohibited Fields of Investment

The Royal Government of Cambodia 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 Organisation, 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 Law on Forestry.

The contents of ‘The Negative List’ is important to investors as 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.

IMPACT ON CAMBODIA

The update to the Law on Investment and adoption of a new Law on Special Economic Zones 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. Furthermore, this provides an opportunity to expedite the implementation of Cambodia's international commitments by integrating the substance of these commitments into the Law.

2019 RECOMMENDATION

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

EuroCham emphasises our commitment to contributing to the drafting of a revised Law on Investment that serves to foster confidence among prospective investors and, particularly, lending institutions. In this context, 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 by providing technical support to navigate Cambodia's investment framework and enforce investment protection. We recommend that provisions be introduced through which the CDC, as the Royal Government of Cambodia's 'Etat 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 Mines and Energy) to ensure that approved projects are able to obtain the necessary licenses in a timely manner.
- b. Integrate the investment protection standards of the ASEAN Comprehensive Investment Agreement 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. Revise current investment incentives to offer more competitive tax advantages to investors, and ensure that Article 23 of the Law on Taxation is reconsidered in parallel to the new Law on Investment and future incentive provisions if contained in the National Budget Law, as proposed during the Government-Private Sector Forum chaired by the Prime Minister in March 2019.
- 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.

Prioritising the Development of New Commercial Laws

UPDATED

There are a number of important commercial laws that have remained in a longstanding state of work-in-progress which is impacting the growth of emerging sectors and Cambodia's international competitiveness. These include:

ISSUE DESCRIPTION

Law on Competition

As part of Cambodia's commitments to the ASEAN Economic Community (AEC), it is required to introduce a national competition policy and law by 2015, to ensure a level playing field and a culture of fair competition that will enhance regional economic integration and performance. However, Cambodia remains the last ASEAN Member State that is yet to introduce a Competition Law. Fortunately, the Royal Government of Cambodia is nearing completion of its development of Cambodia's Competition Law, with the draft currently under review by Council of Ministers and Council of Jurists and it is expected to be adopted during the course of 2019. The final publicly available draft (version 5.7) appears to have incorporated key areas that were highlighted by our previous White Book, such as abuse of market dominance and the need for staggered enforcement of certain provisions.

Law on E-Commerce

Enhanced connectivity will continue to create new opportunities and platforms for Cambodian businesses to reach customers and if harnessed effectively, these opportunities can contribute significantly to economic growth. Cambodia's emerging e-commerce sector requires a supporting body of laws and regulations that will provide the framework for conducting digital transactions in a way that provides adequate security and protection to consumers and businesses alike. The Royal Government of Cambodia has made admirable progress in its development of the E-Commerce Law and the Ministry of Commerce, which is leading this process intends to finalise the Law by the end of 2019, with the draft currently under review by the Council of Jurists. EuroCham's Information and Communication Technology (ICT) Committee has been actively involved in the drafting process through a series of public-private sector consultations, in which members provided detailed feedback and recommendations on technical aspects and to enhance regional integration.

Law on Commercial Contracts

Businesses that 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 seek to considerably increase rental fees upon each renewal negotiation. In many other countries, commercial lease agreements can be secured through specialised contracts that offer additional protection for the tenant against these practices, such as an extended guaranteed minimum term and or an automatic right to renewal. For these specialized contracts to be legally applicable, a supporting legal framework must be in place. The Royal Government of Cambodia has recognised the need for a Law on Commercial Contracts and a draft law to have been under consideration several years ago,

however there has been no recent concrete progress towards adopting such a law.

Law on Consumer Protection

As Cambodia's economy becomes more consumer driven, legislation is required to protect and promote the interests of consumers, enabling them to make informed purchasing decisions and ensure a fair and competitive market for businesses. Consumer protection is regarded as an essential component of AEC cooperation and integration, with efforts underway to establish a common consumer protection policy, as demonstrated by the ASEAN Strategic Action Plan for Consumer Protection 2016-2025 (ASAPCP). This Strategy intends to build upon the activities of the ASEAN Committee on Consumer Protection by enhancing and integrating the existing consumer protection policies in place in each ASEAN Member State. However once again, Cambodia remains the last Member State without the required comprehensive legal framework, though a long-awaited draft Law has been prepared and is expected to be finalise during 2019.

IMPACT ON CAMBODIA

Without the aforementioned laws in place, consumers, businesses and investors are susceptible to opportunistic and unethical practices and the overall business environment can be perceived as unpredictable. Furthermore, if Cambodia continues to delay the adoption of laws that are required as part of its ASEAN and WTO commitments, its reputation and standing within the region and wider international community could diminish. This would likely significantly impact the attraction of the Kingdom as a potential investment destination and the Royal Government of Cambodia's efforts to achieve greater economic diversity.

2019 RECOMMENDATION

✓ **Prioritise the finalisation of the Law on Competition, Law on E-Commerce, Law on Commercial Contracts and Law on Consumer Protection, and commit to adopting these laws before the end of 2019.**

We respectfully recommend that the Royal Government of Cambodia prioritise finalising its development of the aforementioned commercial laws and commit to adopting these laws before the end of 2019. Through enacting these laws, the Royal Government of Cambodia will ensure a fair and competitive market, and create a more favourable investment environment by providing greater protection and assurances to prospective investors.

Introducing a Pre-Registration Gazetting Requirement for New Trademark Applications

RETAINED

Cambodia's Intellectual Property Rights (IPR) regime provides opportunity for individuals or companies to file notices of opposition against 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, although some marks applied online appear in an online database, an officially public gazetting of new trademarks occurs only after a successful registration, which provides other parties no 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 Rights as it supports the Department 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.**

2019 RECOMMENDATION

Following best practices from neighbouring ASEAN countries and elsewhere, we respectfully recommend the introduction of a requirement to publicly gazette all new trademark registrations applications 2 to 3 months prior to a decision being taken by the Department of Intellectual Property. This will provide opportunity for other interested entities or third parties to lodge notices of objection before a decision of registration is reached.

Developing a Detailed Legal Framework to Enable Stronger Provisional Measures in the Protection of Intellectual Property Rights

RETAINED

2017 RECOMMENDATION

Develop a more detailed legal framework to enable stronger provisional measures in the protection of Intellectual Property Rights.

POLICY RESPONSE

Following the agreement between Cambodia and the European Patent Office (EPO) in January 2017, the Validation of European Patents Agreement came into force on 1 March 2018, marking Cambodia as the first Asian country to validate European patents. European patents granted by the EPO and validated in Cambodia will have the same legal effects as a corresponding Cambodian patent and will be subject to Cambodian patent law.

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 who have had their marks infringed upon:

- Under Cambodian law, provisional measures against Intellectual Property Rights (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, which sits under the Ministry of Justice, takes responsibility for investigating economic crimes of high complexity or technology, including IPR infringement cases above a certain monetary value threshold. The Department of Special Investigations is able to bring cases to a specialised 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.

The Royal Government of Cambodia recognises the importance of protecting IPR not only to meet 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.

IMPACT ON CAMBODIA

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

2019 RECOMMENDATION

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

- a. The Trademark Law and its implementing regulations should define what constitutes 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 preserve 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 authorised 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 specialised committees for the suppression of infringement or to other enforcement agencies.

Empowering Customs in Preventing Counterfeit Goods and Parallel Imports from Entering Cambodia

RETAINED

2017 RECOMMENDATION

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

POLICY RESPONSE

To improve competitiveness and reduce costs shouldered by businesses, the Ministry of Commerce's Cambodia Import-Export Inspection and Fraud Repression Directorate General (CAMCONTROL) has been relieved of its duties from all border checkpoints, seaports, special economic zones and other inspection zones. As of 1 February 2019, the General Department of Customs and Excise became the only administration authorised to carry out the inspection of goods at Cambodia's entry points.

ISSUE DESCRIPTION

At present, officials of the General Department of Customs and Excise (GDCE) have relatively limited powers when it comes to enforcing Intellectual Property Rights (IPR) at the Kingdom's borders. The GDCE 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 the GDCE 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 GDCE 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 authorise 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 GDCE so that officials can conveniently access trademark ownership information via a centralised database. This has been identified as a limitation within EuroCham's Sectoral

Committees where, for example, GDCE officials do not have simple access to the registered specifications for pharmaceutical products to determine whether incoming shipments should be cleared.

As discussed earlier, the protection of IPR is a fundamental pillar of economic growth and is recognised by the Royal Government of Cambodia as a priority. An empowered GDCE has the potential to provide a strong ‘first line of defence’ 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.

IMPACT ON CAMBODIA

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

2019 RECOMMENDATION

We respectfully recommend that the Royal Government of Cambodia revise the initial time-frame for suspension proceedings and provide 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 of Cambodia consider granting more power at the administrative level to the GDCE, drawing best practice examples from neighbouring 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 GDCE 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.

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 Department of Intellectual Property Rights, 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

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.

Finally, we noted in the 2018 Annual Report of Ministry of Commerce that there is a list of laws and regulations being drafted including a Sub-Decree on Procedures for Enforcement of Intellectual Property Rights. We recommend the Royal Government of Cambodia takes this opportunity to consider our recommendations made in this section to be included in the Sub-Decree to an extent it is applicable within the Cambodian legal context and system. In addition, the private sector should be given an opportunity to provide comments and inputs before it is adopted by the Ministry of Commerce, and EuroCham would welcome the opportunity to provide support to facilitate this consultative process.

Introducing Specific Remedies for Intellectual Property Rights Infringement Cases

RETAINED

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 Intellectual Property Rights (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.

ISSUE DESCRIPTION

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.

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.

IMPACT ON CAMBODIA

✓ Consult with the private sector to develop legal instruments to define specific remedies for Intellectual Property Rights infringement cases.

2019 RECOMMENDATION

We respectfully recommend that the Royal Government of Cambodia consult 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 intellectual property 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 organised 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.

Establish a Formalised Alternative Dispute Resolution Process Through Relevant Ministries

RETAINED

2017 RECOMMENDATION

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

POLICY RESPONSE

We are pleased to report that the Ministry of Commerce is in the process of drafting a new Prakas to establish a Board of Appeal to challenge intellectual property rights (IPR) when interested parties are not satisfied with the decision taken by the Registrar regarding their trademark registration. The introduction of a review mechanism will be a significant development in the strengthening of IPR in Cambodia, and we encourage the Ministry to engage with the private sector to ensure this best reflects industry needs, which EuroCham would welcome the opportunity to help facilitate.

The Department of Intellectual Property Rights under the Ministry of Commerce has developed a special ‘hybrid’ procedure that aims to help to find solutions on 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.

The PADR process carries the potential to significantly improve Cambodia’s Intellectual Property Rights (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 Department of Intellectual Property Rights. Introducing a more formalised process would help to make PADR a more viable option for the support of a greater number of trademark rights owners.

ISSUE DESCRIPTION

IMPACT ON CAMBODIA

2019 RECOMMENDATION

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

We respectfully recommend that the PADR procedure of the Department of Intellectual Property Rights be formalised by adopting regulation that specify the PADR procedures and the roles of the Department during the process of the PADR.

Furthermore, we propose that the formalised PADR undertaken by the Department should in future be used as a model for other relevant administrative authorities including the Department of Industrial Property under the Ministry of Industry and Handicraft as well as the Department of Copyright under 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.

Finally, we noted in the 2018 Annual Report of Ministry of Commerce that there is a list of laws and regulations being drafted including a Prakas to establish a Board of Appeal. We recommend the Royal Government of Cambodia takes this opportunity to consider our recommendations made in this section to be included in the Prakas to the extent that it is applicable within the Cambodian legal context and system. In addition, the private sector should be given an opportunity to provide comments and input before it is adopted by the Ministry of Commerce, and EuroCham would welcome the opportunity to provide support to facilitate this consultative process.

HUMAN RESOURCES

We are pleased to report that our engagement with the Ministry of Labour and Vocational Training has strengthened since the launch of our second White Book. After publication, the Ministry convened a high-level meeting to provide useful clarifications and explanations to the concerns raised by our members, and to discuss their plan of action for the forthcoming year as they continue to implement the Labour Development Strategic Plan 2014-2019. Following this constructive meeting, the Ministry provided a written letter to EuroCham's Chairman, dated 20 April 2018, to present the detailed responses to each of the recommendations, in line with what was discussed during our meeting.

In respect to improvements for this chapter, we can report that the Ministry holds a similar interpretation of the law regarding the use of the predefined contract template for foreign employees. The Ministry outlined that this template is intended to serve only as the minimum standard

for what is required and that businesses are entitled to formulate their own contract to suit individual requirements. While this was indeed positive, this judgement does not yet appear to have been disseminated to frontline officials, as our members report that in practice, they must continue to use the template rather than their own contracts. The Ministry was similarly receptive to the private sector's concerns regarding the need for businesses that employ more 50 employees to have their own on-site infirmary. However, as this provision is stipulated by the Labour Law, the Ministry affirmed that any review will first require an amendment to the Law.

Recognising these limitations, this year's new recommendations seek to further highlight the need to review and update Cambodia's labour legislation and modernise Human Resource systems and procedures. Cambodia now has a dynamic and diverse range of sectors beyond the garment and footwear manufacturing industry that have grown and contribute considerably to the economy, each

with their own unique employment needs and working conditions. Thus, the Labour Law should endeavour to evolve and reflect with the changing demands of the economy by taking into consideration the needs of wider stakeholders. Fortunately, the Royal Government of Cambodia announced during the Government-Private Sector Forum in March 2019 that the Ministry of Labour and Vocational Training will undertake a thorough review of the Labour Law. Consequently, a number of our recommendations seek to highlight concerns for review, particularly regarding the apprenticeship obligation placed on businesses, as many businesses perceive this to be impractical to support their training and development needs, particularly those in the services sector.

The importance of ensuring that the Kingdom's labour laws represent the wider economy was thrust into prominence following the emergence of Prakas No. 443 on Payment of Seniority Indemnity. While Prakas No. 443 is expected to bring additional protection to some industries, the consequences of the retroactive payment

component threatens the competitiveness of many businesses and comes at a time of increasing difficulties for businesses operating in Cambodia. In October 2018, EuroCham was a part of the unified voice of the private sector that saw over thirty business associations come together to highlight the serious implications of this legislation and to negotiate a deferment. Following these negotiations, the Ministry of Labour and Vocational Training issued Instruction No. 042 in March 2019, to delay the retroactive payment component until December 2021, and reduced the number of days compensation is to be settled each year from 15 days to six days for every year of service before 2019. Due to these developments, we have not included a specific recommendation concerning Seniority Indemnity Payment in this chapter of the White book.

Registration of Employment Contracts for Foreign Employees with the Ministry of Labour and Vocational Training

UPDATED

2017 RECOMMENDATION

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 Labour and Vocational Training.

POLICY RESPONSE

In their April 2018 letter to EuroCham (reference No. 610 KB/SHOr), the Ministry of Labour and Vocational Training clarified that employers are not explicitly required to utilise the predefined contractual template provided by the Department of Employment and Manpower. The predefined template is intended to act as an example of the minimum standards required by the Ministry to formulate a contract between foreign employees in Cambodia. The Ministry acknowledged that businesses are entitled to formulate their own contracts to suit their specific needs, though such contract must unequivocally, contain the information required by the predefined template. This employment contract is then required to be registered with the Department of Employment and Manpower, to be kept for their records.

While we welcome this clarification by the Ministry as it is the same interpretation of the law taken by EuroCham and would indeed simplify the process of registering foreign employees, our members report that this is not the case in practice. Although this may be due to limited dissemination of this interpretation to frontline Ministry officials, the issue remains as before as businesses are still required to use the predefined contract template to register foreign employees.

ISSUE DESCRIPTION

According to Prakas No. 196, Article 3, owners or directors of companies employing a foreign national must register the employment contract of a foreign employee with the Department of Employment and Manpower of the Ministry of Labour and Vocational Training or its municipal and provincial departments. Although the Ministry has now clarified that employers are not required to use the predefined template contract if their own contracts include all of the specified details, in practice, EuroCham's members report that they are still required to complete the template contract for each foreign employee.

As the template contract is somewhat simplistic, it does not provide sufficient detail on areas that employers would normally expect to cover within a contract, this instead means that foreign employees are bound by two different employment contracts, which could have conflicting terms and conditions. Similarly, use of this contract template forces employers to register foreign employees on fixed duration contracts, overlooking that foreign employees can legally be employed indefinitely in Cambodia. This requires employers to resubmit these template contracts every two years, bearing the additional cost and administrative burden to do so.

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. This means that employers require foreign employees to sign a separate, more detailed contract, creating uncertainty as this secondary contract lacks formal recognition. This leaves scope for potential abuse of employment conditions as the contract provided to the Ministry could have different details compared to the formal agreement, such as a lower salary than is actually paid to the employee as a means to minimise the tax payable. Maintaining this status quo is inefficient for both the Royal Government of Cambodia and employers – authorities do not have full visibility of agreements between employers and employees, while employers have no recourse to have their contractual agreements with employees recognised by the Royal Government of Cambodia.

Furthermore, restricting foreign employees to fixed term contracts unfairly disadvantages employees who bring expertise and facilitate knowledge transfer for the benefit of the Cambodian economy. While we recognise that the Royal Government of Cambodia may wish to ensure that roles are not permanently filled by foreigners to provide opportunities for Cambodian citizens, employers are already required to pay a fee if they exceed the quota for foreign employees and should not be penalised further. Accordingly, employers require an equal opportunity to offer foreign employees with the stability and security of indefinite employment to attract talented candidates and undertake long-term strategic business planning.

✓ **Replace the predefined contract template for foreign employees with a standardised online form containing the fundamental details of a formal employment contract.**

2019 RECOMMENDATION

Acknowledging that formal employment contracts are comprehensive documents with complex terms and conditions, it would be a comparable administrative burden for the Ministry of Labour and Vocational Training to process the contents of each. Therefore, we respectfully recommend that the Ministry replace the predefined contract template with a more simplified standardised foreign employee form. We envisage that this standardised form would contain the fundamental details of an employment contract and working conditions such as salary, contract length and holidays, and include a declaration outlining that the Royal Government of Cambodia does not endorse the contents of the employment contract to limit liability.

To bring further administrative efficiencies, this form could be completed and submitted via the Ministry's online platform, alongside the foreign employment quota and work permit systems. This would align well with the Ministry's push to modernise its practices and would alleviate the existing challenges experienced with the dissemination of information to frontline Ministry officials. Furthermore, standardising this process would also remove the restriction placed on employers to register foreign employees on fixed term contracts, as the form would follow the same details of their formal contract and provide foreign employees with the same stability and job security as Cambodian employees.

Enterprise Infirmaries in Medium-Sized Businesses

UPDATED

2017 RECOMMENDATION

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

POLICY RESPONSE

As specified by the Labour Law, any business that employs more than 50 employees in Cambodia is currently required to have their own on-site infirmary, which can significantly increase costs to employers and underutilises valuable healthcare resources. In their April 2018 letter to EuroCham (reference No. 610 KB/SHOr), the Ministry of Labour and Vocational Training acknowledged that this requirement is impacting the private sector, though as it is contained within the Labour Law, an amendment of the Labour Law is required.

The Ministry has stated their intention to take this recommendation into consideration during further discussions with their Operational Safety & Health technical staff. EuroCham welcomes this development and will continue to encourage the Royal Government of Cambodia to consider removing this requirement for businesses employing over 50 employees that are in proximity to National Social Security Fund (NSSF)-contracted hospitals.

ISSUE DESCRIPTION

Prakas No. 330 on the Establishment of Enterprise's Infirmary, 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 recognising the importance of this provision for businesses in certain sectors that are located in rural areas far away from hospitals, for businesses in Cambodia's urban areas this seems to be an unnecessary provision that places additional costs upon the employer and diverts valuable healthcare resources. For businesses in central Phnom Penh, there are a number of NSSF-contracted hospitals nearby so it is unclear what additional benefit the on-site infirmary offers. Accordingly, this has created uncertainty for businesses as to whether they will be penalised for non-compliance and could create an opportunity for non-transparent practices to take place.

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. This requirement is not only costly for businesses but also deprives Cambodia of much needed well-trained healthcare staff, as professionals placed in unneeded on-site infirmaries could better apply their skills and expertise to areas with insufficient resources for the greater public benefit.

✓ **Amend the Labour Law to allow for the revision of the requirement that businesses employing more than 50 employees must have their own on-site infirmaries.**

2019 RECOMMENDATION

As the requirement for businesses employing more than 50 employees to have their own on-site infirmaries is contained within the Labour Law, we recommend that the Royal Government of Cambodia make an amendment to the Law to allow for the revision. Following this amendment, only businesses that employ more than 50 employees and are located in areas without access to NSSF-contracted hospitals should be required to establish on-site infirmaries.

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.

As the Prakas already permits a single enterprise that has multiple workplaces within 5km to establish a shared infirmary, we propose that the Ministry expand this to allow different enterprises that are geographically close to one another (e.g. Special Economic Zones, industrial parks or within a specific area) to pool their resources to establish a similar shared infirmary.

Recognition of Alternative Forms of Work-Based Learning

UPDATED

ISSUE DESCRIPTION

Apprenticeships and internships are both forms of work-based learning that have become increasingly effective tools to enhance education and workforce development, by providing young people with an opportunity to validate their learning under practical conditions in the workplace. This helps to bridge the skills gap that exists between what is taught in education facilities and the actual needs of the private sector, while also allowing businesses to benefit from a large pool of cost-effective, educated labour.

Traditionally, apprenticeships are formal vocational training programmes that prepare individuals for a specific technical profession or trade within physically demanding sectors such as construction or manufacturing, and often take between one to six years to complete, with a guaranteed job on completion. In comparison, internships are generally less structured short-term placements of between one to six months, often for university students to gain experience in a public or private organisation within a specific professional career, such as business development or communications, with the possibility of a job after the completion of their studies.

In Cambodia, as there is a strong emphasis placed on higher education, the prevalence of internships is much greater than apprenticeship programmes, as students are choosing to follow professional based careers rather than specialist trades. Although each programme serves a different purpose, both provide young people with vital work-based training to increase their technical capabilities, while also addressing the skills gap for benefit the Cambodian economy.

Despite their popularity, internships are not recognised by the Ministry of Labour and Vocational Training as a valid alternative to an apprenticeship programme, which is causing difficulties for many businesses due to the provisions contained in Prakas No. 004. Prakas No. 004 on The Training of Apprentices, stipulates that all businesses that employ more than 60 employees; regardless of their industry, must include a certain percentage of their staff as apprentices, with hefty fines of 1% of total annual salaries for non-compliance.

Although we acknowledge the benefits of incentivising businesses to employ more inexperienced staff, as the purpose of an apprenticeship is to train individuals in a specific skilled and manually intensive role, they are ill-suited for businesses involved in the services sector. Internships are instead attractive for such businesses as they provide flexibility to tailor their training and development needs with an individual intern's needs. Similarly, internships requiring less resources to manage when compared to the strict obligations that must be met by employers for apprenticeship programmes to be recognised.

As the expansion of the services sector has been a major contributor of Cambodia's economic growth and job creation, the private sector maintains that public policy should reflect and accommodate the needs of different industries that support ongoing efforts to diversify the economy and strengthen workforce capacity.

Internship programmes are mutually beneficial for students, universities and businesses alike, consequently they have become the central strategy of the private sector to resolve the skills gap that exists in Cambodia. Internships better prepare students for the transition into the business environment by providing them with tangible experience and mentoring support, allowing them to develop important soft skills and establish professional networks that they would otherwise have limited exposure to.

Similarly, internships enable universities to build stronger relationships with the business community, leading to more comprehensive curricula and talented cohorts, while businesses receive affordable and educated employees that they can shape from an early stage. This interdependent relationship ultimately strengthens the capabilities of Cambodia's labour force by reducing the skill gap and contributes to a more competitive and productive economy.

✓ **Formally recognise suitable internship programmes as a viable alternative to an apprenticeship when assessing compliance with Prakas No. 004.**

2019 RECOMMENDATION

While we acknowledge that it is challenging to develop a robust training strategy that is suitable for all industries, we respectfully recommend that the Royal Government of Cambodia take steps to encourage the adoption of suitable internship programmes, by recognising them as a valid alternative to apprenticeships for the private sector. This would enable the Ministry of Labour and Vocational Training to take a company's internship programme into consideration when assessing their compliance with Prakas No. 004 and be in line with the subsequent Instruction No. 042/15 that allows companies to select a worker in probation or those learning new skills to fulfil the yearly apprenticeship requirement.

Furthermore, we suggest that the Ministry consult with both the private sector and education institutes to develop a set of practical implementation guidelines for them to follow to demonstrate that their internship programmes are compliant.

Management of Apprenticeship Funds

NEW

ISSUE DESCRIPTION

Prakas No. 004, Article 8 states that for companies that are unable to comply with the apprenticeship requirements stipulated by the Labour Law, such companies shall pay an apprenticeship tax of 1% of the total annual salaries paid by the company, failing to do so will otherwise result in fines for non-compliance. This Prakas also affirmed that the collected funds are to be deposited into a cash fund that the Ministry of Labour and Vocational Training will use for training development, in collaboration with the Ministry of Economy and Finance and other relevant institutions.

Whilst our members certainly welcome the financing of much needed training and skills development, there are concerns that without private sector involvement, the deployment of the funds may overlook certain sectors as the Ministry has not yet published guidelines on their use. As the purpose of the funds are to increase the abilities of Cambodian citizens and ultimately raise the productivity and competitiveness of businesses, the private sector is best positioned to advise on the priority areas that stand to benefit the most from improved training and additional funding. Without such involvement, there is an increased risk that the training delivered will be inappropriate for the needs of industry, and the current skills gap that exists across many sectors will continue.

The Royal Government of Cambodia has already recognised the importance and benefit of involving a wider group of stakeholders in the planning and management of public funds, as seen by the Governing Body responsible for the implementation and management of the new National Social Security Fund. This Governing Body is comprised of representatives from the relevant government ministries, employers, workers and trade unions, to ensure all stakeholders are given a viable voice in the use of the funds.

IMPACT ON CAMBODIA

An effective consultation mechanism between the Royal Government of Cambodia and private sector to plan and manage the apprenticeship funds would enable the Ministry to establish a competitive, demand-driven training system that responds to the changing needs of the economy. Additionally, as the funds are to be derived directly from businesses, they have a vested interest in ensuring the success of the training programmes, therefore the initiative would greatly benefit from the active participation of private sector specialists.

✓ **Request that the Ministry of Labour and Vocational Training establish a consultative body to involve the private sector in the planning and management of funds collected from the Apprenticeship Tax.**

2019 RECOMMENDATION

We respectfully request that the Ministry of Labour and Vocational Training establish a consultative body to enable the private sector to be actively engaged in the planning and management of the funds collected from the Apprenticeship Tax for deployment into workforce training and development. By doing so, the Ministry will increase the likelihood that the funds will be used on training programmes that maximise the skills and abilities of Cambodian citizens in areas where the economy most demands and effectively prepare individuals for entry into the workforce. We anticipate that by involving more stakeholders in the planning and management, the Royal Government of Cambodia will replicate the success that the National Social Security Fund has seen.

Deducting Training Expenses for Apprenticeships

NEW

ISSUE DESCRIPTION

The publication of Instruction No. 042/15 by the Ministry of Labour and Vocational Training in November 2015, reaffirmed the apprenticeship obligation stipulated by the Labour Law that all enterprises employing more than 60 workers shall employ one-tenth of their workforce as apprentices, with varying ratios for larger businesses. If businesses are unable to comply, they must pay an apprenticeship tax of 1% of the total annual salaries paid by the company or be subjected to additional fines. The instruction also notified businesses that if they were struggling to secure applicants for apprenticeships, they can fulfil the legal requirement with workers that are in their probation period or those that need new skills.

While this Instruction did provide much needed clarity, uncertainty still remains for businesses that wish to have their training programmes for existing workers recognised to fulfil the requirement and whether their increased training expenses will be taken into account when assessing the Apprenticeship Tax. As the apprenticeship requirement ratio is particularly demanding on businesses, some businesses will fail to achieve the necessary level due to difficulties in attracting new apprentices in light of the success of Cambodia's current employment market. Thus, there is likely to be a gap between the number of apprentices a business employs and the level required by law, and business will be forced to spend more on training, which may impact profitability.

As such, it would be unfair to tax businesses that have attempted to fulfil their requirement at the same rate as those businesses that have made no attempt, as this will incentivise businesses to save on the additional training expenditure to offset the cost of the Apprenticeship Tax. Instead, businesses could be permitted to deduct their training expenditure to fulfil the obligation at a reasonable rate against the 1% tax levied, as this will encourage businesses to spend more on training and to proactively seek out more apprentices.

IMPACT ON CAMBODIA

Many businesses are eager to increase the knowledge and skills of their workers and encourage the youth of Cambodia to undertake meaningful apprenticeship programmes. However, the additional costs to businesses can be particularly burdensome in Cambodia due to the skills gap that is being reported by most employers in the private sector. Therefore, business need to be incentivised to create and support training opportunities that meet the Royal Government of Cambodia's requirements. Otherwise, the benefits of their inflated expenses will not be justified, as they will be punished by the Apprenticeship Tax regardless of their actions.

Human capital investment is a key component of economic growth, as prioritising higher skills development will ensure the future competitiveness of Cambodia's labour market. Offering the private sector incentives to increase their training expenses is an effective alternative to the Royal Government of Cambodia committing more of its own public funding to reach the same economic goals. Incentivising businesses enables the private sector to bear more of the responsibility of training the workforce, and ensure that the training delivered will target the needs of the business, in areas where the market demands.

✓ **Permit businesses to deduct reasonable training expenses used to meet the Labour Law's apprenticeship requirement, on a pro-rata basis from the applicable Apprenticeship Tax.**

2019 RECOMMENDATION

We recommend that the Ministry of Labour and Vocational Training consider permitting businesses to deduct reasonable expenses used to finance additional training to meet the apprenticeship requirement of the Labour Law, on a pro rata basis against the applicable Apprenticeship Tax. We respectfully encourage the Ministry to engage in consultations with the private sector to come to an agreement on what should constitute reasonable training expenses, and EuroCham would warmly welcome the opportunity to facilitate such engagement.

We envisage that by enabling businesses to deduct training expenses, the private sector will be incentivised into increase their training expenditures and create more meaningful entry level positions, strengthening Cambodia's workforce development and securing the Kingdom's continued economic growth.

Accessibility of Information

UPDATED

2017 RECOMMENDATION

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

POLICY RESPONSE

In their April 2018 letter to EuroCham (reference No. 610 KB/SHOr), the Ministry of Labour and Vocational Training highlighted its ongoing work to improve communication with the private sector and increase the accessibility of information. The Ministry outlined that they have provided a range of capacity-strengthening training sessions to their labour inspectors and intends to hold further training in the future. Furthermore, the Ministry is modernising its methods of disseminating information, as seen by their efforts to bring the applications for foreign employment quotas and work permits online. The Ministry also confirmed that all applicable laws, regulations and forms such as registration forms for union groups and employer’s associations have been uploaded to their website.

EuroCham welcomes these initiatives and anticipate that this will improve communication and convenience while reducing time and resources spent by the Ministry and businesses to address administrative processes.

ISSUE DESCRIPTION

EuroCham’s members welcome the proactive efforts undertaken by the Ministry of Labour and Vocational Training to improve engagement with the private sector by strengthening communication channels and effectively disseminating information about new laws and regulations. The most notable development has been the Ministry’s launch of its online Foreign Workers Centralised Management System, enabling businesses that employ foreign workers to request their foreign employee quota and work permits through the web-based platform. This one-stop service has greatly simplified a formerly cumbersome administrative process and has given businesses better control over their employment regulatory obligations.

In light of this success, we feel that there would be tremendous advantages in expanding its capabilities beyond the management of foreign workers by enabling the centralising of all labour related administrative requirements through the online platform. This could include processes such as updating the Ministry on staff departures and new recruitment, overtime requirements and the registration of foreign employee contracts.

IMPACT ON CAMBODIA

Digitalising labour administrative processes through the expansion of the online platform will bring great benefits to both the private sector and the Ministry. As the online platform can be designed to ensure that procedures are followed and to generate audit trails, it would facilitate more efficient governance and oversight, which can build trust in the integrity of the administrative system, leading to increased rates of compliance by businesses. Furthermore, as the time spent and resources required to submit and process labour related documentation is greatly reduced for businesses and the Ministry, the barriers and burden related to compliance diminishes.

Broadening the use of the online platform will also provide the Ministry with more flexibility to disseminate information and alter submission requirements as they will have full control over the content that is shared through the platform. This is particularly useful as many of the Kingdom's legal and regulatory obligations are going through a period of transition and formalisation, which are sometimes not fully circulated to the private sector or lower level officials. Similarly, this reduces the opportunities for non-transparent practices by reducing in-person transactions, streamlining the tracing of payments and accountability.

✓ **Consider expanding the Foreign Workers Centralised Management System to enable all labour administrative procedures to be completed through the online service.**

2019 RECOMMENDATION

Following the success of the Ministry of Labour and Vocational Training's Foreign Workers Centralised Management System, we recommend that the Ministry consider expanding the capabilities of the platform to enable all labour related administrative procedures to be completed through the online service.

TAXATION

EuroCham is pleased to report that our positive engagement with the Ministry of Economy and Finance and the General Department of Taxation (GDT) has continued in respect to the Taxation chapter of the White Book. The GDT once again provided thorough responses to the White Book recommendations, with sound explanations and justification for each outlined in their letter to the Chairman of EuroCham, dated 3 April 2018. This constructive collaboration culminated in another successful series of EuroCham's Tax Forum events in Siem Reap and Phnom Penh, which saw a combined attendance of more than 700 participants. During the Phnom Penh Forum, the Director-General of Taxation, His Excellency, Kong Vibol praised the open dialogue facilitated by EuroCham as it aligns with the GDT's mandate to inspire and promote the importance of taxation to Cambodian corporate citizens.

In terms of progress, we have been able to remove a number of recommendations from the last edition, due to these issues either having been resolved or the reasoning provided by the GDT was appropriate. Firstly, our request that the GDT process Value Added Tax (VAT) refunds for businesses in a timely manner was met following the issuance of Prakas No. 576 and 577. These provisions established that for tax compliant enterprises that are

eligible and have correctly followed the defined processes, they should expect their VAT refund within approximately 40 days for the private sector and 15 days for the non-profit sector, after submitting their request. To complement this, announced during the Government-Private Sector Forum (G-PSF) in March 2019, VAT refunds will soon be administered electronically to taxpayers through a newly introduced online platform, which will vastly improve the efficiency and transparency of this process.

The Ministry of Economy and Finance also responded to the need for robust transfer pricing regulations with the implementation of Prakas No. 986. This Prakas, developed with technical support from the Organisation for Economic Co-operation and Development and the World Bank, outlines the approved transfer pricing methods and compliance procedures, and is expected to improve transparency, combat tax evasion and bring Cambodia's taxation system closer in line with the region. Our recommendations regarding the VAT and Withholding Tax obligations for payments to non-residents or for exported services were also recognised by the GDT and they signalled their intentions to issue specific instructions on the evidence requirements to ensure businesses receive the appropriately assessed tax liability.

A number of this year's new recommendations aim to support the development of the regulatory framework for Cambodia's prospering and emerging Mergers and Acquisitions sector, following the strong growth recorded by the Cambodian Securities Exchange. As the securities market in Cambodia remains relatively new, the industry still requires comprehensive legislation on some of the complexities regarding share ownership to ensure that transactions are treated correctly. Thus, we have included two recommendations to highlight where our members observe there to be gaps in the current legislation.

Although the GDT has made excellent progress in formalising the Kingdom's taxation regime and has increased revenue collection to US\$2.2 billion in 2018, the methods employed at times to achieve this have been particularly burdensome on tax-compliant companies. The Royal Government of Cambodia recently recognised these concerns during the G-PSF and introduced Prakas No. 270 on Tax Audits, outlining the measures and procedures to eliminate overlapping auditing responsibilities within the GDT. This Prakas has reduced the tax reassessment period for comprehensive audits to three years and decreased the monthly interest for late tax payments from 2% to 1.5%. This was certainly welcomed and demonstrates the Royal Government of Cambodia's commitment to improving the Cambodian business environment.

To continue this approach, we have recommended the introduction of a voluntary disclosure scheme to enable long-established businesses to come forward with their tax irregularities in return for reduced penalties, as this encourages greater compliance and is common in a number of other countries.

Finally, we have updated two previous recommendations following recent regulatory developments. Following the promulgation of Prakas No. 597, the Ministry of Economy and Finance now formally recognises agent-principal relationships and clarified the associated tax obligations, however, this is only applicable for Cambodian-based relationships and the provision appear unsuitable for travel agents. Therefore, we suggest that the Royal Government of Cambodia consider introducing industry-specific VAT provisions for travel agents to more fairly reflect the nature of their businesses. Similarly, we recommend that the automatically applied exemption for Qualified Investment Projects (QIP) be re-introduced to minimise the administrative burden placed on these businesses, as QIPs are now required to apply to the GDT separately to receive this incentive following the issuance of Prakas No. 638.

Tax Loss Carryforward During Ownership Change

NEW

ISSUE DESCRIPTION Throughout the various phases of a business's life cycle, it is expected that there will be periods in which the total expenses will be greater than total revenue, whereby the business will be operating at a loss. These losses can occur for a number of reasons, including high start-up costs, to fund expansion plans or if a business experiences a period of low demand. Following this, it is generally accepted that a business can offset this period of losses against the amount of tax payable in future accounting periods, in order to limit their liabilities to their net gains and reduce the total tax owed.

In Cambodia, if a business sustains a loss, this loss can be carried forward to provide the business with a tax relief for up to five years. This will only apply if the business has not changed their trading activities, the loss has been recorded in their tax return, and they have not been issued a unilateral tax assessment by the General Department of Taxation (GDT) for any of the years the loss is applied to. Additionally, if a business undergoes any change to its ownership structure, regardless of the actual extent of the change, it will forfeit the ability to utilise the losses against future taxable income.

For businesses that are owned by a sole proprietor or partnerships, this final condition can be reasonable as the extent of an ownership change can impact a business's activities. However, for businesses that are owned by multiple shareholders, the consequences of a change of ownership become less obvious. In this instance, unless a shareholder has purchased a controlling stake, providing them with a majority over other shareholders, there has been no genuine change to the ownership structure of the business and its activities are likely to remain as before.

Tax authorities in many other countries, including Thailand, Malaysia and Singapore, apply what is known as a Shareholder Continuity Test to determine whether a company owned by shareholders can carryforward a previous tax loss, if there has been a change to its ownership. To establish whether an actual change of ownership has occurred, a Shareholder Continuity Test requires there to be a substantial change of ownership, often greater than 49% of the total shares available. If the ownership change is greater than this limit during a specific period, the business will forfeit the complete tax loss.

As the Royal Government of Cambodia has not defined the extent in which they perceive a change of ownership to have occurred in a shareholding company, uncertainty surrounds what constitutes an actual ownership change in Cambodia. Therefore, this limits the GDT's ability to allow businesses to carryforward their losses from previous accounting periods if any shares have changed hands.

IMPACT ON CAMBODIA Although profits are taxed when generated, businesses do not receive an immediate refund if they suffer losses, therefore businesses can use these losses to offset their future profits for tax relief. This ability to carry forward tax losses creates a positive influence on investment by encouraging businesses to take greater risks, which often have higher returns as the financial risk is diminished through a reduced tax bill. This is particularly important

for businesses that require significant start-up costs and have a higher probability of loss making such as manufacturing, which is key for Cambodia's continued economic growth.

Similarly, the removal of favourable tax loss treatment in the event of an ownership change can cause businesses to reconsider their investment decisions, impacting growth plans and job creation. It is likely that this would limit the growth of the Cambodian Securities Exchange as businesses could be hesitant to accept new shareholders if they lose the tax benefit. If Cambodia continues to base the complete forfeiture of tax losses on a change of ownership of any amount, it will have a detrimental impact on future business decisions and will erode Cambodia's ability to remain competitive as an attractive investment destination.

✓ **Consider adopting a Shareholder Continuity Test to determine the extent in which a change of ownership has occurred within a shareholding company.**

2019 RECOMMENDATION

Recognising that there should be limitations on the ability to offset previous losses against future profits to minimise abuse, EuroCham respectfully recommends that the Royal Government of Cambodia consider adopting a Shareholder Continuity Test to determine the extent to which a change of ownership has occurred within a shareholding company. By doing so, the GDT would align their assessment mechanism with what is commonly used in many other jurisdictions. Furthermore, to limit potential abuse, the GDT could calculate the forfeiture of losses carried forward on a pro-rata basis, dependent on the level of ownership change that has occurred.

Stamp Duty on Share Capital Increase

NEW

ISSUE DESCRIPTION

The promulgation of the Law on Financial Management 2013 introduced the provision to subject the transfer of shares within a Cambodian company to a stamp duty of 0.1% of the value of shares. While this practice is commonplace in many countries, EuroCham's members report that the General Department of Taxation (GDT) has also been applying this stamp duty to situations where an existing shareholder has increased their capital within a shareholding company, without all of the other shareholders also doing so.

This means that even though the total holdings of the shareholders that have not subscribed to a capital increase remains as before, the GDT stipulates that as the percentage of ownership has been altered, the shareholder undertaking the capital increase is required to pay 0.1% Stamp Duty of the value of shares. In effect, the GDT is treating the percentage of capital increase by one shareholder as a valid change to the ownership of an entity rather than taking into consideration the actual holdings of each shareholder.

Using an example below to illustrate this issue,

Shareholder A owns 100 shares worth US\$1 million = 50% ownership

Shareholder B owns 100 Shares worth US\$1 million = 50% ownership

If Shareholder B increases their capital by US\$500,000

Shareholder A still owns 100 shares worth US\$1 million = 33% ownership

Shareholder B now owns 150 shares worth US\$1.5 million = 67% ownership

In this example, the capital increase undertaken by Shareholder B has diluted the ownership of Shareholder A, as new shares have been issued allowing Shareholder B to have a majority stake over Shareholder A within the entity. However, as there has not been an actual transfer of shares between two separate parties and because the total holdings of Shareholder A has not changed, Stamp Duty should not apply.

IMPACT ON CAMBODIA

This interpretation by the GDT causes uncertainty for compliant taxpayers and places an additional financial burden upon shareholders, thereby increasing the cost of doing business. From an investor's perspective, this interpretation effectively taxes those that are seeking to invest in Cambodian businesses and could discourage further investment as it disregards the reasoning a shareholder may be increasing their capital, such as to fund growth plans which could create new employment opportunities.

Hong Kong previously levied a 'Capital Duty' on businesses that completed an increase of their share capital, though this was abolished in 2012 with the aim of enhancing Hong Kong's investment attractiveness and competitiveness as an international business centre.

✓ **Recognise that Stamp Duty should not apply when a capital increase is completed disproportionately by one shareholder, as the holdings of the remaining shareholders have not changed ownership.**

2019 RECOMMENDATION

We respectfully request that the GDT reconsider its application of Stamp Duty on capital increases when completed by one shareholder, as the actual holdings of the remaining shareholders will have not changed, nor its ownership. By doing so, the GDT would help encourage further investment into Cambodian businesses by reducing the cost of doing business within the Kingdom.

Voluntary Disclosure

NEW

ISSUE DESCRIPTION The General Department of Taxation (GDT) continues to register considerable success in its drive towards formalising the Kingdom's taxation system, as evidenced by the strong year-on-year increase in tax revenues that far exceed annual GDP growth. While this formalisation has been effective in improving the efficiencies of the tax regime, throughout this transition phase, it has often proved challenging for many businesses operating in Cambodia to ensure that their tax obligations have been appropriately met.

These challenges are most apparent for businesses that have been operating since the period in which Cambodia's taxation system was less structured and full compliance was less systematic. During this time, businesses were often unaware or uncertain that they may have underpaid the required amount of tax, rather than intentionally attempting to evade what they owed. This is demonstrated by the fact that many of the businesses that were operating during this period of limited enforcement are now in the process of pursuing full compliance with all current legal obligations.

Taking this into account, businesses are now experiencing severe reassessments of their liabilities from this period. Long-established companies are discovering that their tax liabilities are being calculated from a point much earlier than when compliance was the norm, and are therefore found to have substantially underpaid their tax. Considering additional monthly interest and fines are also imposed on top of the reassessed taxes, many businesses are struggling to manage this unexpected financial burden as they seek to rectify their historical non-compliance. The monthly interest and fines applied can amount significantly and, in some cases, even exceeds the underpaid tax itself.

EuroCham recognises that a well-functioning taxation system is a necessity for strong and sustainable economic development, and the corresponding benefits associated with such tax systems can often reduce the costs of doing business. Taking this into account, it can be argued that the companies that have contributed the greatest to Cambodia's strong economic progress by operating here for the longest period, are being overwhelmingly impacted by punitive measures for their non-compliance during a time when this was accepted.

This has created an uneven distribution of the tax burden on business that have been responsible for ongoing employment opportunities, skills development, tax revenue and a positive corporate environment. Contrarily, businesses that have established themselves since the formalisation, are able to enter the market with full knowledge of their legal and tax expectations, reducing the opportunities of inadvertently underpaying their obligations, while benefiting from the improved state of the Kingdom.

To overcome similar issues relating to non-compliance, in many other countries, tax administrations provide taxpayers with an opportunity to voluntarily disclose previous tax shortfalls so that they receive a reduced punishment, providing that this is done prior to the notification that an audit is required. This encourages previous non-compliant taxpayers to come forward to correct their tax liabilities under specific circumstances.

Importantly, this differs from an amnesty period as it is not time sensitive and taxpayers who voluntarily disclose are still required to pay more than if they were already fully compliant, however they receive a less severe punishment than those that do not disclose but are identified through auditing. Within ASEAN, such voluntary disclosure programmes are in effect in Singapore and Malaysia as a method to encourage taxpayers to correct irregularities and recover missing revenue. While in Indonesia, following a successful nine month amnesty period in 2016, a voluntary disclosure programme is operating until June 2019, with lower tax rates applied for those that voluntarily report, otherwise a heavy penalty of 200% of their tax assessment will apply if identified through an investigation.

While the GDT has made excellent progress in increasing public revenues and formalising the Kingdom's taxation regime, the methods employed can at times be particularly burdensome on companies seeking full compliance during this transition. Many of these companies accept that they may have underpaid their tax during the period of lax enforcement and are therefore taking steps to reconcile what is owed, though the punitive monthly interest and fines is significantly impacting on their operations.

If long-established businesses are required to pay a tax notification with additional interest and fines, much larger than what they had initially anticipated, the uncertainty may cause these businesses to reevaluate their future investment or expansion decisions, or even the Cambodian market. Similarly, these businesses are likely to become uncompetitive and may be forced to close their operations, resulting in unemployment and loss of tax revenue. This would be particularly disappointing as Cambodia would lose businesses that are well-experienced in operating here and understand the market better than most new entrants as they have remained through the more challenging times to facilitate the growth of the economy.

Implementing a voluntary disclosure programme not only benefits the taxpayer with a reduced financial obligation, but allows governments to secure missing revenue through a less resource intensive administrative process than if conducting their own audit, while levelling the playing field for all compliant taxpayers. In Cambodia, this would allow the GDT to refocus their remaining resources on stronger detection of those that continue to intentionally evade their tax obligations. When communicated effectively, this would encourage greater compliance, increase the willingness to disclose and reduce overall tax evasion as all taxpayers would be aware that the risk of detection has increased considerably.

IMPACT ON CAMBODIA

✓ **Consider reducing the penalties applied to taxpayers who voluntarily disclose previous tax irregularities prior to an audit notification being issued.**

2019 RECOMMENDATION

Recognising that the GDT already acknowledges the benefits of offering taxpayers an opportunity to become compliant as demonstrated by the amnesty periods it has previously

offered to certain sectors, EuroCham respectfully recommends that the GDT consider implementing an ongoing voluntary disclosure programme for all taxpayers to correct previous tax irregularities. By doing so, this would reflect the realities of earlier compliance with Cambodia's taxation system and take into consideration the contribution that long-established businesses have made to the overall development of Cambodia.

The terms of such programme should take a balanced approach between providing sufficient incentives for those that were previously non-compliant to come forward within a specified timeframe, while not rewarding or encouraging such conduct in the first place, and this should be applied consistently for all taxpayers. This will increase future rates of compliance through greater awareness, while reinforcing the behaviour of compliant taxpayers.

Value Added Tax Provisions Relating to Travel Agents

UPDATED

2017 RECOMMENDATION

Consider introducing VAT provisions for travel agents that recognise 'agency relationships' so as to more fairly reflect the nature of these businesses.

POLICY RESPONSE

On 27 June 2018, the Ministry of Economy and Finance issued Prakas No. 597, which stipulates the guidelines for businesses to follow to have their relationship as an agent who supplies goods and services on behalf of a principal recognised by the General Department of Taxation (GDT), and clarifies the associated tax obligations. Importantly, this provision only outlines the rules and procedures relating to agents that supply goods or services on behalf of a principal who is a Cambodian tax resident, and did not address an agency relationship with a non-resident (overseas) principal. For agents acting on behalf of a Cambodian resident taxpayer, they are required to formally apply in writing to the GDT, detailing their relationship to obtain a recognition letter and regularly report sales volume and stock movements. Implementing this arrangement will allow agents to limit their tax exposure to the commission earned on a sale, rather than the gross invoice.

EuroCham recognises the advantages that this provision brings to legitimise an agency relationship that meets the detailed requirements, though as it does not allow for an agent to operate in Cambodia on behalf of a non-resident principal, the issue remains for businesses operating under such circumstances.

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.

Within the European Union, Value Added Tax (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 countries, including China and Indonesia, also recognise 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

ISSUE DESCRIPTION

made for their services cannot contribute towards the Input Tax Credit of the travel agent. Tax-compliant companies tend to bear the burden of non-compliant suppliers as it can be very challenging to identify tax-compliant goods and service providers in some sectors.

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	US\$1,000,000
Cost of Sales	(US\$800,000)
Gross Margin	200,000
VAT Output Credit (10%)	(US\$100,000)
VAT Input Credit (10% from only 40% of suppliers)	US\$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 agent 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 enable travel agents to calculate their generated revenues more accurately.

✓ **Consider introducing industry-specific VAT provisions for travel agents so as to more fairly reflect the nature of these businesses.**

2019 RECOMMENDATION

Referring to similar regulations within the European Union and examples from Asia, we suggest considering the introduction of industry-specific VAT provisions for travel agents 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.

Unfair Tax Treatment of Seniority Indemnity Payments

NEW

ISSUE DESCRIPTION

The Royal Government of Cambodia amended Chapter IV of the Labour Law (Royal Decree 0618/010) in June 2018 to replace severance pay with seniority indemnity payment if an employee is terminated for reasons other than serious misconduct or their resignation while employed on an Undetermined Duration Contract (UDC). Prakas No. 443 on the Payment of Seniority Indemnity established the provisions of the amendment and was promulgated by the Ministry of Labour and Vocational Training on 21 September 2018.

From January 2019, employers are required to compensate all employees on UDCs with a payment equivalent to 15 days of actual wages and other fringe benefits, paid in two instalments for each year they remain working with an organisation. Employers are also required to retroactively compensate employees for the length of their service accumulated before Prakas No. 443, up to a total of 12 years, referred to as back pay. Following a series of negotiations, employers will only be required to release six days per year of back pay for previous indemnity starting from December 2021 for sectors outside the garment, footwear and textile industry to reduce the financial burden on businesses.

During the Government-Private Sector Forum chaired by the Prime Minister in March 2019, the Royal Government of Cambodia confirmed that both forms of Seniority Indemnity Payment would be tax exempt and enterprises would be permitted to deduct expenses incurred in settling such payments. However, Circular No. 003 on Tax Exemption for Seniority Indemnity Payment issued by the Ministry of Economy and Finance on 11 April 2019, now states that the tax exemption status will only be applicable for payments made to Cambodian nationals, while foreign national workers will bear the tax burden of their payments.

Under the Cambodian Constitution and Labour Law, there is no distinction made between the rights of Cambodians and foreigners, and as specified by Article 12 of the Labour Law, employers must provide the same treatment and social benefits to all workers without discrimination. As Seniority Indemnity Payment has replaced severance pay in the Labour Law, the substance of these payments remains the same, in that they are designed to improve the living standards and working conditions of all employees, when terminated for reasons other than serious misconduct or their resignation.

Taking this into account, the Ministry of Economy and Finance previously issued Circular No. 011 in October 2016 on the Implementation of Obligation to Withhold Tax on Fringe Benefits which states that, “...*some benefits that workers/employees receive from their work shall not be included in the salary tax calculation basis and not be subject to tax on fringe benefits. Those benefits are as follows: ...6. Severance pay for employment termination or indemnity for dismissal at the level stipulated in the Labour Law.*”

IMPACT ON CAMBODIA

The unfair treatment of foreign workers negatively impacts the Kingdom’s competitiveness and attractiveness in recruiting foreign expertise and investment, and could be incompatible with Cambodia’s international commitments. When this unfair treatment is presented

alongside the introduction of the retroactive application of Seniority Indemnity Payment, the credibility and image of Cambodia as a pro-business and non-discriminatory investment destination is severely weakened.

✓ **Revise Instruction No. 003 MEF to remove the Cambodian nationality clause to ensure fair tax treatment of Seniority Indemnity Payments.**

2019 RECOMMENDATION

We respectfully recommend that the Ministry of Economy and Finance revise Instruction No. 003 MEF on Tax Exemption for Seniority Indemnity Payment to remove the Cambodian nationality clause to enable tax exemption for payments made to foreign nationals. This will ensure the fair and non-discriminatory treatment for all workers on Undetermined Duration Contracts, in line with the announcement made by the Prime Minister during the Government-Private Sector Forum and the previous tax treatment of severance pay, which Seniority Indemnity Payment has replaced.

Incentives for Qualified Investment Projects

UPDATED

2017 RECOMMENDATION

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

POLICY RESPONSE

In previous correspondence with EuroCham, the General Department of Taxation emphasised that the 'clawback mechanism' on dividends contained within Article 23 of the Law on Taxation is intended to encourage Qualified Investment Projects (QIPs) to reinvest retained earnings in Cambodia. The Royal Government of Cambodia is in the process of updating the Law on Investment to better reflect Cambodia's economic growth ambitions and has committed to finalising the new draft by the end of June 2019. EuroCham is eagerly looking forward to the updated Law, particularly regarding revisions to QIP incentives so as to offer more competitive tax advantages to investors. Additionally, as proposed in the Investment Protection chapter, we also suggest that Article 23 is reconsidered in parallel to the new Law on Investment.

ISSUE DESCRIPTION

Cambodia's Law on Investment (1994) and the subsequent implementation sub-decrees and amendments allow companies to apply to have their investment projects recognised as a 'Qualified Investment Project' (QIP) which grants a number of incentives such as preferential tax treatment and faster administrative procedures. This includes an automatic exemption from the 1% Minimum Tax obligation on their annual turnover, which all businesses operating in Cambodia were previously subjected to if the amount was greater than their Tax on Profit payable for the year, or if operating at a loss.

On 4 July 2017, the Ministry of Economy and Finance issued Prakas No. 638 on the Criteria of Improper Accounting Records and Procedures for Paying Minimum Tax. This announcement extended the exemption from the 1% Minimum Tax obligation to all businesses that follow the defined reporting requirements and have applied in writing to the General Department of Taxation (GDT). The dissemination of Prakas No. 638 followed an amendment made to Article 24 of the 2017 Law on Financial Management which imposed the 1% Minimum Tax as a penalty for any business that does not maintain proper accounting records.

Prakas No. 638 defines improper accounting records as enterprises that: do not issue invoices in line with the Law on Taxation; commit serious negligence; or who have been found to be engaging in tax evasion. Additionally, enterprises with an annual turnover exceeding KHR 2,000 million (US\$500,000), assets of KHR 3,000 million (US\$750,000) or over 100 employees must provide an audit report from an independent auditor.

To claim the Minimum Tax exemption, taxpayers' accounting records must be submitted for review to a committee established by the GDT which will evaluate the records against the above criteria every two years. On notification of the review committee's findings,

taxpayers can make a request to the GDT to review the committee's evaluation if the taxpayers disagree with the committee's decision.

Prior to this announcement, QIPs were the only enterprises that were entitled to the Minimum Tax exemption. However, this entitlement is no longer automatically applied and QIPs are now required to follow the same application procedures as other entities and approval must be granted by the GDT.

This is causing uncertainty as QIP companies are already held to a significantly higher accounting standard than other businesses and maintain strict financial records that are audited annually by independent auditors to retain their QIP status and incentives. Similarly, the Council for the Development of Cambodia (CDC) is expected to act as a 'One-Stop Shop' for investors by obtaining all approvals and authorisations on behalf of QIPs, to simplify processes and encourage further investment, though this appears to be no longer accurate. Consequently, the advent of Prakas No. 638 has created a new unnecessary administrative burden for QIP companies, who are already heavily scrutinised for their financial compliance.

This ambiguity creates potential regulatory risks for companies, as they are unable to confidently know whether the CDC will continue to be the leading authority for the QIP approval process or whether the incentives applied will remain in the future. This could lead to a lower level of investment by companies that are interested in establishing projects of significant national interest in Cambodia. Similarly, as the instances in which the Minimum Tax is applied (amount is greater than Tax on Profit or when operating at a loss), this could significantly increase the cost of doing business for QIP companies as large projects of the size required for QIP approval often take an extended period to generate profits. Presently, it is unclear how this tax could be applied to QIPs as they are given the option of selecting a profit tax holiday or special depreciation as another incentive to encourage investment.

As Cambodia transitions towards lower-middle income status and its competitive advantages provided by preferential treatment by key markets such as the European Union and United States begin to erode, Cambodia needs to ensure it remains competitive compared to other countries from ASEAN and elsewhere to attract foreign investment.

IMPACT ON CAMBODIA

✓ **Consider re-introducing the automatic exemption from Minimum Tax for Qualified Investment Projects during their tax holiday period.**

2019 RECOMMENDATION

EuroCham recognises that the decision to exempt businesses from paying the Minimum Tax impacts the GDT's revenue and we welcome this as an initiative to reward tax-compliant businesses and incentivise others to keep proper accounting records, as it is another important step in formalising Cambodia's taxation system. Taking this into account, the

issuance of Prakas No. 638 has inadvertently created uncertainty for companies seeking to establish QIPs and has removed an incentive that was previously automatically applied. Therefore, we respectfully recommend that the Royal Government of Cambodia consider re-introducing the automatic exemption from Minimum Tax for QIPs during their tax holiday period.

Furthermore, for the CDC to truly act as a “One-Stop Shop” for significant foreign investment projects, investors require assurance their approval processes will remain under their authorisation and that additional requirements will not be stipulated by other ministries without prior guidance.

CUSTOMS, TRANSPORT *and* LOGISTICS

In the context of external threats to the status of Cambodia's preferential trading arrangements, the Royal Government of Cambodia announced a suite of structural reforms in January 2019 to improve trade facilitation and increase the Kingdom's export competitiveness. These reforms were confirmed during the Government-Private Sector Forum (G-PSF) chaired by the Prime Minister in March 2019, and are intended reduce the cost of doing business and therefore potentially offset the reintroduction of tariffs. Accordingly, the measures have been overwhelmingly welcomed by the private sector, and if successfully implemented, will address many of the issues raised in our earlier White Books by EuroCham's Transport and Logistics Committee.

In line with our previous recommendation, the Royal Government of Cambodia has dissolved the Kampuchea Shipping Agency and Brokers (KAMSAB), the state-owned organisation that held a monopoly on shipping agency services, effective from 28 February 2019. The dissolution of KAMSAB will foster greater competition in the logistics sector by removing an unnecessary burden, leading to improvements in the quality of service and value for money. Additionally, the Ministry of Commerce's Cambodia Import-Export Inspection and Fraud Repression Directorate General (CAMCONTROL) has been

relieved of its duties from all border checkpoints, seaports, special economic zones and other inspection zones. As of 1 February 2019, the General Department of Customs and Excise became the only institution authorised to carry out the inspection of goods at Cambodia's entry points. This decision will result in a significant cost savings for businesses, as the inspection fees charged collected almost US\$30 million annually. When combined with the earlier reform measures to eliminate export management fees and Certificate of Origin requirements for some countries, the Ministry of Commerce is anticipating a loss of approximately US\$60 million in annual revenue.

Our recommendation on the official fees for customs procedures performed outside of regular working hours and out-of-office was similarly addressed, with confirmation that Prakas No. 1608, developed in consultation with our members and was implemented on 1 April 2019. This was accompanied by a 50% reduction in the container inspection fees required by Customs, following an instruction issued by the Ministry of Economy and Finance to further reduce the financial burden of importing and exporting. Importantly, it was also announced that Customs will introduce an online receipt for these services, bringing much needed transparency to the costs associated with such procedures. Although a date

was not confirmed, this was highly praised since the lack of official invoicing is regularly raised as one of the most significant concerns for international companies and forces them to use brokerage services to offload the regulatory risk, increasing the cost of doing business.

With the progressive implementation of these significant reforms underway, it will take some time for their impact to fully materialise. Therefore, with such apparent progress underway, this year's Customs, Transport and Logistics chapter contains only three recommendations to highlight remaining issues that have not yet been addressed by the reform agenda. Firstly, to further increase the efficiency of customs processing, we suggest Customs continue in its efforts to simplify clearance procedures by adopting the World Customs Organisation's Immediate Release Guidelines. This international best practice standardises and streamlines procedures by categorising consignments based on risk and enables their timely release as operators provide the necessary customs information in advance of the arrival of goods.

Secondly, we have retained our recommendation on the need to prioritise the expansion of the customs modernisation programme, through implementing a secure online payment system

and to widen electronic documentation capabilities to manage the increasing volume of trade more effectively. As Customs has already signalled its intentions to issue online receipts for customs services, we hope to see this initiative accompanied by the rollout of a system to facilitate online payments, as this will increase accountability and minimise exposure to non-transparent practices. Our final recommendation seeks to address the ongoing concerns held by the private sector with the process to escalate issues relating to Customs officials or to request a review of their determination. Recognising that the existing practice may have been suitable for the previous needs of the economy, as the number of businesses dealing with Customs has grown dramatically, as has the levels of imports and exports, therefore businesses require an efficient and practical method to escalate issues.

We are certainly encouraged by the positive and proactive structural reforms taking place to improve Cambodia's trade competitiveness and we look forward to further constructive dialogue in cooperation with the relevant ministries to find solutions to the issues we have raised.

Simplified Customs Clearance Procedures

NEW

ISSUE DESCRIPTION

The acceleration of international trade and Cambodia's integration into global supply chains have been fundamental drivers in the Kingdom's continued economic expansion, enabling the economy to grow by 7.3% in 2018¹. However, this surge in cross-border trade places increasing demands on the resources of the General Department of Customs and Excise, due to the complexity of customs procedures required to facilitate the transfer of goods in and out of the country. Accordingly, the compliant private sector considers this complexity and the corresponding delays to be potential barriers that could inhibit the future progress of Cambodia's competitiveness.

Presently, the Customs Department is unable to distinguish between different types of cargo, value, size or expedited shipping services for international consignments, other than for shipments under the declared value of \$50 following the successful implementation of de minimis regime in 2018. This means that the level of documentation and scrutiny required for Customs to process clearances and release goods is the same for any weight and values above \$50, e.g. 3 document sets for master airway bill, house airway bill, invoice & packing list, business registration, Value Added Tax (VAT) certificate and letter of authorisation.

This creates significant obstacles in the efficient movement of goods, as larger and more valuable consignments require considerably more resources to physically inspect and process, due to the increased risk that the goods could be declared inaccurately or contain unlawful cargo. While smaller and lower valued shipments are expected to receive the same level of diligence from Customs, despite the risk of these shipments being perceived as much lower. This causes particular issues for consignments sent via express or airfreight, as segregation for these services is similarly unavailable, often resulting in a delayed release as clearance cannot be expedited and companies must submit the same lengthy documentation as other forms of shipping.

If carriers were permitted to lodge the necessary data and inform Customs in advance of the arrival of a consignment, Customs would be able to categorise the shipments that require more comprehensive clearance procedures on the anticipated level of risk, such as on contents or the country of origin. This would enable Customs to process and release certain goods simultaneously as they arrive, while focusing their resources more on higher risk consignments, allowing Customs to process and release all consignments more efficiently and effectively. Importantly, under this system Customs could continue to inspect any consignment it deemed necessary, however the need and time required to conduct inspections would be dramatically reduced.

IMPACT ON CAMBODIA

The consequences of delays in the clearance and release of cargo are felt throughout Cambodia's economy. If logistics companies are unable to meet tight delivery schedules due to inefficiencies within the clearance process, this creates unpredictability and reduces the capacity of manufacturers and suppliers to plan, manage and optimise their supply chains, increasing the costs of production. As many businesses are now integrated into regional production networks, the cumulative effect of persistent delays could seriously impact Cambodia's competitiveness and opportunities to improve its standing within the value chain.

The growth of e-commerce is a strong incentive for Cambodia to update its customs processing, as the existing complex system is likely to obstruct trading activity due to the challenges associated with managing such a dramatic increase in the volume of trade. As e-commerce links businesses directly with consumers, the frequency of smaller and lower value consignments sent via express services will surge and may overburden the Customs Department, particularly as many of the buyers and sellers will have limited knowledge of exporting and importing requirements. Similarly, as Cambodia does not handle express shipping separately from other services, consignments that should be released swiftly will be delayed, affecting customer satisfaction and the reputation of online businesses.

✓ **Prioritise the adoption of the World Customs Organisation's Immediate Release Guidelines to simplify customs clearance procedures.**

2019 RECOMMENDATION

We respectfully recommend that the General Department of Customs and Excise prioritise the adoption of simplified customs clearance procedures to permit the immediate release of certain goods, as this aligns with the Royal Government of Cambodia's ongoing efforts to improve trade facilitation and eliminate unnecessary procedures.

As Cambodia has already adopted simplified customs procedures for consignments under the value of US\$50 via the de minimis system, we suggest expanding this by basing the simplified procedures on the Guidelines for Immediate Release published by the World Customs Organisation. These guidelines aim to standardise and simplify customs procedures by categorising consignments based on risk, and separating the release of goods from the time-consuming clearance process as logistics operators provide the required information prior to the arrival of goods. The four categories are:

1. Correspondence and documents: items without commercial value and not subjected to taxes.
2. Low-value consignments for which no duties and taxes are collected (de minimis): already implemented in Cambodia, allowing the immediate release following submission of a simplified customs declaration.
3. Low-value dutiable consignments: items that do not qualify for tax exemption but are below a determined threshold in which a full Customs declaration is not required. Aim to achieve consignment release within 1 hour after the arrival of the physical shipments.
4. High-value consignments: items that do not fall under other categories, therefore normal release and clearance procedures apply. Aim to achieve consignment release within 3 hours after the arrival of the physical shipments.

Additional measures that we suggest to improve Customs' ability to expedite clearances and releases to meet the goal of immediate release include:

- Facilitate the electronic payment of duties and processing fees for Low Value Dutiable and High Value consignments and issue a daily electronic statement to logistics operators to enable pre-arrival payments;
- Expand the working hours of Customs officials to effectively manage the early and late arrival schedules of express airfreight;
- Prioritise the establishment of a dedicated Express Handling Unit when feasible to group and streamline processes for all express consignments;
- Ensure the fees for duties, customs processing and out-of-hours services are in line with the recently adopted Customs public service fees stipulated by Prakas No. 1608.

These initiatives will enable the General Department of Customs and Excise to deploy its resources more efficiently and importantly, without sacrificing border security or revenue collection. While we recognise that any adjustments to the central processes in which the General Department of Customs and Excise performs its duties is a significant task to undertake, the benefits to Cambodia's trade facilitation and competitiveness through a simplification of Customs procedures cannot be overstated.

Customs Modernisation

UPDATED

2017 RECOMMENDATION

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

POLICY RESPONSE

The Royal Government of Cambodia is actively pursuing the development of Cambodia's National Single Window, which will establish a single-entry point for all import, export and transit-related regulatory matters and standardise information requirements. Phase 2 of the project was launched in March 2018 and involves the integration of seven Cambodian authorities into a unified online trade facilitation platform, in which implementation testing was carried out between 25 March and 17 May 2019. The Royal Government of Cambodia intends to officially launch Cambodia's National Single Window in early June 2019.

The establishment of a National Single Window aligns with Cambodia's commitments to the ASEAN Trade in Goods Agreement, that will establish the ASEAN Single Window to enable the electronic exchange of Customs data between all ASEAN government agencies responsible for trade. This system will streamline and digitalise export processes and documentation, including customs clearances, licenses and permits across the region to reduce cross-border risks, enhancing trade efficiency and minimise costs for businesses.

Our members welcome the ongoing efforts of the General Department of Customs and Excise to modernise customs procedures and continue to introduce enhanced automated processes that support online systems already in place, as demonstrated by the implementation of Phase 2 of the National Single Window project. There is a general perception that Customs procedures are becoming easier as a result of recent automation initiatives such as the roll-out of the online system for exporters to obtain Certificate of Origin.

As the Customs Department recognises in its Strategy and Work Program on Reform and Modernisation 2014-2018, there is opportunity to realise further time and cost savings through expanding use of electronic transactions. The existing capabilities for the Customs Department 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 Automated System for Customs Data (ASYCUDA) centre 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

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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 authorisation papers in hard copy and there is no system for 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 International Air Transport Association's Recommended Practice 1670 (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 need to be submitted to Customs, it would be quicker to provide these documents 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 and would provide logistics operators with a valid audit trail.

IMPACT ON CAMBODIA

The importance of transparency and the requirement to present certified records for customs matters has grown considerably, as multinational companies seek to coordinate and standardise their risk management practices on a global scale to ensure that their operations in all jurisdictions are in compliance with local and corporate responsibilities. Therefore, without an effective system to facilitate the electronic exchange of documentation and payments, Cambodia's competitiveness and attractiveness for investment is likely to deteriorate, as global businesses will be unable to continue accepting exposure to regulatory risks from non-transparent practices.

As the volume of international trade swells with the expansion of Cambodia's economy, the lack of automation within customs processes and procedures will hinder the Customs Department's ability to respond and manage this growth. Similarly, the continuation of paper-based procedures remains a burden for both the private sector and the Customs Department, as it reduces their efficiency and the risk of losing documents or encountering errors increases significantly.

✓ **Prioritise the implementation of a secure online payment system and expansion of online document capabilities to facilitate customs procedures more effectively.**

2019 RECOMMENDATION

The General Department of Customs and Excise has an ambitious reform program designed to transform the Department into a more modern Customs administration by 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 recommend that the Royal Government of Cambodia prioritise the introduction of a secure online payment system, and encourage the Customs Department to take our comments on the documentation processes for marine shipping and air cargo into consideration as they continue to update its online documentation capabilities.

Procedure for Escalation of Issues

UPDATED

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.

POLICY RESPONSE

In November 2018, EuroCham held a luncheon with His Excellency, Dr Kun Nhem, Director General of the General Department of Customs and Excise, in which attendees were given an exclusive opportunity to directly address His Excellency's customs reform and modernisation programme. During this event, a question was proposed to the Director General regarding the escalation process for issues relating to customs matters. In response, His Excellency reaffirmed the process outlined by the Law on Customs, which states that if a person is dissatisfied with the determination of a tariff classification, origin or customs value, they may object by writing to the Director General within 30 days of receiving the customs notice.

EuroCham is grateful to His Excellency for engaging with the private sector and we certainly welcome the ongoing efforts to modernise Cambodia's customs processes. However, our members believe that the current escalation process has not adapted to the growing needs of the economy, particularly as Cambodia's export competitiveness is under increasing pressure and requires further reforms to improve.

ISSUE DESCRIPTION

The General Department of Customs and Excise has a Public Relations Unit which is generally very active and responsive, and we are appreciative that the Department has been helpful in addressing specific issues raised by EuroCham. This being the case, our members have raised concerns with the existing procedure to escalate issues relating to Customs officials or to request a Customs determination review.

Article 24 of Chapter 3 of the Law on Customs that was promulgated in 2007, states that any person dissatisfied with the determination of a tariff classification, origin or customs value by a Customs official may object, by writing to the Director General within 30 days of receiving the customs notification. Following which, the Director General shall make a decision regarding the objection within 60 days, otherwise the appeal will be deemed as accepted. If a decision is made by the Director General, this can also be objected by filing a written appeal to the Customs Tariff Committee, after which any further appeals must be made to a court within 30 days of the Committee's decision.

While this process may have been appropriate for the earlier needs of the economy, as Cambodia's trade volume has risen dramatically, as well as the number of businesses operating, it is likely that this process is now inefficient to manage the increased frequency of requests and reviews. Accordingly, businesses, particularly small and medium enterprises, require a more efficient and effective method to escalate issues that they encounter while engaging with Customs officials and to request a determination review.

The process for escalating issues encountered with Customs has not adapted to the needs of Cambodia's current level of economic activity, and is therefore creating a feeling of insecurity for businesses, as they consider their right to appeal decisions made by Customs officials to be limited. To enable an improved 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.

IMPACT ON CAMBODIA

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

2019 RECOMMENDATION

We respectfully request that the General Department of Customs and Excise update its procedure through which businesses can escalate issues and request a systematic review of a decision made by Customs officials. This procedure should be conducive to the economic growth trajectory of Cambodia and the complexity of its economic activities to ensure it can manage an increasing volume of requests efficiently and effectively. Furthermore, the procedure should be widely disseminated among Customs officials and the private sector to raise the awareness of this process and enhance investor confidence.

AUTOMOTIVE

EuroCham's advocacy activities in respect to the automotive sector have been focused on supporting the initiatives undertaken by the Cambodian Automotive Industry Federation (CAIF). This cooperation has helped enable CAIF to become the foremost voice for the expanding network of authorised distributors of automotive manufacturers in Cambodia, as they seek to enhance consumer protection and encourage an even playing field for all businesses in the industry. CAIF has certainly been proactive in its engagement with the Royal Government of Cambodia, as they work towards finding solutions to issues that are impacting authorised distributors, particularly regarding the implementation of the 19 UNECE technical regulations on automotive products under Prakas No. 150.

Following extensive consultations, initially by EuroCham and then continued by CAIF, we are pleased to report that the Ministry of Industry and Handicraft has recognised the compliant private sector's concerns by issuing Prakas No. 99 to extend the delayed enforcement of Prakas No. 150 until 31 December 2019. Issued in March 2019, Prakas No. 99 also expanded the requirement to comply with the 19 UNECE Regulations to any business involved in the production, transformation, importation and sale of automotive products by 1 January 2020. While further details regarding the implementation programme will be

determined separately, Prakas No. 99 has been widely welcomed as it signals to the industry that the UNECE Regulations may be applied to all vehicles imported into Cambodia. Acknowledging that such reforms will take considerable time and resources to materialise, Prakas No. 99 is encouraging for authorised distributors, as since our last White Book, the business environment in Cambodia had become increasingly difficult for them to remain competitive. In fact, the regulatory challenges that have persisted for the sector were the catalyst for the recent withdrawal of a well-regarded and experienced European automotive distributor from the Cambodian market.

Taking this development into account, this year's recommendations seek to build on the knowledge presented by our previous White Books, with more categorical suggestions to enhance the quality and safety of vehicles, while improving the competitiveness and attraction of the sector from an investment perspective. Our first recommendation seeks to secure a formal commitment that the provision contained in Prakas No. 99 that requires all automotive businesses to comply with the 19 UNECE Regulations will be maintained and enforced universally, rather than only on new vehicles imported by authorised distributors. This will ensure that authorised distributors are not unfairly burdened by the introduction of stricter standards and will not create two separate regulatory

systems for the same industry. More importantly, the regulations will have much larger impact on improving safety if they are applied to all vehicles. Accordingly, we recommend that Prakas No. 150 should apply to all vehicles imported into Cambodia, and those that cannot demonstrate conformity be banned from import from the date Prakas No. 150 becomes effective.

Our next recommendation expands the topic of strengthening consumer protection by facilitating the introduction of a product recall process for all vehicles. We recognise that the Ministry of Public Works and Transport has undertaken substantial initiatives to address vehicle safety, most notably by improving and increasing vehicle inspections. However, we observe that Cambodia lacks an effective means for vehicle manufacturers to notify owners if safety-related issues arise with their vehicles. Despite the overwhelming majority of vehicles in Cambodia being imported by unauthorised distributors, authorised distributors are responsible for implementing service measures that rectify safety issues, although they are unable to complete these works as they are unaware of what vehicles are in the country.

Our final recommendation seeks to highlight to the Royal Government of Cambodia how its taxation policy for automobiles can be rationalised to collect greater revenue over the entire lifespan of a new vehicle, with the added benefit of

encouraging the public to purchase safer and environmentally friendly vehicles. Cambodia's existing taxation policy effectively incentivises the purchase of used vehicles over new, as total tariffs for importing new passenger vehicles from outside ASEAN can reach up to 151% of a vehicle's value, out of the reach for many Cambodians. In contrast, if Cambodia's taxation system was adapted to increase taxes on used vehicles or outright banned their import, this would shift consumer demand towards new vehicles, while restricting the availability of older, unsafe and more environmentally damaging vehicles.

Throughout this chapter, we hope to convey that our members, representing the growing network of authorised distributors, who have already heavily invested in their facilities, are more than willing and eager to continue in their commitment to Cambodia by increasing their investments. However, this will not occur until they are able to demonstrate to their parent companies that the automotive sector in Cambodia is profitable, and that the regulatory framework is applied consistently and fairly.

Application of UNECE Safety Standards

UPDATED

2017 RECOMMENDATION

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

POLICY RESPONSE

On 25 March 2019, the Ministry of Industry and Handicraft issued Prakas No. 99, to extend the deferred enforcement of Prakas No. 150 on the 19 UNECE Regulations for automotive products from 14 June 2019 until 31 December 2019. Importantly, this Prakas has expanded the requirement to comply with Prakas No. 150 to any business involved in the production, transformation, importation and sale of automotive products, stating that all businesses must begin the implemented of the 19 UNECE Regulations by 1 January 2020.

ISSUE DESCRIPTION

EuroCham and the Cambodian Automotive Industry Federation (CAIF) applaud the introduction of Prakas No. 150 in June 2016 by the Institute of Standards of Cambodia, under the Ministry of Industry and Handicraft, as a positive measure to improve the safety of vehicles on the road and protect consumers. Initially, authorised automotive distributors were notified that Prakas No. 150 would apply only to new vehicles entering the country, while imported used vehicles would be exempt. Since new vehicles account for less than an estimated 10% of total vehicle imports, this would create an uneven playing field for new vehicles, increase the cost of doing business for new vehicle importers, and miss the opportunity to significantly improve the quality of vehicles on Cambodia's roads by selective enforcement.

Fortunately, following extensive engagement with the Royal Government of Cambodia, initially by EuroCham and then continued by CAIF, the Ministry of Industry and Handicraft issued Prakas No. 99 in March 2019 to extend the delay of Prakas No. 150 until 31 December 2019. This legislation also affirms that any business involved in the production, transformation, importation and sale of automotive products will be required to comply with the 19 UNECE Regulations. While the implementation programme to demonstrate compliance will be determined by a separate announcement, Prakas No. 99 was widely welcomed by the industry as it has indicated that the UNECE Regulations will be applied universally to all vehicles imported into Cambodia.

However, as the import of new vehicles by parallel and grey market vendors is also unrestricted, it is unclear how these standards can be applied consistently to all incoming vehicles, so that they do not only obstruct authorised distributors. Similarly, there is no agreed definition of what constitutes a new vehicle when sold via an unauthorised distributor, as the General Department of Customs and Excise considers both current year and next year models as new vehicles for tax purposes.

While the commendable aims of the adoption of the 19 UNECE Regulations are to “*make automotive products safe and to prevent disaster on human, environment, and society*”, such regulations will have a minimal tangible impact if they are applied selectively to new vehicles imported by authorised distributors, as these only contribute less than 10% of all vehicles on Cambodian roads. In principle, this would create two separate regulatory systems for the same industry, and unfairly burdens the authorised distributors that have invested significantly to establish their facilities in the Kingdom. As Cambodia has no automotive import restrictions, it is the only ASEAN Member State that permits the import of used vehicles without limitations, meaning the challenges of implementing these regulations for all vehicle imports are unique to Cambodia.

If these regulations are applied uniformly on all vehicles imported after the enforcement date of 31 December 2019, they will be substantially more effective in preventing the availability of vehicles unsuitable for the Cambodian environment, and would ensure that only safe and reliable vehicles are sold. Restricting the availability of vehicles to only those that conform to international standards will lead to better and more safer vehicles on the road and contribute to the objective of Cambodia’s National Road Safety Committee to halve road fatalities by 2020.

✓ **Ensure that Prakas No. 150 is applied universally to all vehicles imported into Cambodia, in line with Prakas No. 99.**

2019 RECOMMENDATION

In order to realise these benefits, we respectfully request that the Royal Government of Cambodia ensures that the automotive certification and safety standards stipulated by Prakas No. 150 is applied to all vehicles, both new and used to ensure a level playing field for all automotive distributors, in line with Prakas No. 99. Furthermore, we recommend the introduction of a ban on the importation of vehicles that are unable to demonstrate conformity with the implemented standards from 31 December 2019 onwards, as this will effectively prevent flood-damaged, stolen, insurance write-offs and other dangerous conditions that result in unsafe vehicles being on the road.

By implementing these recommendations simultaneously, the Royal Government of Cambodia will overwhelmingly improve the competitiveness and attraction of Cambodia’s automotive sector from an investment perspective, while also significantly enhancing the quality and safety of vehicles on its roads.

Enabling Authorised Dealerships to Implement Service Measures and Product Recalls

UPDATED

ISSUE DESCRIPTION

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 authorised workshops for repair. Responsibility for notifying a customer normally falls to the authorised importer and dealer. As standard practice, authorised dealers check each vehicle visiting their workshop to ascertain if there are any outstanding service measures or recalls waiting to be performed. The cost of repair work, both labour and parts, is generally covered by the manufacturer at no cost to the owner.

However, owing to the large number of vehicles, both new and used, imported by non-authorised dealers, authorised dealers are unaware of which 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.

IMPACT ON CAMBODIA

Failure to perform service measures means that potentially un-roadworthy vehicles remain in use and is an issue that severely impacts consumer safety. Without a means of notifying owners of a recall, consumers may be unaware their vehicle is affected and potentially unsafe. From a business perspective, manufacturers and authorised distributors that have invested in the Cambodian market will be reassured that the reputation and responsibility of their brands and products will be upheld, as an effective recall process will enable them to rapidly rectify any issues their products may have.

2019 RECOMMENDATION

✓ **Request that the Department of Land Transport provide authorised automotive distributors with the Vehicle Identification Numbers of registered vehicles on a quarterly basis, to enable them to notify the Department in the event of a product recall.**

We recognise that there may be privacy concerns regarding the sharing of contact information of vehicle owners, similarly the Department of Land Transport, under the Ministry of Public Works and Transport may not wish to provide authorised distributors with this sensitive information if they were not responsible for the sale. Therefore, we suggest that the Department provide the Vehicle Identification Number (VIN) of registered vehicles on a quarterly basis, as a VIN is an anonymous and unique number that is used by manufacturers to identify individual vehicles.

Following this, authorised distributors can notify the Department in the event that a vehicle is required for recall, which will enable the Department to contact the registered owner to have them visit an authorised distributor for servicing to correct the issue. While this will place additional demands on the Department, it will ensure the safety and quality of vehicles in use in Cambodia while respecting the privacy of owners.

Rationalise Taxation Policy

UPDATED

- ISSUE DESCRIPTION** The Cambodian automotive sector is currently comprised of three types of vehicle imports:
1. New vehicles imported by authorised distributors: These are imported using a manufacturer's invoice. Effective from 15 June 2019 these vehicles will comply with the UNECE standards announced by the Institute of Standards, under the Ministry of Industry and Handicraft.
 2. New vehicles imported by non-authorised distributors, also known as “parallel imports”: These are purchased from a dealer outside Cambodia and the declared value is typically based on an assessed value table maintained by the General Department of Customs and Excise (GDCE). Having been built for another market, these vehicles may not meet the standards announced by the Institute of Standards and may not have been built with Cambodia's climate, fuel, and road conditions in mind.
 3. Used vehicles: These are purchased overseas and imported, and their value is assessed by a value table maintained by the GDCE. Vehicle condition cannot be guaranteed; authorised distributors regularly see used vehicles that have been in accidents, flooded or are stolen vehicles. Imported diesel vehicles designed to run on fuel not available in Cambodia are common and these experience frequent mechanical and electrical problems. Consumers cannot be readily assured of the safety or reliability of these vehicles. It is difficult to determine if these vehicles meet the UNECE standards implemented by Cambodia.

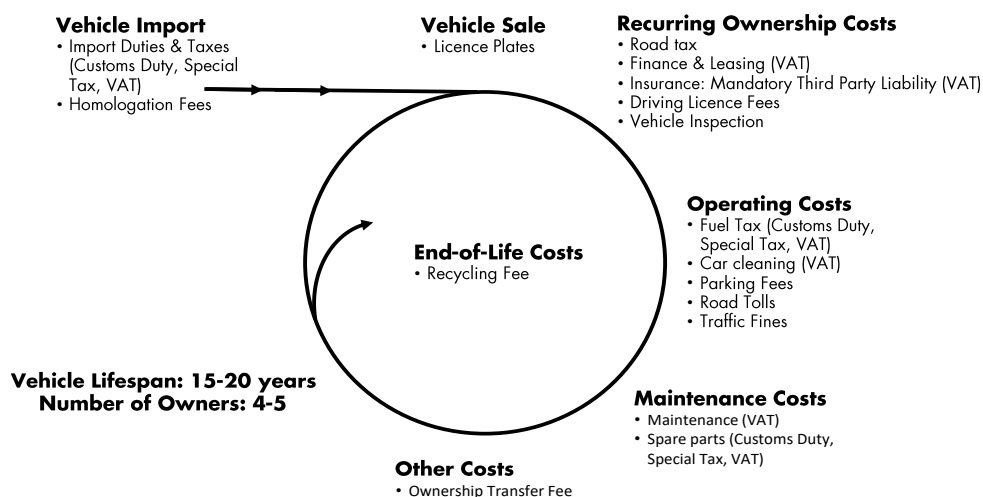
The GDCE applies import duties and taxes on all automobiles imported using either the manufacturer's invoice for vehicles of Type 1 above, or an assessed value for vehicles of Type 2 and Type 3 above. By all approximations, this third type of used vehicles accounts for an overwhelming proportion of the estimated 60,000 vehicles that are added to Cambodian roads each year. In contrast, new vehicles imported into Cambodia only represent 10-15%.

It is inherently difficult to correctly estimate the value of used vehicles, which in addition to safety concerns arising from the importation of unroadworthy automobiles, is why many markets have banned used car imports altogether. Under the current system, high import tariffs have resulted in Cambodia having some of the highest retail prices for new vehicles in ASEAN, despite having one of the lowest GDP per capita in the region. When all charges are taken into account, the total tariffs for importing new passenger vehicles from outside of ASEAN into Cambodia can reach up to 151% of the value of the vehicle.

Unfortunately, this situation encourages the importation of used vehicles over new cars, despite new vehicles generating more tax revenue than used vehicles. For a new vehicle, as its first destination after manufacturing is Cambodia, the Royal Government of Cambodia will collect tax revenue over the course of the vehicle's entire lifespan. Tax collection begins once it has been sold and imported by the dealership, and continues throughout its use on road, during refuelling, servicing, and annual road tax, through to its end of life when

it is scrapped for parts. In comparison, used vehicles have already completed much of this journey elsewhere, and are near or beyond their intended life expectancy, resulting in such vehicles being scrapped much sooner. This explains why vendors are able to source and sell these vehicles so cheaply, as Cambodia is one of the few remaining markets where they can be offloaded.

Tax Life Cycle of a Vehicle



Cambodia's current taxation policy effectively incentivises the purchase of used vehicles over new. This has led to many of the vehicles on Cambodia's roads being unsuitable and pose a serious safety risk, having previously been involved in accidents in their place of origin, while older vehicles lack many of the modern features that reduces the impact they cause to the environment.

It is necessary to acknowledge that used vehicles will continue to play an important role within the Cambodian automotive market and the second-hand market would not cease to exist. In fact, used car sales generally far outnumber new car sales. However, all of these vehicles will have initially entered their respective markets as new vehicles and over time were sold and repurchased as used cars, this ensures that are built appropriately for the target environment.

The Cambodian automotive industry recognises that the Royal Government of Cambodia has multiple needs regarding its automotive policy, which includes maximising tax revenue, while ensuring that its citizens have access to a range of affordable vehicles. Unfortunately, the continued use of an assessed value table by the GDCE to estimate the value of used vehicles deprives the Royal Government of Cambodia of additional tax revenue. We believe that by implementing a ban on used vehicle imports, the Royal Government of Cambodia would be able to reduce the overall duty and tax burden on vehicles thus ensuring consumers still have access to affordable cars.

IMPACT ON CAMBODIA

The Royal Government of Cambodia’s Industrial Development Policy recognises that an optimised 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*”³.

The same principle applies within a consumer market such as automobiles. We believe that an outright ban on used vehicle imports or significantly higher taxes for used vehicles would shift consumer demand towards new vehicles thus removing older, unsafe and less environmentally-friendly cars from the roads and allowing the automotive industry to generate even more revenue for the country.

2019 RECOMMENDATION

✓ **Rationalise taxation policy for automobiles to encourage the use of more suitable and environmentally friendly vehicles in Cambodia.**

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

- a. Implement an outright ban on used vehicle imports.
- b. Explore an overall reduction in import duties and taxes to ensure consumers still have access to affordable cars.

The coupling of these two measures will enhance consumer protection against vehicles unsuitable for the Cambodian environment, while increasing the affordability of newer, safer vehicles, from which the Royal Government of Cambodia will benefit from a greater proportion of tax revenue.

AGRIBUSINESS

EuroCham's Agribusiness Committee was established in 2018, following strong interest shown by our members involved in the agricultural and food processing sectors. As is the case for our other Sectoral Committees, the Agribusiness Committee provides members with a valuable platform to discuss and identify issues impacting their businesses, and importantly, to propose constructive, realistic solutions to the Royal Government of Cambodia. The collaborative discourse facilitated through this platform has shaped our new Agribusiness chapter, and expands EuroCham's efforts to promote public-private dialogue and to share international best practice across a wider range of industries.

We are pleased to report that since its launch, the Agribusiness committee has pursued purposeful engagement with the Ministry of Agriculture, Forestry and Fisheries. During our introductory meeting, the Ministry welcomed closer cooperation with the private sector to improve the competitiveness of the Kingdom's agriculture sector. The Committee also held its first industry event with the Ministry in February 2019, inviting His Excellency, Mr Veng Sakhon, Minister of Agriculture, Forestry, and Fisheries to preside over a luncheon, in which His Excellency shared his vision for the Ministry and its incoming policies. The success of this event demonstrated the sector's eagerness for closer engagement with the Royal

Government of Cambodia, which EuroCham will endeavour to facilitate.

The need for an effective advocacy channel for agribusinesses was confirmed in May 2018, with the unexpected ban on the import of crop protection products, following a serious water contamination incident. With the Committee's support, EuroCham was able to raise awareness of the detrimental impact such a ban would have on the agriculture sector and that its continuation would increase the use of illegally imported and counterfeit products. Following an investigation into the contamination, the Ministry was able to remove the ban and committed to strengthen efforts with the relevant authorities to combat the import of counterfeit products.

For this inaugural chapter, our members have identified five priority issues, for which we have proposed practical recommendations. The first recommendation aims to highlight the existing limitations of the Law on Animal Health and Production that was adopted in 2016. Most notably, the Law explicitly bans the use of substances harmful to humans and animals, however as the specific substances have not yet been defined, this remains open to interpretation. Consequently, this has led to the use of unsafe substances in food production, particularly beta agonists to become widespread.

Our second recommendation seeks to raise concern with the negative impact the availability of illegally imported agricultural inputs is having on competition and investment in the sector. Legitimate distributors of agricultural inputs must adhere to strict compliance requirements before being permitted to sell to customers, including obtaining licences for trading, warehousing and importing their products, each with a considerable cost associated. As illegal distributors circumvent this compliance process entirely, they can sell potentially hazardous products that are unfit for the Cambodian market, at prices far below what compliant competitors can offer, significantly harming their profitability and the attractiveness of the sector.

The agriculture sector is a major employer and driver of the Cambodian economy, and has robust labour requirements and benefits stipulated by the Labour Law, which other sectors do not need to follow or provide. Our next recommendation aims to emphasise that these additional conditions should be taken into consideration by the Royal Government of Cambodia as it seeks to implement new labour reforms such as the adoption of a standard minimum wage. Recognising that such labour reforms are certainly welcomed, we convey that a balance should be found that factors in the support that these additional benefits provide.

The competitiveness of Cambodia's agriculture exports has been the focus of increasing attention, following the European Commission's decision to implement safeguarding measures on Cambodia's rice exports to the European Union. Accordingly, we highlight the need for Cambodia to diversify rice production by growing a wider range of varieties, and suggest that hybrid rice be formally accepted and grown as means to minimise similar threats.

Finally, our last recommendation seeks to clarify a requirement by the Ministry of Environment that agricultural businesses must conduct water quality testing through the Ministry's own laboratory facilities. While our members certainly recognise the need for regular environmental impact analysis, we express that the mandatory use of the Ministry of Environment laboratory limits competition and reduces the objectivity of testing results.

We look forward to a series of engaging and productive discussions with the Ministry of Agriculture, Forestry and Fisheries, Ministry of Environment and Ministry of Labour and Vocational Training in response to these recommendations, as we share the goal of bolstering the competitiveness of Cambodia's agriculture sector.

Banned Substances in Animal Production

NEW

ISSUE DESCRIPTION

The Royal Government of Cambodia adopted the Law on Animal Health and Production in 2016, to ensure the effective management and development of livestock farming by modernising and standardising practices with international regulations to prevent the spread of communicable diseases. Similarly, the Law sought to align Cambodia's livestock standards with its regional neighbours to facilitate the growth of cross border trade in animal products and further regional integration.

While this demonstrated the notable progress undertaken by the Royal Government of Cambodia to increase the health and safety of animal production in Cambodia, the Law can be perceived as being limited in regards to specific details of what practices are not permitted, which enables some businesses to avoid adherence to the requirements. For example, Chapter 2, Article 27 of the Law explicitly bans the use of substances that are harmful for both animals and humans, genetically modified and those that artificially enhance the growth of animals, without defining the specific types of banned substances. Without specifying the harmful compounds, this remains open to interpretation and allows businesses to continue to use such substances in their production.

Independent testing has detected a widespread presence of beta agonists, namely salbutamol and ractopamine in various feed products and premixes by businesses involved in livestock farming in Cambodia to gain a competitive edge in the market. Beta agonists such as ractopamine, salbutamol, clenbuterol and fenoterol are used predominantly in pig farming in Cambodia to reduce the fat content of the animal by artificially promoting the growth of muscular tissue during the fattening phase prior to slaughter. The use of beta agonists enables producers to obtain leaner meat and higher carcass weight, largely due to an increase in water absorption by the animal.

Many countries including Thailand, Vietnam, China, Russia and the European Union have banned the use of beta agonists in livestock farming due to the adverse side effects observed in the animals themselves and humans that have consumed the end products, as measurable levels of the compounds remain in the meat. Health risks associated with the use of beta agonists include increases cardiovascular risks, headaches, tremors, musculoskeletal damage and animal mortality.

As the Law on Animal Health and Production already forbids the use of harmful substances that artificially enhance the growth of animals, beta agonists should already be banned from use in Cambodia, therefore the Ministry of Agriculture, Forestry and Fishing should enforce this by defining the specific banned compounds to end this practice.

IMPACT ON CAMBODIA

As demand for meat continues to increase, it is imperative that the Royal Government of Cambodia take adequate steps to ensure that the inputs used during livestock farming are safe for the welfare of the animals and that the end products are suitable for human consumption. If the use of dangerous substances were to continue unimpeded and the associated risks became more prevalent, Cambodian farmed livestock could potentially develop a negative

reputation as being harmful, which would damage the growing agriculture sector. The likelihood of this negative reputation growing is compounded by the fact that Thailand and Vietnam have already banned the use of beta agonists and do not allow imports that are found to contain these substances. Thus, while the Law on Animal Health and Production was intended to align Cambodia's standards with its neighbours to facilitate regional integration and greater cross border trade, without defining the specific banned compounds, their use will continue and may impact Cambodia's competitiveness as a potential meat exporter.

Furthermore, defining the specific banned compounds can be an effective awareness raising strategy by the Ministry to enable farmers to become better informed about the substances that are used on their animals, as many smaller farmers may be unaware of the harmful consequences from their continued use. Similarly, defining the banned substances will promote a more level playing field for farmers, as the price per animal can be significantly altered by the use of beta agonists, so farmers that choose not to use these substances are less competitive than those that do and receive less for their animals when sold.

✓ **Request that the Ministry of Agriculture, Forestry and Fisheries define the list of banned substances contained within the Law on Animal Health and Production, and ensure that the list specifically includes beta agonists.**

2019 RECOMMENDATION

To bring Cambodia's livestock farming standards in line with many other countries and important regional export markets, we recommend that the Ministry of Agriculture, Forestry and Fisheries define the list of banned substances contained within the Law on Animal Health and Production and ensure that the list specifically includes beta agonists such as ractopamine, salbutamol, clenbuterol and fenoterol. By doing so, the Ministry will increase the safety and quality of animal products available in Cambodia and enable a more competitive market for compliant businesses.

It is important that the publication of the specific banned substances is followed by an effective awareness campaign on the issue, to persuade businesses not to use the banned substances and inform them about safer methods to improve their production. Similarly, the Ministry should increase the number of inspections conducted on farms and in the marketplace to ensure that farmers follow the updated regulations. For those that continue to use the harmful substances listed, the Ministry should enforce the punishments stipulated by the Law on Animal Health and Production to ensure that those that comply with the regulations are not disadvantaged.

Availability of Illegal Agricultural Input Products

NEW

ISSUE DESCRIPTION

An efficient and productive agriculture sector is at the core of the Royal Government of Cambodia's overall development strategy, and is crucial for its export competitiveness and food security. Fundamental to a productive agriculture sector is the effective use of high-quality inputs such as seeds, fertilisers and pesticides that allow farmers to increase their yields and the intensity of land use. However, due to limited investment and technical barriers, Cambodia does not yet manufacture many of its own agricultural input products to meet the increasing demands of the sector. While this is indeed changing as investment rises, Cambodia's agriculture sector heavily relies on the import of many input products, predominately from Vietnam and Thailand.

Due to the importance of the sector and the recognition of the limited domestic production, the Royal Government of Cambodia has set zero tariffs for the import agricultural inputs into Cambodia. To receive this favourable incentive and ensure compliance, agricultural businesses are required to register themselves with the Ministry of Agriculture, Forestry and Fishery, and obtain licences for the trading, distributing and warehousing of agricultural inputs within Cambodia. Additionally, each product that a business wishes to bring into the country must be register with the Ministry to confirm its composition and safety. Only after these processes are complete, may businesses apply for an import licence and subsequent permits to import products. Although this compliance process is complex and has considerable costs associated, the benefits of the import tax exemption and the exclusive distribution rights of the products that they register, enable most compliant businesses to manage these requirements appropriately.

Despite the Ministry's efforts to regulate and control the importation of agricultural input products into Cambodia, there is a significantly sized informal trade of products that have illegally crossed the border from neighbouring countries, which are widely sold and used by many farmers across the country. While these countries are the source of many registered products, due to the manufacturers producing more than their markets demand, unregistered distributors take advantage of this lower cost surplus by overloading it in Cambodia, below domestic prices. This price dumping places unnecessary pressure on compliant businesses as they are unable to match the low prices set by unregistered distributors, who save costs by avoiding registration and licencing of their business and products.

Although in some cases the illegally imported goods can be from the same manufacturer as those legally available, as they are not sourced through legitimate distribution channels, there is no certainty that the product matches what the unauthorised seller claims. As such, these products often lack suitable packaging or labelling in Khmer language so farmers are unable to follow the usage instructions and may use the incorrect product, potentially damaging their crops and the environment. Similarly, as there is no quality assurance from the manufacturer or distributor, farmers will not know whether the products are of a sub standard quality, counterfeit or more hazardous than what is legally available. Accordingly, agricultural inputs that have been illegally imported into Cambodia can be extremely unsafe for the farmers and consumers, and negatively impact the long-term sustainability of the environment.

As it would be unreasonable to expect that most farmers would have the technical knowledge to determine whether the agricultural input products that they are purchasing have been legitimately imported, the responsibility falls on Cambodian regulators to build awareness around the dangers of using illegally imported products and enforce greater compliance.

Without wider enforcement, compliant agricultural businesses are unfairly disadvantaged, as they cannot compete with the low cost of these illegal products. This impacts the growth of Cambodia's agriculture sector and its attractiveness as an investment destination, as these products damage the reputation of brands and businesses will be unwilling to continue or increase their investment if they are unable to achieve profitability.

Additionally, as the distributors of illegal imports circumvent the registration and licensing requirements set by the Ministry, the Royal Government of Cambodia misses out on the collection of important revenue and loses the ability to accurately record data to analyse the growth of the sector.

✓ **Request that the Ministry of Agriculture, Forestry and Fisheries implement stronger enforcement measures during their inspections at the point of distribution for agricultural input products.**

2019 RECOMMENDATION

Agricultural businesses require reassurance that the Royal Government of Cambodia is taking steps to combat the flow of illegally imported agricultural input products, therefore we respectfully recommend that the Ministry of Agriculture, Forestry and Fisheries implement stronger enforcement measures during their inspections of retailers and distribution facilities. This would include following through with punitive measures for repeat offenders and the confiscation of products that are not registered with the Ministry. We would also welcome efforts to strengthening inter-ministerial collaboration with the General Department of Customs and Excise, such as by providing them with access to product registration details as this would enable them to verify whether incoming imports are compliant.

Importantly, we would like to stress that enforcement should not be directed at the farmers that use the illegal products themselves as they are often unaware that the products are illegitimate, rather they should be educated on their harm and how to identify them so that they can be avoided in the future.

Unique Employment Conditions of the Agriculture Sector

NEW

ISSUE DESCRIPTION The Labour Law outlines the relations between employers and employees, and sets out the working conditions that are applicable to all private sectors of the Cambodian economy. Due to the unique demands of the agriculture sector, businesses that regularly employ paid workers for the cultivation of commercial crops have additional obligations specified by the Law that other sectors are not required to adhere to.

Chapter 7 of the Labour Law stipulates the specific working conditions that agricultural businesses must provide for their employees and families to ensure that they are compliant. These obligations include free housing or an allowance, utilities, food, day nurseries and the construction of their own self-administrated schools. While these conditions do indeed add a substantial expense to the operations of agricultural businesses, many recognise that this is part of the cost of doing business in the sector in Cambodia, due to the remote nature of many plantations and the benefits and protection they provide for their workers.

This being the case, these added benefits are often not taken into consideration when evaluating the actual wages that workers receive. Although the net wage of an agricultural worker can be lower than other sectors, because the business bears the cost of many of their daily necessities, the workers should be in a position to save considerably more of their wage than those that must use their wage for housing, food and wider needs.

This disconnect is causing concerns for agricultural businesses due to the emerging discussions based around the potential adoption of a standard minimum wage across more sectors than the garment, footwear and textile sector. While the minimum wage is currently only applicable for this sector, its effect already impacts the wages of other sectors as many employees expect that they should receive the same amount, driving up the cost for businesses to compete.

Agricultural businesses recognise that this may be attributed to a communication issue with the labour pool as they need to raise greater awareness of the difference between a slightly lower net wage with substantially more benefits to that of a higher net wage with few added benefits. Similarly, the awareness of this must be raised with policy makers to ensure that the unique obligations placed on the agriculture sector and the extensive benefits provided, are taken into account during future discussions on labour reforms.

IMPACT ON CAMBODIA While many of the initiatives undertaken by the Royal Government of Cambodia to formalise employment protections have largely been welcomed by the business community, it is important that such reforms strike a reasonable balance between the needs of workers and those of businesses to ensure that Cambodia remains competitive. If the cost of labour continues to increase without productivity following suit, Cambodia could lose its competitive advantage as a low-cost production base, which would force many businesses to move elsewhere and severely impact future economic growth.

Furthermore, commercial operators already struggle to compete within the highly competitive market, as smaller agricultural enterprises and other industries do not need to

provide the additional benefits detailed above and avoid the substantial expenses. When this is combined with the recent labour reforms such as the National Social Security Fund, seniority indemnity payment and the upcoming pension scheme, the cost effectiveness and economic case for commercial agriculture production in Cambodia is reducing, without the additional burden of a standard minimum wage.

✓ **Ensure that the Royal Government of Cambodia takes into consideration the additional benefits and conditions already provided by agricultural businesses when implementing new labour reforms.**

2019 RECOMMENDATION

While we welcome the formalisation of Cambodia's employment protections and recognise the need for a liveable wage for its citizens, it is our members' view that these should be balanced with the needs of businesses and those of their employees. Therefore, we respectfully urge the Royal Government of Cambodia to take into consideration the additional benefits and conditions already provided by agricultural businesses when implementing new labour reforms to ensure that the sector remains competitive.

Hybrid Rice

NEW

ISSUE DESCRIPTION

As a result of the extensive efforts undertaken by the Royal Government of Cambodia and the agriculture sector to expand and modernise the production of rice, Cambodia has become an increasingly competitive exporter, supplying both regional and international markets. While much of the focus of exports has been placed on premium fragrant rice varieties, which demand a higher price and have achieved international acclaim, non-fragrant varieties have often struggled to compete with exports from Vietnam. Given the size of world rice market and the different segments that exist, Cambodia should seek to diversify of rice breeds by increasing production of non-fragrant varieties to ensure it remains competitive and to achieve its rice export targets.

An effective means to increase production of alternative rice varieties in other leading rice growing countries, most notably China, Philippines, Vietnam and India, has been through the use of hybrid rice breeds. Hybrid breeds of rice are varieties that have been purposely bred for selective traits, by crossing two different parent rice seeds to breed a hybrid of the two. This process produces breeds that can generate significantly higher yields of 15-30%⁴ more than comparable traditionally bred varieties, as well as those that can resist water scarcity, saline, high temperatures and pests.

However, this cross-breeding process results in a seed that is sterile, and due to the technical challenges involved, commercial seed producers are required to manage this process. Accordingly, hybrid rice cannot be reused for another harvest, thus farmers are required to purchase new seeds each season, which are more expensive than regular seeds, though due to their higher yield, far less seeds are required. Due to these costs and the additional fertiliser and pesticide requirements, it is important that the cost effectiveness of hybrid rice is assessed to gauge whether it is appropriate for a particular farmer.

Presently, the Ministry of Agriculture, Forestry and Fisheries does not allow agricultural businesses to register hybrid rice products for commercial use, which has effectively banned their formal use in Cambodia. This stance may be attributed to the confusion surrounding the misclassification of hybrid crops as a genetically modified organism (GMO). GMOs differ considerably to that of a hybrid crop as GMOs are created by splicing genetic material from an entirely different organism which cannot occur naturally, whereas hybrid seeds are of the same species and therefore genetics, so there are no health concerns or export controls placed on the end products.

This can be demonstrated by the General Directorate of Agriculture under the Ministry of Agriculture, Forestry and Fisheries, which recently developed its own hybrid variety of corn, known as 'BNT-5666', with support from the Korea Programme on International Agriculture (KOPIA). This hybrid corn variety has significantly increased yields and its resistance to disease, and is expected to be made available to farmers in 2019. Similarly, much of the lower quality milled rice that is available for domestic consumption in Cambodia is hybrid rice that has been informally grown in the Southeast and then transported to Vietnam for processing and exported back, as Cambodia's rice processing capabilities are focused on premium varieties.

Therefore, as the benefits of hybrid crops have been recognised by the Ministry and that hybrid milled rice is already widely available, it would be reasonable to allow agricultural businesses to begin registering hybrid rice varieties for their commercial use in Cambodia, to enable farmers to diversify production and formally harvest a domestic supply.

The radical reduction in poverty across rural areas of Cambodia can largely be attributed to increased demand and revenue from rice as it is the main crop and source of income for 85% of rural Cambodian households⁵. However, due to the impact of climate change and the increasingly competitive global market, this fundamental source of income is threatened. Hybrid rice presents farmers with a climate resilient, sustainable solution to increase yields and intensify productivity, and consequently increase the income of farmers and strengthens Cambodia's food security. Similar to the General Directorate of Agriculture hybrid corn initiative, Cambodia could also develop its own hybrid rice varieties that could be sold in other markets, generating intellectual property and an additional revenue stream as the demand for hybrid breeds grows.

Furthermore, recent policy developments in Vietnam have signalled that the Vietnamese Government intends to shift rice production from low value, high yield varieties towards higher value products to enable farmers to increase their profit margins⁵. While it will be some time before the effects of this are felt, this presents a challenge to Cambodia's production of premium rice due to Vietnam's substantial industrial capacity. Therefore, in certain applications hybrid rice varieties may provide a solution for Cambodian farmers to diversify their production to ensure they remain competitive in other rice varieties and would align with the aims of Cambodia's rice policy that seeks to facilitate its rise as a global leader in rice trade.

IMPACT ON CAMBODIA

✓ Consider permitting hybrid rice breeds to be legally grown and registered in Cambodia.

2019 RECOMMENDATION

While hybrid rice varieties present both positive and negative characteristics that make them suitable for certain applications, farmers should be given the opportunity to utilise these innovative, modern crops to increase their production and incomes. Therefore, we respectfully recommend that the Ministry of Agriculture, Forestry and Fisheries consider permitting hybrid rice breeds to be legally registered and formally grown in Cambodia.

Mandatory Use of the Ministry of Environment Testing Facilities

NEW

ISSUE DESCRIPTION

Following a number of serious incidents involving the suspected contamination of natural water sources from agricultural inputs, the Ministry of Environment began requiring businesses involved in commercial agriculture to conduct water quality testing to ensure that their activities do not damage the environment. While it was later confirmed that these incidents of contamination were not the fault of nearby agricultural operations, the requirement for businesses to conduct biannual water quality testing has remained.

Agricultural businesses agree that regular environmental testing is an essential facet of their operations, as natural water sources are particularly vulnerable to contamination unless sustainably managed. However, our members report that to fulfil this obligation, businesses must utilise the Ministry of Environment’s own laboratory facilities for the analysis, rather than being able to submit results obtained from an independent facility. The Ministry notified businesses that this is due to their inability to confirm the reliability and accuracy of testing facilities outside the control of the Royal Government of Cambodia.

While this may be case, our members have their own concerns surrounding the Ministry’s testing facilities as they perceive the results to often be inaccurate and unreliable, largely due to the laboratory’s limited resources and capacity development. Most businesses already use independent, third party facilities to conduct a range of tests for quality control and environmental impact analysis, and rely on the unbiased and accurate results of these tests for their commercial and investment decisions. Therefore, independent testing would be a more effective mechanism to ensure that commercial agricultural operations are not causing ecological damage.

IMPACT ON CAMBODIA

The mandatory use of the Ministry’s testing facilities imposes unnecessary additional costs on agriculture businesses, as businesses require a higher level of accuracy than the Ministry’s laboratory can provide, thus they are obliged to pay for duplicate testing. Similarly, requiring all agricultural businesses to conduct testing through the Ministry is likely to overload its resources, reduce its efficiency and delay compliance. Rather, if businesses were permitted to use independent facilities, the workload could be spread across multiple facilities to ensure a timely service. If this monopoly continues, it will increase the cost of doing business and the administrative burden for compliant companies, and will ultimately reduce the competitiveness of Cambodia’s burgeoning agriculture sector.

Furthermore, as the sole purpose of independent laboratories are to conduct third party testing, their integrity relies on their ability to produce reliable, accurate and objective results that are free from the influence and control of interested parties. Accordingly, these laboratories invest considerable resources on their equipment and personnel to maintain this objectivity and accuracy to ensure that their customers will continue to use their facilities for testing and analysis to inform their business decisions.

✓ **Request clarification into whether it is mandatory for businesses to use the Ministry of Environment's laboratory facilities to conduct water quality testing.**

2019 RECOMMENDATION

While our members recognise the importance of regular environmental impact analysis to ensure that agricultural businesses do not degrade the Cambodian environment, we feel that it is vital that such analysis is conducted by an independent, third party who can guarantee the accuracy and objectivity of their results. Therefore, we request that the Ministry of Environment clarify whether it is mandatory for agricultural businesses to use the Ministry's laboratory facilities to conduct water quality testing, and if so, consider permitting businesses to submit test results obtained from reputable independent facilities.

INFORMATION *and* COMMUNICATION TECHNOLOGY

The Royal Government of Cambodia recognises the important role the thriving Information and Communication Technology (ICT) sector has in achieving the Kingdom's plans to diversify the economy and has taken considerable effort to strengthen its engagement and communication with industry stakeholders. This improvement is most demonstrated by the consultative approach taken by the Royal Government of Cambodia throughout the development of the draft E-Commerce Law, in which EuroCham's ICT Committee has been a supportive dialogue partner as representatives from the private sector. Committee members provided detailed feedback against each component of the incoming legislation to verify the accuracy of technical details, and gave useful recommendations to promote regional harmonisation and ensure that the provisions would not stifle innovation for the benefit of Cambodia. We trust that the Royal Government of Cambodia found our advice and guidance constructive as it finalises this vital legal framework.

The Ministry of Posts and Telecommunications has been widely supportive of the digital transformation underway and regularly engages with the private sector to address barriers that could hinder

the future success of Cambodia's digital economy. EuroCham was fortunate to support the Ministry of Posts and Telecommunication and the Ministry of Industry and Handicraft's Tech Start-up and Micro, Small and Medium Enterprises (MSMEs) Forum in May 2018, where forward-thinking businesses discussed the opportunities and challenges of embracing new technology.

In terms of further progress for this chapter, the Ministry of Posts and Telecommunications provided a written response to our previous recommendations and outlined the extensive public consultations that have shaped the sector's recent regulatory developments, including the Universal Service Obligation and Capacity Building and Research & Development funds. Since the creation of the Universal Service Obligation and Capacity Building and Research & Development funds in July 2017, telecommunication operators have contributed more than US\$13.5 million to expand services and support technical workforce development. This level of compliance reflects the success the Royal Government of Cambodia has had in addressing the concerns held by the private sector. A favourable component of the draft implementation guidelines is the reimbursement mechanism that enables businesses to clawback

a portion of their funding contributions when undertaking eligible projects that are aligned with the aims of the funds, which seek to bridge the current digital divide.

Our new recommendations for this edition strive to build on this positive regulatory progress by suggesting the adoption of new legislation that is important for a prosperous, competitive and innovative ICT sector. Firstly, we highlight the need for Cambodia to prioritise the adoption of data protection and privacy laws, as currently there is no framework to govern how electronic data is used, managed or stored. These laws are essential to ensure citizens and businesses are adequately protected from the harmful misuse of private data, while also being an important tool to build awareness around how data is used, particularly by third parties.

The next new recommendation focuses on encouraging consumer choice and fair competition by proposing the implementation of mobile number portability and a broadband open access policy. By providing consumers with the ability to change their telecommunication operators with ease, businesses are driven to innovate to ensure they retain their customers, leading to improved service

quality, reduced pricing and a stronger, more competitive technology sector.

Our last new recommendation seeks to address the pervasive skills gap that exists within the ICT sector, by encourage the Royal Government of Cambodia to promote greater engagement between training providers and the private sector to improve course content and qualifications. While we recognise that the skills gap is prevalent across numerous sectors of the economy, due to the pace of technological advancements, the consequences of this could severely damage the competitiveness of Cambodia's ICT industry.

Finally, we have retained two recommendations from the last edition, which are focused on minimising the financial burden resulting from incoming regulatory changes, as the telecommunication industry already contributes a significant amount of its revenue to the Royal Government of Cambodia. As such, we continue to emphasise that reforms must strive to find the right balance between generating public revenue and ensuring the economic viability of the sector for existing and prospective investors.

Prioritise the Adoption of Data Protection and Privacy Laws

NEW

ISSUE DESCRIPTION

The digital transformation underway in Cambodia places a growing importance on private data and the way that it is stored, managed and used, particularly by third parties. Although the Cambodian Constitution established the constitutional right of all citizens to privacy and the confidentiality of communication, the Kingdom currently lacks a comprehensive legislative framework to restrict and regulate the use of private data, and ensure protection against unauthorised or unlawful access.

As data is intrinsically linked to the digitalisation of the economy, businesses rely on its value to deliver their goods and services, drive innovation and support investment decisions. However, as demonstrated by the increasing number of high-profile worldwide data thefts, breaches and cases of improper access, it is essential for Cambodia, like all other countries, to safely manage and protect data, otherwise the consequences may severely damage reputations and operations.

While many businesses in Cambodia already recognise the necessity of privacy and data protection and implement mitigation strategies, it is misguided to assume that all businesses will invest the time and resources required to safeguard data without clear legislation regulating electronic data.

IMPACT ON CAMBODIA

New technologies are a significant contributor to the national development of Cambodia. However, without a robust legal framework governing the responsible use and storage of the data generated from new technology, including by third parties, the importance of data security can be overlooked and individuals, businesses or governments are potentially exposed to serious threats and instability. This not only includes reputational damage or abuse from the misuse of data but also the consequences of the physical loss of data due to power outages or natural disasters.

The flow of data that enables digital economies to flourish is built on trust, as those providing private data must believe that the entity using or storing their data will act in good faith. If this trust is broken, confidence in the entity will be harmed and others will no longer trust that their information will be safe. This is a serious concern for businesses involved in the use and management of private data, such as contact details or financial information, as they will quickly become uncompetitive. If Cambodia was to develop a reputation for the mishandling of data due to the lack of sufficient regulations, investment in its emerging technology sector would swiftly diminish.

Furthermore, due to the growing concerns around how data is used, some countries are restricting the flow of data to countries with lax privacy and protection laws, to ensure businesses cannot circumvent their domestic regulations. Similarly, like data itself, the laws governing its use are no longer bound by jurisdictions and are now being applied extraterritorially, as demonstrated by the European Union's General Data Protection Regulation (GDPR) legislation. This legislation applies strict obligations on any business that process the data of European citizens or risk hefty punitive measures for non-compliance, regardless

of a business's physical location. Therefore, without an effective regulatory framework that maintains progress with comparable markets, there is a risk that the competitiveness of Cambodia's digital sector could diminish, which would increase the difficulty of attracting investment.

✓ **Prioritise the adoption of the data protection and privacy laws, following an effective public-private consultation process.**

2019 RECOMMENDATION

While we recognise that the pace of technology generally exceeds that of the legal framework that governs it, we respectfully recommend that the Ministry of Posts and Telecommunications prioritise the adoption of Cambodia's data protection and privacy laws to ensure the responsible use and management of data. It is important that such regulations be formulated to focus on the management of risks to an acceptable level, and balance the economic and social benefits that digital innovations can bring, with ensuring protection from the adverse impact of the misuse of data.

Adopting such regulations would also strengthen Cambodia's efforts to further integrate into the ASEAN Economic Community, as there is a particular focus to harmonise data protection legislation and commit to enhanced cooperation in the field of ICT, as demonstrated by the Master Plan on ASEAN Connectivity and the ASEAN Framework on Personal Data Protection. Taking this into consideration, EuroCham's ICT Committee would welcome the opportunity to contribute to the development of such legislation in a collaborative and supportive manner, similar to the consultative process undertaken by the Royal Government of Cambodia for the drafting of the E-Commerce Law.

Ensuring Consumer Choice and Open Access

NEW

ISSUE DESCRIPTION

As the digital economy continues to grow and access to telecommunications becomes a necessity, it is vital that consumers are given adequate protection to ensure they are free to choose the services that best match their individual needs. Likewise, as the types of service also expands, it is important that the Royal Government of Cambodia takes steps to harness the growth of the sector through effective policies and regulations that seek to foster innovation and encourage fair competition between providers.

Presently in Cambodia, if a consumer is unhappy with the quality of service from their mobile provider and decide to switch to a new provider, they are required to give up their phone number and adopt a new one, this results in increased switching costs and hassle of informing others of the change to their contact details. Without the ability to transfer mobile numbers to different providers, some providers have been able to purchase licences for a wide range of phone numbers, including desirable and lucky combinations, at a low-cost following a number of carrier mergers, causing unfair competition against incumbent providers.

To overcome these issues, many countries have adopted mandatory mobile phone number portability regulations that allow consumers to retain their existing phone number when switching to a new provider, which has reduced costs while increasing competition and consumer satisfaction. Within ASEAN, Singapore, Malaysia and Thailand have already introduced mobile number portability for free and can be completed in less than three days, and providers in Vietnam began rolling out number portability from November 2018. Similarly, all ASEAN Member States have been encouraged to implement mobile number portability, following its inclusion in the Siem Reap Declaration of the ASEAN Telecommunications and Information Technology Ministers meeting held in December 2017⁶.

Ensuring competition and consumer choice is equally as important when it come to the physical infrastructure for which communication flows through. As an internet connection has become an essential utility rather than a luxury, it is imperative that access to network infrastructure is provided on fair and reasonable terms as it plays a major role in shaping the field of competition. Although many individual users in Cambodia may be satisfied with mobile internet and may not even have a physical internet connection, businesses often have heavy bandwidth needs and demand higher speed connections than mobile internet can currently provide.

In Cambodia, when a new building is constructed, a telecommunication provider will make an agreement with the owner to connect the building to the broadband network and in return will be given full exclusivity to all consumers that reside within. This gives the provider a monopoly over the tenants and leaves the consumers with little recourse if they are unhappy with the quality of their service, and if this was to occur within an office building, it would severely inhibit commercial activities.

As there is little incentive for providers to grant access to their infrastructure to competitors, the sector requires the Royal Government of Cambodia to implement an effective

broadband open access policy to allow the shared and fair use of network infrastructure. Implementing an open access policy would follow the example set by the Royal Government of Cambodia's Universal Service Obligation Fund, that seeks to encourage the private sector to expand network infrastructure to areas that are less economically convincing, though greatly benefit the citizens that reside in such areas.

As in many countries, much of the focus of Cambodia's telecommunication legislation has been on regulating the establishment of networks and licensing providers. However, as the sector continues to develop and more players enter the market, it is vital that policy follows suit to encourage fair competition and protect consumer choice. The increase in competition that stems from effective consumer orientated policies stimulates the private sector to innovate, improve service quality and price competitively. If businesses fail to do so, they ultimately risk losing their customers to the competitors that do, as customers become more empowered to make well-informed purchasing decision.

The aims of implementing pro-competition policies like mobile number portability and open access for broadband infrastructure are to enhance consumers' perception of telecommunication services in Cambodia by raising awareness of alternatives and simplifying the switching process. This will encourage greater investment into Cambodia's ICT sector, and result in a stronger and more competitive market with improved network infrastructure.

IMPACT ON CAMBODIA

✓ **Consider implementing mobile phone number portability and a broadband open access policy to encourage greater consumer choice and fairer competition.**

2019 RECOMMENDATION

We respectfully recommend that the Ministry of Post and Telecommunications take steps to implement mobile phone number portability and a broadband open access policy to encourage greater consumer choice and fairer competition within the telecommunication sector. For mobile phone number portability, we suggest harmonising regulations with those implemented by other ASEAN members, as encouraged by the Siem Reap Declaration of the 2017 ASEAN Telecommunications and Information Technology Ministers meeting.

Recognising that implementing an open access policy for network infrastructure would be a lengthier and more technical process, we suggest that the Ministry seek best practice and engage in public-private consultations to ensure that such policy would effectively balance the needs of consumers, operators and owners, and encourage fair use of infrastructure.

Addressing the ICT Skills Gap

NEW

ISSUE DESCRIPTION

The Royal Government of Cambodia is clearly committed to increasing the standards of education throughout the Kingdom, demonstrated by the continued trend of education receiving the highest allocation in the National Budget, with US\$737 million earmarked for 2019, following the sizeable 24% increase in the 2018 Budget. While the private sector recognises and welcomes this improvement, employers across the board continue to report challenges in finding quality applicants for recruitment, due to the considerable skills gap that exists between the education delivered and the skills that industries require. For the rapidly developing Information and Communication Technology (ICT) sector, the skills gap issue is even more prevalent.

As a result of the growing demand for ICT services in Cambodia, a large number of training facilities have established themselves alongside existing universities to offer a range of ICT focused courses and qualifications. Unfortunately, as the sector lacks a recognised qualification framework, the quality of courses delivered within Cambodia varies considerably, and much of the learning can be out-of-date and bears little relevance to the industry. While many Cambodians are becoming increasingly tech-savvy; thanks to the high penetration of mobile devices, computer literacy continues to fall well behind, leaving many graduates unprepared for the job market and with qualifications that hold limited value both within Cambodia and internationally.

Although Cambodian universities and the private sector has begun collaborating to bridge this gap, this has largely been focused on securing internships for students rather than involving ICT businesses in curriculum development. Consequently, as curricula rarely takes into consideration the needs of the industry, students are well below professional expectations, therefore businesses are required to effectively retrain many of the fresh graduates that they hire.

While most ICT businesses recognise that recent graduates will need on-the-job training due to their limited technical experience, many businesses are finding that they are forced to teach foundation level skills, such as basic arithmetic, which should normally have been completed during early education. Businesses are required to heavily invest time and resources into each graduate, which they often struggle to recoup due to high turnover, with staff choosing to leave after a relatively short period to obtain higher salaries elsewhere.

IMPACT ON CAMBODIA

While the surging uptake of mobile devices by Cambodians presents a significant opportunity for ICT businesses to offer innovative technology focused solutions, the severe lack of home-grown ICT skills greatly reduces Cambodia's ability to remain competitive within this ever-changing industry. To service this demand, businesses are forced to invest substantial resources into the training and development of recent graduates or spend considerably more to retain and recruit experienced local and international staff to fill the gap. This causes the cost of labour to increase and unbalanced with regional competitors, since there

are only a limited number of experienced candidates available⁷. These increased costs damage the Cambodian ICT sector's ability to remain financially competitive, which is essential as many ICT projects are no longer geographically dependent.

This additional financial constraint further impacts the more fragile start-up ICT businesses, which are often seen as the lifeblood of any competitive ICT sector. Start-ups require staff that can work independently, with minimal training and for a low cost, as their contribution is rewarded through valuable professional experience. As a result of their limited resources during the early growth phase, start-ups do not have the capacity to support the level of training required for many Cambodian graduates. The lack of cost-effective talent, significantly limits the capability of startups to grow organically and could allow foreign entities to gain a foothold in the Cambodian market before local businesses can.

✓ **Promote greater engagement between training providers and the private sector to improve ICT courses and accreditations to address the skills gap.**

2019 RECOMMENDATION

Recognising the efforts already made by the Ministry of Education, Youth and Sport and the Ministry of Post and Telecommunications to enhance education standards, we recommend that Royal Government of Cambodia seek to promote greater engagement between training providers and the private sector to improve ICT training and accreditations standards. Doing so would closely align with the aims of the recently adopted Capacity Building and Research & Development Fund, which intends to encourage human resource development through private sector support.

While we acknowledge that the development of a recognised education framework for the ICT sector is a lengthy task, we suggest that training providers collaborate closely with the sector to develop their courses, as businesses are best positioned to understand the current and future demands of the industry. The private sector can provide support to training facilities to create a needs-led curriculum by reviewing course material, teaching methods and validating examinations. Following this, more training facilities should seek to offer technical certifications such as Cisco, Microsoft and Oracle, as these internationally recognised, professional programmes have been designed for a specific use and career progression in mind.

We anticipate that promoting closer coordination will follow the success that increased public-private engagement with the Ministry has shown, and pay dividends in the longer term by enhancing the productivity and competitive advantage of Cambodia's ICT workforce, in line with the Royal Government of Cambodia's policy agenda to diversify the economy.

Ensuring Regulatory Stability to Support Investment in the Telecommunications Sector

UPDATED

2017 RECOMMENDATION

Engage in substantive consultation with the private sector prior to implementation of the telecommunications relicensing process.

POLICY RESPONSE

In their October 2018 letter to EuroCham, the Ministry of Post and Telecommunications detailed the numerous occasions in which the private sector was engaged with during the development of the new Telecommunications Law. The Ministry reaffirmed that they intend to continue to hold similar consultative meetings for future legislative changes, including the relicensing process and welcomes all feedback, input or concerns the private sector may have.

ISSUE DESCRIPTION

The Royal Government of Cambodia passed a new Law on Telecommunications in December 2015 that included a requirement for all telecommunication businesses to reapply for their operating licenses. The draft Prakas describing the application process and fee structures was released in early 2017 and was expected to be passed during 2017 though this has been delayed pending further consultations. The new Law has also stipulated further increases in regulatory-related fees and levies, such as revised numbering fees, changes in revenue share and requirements to contribute to the Universal Service Obligation Fund and Capacity Building and Research & Development Fund, which is straining the competitiveness of the industry.

IMPACT ON CAMBODIA

Although mobile retail prices in Cambodia are one of the cheapest in the world, mobile data consumption is increasing exponentially, resulting in mobile operators having to significantly invest into network infrastructure and advanced technologies that have shorter lifecycles. Therefore, to attract continuous investment in telecommunications sector and in Cambodia more generally, it is important that the Royal Government of Cambodia provide investors impetus to continue to do so.

In the upcoming 5G era which is an important component of a digital economy as well as Industry 4.0, considerable investments are required in terms of equipment, spectrum and street-level infrastructure. In other markets, governments are re-evaluating sector-specific taxes while incentivising compliant and high performing operators to undertake infrastructure expansions. For example, Thailand's National Broadcasting and Telecommunications Commission is planning to provide operators low-interest loans from its Research and Development Fund, while also offering flexible conditions for the upcoming spectrum auctions to encourage and support such 5G-related investments.

Cambodia's telecommunication sector has been developing at a very promising rate but further moves to extract revenue from the sector may negatively impact stakeholders. The industry recognises its role in contributing to government revenue, however for greater sustainability, future reforms should in balance with the growth of the sector and the necessity for additional investments, particularly as retail pricing strategies are constrained by market demands.

✓ **Continue to engage in substantive consultation with the private sector prior to the adoption of the telecommunications relicensing process and explore opportunities to incentivise investment in telecommunication infrastructure.**

2019 RECOMMENDATION

We respectfully recommend that the Ministry of Posts and Telecommunications and the Telecommunications Regulator of Cambodia continue to engage in substantive consultation with the private sector prior to adoption of the relicensing process. Additionally, the Royal Government of Cambodia should explore opportunities to support and encourage greater levels of investment to expand and expedite telecommunication infrastructure through incentives and favourable contracting conditions.

Furthermore, we would encourage the Royal Government of Cambodia to adopt the principle of 'no worse off' during the development and finalisation of the incoming new Prakas - the new regime should honour 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 upon the sustainability of the sector.

Allocation of Spectrum

UPDATED

2017 RECOMMENDATION

Introduce a screening process for bidders on future spectrum auctions.

POLICY RESPONSE

In their October 2018 letter to EuroCham, the Ministry of Post and Telecommunications outlined that the draft Sub-Decree on the Organisation, Management, and Allocation of Radio Frequency Spectrum states that where bidders are unable to provide payment for their winning bid, the Ministry will reorganise a new auction within 90 days after the final payment reminder. However, this does not overcome the issue whereby a speculative bidder with limited financial capability can enter an auction and unnecessarily inflate the price of spectrums, which will cause further delays to the allocation and network expansion.

ISSUE DESCRIPTION

The Royal Government of Cambodia 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 utilisation hinders the development of telecommunications services. The new Law on Telecommunications requires a new Sub-decree to be developed to cover spectrum planning, allocation, assignment and monitoring.

It is our understanding that the Ministry of Posts and Telecommunications is in the process of drafting this new sub-decree and is expected to introduce an auction system to manage the allocation of spectrum bands. This differs to that of a competitive tendering process as an auction allocates the spectrum based on the highest value offered by interested parties, whereas with a competitive tender, allocation is based on a submitted business plan that is then judged against specific criteria. Spectrum auctions are an allocation method that is common in other countries. However, such auctions must 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 the prices that they bid or the competencies to rollout services using the spectrum.

IMPACT ON CAMBODIA

The telecommunications sector would benefit from the Royal Government of Cambodia ensuring that spectrum is in the hands of service providers who will actually make use of this resource 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 of Cambodia in the realisation of its economic development objectives.

✓ **Request that future spectrum auctions are only utilised for the allocation of new spectrums and ensure that bidders are appropriately screened.**

2019 RECOMMENDATION

Should the Royal Government of Cambodia follow through with its decision to introduce spectrum auctions, we would recommend that this mechanism only be utilised for the allocation of new spectrums such as for 700MHz, rather than for the renewal or reallocation of existing concessions, for which the existing competitive tendering process is sufficient. This together with the requirement that bidders go through a pre-bidding procedure before participating in the auction, will ensure that the prices of spectrums are not artificially driven up by bidders. Pre-bidding screening should require companies 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, before being granted permission to participate in the bidding process.

Furthermore, as part of the upcoming finalisation of the Sub-Decree on Spectrum Auctions, we recommend that the existing spectrum allocations of current licensees should be maintained (unless not utilised at all), while minimal rollout obligations or similar controls should be considered to deter non-serious players. Additionally, more spectrums should be released for mobile services to support Cambodia's digital inclusion agenda.

GREEN BUSINESS

EuroCham's Green Business Committee continued to be one of our most active, demonstrating the private sector's strong interest in integrating more socially and environmentally responsible practices into their businesses. The Committee led an extensive programme of events over the last year, organising breakfast talks on engaging topics such as impact investing, reducing plastics, affordable housing and the future outlook of energy. Each event provided a constructive platform for participants from the Royal Government of Cambodia, civil society and business community to exchange strategies to address the challenges of sustainable development in Cambodia.

To build on the awareness raised by our breakfast talk series, EuroCham launched Cambodia's first industry-wide Corporate Social Responsibility (CSR) Awards to recognise and encourage the CSR practices of our members. This exciting contest will enable participating companies to showcase their CSR programmes for evaluation by a panel on their impact, approach and innovation, with the aim of providing widespread visibility to the concept of CSR in Cambodia.

In terms of advocacy developments, our Green Business committee deepened its engagement with the Royal Government of Cambodia, notably through our luncheon with His Excellency, Dr Say Samal, Minister of Environment in January 2018. Participants were given first-hand insight into His Excellency's forward-thinking reform agenda and the capacity building initiatives underway to transform and modernise the Ministry. Public consultations on the incoming Environment and Natural Resources Code of Cambodia also continued, with our members presented with an ongoing opportunity to provide practical feedback on the draft Code, now in its 11th phase of revision. As many of the concerns raised in our previous White Books relate to areas that will be addressed by the new Code, we have included a new recommendation on prioritising its finalisation, to bring much needed clarity on the environmental responsibilities of investors.

The Electricity Authority of Cambodia (EAC) took a significant step in formalising the regulatory environment for renewable energy in January 2018, with the adoption of regulations on solar photovoltaic systems that connect to the

national grid. Following this, the EAC invited our Committee to provide technical input into the new tariff structure introduced with regulations. Despite this, concerns remain with the rates set for these tariffs, as many businesses consider the charges to be too high and therefore diminish the economic case for rooftop solar. Accordingly, we have updated our recommendation on supporting the competitiveness of solar by suggesting that the incentive scheme outlined in the current draft of the Environment and Natural Resources Code be retained in the final version. Further regarding the Code, we have also retained our recommendation on encouraging the removal of the Cambodian nationality requirement for Environmental Impact Assessment consultancies, as this restricts competition and is incompatible with Cambodia's international commitments.

Recognition of sustainable buildings in Cambodia is similarly progressing, with discussions taking place within the Ministry of Environment to develop a set of green building guidelines by the newly formed technical working group on sustainable cities. This is indeed encouraging, as interest has been shown towards establishing

a Cambodian Green Building Council under the Ministry. However, we recommend that this body be structured independently from the Royal Government of Cambodia, as required by the World Green Building Council to gain access to the global support network and follows international best practice.

Our remaining recommendations seek to further strengthen and contribute to Cambodia's transition to a greener economy, whereby the Kingdom's environmental and social responsibilities are not sacrificed in its pursuit of continued economic growth. To facilitate this, we have updated our recommendations on establishing a national environmentally labelling programme for goods, and to promote sustainable waste management practices in the private sector. Our final recommendation emphasises the need for greater financial support for small and medium enterprises (SMEs) to undertake investments in low-carbon developments, as the SME sector is best positioned to lead the transformation into a green economy.

Finalising the Environment and Natural Resources Code of Cambodia

NEW

ISSUE DESCRIPTION

The Royal Government of Cambodia recognises the strong need to overhaul Cambodia's environmental legislative framework, as the prevailing law governing environmental protections and the use of natural resources has not been updated since its promulgation in 1996. As a result, the Ministry of Environment has been thoroughly committed to drafting the new Environment and Natural Resources Code of Cambodia since 2015, with the draft Code now in its 11th phase of revisions.

Throughout this extensive development, the Ministry has actively engaged with stakeholders through a civil society working group and several national consultation workshops with non-government organisations, local communities, development partners and the private sector to gather direct input and feedback. The most recent national workshop was held in March 2018, and feedback from this has been provided to the Royal Government of Cambodia by the legal firm involved in drafting the Code.

The Royal Government of Cambodia's intentions for the new Code are that it forms the complete legal foundation for all matters related to, but not limited to, the environment and natural resources. The Code is expected to cover a range of areas including: public participation and information access; environmental impact assessments; collaborative management of natural resources; pollution and waste management; biodiversity protection; cultural heritage protection; and provisions for dispute resolution procedures. Furthermore, it was announced in November 2018 that the draft Code would be amended once again to include specific provisions to supersede existing laws on forestry, fisheries and protected areas, which will require further public consultations and collaboration between the Ministries of Interior, Agriculture, Forestry and Fisheries, and Environment.

This inclusive consultative approach taken by the Royal Government of Cambodia has been unequivocally welcomed, and we recognise the complexity of developing such significant and comprehensive legislation has caused delays to the intended timeframe. However, there are concerns across the private sector that the lengthy delays caused by the expansion of the Code may negatively impact investment in Cambodia.

IMPACT ON CAMBODIA

As the impending updated Environment and Natural Resources Code is a critical piece of legislation and is expected to encompass all areas of relating to the natural environment in Cambodia, the uncertainty resulting from the ongoing delays is likely to impact investment decisions. A lack of clarity over what the Royal Government of Cambodia expects and requires from the private sector prevents businesses from knowing what 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.

✓ **Prioritise the finalisation of the Environment and Natural Resources Code of Cambodia.**

2019 RECOMMENDATION

Many of the recommendations that have been made in our previous editions of the White Book relate to a number of areas that we anticipate will be covered by the updated Environment and Natural Resources Code of Cambodia. Therefore, to achieve the level of regulatory clarity required to ease concerns in respect to the environmental responsibilities of investors, we respectfully recommend that the Royal Government of Cambodia prioritise the finalisation of the Environment and Natural Resources Code of Cambodia.

Support the Competitiveness of Solar Energy

UPDATED

2017 RECOMMENDATION

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

POLICY RESPONSE

The Royal Government of Cambodia has recognised the attractiveness of solar energy and in January 2018, adopted its first related regulations via the Electricity Authority of Cambodia, which outlined the regulatory framework for connecting solar photovoltaic (PV) generating sources to the National Grid. According to the regulations, individual consumers are now able to install solar systems with no restrictions, as long as the system does not require connection to the national grid. Only big (voltage above 380 volts up to 22,000 volts) and bulk (any voltage above 22,000 volts) consumers may seek approval to connect their solar systems with the national grid, in which a tariff charge, technical specifications and other conditions would be applicable.

These new regulations were widely welcomed by the industry and are expected to be a major driver in the expansion of investments into large scale solar developments across Cambodia. While this is indeed promising and has brought much needed clarity to the renewable energy sector, EuroCham continues to advocate for the Royal Government of Cambodia to implement incentives for rooftop solar to encourage a wider adoption of renewable energy production.

ISSUE DESCRIPTION

Solar power represents a source of energy that is complementary to the Royal Government of Cambodia'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 solar irradiation, averaging around 6 full solar hours per day⁸, making solar energy a technically and commercially viable energy solution for much of the country. Solar energy can also help Royal Government of Cambodia to meet its goals of reducing CO₂ emissions and wider sustainability commitments.

Solar development projects in the Kingdom are currently experiencing a strong period of demand, in particular utility-scale solar farms, following the successful launch of Cambodia's first large-scale solar farm in Bavet City in 2017. This was further strengthened by the enactment of the Regulations on the General Conditions for Connecting Solar PV Generating Sources to the Electricity Supply System of National Grid by the Electricity Authority of Cambodia (EAC) in January 2018. These conditions have enabled the interest of investors and multilateral development partners to grow intensely, and there is now a robust pipeline of utility solar projects in various stages of planning and development in Kandal, Kampong Speu, Kampong Chhang and Phnom Penh.

The Royal Government of Cambodia is now supporting a number of these projects itself as it has acknowledged the attractiveness of solar energy as means to diversify Cambodia's energy generation resources and to reduce the Kingdom's electricity cost and carbon

footprint. While this progress is certainly welcomed and demonstrates the economic feasibility of utility solar projects in Cambodia, the support for rooftop solar systems in the commercial and residential sectors has been much more limited.

Cambodia's energy demands are projected to continue to rise considerably, and while efforts to reduce the price of electricity by the Royal Government of Cambodia are commendable, the high cost of electricity is frequently identified by the private sector as one of the foremost barriers to increasing the Kingdom's competitiveness. Rooftop solar systems are a viable solution to ensure a stable supply of electricity and to reduce costs for businesses as they are well-matched with energy needs of the commercial and industrial sectors such as garment manufacturing, in which their peak demand for electricity often aligns with peak sunlight hours.

However, due to the reasonably significant initial outlay required to finance a rooftop solar system, businesses will only invest if they can expect to receive a return on investment within a determined time period. Additionally, as solar energy is not yet a complete replacement for traditional power sources, which are still needed to provide baseload power due to the unpredictable nature of the weather, businesses wishing to utilise solar energy still need to be connected to the national grid.

Although large-scale systems can now be connected to the national grid, under the EAC's regulations, solar installations can only be used for self-consumption and excess solar electricity cannot be fed into the national grid. As the national grid does not benefit from this excess supply, the EAC has set special tariffs comprised of a solar consumption and capacity charges for systems connected to the national grid. This is to ensure that the Royal Government of Cambodia's existing investments into hydro and coal-fired power plants do not become redundant if many consumers were to convert to solar energy.

We recognise that the Royal Government of Cambodia must balance its priorities of seeking the lowest cost energy solution with the need to protect existing assets. However, these new regulations have effectively taxed the use of solar and have failed to provide a mechanism for the EAC to benefit from the excess solar electricity generated or to compensate system owners for this. Therefore, the economic case for rooftop solar for commercial and industrial applications is diminished considerably, as businesses will struggle to achieve a return on their investment within a reasonable length of time.

We would like to stress that 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 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 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 of Cambodia 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.

2019 RECOMMENDATION

✓ **Ensure that the incentives for solar energy use contained in Draft 11 of the Environment and Natural Resources Code of Cambodia are retained in the final version.**

We respectfully recommend that the Royal Government of Cambodia ensure that the final passing of the Environment and Natural Resources Code of Cambodia retains the provisions to incentivise solar use including a requirement to develop regulations on net metering, profit tax reductions and the one-year pilot for a feed-in-tariff scheme. This would help to address the affordability issue for rooftop solar systems and would help the solar sector to be economically competitive vis-à-vis less sustainable forms of energy production.

By implementing policies to support the competitiveness of solar, the Royal Government of Cambodia would further strengthen Cambodia's commitments to the ASEAN Plan of Action for Energy Cooperation (APAEC) 2016-2025, which has set a target of reaching 23% of renewable energy in the primary energy mix by 2025⁹. Similarly, such incentives would align Cambodia with other ASEAN members, including Indonesia, Malaysia, Philippines, Thailand, and Philippines, which have all introduced feed-in-tariff schemes and have coincidentally become top countries for investment into renewable energy installations.

Limited Competition Amongst Environmental Impact Assessment Consulting Firms

RETAINED

2017 RECOMMENDATION

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.

POLICY RESPONSE

In January 2018, EuroCham held a high-profile luncheon event with His Excellency, Dr Say Samal, Minister for Environment, in which attendees were given first-hand insights into the Minister's forthcoming policies and reform agenda for Cambodia's environmental sector. During this event, a question was proposed to His Excellency regarding the Environmental Impact Assessment (EIA) application process and whether there was a policy to increase the number of companies that could deliver EIA consulting services.

In response, His Excellency stated that the Ministry would like many companies to offer such services, though the EIA licencing process is thorough and requires reviews to ensure that the companies can continue to deliver the necessary services correctly. As a result of these reviews, the Ministry was in the process of potentially cancelling a number of existing licences, as these companies were found not to be upholding their responsibilities. In respect to the Cambodian nationality requirement, His Excellency affirmed that in the longer term there may be an easing on this restriction due to Cambodia's World Trade Organisation commitments, however at this stage there were no plans to do so. His Excellency instead suggested that foreign companies wishing to offer EIA consulting services in Cambodia, should partner with a Cambodian company.

EuroCham welcomed the direct response from His Excellency on this issue and would like to once again thank the Ministry of Environment for their supportive engagement. Nevertheless, we will continue to encourage the Royal Government of Cambodia to consider removing the nationality requirement from the final Environment and Natural Resources Code of Cambodia.

Recent drafts of the Environment and Natural Resources Code of Cambodia continue to stipulate that any new development project must conduct an Environmental Impact Assessment (EIA) through an accredited company which must be of Khmer nationality. While EuroCham is aware of some limited exemptions to this, whereby a foreign company has partnered with a Cambodian company to obtain a licence to deliver EIA consulting services, this is not widespread and the majority of foreign firms remain excluded.

According to Cambodia's World Trade Organisation (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 EIA consulting firms by restricting market access. Limited competition would allow for inflated prices and a lack of incentive to provide a quality service.

ISSUE DESCRIPTION

IMPACT ON CAMBODIA

On the basis of Cambodia's schedule of commitments to the WTO, articles that 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.

Furthermore, this issue can create additional costs and administrative burden for investors, and negatively impact Cambodia's competitiveness and 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. In contrast, removing the nationality clause would have a positive impact on the consulting market, as companies will be forced to improve the quality of services and price their services more competitively or risk losing their customers to competing companies that do.

2019 RECOMMENDATION

✓ **Ensure that the nationality requirement for Environmental Impact Assessment consultancies is not included in the final Environment and Natural Resources Code of Cambodia.**

We respectfully recommend that the Royal Government ensure that the nationality requirement for Environmental Impact Assessment consultancies is not included in the final version of the Environment and Natural Resources Code of Cambodia, as was done in previous drafts (Draft 6 on 20 November 2016 and Draft 7 on 31 December 2016). Additionally, we suggest that the consideration of EIA consulting accreditation applications be based only upon the competencies of the applying company, as this would encourage applications from a greater number of consultancies and ensure fair competition among service providers.

Establish an Independent Green Building Council

UPDATED

2017 RECOMMENDATION

Explore the creation of a Cambodian Green Building Council.

POLICY RESPONSE

EuroCham's Green Business Committee has been actively engaging the Royal Government of Cambodia to advocate for the establishment of a Cambodian Green Building Council. The objectives of this independent organisation would be to oversee the development and implementation of standards and a certification framework that would enable green buildings to demonstrate their conformity to green building practices.

Following fruitful discussions with the Ministry of Environment and Ministry of Land Management, Urban Planning and Construction, EuroCham was informed that a technical working group on sustainable cities had been mobilised by the Ministry of Environment, in which discussions around the development of green building guidelines had taken place. As the aims of this initiative intersect with those of the Green Building Council, EuroCham was advised to organise a workshop to bring together relevant stakeholders from the Royal Government of Cambodia, private sector and development partners to discuss the establishment of a Cambodian Green Building Council.

Cambodia is currently experiencing a construction boom and can expect further heavy investment in its built environment over the next decades. For this reason, it is crucial that the Royal Government of Cambodia 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 urbanisation compared to other ASEAN countries provides a great 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 Member States to lack official guidelines and regulations on sustainable buildings and this legislative gap is enabling the negative environmental impact of the rapid urban growth to continue. The Royal Government of Cambodia recognises this and has taken steps to address these concerns through the ongoing consultative development of the updated Environmental Code and by mobilising a number of technical working groups within the Ministry of Environment to respond to emerging challenges, including a group on sustainable cities. This is certainly encouraging as discussions are taking place to formulate a set of green building guidelines and interest has been shown towards collaborating with EuroCham's Green Business Committee to establish a Cambodian Green Building Council (CGBC) under the remit of the Ministry of Environment.

ISSUE DESCRIPTION

However, as this body would be responsible for the creation of an accreditation framework for sustainable buildings and act as the scientific authority to objectively rate and reward buildings based on their sustainability credentials, it is necessary that it be structured independently from the Royal Government of Cambodia. Similarly, it is a requirement that the body be structured as an independent, non-profit organisation to become a member of the World Green Building Council (WGBC), ensuring it is effectively aligned with international best practice.

IMPACT ON CAMBODIA

The independence of a CGBC will ensure an inclusive approach to the promotion of sustainable construction by taking into consideration the input of the broader range of stakeholders required to facilitate the market transformation of the building industry. Furthermore, this level of independence will signal stronger legitimacy of the organisation as it removes potential opportunities for a conflict of interest or bias when ratings and awards are given. This will positively impact the real estate investment environment as investors will be reassured by an independent accreditation system.

Importantly, if the body's governance structure is not independent it will be unable to gain access to the global support provided by the WGBC, in which approximately 70 international organisations form its membership. This international membership organisation helps to strengthen the establishment of new Green Building Councils by acting as a valuable knowledge transfer network and supporting the development of business plans, governance and marketing. This level of support is invaluable, particularly during the initial start-up phase of the organisation when securing sufficient stakeholder buy-in can be a deciding factor in its success. Similarly, it is vital that the CGBC gains WGBC membership to enable its participation in their global projects and partnerships that will ensure that the organisation becomes the premier authority on sustainable construction in Cambodia.

2019 RECOMMENDATION

✓ **Consider supporting the establishment of an independent Cambodian Green Building Council to enable its membership into the World Green Building Council.**

The decision by the Ministry of Environment to form a technical working group on sustainable cities has been welcomed, as it demonstrates the appetite within the Royal Government of Cambodia to promote sustainable and responsible construction. Recognising the interest already shown towards the creation of a Cambodian Green Building Council by the Ministry and industry stakeholders, we respectfully recommend that the Royal Government of Cambodia consider supporting the structuring of the body as an independent, non-profit organisation. This is to ensure that the Cambodian entity can gain access to the World Green Building Council network and the aforementioned benefits, as this governance structure is a requirement of their membership.

Environmental Labelling

UPDATED

2017 RECOMMENDATION

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

POLICY RESPONSE

During the course of 2018, the Chinese Government provided capacity building support to the Ministry of Environment and National Council for Sustainable Development in its development of ecolabelling and to establish a national environmental labelling programme in Cambodia. The project was led by the China Environmental United Certification Centre (CEC), and drew on their experiences in developing the China Environmental Label and international best practice. The project culminated in a jointly compiled National Report of Cambodia on Ecolabelling and the CEC providing technical support and training to 25 officials from the Ministry of Environment who are now tasked with establishing the environmental labelling programme in Cambodia.

Although the report has not yet been released, EuroCham warmly welcomes this proactive joint initiative by the Royal Government of Cambodia and Chinese Government, as it demonstrates the increasing importance and demand for environmental labelling in Cambodia from a range of development partners. We encourage the Royal Government of Cambodia to continue in its activities to establish a national labelling programme and would embrace the opportunity to support this by facilitating the involvement of the private sector.

At the present time, there is no requirement for products marketed and sold in Cambodia to carry any labelling denoting their energy efficiency or environmental impact. 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 products that have been produced with their environmental impact in mind against those that have not or are less energy-efficient.

Products that have considered their environmental impact often represent more sophisticated technologies or more demanding production processes, which come at a higher price that must be passed onto consumers. If consumers do not have sufficient information available on the environmental impact of a product they are purchasing, it can be difficult to justify why environmentally friendly products cost more than their competitors. Consumers may also be unaware of the cost-savings that can be realised through investing in energy-efficient products that reduce electricity consumption. These concerns are similarly held in the commercial and industrial sectors, where there are also no requirements to inform buyers of the efficiency or environmental impact of products, such as heavy machinery or construction equipment.

ISSUE DESCRIPTION

IMPACT ON CAMBODIA

By establishing an ecolabelling programme, the Royal Government of Cambodia will act as a driving force behind the growth of the green economy in Cambodia by supporting efforts to mainstream the principles of environmental practices and raising the profile of sustainable consumption and production. However, without a scheme to promote such practices and steer the purchasing decision of products based on their environmental impact, consumer behaviour is unlikely to change at a similar pace as in other countries with ecolabelling.

Therefore, support for green and sustainable products will be left to market forces, where they often initially struggle to compete due to the increased cost of production. This could potentially impact the future competitiveness of Cambodian manufacturers and suppliers, particularly within the ASEAN region, where the importance of green procurement and production practices is growing considerably.

2019 RECOMMENDATION

✓ **Prioritise the establishment of a national environmental labelling programme in Cambodia.**

The Royal Government of Cambodia already recognises the importance of ecolabelling, as demonstrated by the capacity building project undertaken by the Ministry of Environment and National Council for Sustainable Development with the Chinese Government. Therefore, we respectfully recommend that the Royal Government of Cambodia now prioritise the establishment of a Cambodian environmental labelling programme to guide purchasing decisions towards more environmentally friendly and energy-efficient goods. To build widespread support across the Royal Government of Cambodia, we also encourage the Ministry of Environment to strengthen interministerial cooperation with the Ministry of Industry and Handicrafts during its development of the programme.

Following a successful implementation and an expansion of the range of labelled products, the Royal Government of Cambodia could begin the development of its own Green Public Procurement policy, whereby the purchase of products and services that contribute to the green economy through sustainable consumption and production would be prioritised. This would enable the Royal Government of Cambodia to lead by example and support the private sector by taking into consideration its environmental impact and increase the market share of green products, while also aligning Cambodia's public procurement practices with the majority of other ASEAN Member States.

Financing for the Green Economy

UPDATED

ISSUE DESCRIPTION

The high cost of electricity is frequently identified as a leading obstacle in improving Cambodia's competitiveness, particularly regarding opportunities to move up the manufacturing value chain to more energy intensive processes. While the Royal Government of Cambodia's efforts to address this are admirable, including the recent US\$50 million subsidising package to reduce electricity tariffs, this will likely bring only temporary relief as further investment in power generating infrastructure and efficiency improvements are required to meet its growth aspirations. Similarly, Cambodia is highly vulnerable to the threat of climate change, with most sectors of the economy unprepared to effectively manage the impact of the increasing number of natural disasters occurring every year.

Encouragingly, investments in renewable energy generation is growing in Cambodia, as investors recognise its value in reducing energy costs and emissions, specifically solar energy, which has already achieved price parity with other energy sources in many countries. However, much of the focus of these investments has been in large scale centralised projects, despite Cambodia's electricity supply network remaining fragmented, with the national grid reaching 71.5% of households¹⁰. Although the Royal Government of Cambodia has committed to expanding grid access and intends to connect all 24 provinces by 2020, these plans are made significantly more challenging as 79% of the population live in rural areas¹.

This situation presents a clear opportunity for small and medium enterprises (SMEs) to lead the drive of the low-carbon economy in both renewable energy and efficiency improvements. For example, in rural areas that are unconnected to the national grid, privately-run rural electricity enterprises (REEs) provide basic and relatively expensive diesel generated electricity via mini-grids. This decentralised model could play a pivotal role in transitioning rural areas to renewable energy by replacing these existing diesel generators with solar systems managed by SMEs. Likewise, as many Cambodian households and businesses rely on old, inefficient appliances and technology, measures to improve the efficiency of their electricity use would greatly improve their consumption, productivity and environmental impact.

Despite these opportunities, many SMEs in Cambodia face obstacles in their attempts to implement or scale up low-carbon developments, with the primary barrier being limited access to finance. Although Cambodia has a healthy and competitive micro finance sector, the amount of capital available from these organisations is usually below the needs of SMEs to undertake such projects. Similarly, capital available for SMEs from traditional financial institutions represents only a fraction of their total lending capacity, and is typically only available to well-established businesses. This can be attributed to a range of factors on both sides of supply and demand, including contextually unsuitable collateral requirements, unfeasible returns and rigid repayment terms, while SMEs can often have limited technical knowledge or commercial experience, particularly regarding financial management practices.

These conditions ultimately hinder the growth of not only the low-carbon economy but all expansion activities by SMEs. Fortunately, the Royal Government of Cambodia has sought

to address these challenges by establishing a new SME Bank to enhance access to funding for local SMEs, which is expected to launch during 2019. The government-backed SME Bank will have an initial capital of US\$100 million, with the Ministry of Economy and Finance confirming that funding has already been allocated to the initiative. The Ministry also outlined that the priorities of the new bank will be focused on supporting SME development in four main sectors – agribusiness; manufacturing; tourism and digital start-ups, with a particularly emphasis on those targeting export markets.

While this initiative is indeed promising and continues the Royal Government of Cambodia's efforts to respond to the need for greater financial support for SMEs, this could also provide an opportunity to encourage investments in low-carbon developments and green growth by SMEs. Directing public funding to towards these forms of investment, together with the listed priority sectors would be highly effective in advancing the transition to a low-carbon economy, and would demonstrate the Royal Government of Cambodia's commitment to a sustainable future for Cambodia.

IMPACT ON CAMBODIA

Cambodia is consistently ranked among the top ten countries as most vulnerable to the effects of climate change, largely due to the Kingdom's low capacity to adapt to the changing environment¹¹. The impact of climate change is already having serious implications for Cambodia's agriculture sector and rural communities, as they struggle to mitigate the impact of natural disasters every year. Accordingly, adaptation measures are desperately needed to enhance Cambodia's resilience to adverse impacts of climate change.

However, improving energy efficiency and reducing the environmental impact of SMEs are unlikely to be primary concerns of many SMEs, as they are often unaware of the importance or benefits that investments in green technology can bring to their operations. As financing from private sector institutions is limited or unavailable, unless action is taken by the Royal Government of Cambodia to stimulate and incentivise investment in low-carbon developments, SMEs will be excluded from leading the growth of the green economy.

2019 RECOMMENDATION

✓ **Consider expanding the priorities of the new SME Bank to include investments in low-carbon developments by small and medium enterprises.**

We respectfully recommend that the Royal Government of Cambodia consider expanding the priorities of the new SME Bank to include investments in low-carbon developments by SMEs, alongside the four main sectors, agribusiness; manufacturing; tourism and digital start-ups. This approach would improve access to low-interest, long term financial instruments for SMEs that already recognise the economic benefits of low-carbon development, but would also mainstream the narrative of the advancing green economy in Cambodia. Additionally, this would be conducive to the Royal Government of Cambodia's objectives of increasing private sector participation in the Kingdom's mitigation and adaptation responses to climate change.

Promoting Sustainable Waste Management

UPDATED

ISSUE DESCRIPTION

As Cambodia becomes more urbanised and develops a greater consumer economy, the Kingdom's cities will produce greater quantities of solid waste. Indeed, Phnom Penh's monthly output of waste at its landfill has more than doubled over the last decade, with an estimated one million tonnes of solid waste generated annually¹². This is presenting clear challenges for the city's authorities and waste management services as they attempt to manage this exploding growth.

Fortunately, Phnom Penh Capital Administration (PPCA) has undertaken constructive engagement with a range of stakeholders to improve the city's response to waste, and through a collective effort with development partners, finalised the Phnom Penh Waste Management Strategy and Action Plan 2018-2035 for endorsement in early 2019. This comprehensive document is based on a holistic approach to waste management and will act as a strategic guide for the PPCA to achieve the systemic improvements needed to reduce the volume of waste produced by the city and to strengthen collection and disposal. Due to the current state of waste management in Phnom Penh, this is a daunting task that will require extensive coordination and considerable resources to materialise over the next 16 years.

The most pressing action identified by the strategy is the need to address how waste is produced and collected from its source, be that households, schools, restaurants, hotels and other establishments. Fundamental to this is for waste generators to begin separating the different forms of waste to enable waste management services to collect and treat the contents more efficiently and cost effectively.

As a first step, separating organic from non-organic waste increases its value immensely, as this is a complicated and expensive process after waste has been mixed. If separation is performed at the source, organic waste can be composted to create an important agricultural commodity, while non-organic waste can be diverted for recycling. However, Cambodia has never practiced formal waste separation, instead residents rely on an unsystematic network of informal waste pickers to sort sellable waste at its source and at disposal sites. Accordingly, introducing stricter requirements on residents to separate their waste would likely be ineffective unless accompanied by a significant shift in the public's perception and behaviour towards waste.

In fact, Sub-Decree No. 113 on the Management of Garbage and Solid Waste of Downtowns, adopted in 2015, which decentralised waste management administration to Phnom Penh's local authorities, already stipulates that waste be properly separated, packaged, stored and disposed. Unfortunately, enforcement of this has been limited and local authorities, businesses and residents are unlikely to be fully aware of their responsibilities.

As the largest producers of waste, the private sector has a crucial role to play in improving the state of waste management in Cambodia, and should be seen as a strategic partner to build awareness around the benefits of reducing waste and waste separation. In many ways, the private sector stands to gain the most from a more organised waste management system,

from the availability of cheaper recycled materials, new business opportunities in recycling and to improve public image by demonstrating environmental responsibility. Businesses should therefore be utilised to normalise the practice of waste separation and other sustainable approaches to waste management.

However, Phnom Penh's waste management contractor does not currently have the capacity to collect or treat different forms of waste, making the implementation of separation all the more challenging. Consequently, many responsible businesses in Cambodia that wish to manage their waste in a sustainable manner, may be discouraged from doing so, as their waste will be mixed once collected regardless of their own internal strategies.

Rather than delaying action until this improves, the Royal Government of Cambodia could strengthen its commitment to tackling the growing waste problem by taking measures to recognise, encourage and incentivise actors that already implement initiatives to reduce and separate waste. By taking a more systematic approach, the Royal Government of Cambodia and private sector will ease the informal sector's efforts to collect and recycle useable waste and provide support to the small but growing number of privately-run composting and recycling services.

IMPACT ON CAMBODIA

The impact of climate change and the growing support for sustainable development has forced investors to place stronger importance on the environmental performance of their investments. Indeed, the integration of environmental, social and governance (ESG) factors in investment decisions has increased considerably, as responsible investors recognise their far-reaching implications on the long-term viability of investments.

In respect to waste management, investors and multinationals are prioritising efforts to minimise waste generation, recover materials and energy from waste, and treat unusable waste sustainably due to the economic and reputational consequences of not doing so. If Cambodia's waste management system is unable to effectively respond to the rapid escalation of waste, it may begin to impact the Kingdom's ability to attract new investment and compete against countries that do sustainably manage waste.

Furthermore, promoting and establishing best practices in sustainable waste management will serve not only Cambodia's international and regional commitments to minimise environmental impact, but importantly, mitigate the associated public health risks that accompany less sustainable forms of treatment.

2019 RECOMMENDATION

✓ **Develop fiscal and non-fiscal instruments to recognise, encourage and incentivise private sector initiatives to reduce, separate and recycle their waste.**

As part of the ongoing efforts to modernise Cambodia's municipal waste management sector, we respectfully recommend that the Royal Government of Cambodia develop fiscal and

non-fiscal instruments to recognise, encourage and incentivise the private sector's initiatives in areas of waste reduction, separation and recycling:

- Encourage the private sector to implement internal solid waste management practices and policies that would ease collection; develop partnerships with recycling companies; reduce waste and transition from the use of single-use plastic (plastic bags, excessive use packaging, single-use bottles, crockery and straws).
- On a voluntary basis, provide opportunities for businesses to report their improved waste management practices to gain access to tax incentives and recognition awards.
- Incentivise and promote recyclable and natural materials for packaging, and increase market access for recyclable packaging suppliers through tax and customs duty incentives.
- Promote and incentivise the establishment of recycling facilities in Cambodia's major cities.
- Continue to disincentivise the use of plastic bags in supermarkets and introduce stricter regulations around the use and irresponsible disposal of plastic.
- Widely disseminate the Environmental Guidelines on Solid Waste Management in Kingdom of Cambodia and Sub-Decree No. 113 on the Management of Garbage and Solid Waste of Downtowns, and progressively introduce enforcement measures.
- Mobilise resources to launch an education and awareness campaign to inform residents of the benefits of waste separation and their responsibilities as waste generators.

HEALTHCARE

European healthcare brands continue to be well-regarded in the Kingdom and play an important role in promoting high standards of quality control that ensure a safe environment for patients. We are very pleased to report that our engagement with the Ministry of Health has enhanced since the launch of the first White Book. Our Healthcare Committee was given the opportunity to discuss our previous recommendations extensively with the Department of Drugs and Food and the National Health Products Quality Control Centre, which we would like to extend our gratitude to the Ministry of Health for facilitating. The Committee has similarly maintained close collaboration with the Counter Counterfeit Committee of Cambodia to support their efforts in combating fake and illegitimate pharmaceutical products, for which we are preparing an MoU to formalise this cooperation.

This constructive engagement has been supportive in finding solutions to some of the challenges faced by the compliant healthcare sector. In terms of recent developments, the Ministry of Health confirmed that it is in the process of setting up an online platform to electronically manage medical product registrations and importations, with

technical support provided by the World Health Organisation (WHO). While we recognise that this project requires considerable time and resources to implement, we commend this project and encourage the Ministry to prioritise its development as it will vastly improve the efficiency and transparency of these processes.

The Ministry is currently finalising the draft guidelines on post-registration variations for pharmaceutical products, which are being prepared in alignment with the ASEAN Variation Guidelines. We look forward to these updated regulations, and trust that the current scope for submissions of variations will be retained, including pack sizes and manufacturing changes, as these enable pharmaceutical companies to effectively improve and update their products when necessary. Once approved, the Ministry intends to issue a Joint-Prakas with the Ministry of Economy and Finance on the fee structure for post-registration variations during the course of 2019. We hope to see that the costs for variations will not increase, as communicated during the Government-Private Sector Forum Working Group D meeting in February 2019. Our members appreciate the considerate approach taken by the Ministry of Health in

accepting certain variations during this interim period to ensure minimal disruptions to supply of medicines for patients.

The Ministry has similarly updated the over-the-counter (OTC) registrar in 2017 and notified our members that it intends to complete another update to the list in 2019, to ensure that the list continues to reflect the changing healthcare needs of the population. In line with this ambition, we have included a new recommendation that seeks to clarify the process and regulations regarding the transfer of prescription medicines to OTC, and recommended that such processes are aligned with ASEAN practices.

While these developments demonstrate incoming improvements for the sector, the most pervasive issue impacting healthcare businesses in Cambodia remains that the Ministry of Health and Cambodian Law does not deem the unauthorised distribution of pharmaceuticals as being illegal. This is in spite of the concerns held by our members that the current legislation cannot guarantee the safety or quality of such products and that they therefore pose a threat to patient safety. Consequently, our Healthcare Committee

continues to advocate for stricter measures to minimise the availability of pharmaceutical products that do not adhere to the compliance and testing requirements stipulated by the Ministry.

This enduring commitment to high standards of care and patient safety is what our remaining recommendations seek to maintain, by improving the availability and affordability of treatment options through a more competitive market. We propose to expand the list of accepted biological products wider than the WHO's Pre-Qualified List to better reflect the Kingdom's needs, along with the simplifying of medical equipment registrations to enable multiple devices to be registered under a single family and the alignment of registration categories with ASEAN guidelines. Furthermore, we aim to clarify uncertainties that are present in the regulatory environment concerning medical marketing activities; reintroduce a process for urgent import licences; and to encourage the Ministry to hold registrations and renewals committee meetings with more frequency.

Widen the List of Approved Biological Products for Import

NEW

ISSUE DESCRIPTION

Cambodia has experienced considerable success in improving healthcare standards and access across the country. A critical component of the success of Cambodia's healthcare strategy has been an effective immunisation programme, undertaken with the support of the World Health Organisation (WHO), to prevent the spread of vaccine-preventable diseases such as polio, measles, rubella and others.

Due to heightened safety concerns and the complexity of manufacturing and testing, the importation of vaccines and other biological medicinal products into Cambodia is stricter than other healthcare products. These concerns have led the Ministry of Health to recently implement tighter restrictions on the medical companies that deal with biological products. The Ministry has stipulated that they will only grant import licences for products that appear on the WHO Prequalified Vaccines List, which is significantly reducing the availability and range of biological products in Cambodia.

The WHO compiles the Prequalified Vaccines List as a service to the United Nations (UN) agencies that purchase vaccines to determine the acceptability of vaccines from different sources, and reflects the products that are required by their respective tenders and that have been submitted for evaluation¹³. The WHO states that it does not intend for this to be an exhaustive list of products used in the treatment of diseases, and that if a product has not been included, it does not mean it would not comply with their standards if submitted for evaluation¹³. Similarly, if a product is included on the List, it does not imply approval of the product or manufacturing site by the WHO, as this responsibility lays with the national authorities of vaccine exporting countries and there is no guarantee that the products will continue to meet WHO standards.

Importantly, the WHO Prequalified List also relies on the scientific assessment and inspections conducted by the US Food & Drug Administration (USFDA) and European Medicines Agency (EMA) as a basis for prequalified listing. Therefore, if a product required by a UN agency has already been evaluated by either of these authorities, the WHO does not require their own evaluation to take place before listing as the WHO recognises that the USFDA and EMA have the capabilities and capacity to confirm a product's safety and effectiveness.

IMPACT ON CAMBODIA

While we recognise that the Ministry has implemented this additional constraint to ensure that the biological products available are safe and effective as defined by the WHO, due to the limitations of the List and its varied demands, the need for all products to be listed before they can be imported severely restricts patient access to treatments. As the inclusion of new treatments is entirely dependent on the needs of the UN agencies that rely on the WHO List, it will be inconsistent with the specific and changing healthcare needs of Cambodia, and can quickly become outdated due to the fast pace of scientific developments. Consequently, if a new treatment is released to market, there is an expectation that it

will be some time before it will be seen on the List due to the heavy administrative processes involved, which may prevent Cambodian citizens from accessing innovative, life-saving treatments.

Restricting the availability of new treatments to those on the WHO List also negatively impacts the cost of biological products in Cambodia by limiting competition. Alternative treatments that are also proven to be safe and effective are unable to compete for market share, allowing distributors to maintain their high prices for the products that are on the List. Similarly, as the WHO List specifies the required dosage, only versions of the product that match the exact dosage will be approved for import, which reduces the ability for hospitals and clinics to receive competitive prices and achieve economies of scale by purchasing in bulk.

✓ **Request that the Ministry of Health widen the acceptance of biological products to include those approved by the US Food and Drug Administration and or European Medical Agency.**

2019 RECOMMENDATION

We respectfully request that the Ministry of Health widen the acceptance of biological products approved for import to include products that have already been approved by the USFDA and or the EMA. As the WHO itself, is not a regulatory entity and already bases listing approvals on the evaluations of the USFDA and EMA, the Ministry will retain the high level of regulatory oversight required to ensure that only safe and effective products enter Cambodia, while increasing patient access to innovative treatments and allowing hospitals to take advantage of cost-saving strategies.

Transfer of Prescription Medicine to Over-the-Counter

NEW

ISSUE DESCRIPTION

Self-medication with the use of over-the-counter medicines is the most common form of medical care across the world. Over-the-Counter (OTC) medicines allow consumers to benefit from a wide range of convenient treatment options at a reduced cost by avoiding consultations with healthcare professionals. As a result, there is a growing trend, particularly in developed markets to increase patient access to new treatments by making more pharmaceutical products available over-the-counter, rather than requiring patients obtain a prescription.

This reclassification of prescription medicines to OTC is not a new occurrence, with many now common treatments like paracetamol, ibuprofen and antihistamines all once requiring a prescription. Reclassification occurs when healthcare authorities and pharmaceutical companies are confident that the potential risk of wider access is lower than the benefit to patients and after there has been an established track record of safe diagnosis, treatment and management without the need for a doctor's supervision.

In Cambodia, uncertainty surrounds the processes and regulations involved to transfer a prescription medicine to an OTC medicine. Therefore, the wider healthcare industry and Cambodian citizens will stand to benefit from a formalised process with clear and consistent criteria for healthcare companies to follow to transfer prescription products to OTC.

IMPACT ON CAMBODIA

In the absence of a defined procedure for healthcare companies to safely convert prescription medicines to OTC, patients are forced to spend more time and money on consultations with healthcare professionals, rather than utilise cheaper OTC treatments for certain conditions at their own convenience. Similarly, if patients are unable to treat the symptoms of their minor ailments, this will rapidly increase the strain on Cambodia's healthcare system and takes away essential medical services and expertise from patients with more serious conditions that are inappropriate for self-care.

If the range of OTC treatments does not evolve with the Kingdom's changing healthcare needs, the illicit use of prescription medicines is likely to increase, as patients have little choice but to continue using these products when they become ill. The risks associated with prescription medicines significantly increases when used illicitly, as patients are often unaware of the potential contraindications or harmful side effects their use can carry. In comparison, patients perceive OTC medicines to be less risky while just as effective for certain conditions, due to the safer dosages and more comprehensive labelling and packaging, which provides detailed usage instructions on what symptoms can be treated and the potential side effects.

✓ **Align the eligibility criteria and processes involved to reclassify a prescription pharmaceutical product as an Over-the-Counter product in Cambodia with ASEAN practices.**

2019 RECOMMENDATION

EuroCham respectfully requests that the Ministry of Health clearly define the criteria and processes for healthcare companies to follow to reclassify a prescription pharmaceutical product for use as an OTC product in Cambodia. By doing so, the Ministry will enable Cambodian citizens to safely take greater individual responsibility in the management of their own healthcare, bringing the economic and public health benefits of increased self-treatment. However, it is important that there are rigorous controls in place to ensure that only treatments that are appropriate for self-medication are reclassified.

Recognising that the criteria for reclassification will be dependent on the Ministry of Health's requirements, we recommend that this process be evidence-based and rely on impartial data provided by the healthcare sector to demonstrate their products' suitability, for which the Ministry of Health will need to continuously review on the basis of safety and efficacy.

Preventing the Import of Unregistered Pharmaceutical Products

UPDATED

2017 RECOMMENDATION

Implement additional measures to prevent parallel importing of pharmaceutical products.

POLICY RESPONSE

In their August 2018 letter to EuroCham, the Department of Drugs and Food reaffirmed that the Ministry of Health's stance on the legality of parallel imported pharmaceutical products in Cambodia. As the Royal Government of Cambodia does not currently allow pharmaceutical companies to obtain the exclusive rights to import pharmaceutical products into Cambodia, parallel imports are therefore considered legal by the Ministry.

The Department outlined that in instances where they have issued licences, they have done so because a product has already received market authorisation for distribution and is permitted to enter Cambodia by the General Department of Customs and Excise. The Department claims that this, in effect, means that such products have been appropriately packaged and have had their taxes paid, which the Ministry verifies during their regular inspections of pharmacies.

EuroCham continues to express that the primary concern on this matter remains with ensuring the importation of high quality and importantly, safe pharmaceutical products for Cambodian citizens. Our members feel that under the current framework, this cannot be guaranteed without stricter measures in place. Accordingly, EuroCham continues to advocate for the implementation of additional measures to restrict the parallel importation of pharmaceuticals into Cambodia for the safety of patients.

ISSUE DESCRIPTION

Cambodia has rigid processes in place for the registration of pharmaceutical products, which mandates detailed technical specifications of both the product and its packaging to ensure a product's safety, effectiveness and quality. According to the law, only products that match the specifications registered with the Ministry of Health can be imported into Cambodia. Despite this, there are some pharmaceutical distributor that circumvent these requirements by importing products falsely under the registration number of an authorised distributor or products that have avoided registration and testing entirely. As these products have not received import permission from the Ministry, they should therefore be illegal for sale in Cambodia.

While in some instances unregistered products can originate from the authorised manufacturer and meet some of the product specifications, they nonetheless pose health risks when transported by an unofficial entity into Cambodia. Multinational pharmaceutical companies take climatic conditions into account when designing their packaging and regularly modify their packaging for specific countries for added protection. Cambodia has a tropical climate and many of its pharmacies are not climate-controlled, requiring packaging to be adapted to prevent pharmaceutical products from spoiling in the heat. In contrast, products originating from Europe will have packaging appropriate for the European environment which is likely to be inadequate and inappropriate for the Cambodian environment. In order to ensure that products are transported and stored under the right conditions,

manufacturers require their distributors to undergo stringent audits and selection processes. Distributors that deliver products without being appointed by the manufacturer, will not have undergone such controls and cannot ensure the products are safe once they reach patients.

Another fundamental aspect of pharmaceutical safety is pharmacovigilance, in which a manufacturer will be notified in case of an Adverse Event occurring within the market. An Adverse Event is the occurrence of a negative experience relating from the use of a pharmaceutical by a patient, and is reported to manufacturers by distributors in order to take proactive precautions to ensure patient safety. However, as distributors of unregistered products are not appointed by a manufacturer, they will not report such events, therefore increasing the likelihood that harmful pharmaceuticals will remain in distribution as there are no controls in place to ensure patient safety.

EuroCham's Healthcare Committee is extremely supportive of affordable treatments. The solution to providing Cambodia with affordable pharmaceuticals is to increase competition through the distribution of different treatment options from a wider range of manufacturers, with different pricing segments. In comparison, unregistered products are not a viable solution to this affordability issue as they are able to enter the market at cheaper prices because they circumvent the testing conducted by the National Health Products Quality Control Centre and manufacturers' pharmacovigilance processes.

Although we recognise that Cambodia's existing regulations do not allow distributor the right to exclusive distribution of pharmaceuticals, to our knowledge these regulations also do not allow the entry of products that are a variation of a registered pharmaceutical product. Companies distributing pharmaceuticals are required to apply for a variation when a registered product that has been modified to ensure that its registration details are accurate and the modified variety is safe. Weak detection of unregistered products entering the market, creates vulnerabilities in the distribution chain. Therefore, the likelihood of counterfeit and sub-standard products entering the market increases considerably, as trust is reduced as there are no controls in place to certify that the active compounds match what the seller claims.

Our primary concern on this issue relates to patient safety rather than the impact on revenue. Unregistered pharmaceutical products represent a serious health risk to the Cambodian population as there are no means of assuring the quality of such products. The average consumer cannot be expected to have the technical knowledge to determine whether or not a pharmaceutical product is spoiled or not due to inappropriate transportation or packaging, therefore responsibility must fall upon regulators to provide quality assurance through effective management of all imports.

In cases where an unregistered product is legitimate, the product manufacturer will have already registered the sale in another country and therefore does not incur any financial loss as a result of unauthorised importing. However, in the longer term, a higher presence of unregistered products in the market is 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 lax import controls, they are unlikely to be granted a budget for activities such as education and training for patients and healthcare professionals.

IMPACT ON CAMBODIA

2019 RECOMMENDATION

- ✓ **Prioritise interministerial coordination between the Ministry of Health and the General Department of Customs and Excise to implement additional measures to prevent unregistered and untested variations of registered pharmaceutical products from entering the Cambodian market.**

We encourage the Ministry of Health to undertake closer collaboration with the General Department of Customs and Excise to take a proactive approach in identifying and preventing unregistered pharmaceutical products being brought into the country, and alert the exclusive dealerships that distribute the legitimately registered products about such incidents. Measures that would facilitate this cooperation include:

- Ensure that the Ministry of Health issues import licences 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 dealership. Effective implementation of this principle would ideally require an inter-ministerial electronic platform to share the applicable information and documents.
- Provide Customs officials with simple access to the registered specifications for pharmaceutical products, including packaging and artwork, so that they can more easily check for discrepancies between the registered specifications and any cargo being brought into Cambodia.
- Conduct more regular inspections of pharmacies and their storage conditions through authorised 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.

Communication Between the Public and Private Sectors

UPDATED

2017 RECOMMENDATION

Introduce a formalised 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.

POLICY RESPONSE

In their August 2018 letter to EuroCham, the Department of Drugs and Food responded to our request for a formalised public-private sector forum for healthcare, and advised that companies should submit a formal request to the leadership of the Ministry of Health as the Department does not have the authority to create such a mechanism. Fortunately, during the Government-Private Sector Forum (G-PSF) chaired by the Prime Minister in March 2019, the Royal Government of Cambodia announced the expansion of the G-PSF Working Groups to include a specific Working Group on healthcare, alongside education and construction. The Department also confirmed that the Ministry is currently in the process of setting up an online platform to electronically manage medical product registrations and importations with support from the World Health Organisation.

There is a growing trend across a number of Cambodia's ministries to modernise their processes and systems by delivering their services digitally through online platforms, as demonstrated by the Ministry of Labour and Vocational Training's Foreign Workers Centralised Management System and the Ministry of Commerce's Online Business Registration System. The effective implementation of an online platform such as these, greatly improve efficiency and reduces the resourcing requirements of the Royal Government of Cambodia, while also increasing the quality of services as a result of automation.

ISSUE DESCRIPTION

The Department of Drugs and Food outlined to EuroCham during our meeting in July 2018 and corresponding letter that the Ministry is currently in the process of setting up its own online platform to manage the registration and importation process of medical products in Cambodia, with support from the World Health Organisation, referred to as e-Registration and e-Importation. The compliant private sector overwhelmingly welcomed this development, as we anticipate this will significantly ease many of the regulatory processes.

Presently, healthcare companies awaiting new registrations or renewals do not benefit from a platform to track the progress of their submissions, meaning that despite the aim of the Ministry to process registrations within six months, it takes considerably longer, often due to documentation issues. This negatively impacts the operations of many healthcare companies, as lengthy delays to the registration process hinder their ability to import or distribute their products in Cambodia.

Recognising that the creation of an online platform is a substantial project for the Ministry to undertake, and will require significant resources to develop and rollout a successful platform as intended, we feel that it is imperative that the Ministry prioritise this project to ensure that it does not fall behind schedule.

IMPACT ON CAMBODIA

The timely implementation of an online platform would signify the Ministry of Health's commitment to utilising new technology to improve engagement with private sector. Without a modernised system, individuals and businesses can only access government information and services in person, during office hours, causing lengthy delays and can adversely affect the performance and efficiency of ministries. Consequently, this could diminish the quality of services delivered as bottlenecks develop due to limited resources to manage to an increasing number of service requests, which may damage the private sector's perception of public services in Cambodia.

The underlying cause of the lengthy regulatory delays in the healthcare sector can be attributed to the inability of companies to track, manage or respond to issues that have arisen with their applications. If this issue continues, this is likely to deter further investment and lower the quality of healthcare services in Cambodia, as patients and healthcare professionals will be obstructed from utilising new and innovative treatments as companies will be unable to bring them to market efficiently.

2019 RECOMMENDATION

✓ **Prioritise the implementation of the Ministry of Health's e-Registration and e-Importation online platform, and involve the private sector throughout its development.**

The confirmation from the Ministry of Health that it is in the process of establishing an online platform for e-Registrations and e-Importations has been decisively welcomed by the compliant private sector. We anticipate that this will enhance transparency, accuracy and the dissemination of information between Royal Government of Cambodia and businesses, as automating these services will remove the uncertainty over regulatory matters and reduce opportunities for non-transparent practices. Accordingly, we encourage the Ministry of Health to prioritise the implementation of their online platform to ensure the rollout is not delayed.

While we acknowledge the considerable task ahead of the Ministry, we highly recommend that they consult with the private sector during the development and testing phase of the platform to take into consideration their concerns. This will ensure the delivery of an effective system that meets the needs of both the Royal Government of Cambodia and healthcare professionals catering to the needs of their patients.

EuroCham's Healthcare Committee stands ready to support the Ministry as it undertakes

this important project and would welcome the opportunity to test and provide feedback on the platform under actual use conditions.

Family Registration for Medical Devices

NEW

ISSUE DESCRIPTION

As detailed previously, the procedures surrounding the registration of medical products could be re-examined to reduce the administrative blockages that are currently afflicting the healthcare sector in Cambodia. This issue is particularly apparent for medical device distributors, who are required to register different variations and components of the same product as separate registrations. This substantially increases the cost of bringing new devices to market and the resources required to submit applications.

For example, when a distributor registers a single use device such as an implant, which must be available in multiple sizes to suit an individual's requirements, while still serving the same function, the Ministry of Health sometimes requires each variation be registered as a separate product. This is a significant concern for distributors of lifesaving devices such as cardiovascular implants, as these specialised low volume products are required in a range of sizes, though the cost of registration can severely impact their availability. Similarly, reagents, which are substances that are used in combination with other systems to cause a chemical reaction, are needed in hundreds of variations for specific functions, though they are still required to be registered separately from the equipment they are used with.

Presently, there appears to be inconsistency in the administrative procedures for registering reagents. The Department of Drugs and Food has stated that the registration of multiple reagents is permitted when registered simultaneously with the equipment they are used with. However, our members report that in practice, this is still not always possible and they must continue to register each reagent separately and pay multiple registration fees.

As a regional example, to cater to the diverse categories of medical devices available in Singapore, distributors are able to group certain devices under one product registration application to simplify administrative processes. To collectively register devices under a group, products must have a common intended purpose, be of the same risk classification and the variations be within a defined scope. These pre-existing guidelines on family registration could be appropriate for use in Cambodia.

IMPACT ON CAMBODIA

Replicating Singapore's system for group registrations for medical devices by permitting distributors to register their product variations under a family or category would help to alleviate the administrative blockages that exists within the Cambodian healthcare sector. The resources required by both the Ministry of Health and the private sector to process product registration would decrease considerably, with no impact on safety as products must still be compliant and registered accordingly.

The continuation of unpredictable practices regarding the registration requirements of medical equipment contributes to unfair competition, as one registration application can cost around US\$100, thus the cost of registering hundreds of variations of reagents separately, rather than collectively is extremely expensive for distributors. The increasing cost and length of compliance hinders innovation and choice as it discourages suppliers from bringing state-of-the-art equipment to Cambodia. The impact of this is overwhelmingly felt

by patients and the quality of care they receive, as patients will be unable to benefit from advanced and lifesaving treatments, while healthcare professionals will struggle to keep up with the rapid technological developments of the industry.

✓ **Consider issuing regulations that would allow for the collective registration of multiple medical devices under a family or category registration.**

2019 RECOMMENDATION

To lessen the administrative burden placed on the Ministry of Health and medical device distributors, we respectfully recommend that the Ministry consider issuing regulations that would allow for the collective registration of multiple devices under a family or category registration, when the application is made simultaneously. Additionally, to offset the potentially reduced revenue as initially there should be less new product registrations, the Ministry could charge an increased fee for the registration of equipment that requires multiple variations or associated components.

Categorisation of Medical Equipment for Registration Purposes

UPDATED

2017 RECOMMENDATION

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.

POLICY RESPONSE

In their August 2018 letter to EuroCham, the Department of Drugs and Food outlined that the existing Prakas No. 1258 which governs the registration process for medical equipment in Cambodia, requires products to be individually registered, and does not permit products to be grouped and registered under a category. The Department did convey that the Ministry of Health may consider issuing a Prakas on family registrations for medical equipment in an effort to reduce the required fees and burden placed on companies operating in Cambodia, which EuroCham would welcome the opportunity to support.

The Department also clarified that the Ministry does allow multiple reagents to be jointly registered with equipment if the registration is applied simultaneously and bears the same registration number. However, our members report that this is sometimes inconsistent with current practice, as they are still required to register reagents separately, though this may be attributed to frontline officials being unaware of this recent development.

ISSUE DESCRIPTION

The procedures and documentation required to register medical equipment in Cambodia depend upon the Ministry of Health's categorisation 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.

This uncertainty forces medical equipment distributors to make their own judgement on what equipment they should register, informed by researching various sources including what equipment requires registration in other countries and by contacting the General Department of Customs and Excise for further clarification. Currently, our members report that they are only certain that equipment that involves chemicals, for example reagents, and invasive medical devices such as implants require registration, and remain unsure on whether other types of equipment must be registered before they can be imported.

In 2015, Cambodia; along with all other ASEAN Member States, signed the ASEAN Medical Device Directive (AMDD) to harmonise medical device regulations across the region and streamlined processes for manufacturers to access their markets by reducing technical and regulatory barriers. An important component of the agreement is the ASEAN Common Submission Dossier Template that will enable manufacturers to submit

common technical documentation to each authority to reduce costs and enhance regulatory efficiency. This requires ASEAN Member States to develop and implement the shared guidelines and standardised device classification criteria of the AMDD to facilitate the integration of a single market for medical devices.

While this agreement is expected to come into effect from 2020, Cambodia still needs to align its internal regulatory compliance procedures with the guidelines provided in the AMDD, which may be the cause of the ongoing uncertainty experienced by medical equipment distributors operating in Cambodia.

Uncertainties in the categorisation of medical equipment contributes to the aforementioned delays in the registration process in Cambodia, as companies are unable to determine what the Ministry's requirements are for a specific product. Such uncertainty can lead to an inefficient regulatory system which is unable to effectively respond to the growing demands of the industry, due to the increasing administrative burden placed on both the Ministry and compliant private sector. Importantly, this could also increase the likelihood of high-risk equipment entering Cambodia incorrectly, as a lower risk device with less regulatory controls, which would jeopardise the safety of patients and healthcare professionals.

The inconsistencies in the registration requirements also contributes to unfair competition by raising the costs of registrations and could discourage suppliers from making more equipment available in Cambodia which would negatively impact the healthcare system's patients, efficiency, research and innovation. If Cambodia and all ASEAN Member States successfully implement the AMDD agreement, it would subsequently drive the growth of the medical device industry across Southeast Asia.

IMPACT ON CAMBODIA

✓ **Align medical equipment registration categories and guidelines with those defined by the ASEAN Medical Device Directive.**

2019 RECOMMENDATION

We respectfully request that the Ministry of Health align the medical equipment registration guidelines and categories required for import approval with those defined by the ASEAN Medical Device Directive. As this agreement is expected to come into effect in 2020, doing so will enable the Ministry to be well prepared for the harmonisation of regulations and further support Cambodia's planned integration into the ASEAN single market and production base.

Article 4 of the ASEAN Medical Device Directive¹⁴ sets out the classification of medical devices into the following four classes, in accordance with the defined risk classification rules:

- Class A: Low Risk – such as bandages, surgical gloves and IV tubes

- Class B: Low to Moderate Risk – such as artificial dental roots, contact lenses and pregnancy test
- Class C: Moderate to High Risk – such as blood pouches, solution for contact lenses and genetic test kits
- Class D: High Risk – such as medical devices that contain medicine, artificial hearts and HIV test kits

If the Ministry was to formally permit medical equipment distributors to follow these classifications during the import approval process, it would remove much of the uncertainty surrounding medical device distributors in Cambodia, and would support these companies to bring more innovative treatments to the Kingdom.

Approval Process for Medical Marketing

NEW

ISSUE DESCRIPTION

The marketing of healthcare products in Cambodia is tightly regulated by the Ministry of Health to ensure that the claims, content and appearance of such activities are legitimate and any potential risks to patient safety are minimised. These regulations require healthcare companies to seek prior approval from the Ministry for any materials and events that they wish to utilise to advertise their products before they can be released to the public, healthcare professionals and industry stakeholders.

While this is standard practice in many countries, our members perceive there to be an increased level of uncertainty surrounding the approval process in Cambodia, due to recent changes in practices by the Ministry, which have not yet been formally officialised, despite in some cases already being enforced. Our members report that for branded promotional materials that are often given to medical professionals such as laboratory logbooks, which previously did not undergo such scrutiny, companies are now required to seek approval. Likewise, for other materials such as gimmicks, it is extremely difficult for manufacturers to procure an actual single sample because of manufacturing constraints, and this may, in practice, prevent companies from seeking approval for their marketing materials.

The uncertainty caused by a divergence from past processes also extends to the approval process required for companies to organise or attend medical marketing events and meetings with healthcare professionals. Previously, company representatives were permitted to attend joint meetings with medical associations, if the association itself had received approval, though in some cases the Ministry now requires both the association and individual companies attending to obtain separate approval. Similarly, the approval granted for medical events was previously valid for a period of one month, giving companies the flexibility to reasonably change plans, however the Ministry now requires the event to occur on the exact date for which approval has been requested. This has led to a situation where companies are unable to invite healthcare professionals that are useful in providing a valuable medical message, as by the time the approval is obtained, it is too late to book these sought-after professionals for a specific date.

The difficulties surrounding this approval process are compounded for events held outside Phnom Penh, particularly in Battambang, Siem Reap, and Kampong Cham, as companies must seek approval from the Ministry as well as from the provincial Health Departments, creating an unnecessary, additional administrative burden. We would like to thank the Ministry for their efforts already taken to prevent the duplication of approvals by local authorities, however, our members report that this issue persists.

Healthcare companies support the need for a suitable regulatory framework for the industry to ensure that companies do not act inappropriately or make false claims in their marketing materials that could potentially harm the public. Accordingly, the healthcare sector requires such regulations to be unambiguous, consistent, and accompanied by formal guidelines that enable companies to establish what marketing is acceptable and what is unacceptable before submission to the Ministry of Health.

IMPACT ON CAMBODIA

Like all other private industries, healthcare companies utilise effective marketing strategies to differentiate their product offering and maintain their position in the market against their competitors. This fosters a competitive healthcare sector that encourages greater investment from multinational companies, bringing improved healthcare quality standards. Marketing events and materials are also used by pharmaceutical companies to disseminate important evidence-based medical information to healthcare professionals about their products, as well as non-promotional medical information such as scientific updates on international guidelines and new clinical evidence. The objective of this is to support healthcare professionals to choose the best treatment for their patients, according to the availability of products on the market.

However, a lack of clear guidelines on what marketing is permitted and when companies are required to seek approval creates an ambiguous regulatory environment, making it more difficult for companies to do business in Cambodia and negatively impacts prospective investor sentiment. Cumbersome regulatory processes that reduce competitiveness ultimately affect patients' access to advanced, life-saving treatments, as healthcare companies are unlikely to bring such treatments to a new market if they cannot be assured of a return on their investment.

2019 RECOMMENDATION

✓ **Request clarification of the guidelines that healthcare companies must follow to obtain approval from the Ministry of Health for their marketing activities.**

We respectfully request that the Ministry of Health clarify the guidelines that healthcare companies must follow to ensure their marketing activities are in compliance with the Ministry's requirements. Such guidelines should detail when companies are required to seek approval for certain activities and when it is unnecessary, length of materials (number of pages), estimated processing timeframe as well as what accompanying materials and documentation is required for submission to receive approval. We would also encourage the Ministry to revert to the previous ten-day validity for granted approval, as this provided companies with reasonable flexibility to host and attend marketing events.

Regarding marketing gimmicks, we request that the Ministry consider following the current practice of only requiring an artwork for submission, as this artwork effectively displays all of the necessary elements and messages required by the Ministry for review.

As products are still allowed to be marketed even though their registration licence has expired, we would respectfully request that the Ministry also allow the registration of promotional events to continue, despite an expired licence, as this licence is only required to import products and not market them.

To ensure the effective implementation of the marketing approval process, we would also recommend that the Ministry reiterate steps to disseminate its requirements throughout all

provincial Health Departments to ensure the regulations are consistently applied across the Kingdom and that approval is not duplicated.

Urgent Import Licenses

UPDATED

2017 RECOMMENDATION

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

POLICY RESPONSE

EuroCham wishes to acknowledge the proactive efforts previously taken by the Ministry of Health to support companies to obtain import licences for medical products, in instances where there have been delays in their registration renewal process. Unfortunately, in the Department of Drugs and Food's August 2018 letter, EuroCham was notified that the Ministry will no longer consider granting urgent import licence requests. The Department stated that going forward, no medical products will be allowed to enter Cambodia without having first received a valid registration licence, even products awaiting their licence renewal. The Department outlined that the Ministry will issue renewal certificates within six months and that they are in the extensive process of setting up a new online platform for e-Registrations and e-Importation, which should simplify this process.

While EuroCham recognises that the Ministry may have taken this firm approach to ensure a level playing field for all companies, we feel that this decision limits an opportunity to provide a supportive service to ease the process of doing business in Cambodia under extenuating circumstances. Additionally, this decision will impact patient access to medical treatment if there is a delay in processing a vital medicine's import licence. EuroCham encourages the Ministry to reinstate a channel to obtain an urgent import licences for healthcare products that are awaiting renewal or registration, and while doing so, implement a formal application process with clear guidelines outlining eligibility.

ISSUE DESCRIPTION

Medical products actively going through the renewals process are not automatically entitled to receive import licences. Under normal circumstances, a product registration certificate is required in order to obtain an import licence from the Ministry of Health, which they will process within six months. EuroCham members report that this timeline is fair and generally accurate when all of the required documentation has been submitted, though in situations where there is an issue with their application, they perceive a lack of clear communication with the Ministry, which is severely affecting the approval process.

As companies are unable to effectively track their applications, they are unaware of issues that may arise with their submissions and it often takes some time before they are contacted by the Ministry to rectify any concerns. This causes significant delays to the import procedure as the Ministry cannot process the application until the documentation is in order. Once the company has been notified and reconciled any issues, the 6-month renewal processing timeframe restarts, adding considerable delay to the process, and companies are prevented from importing their product during this period.

The Ministry was previously very helpful in finding a solution to this issue, having agreed to consider granting requests for urgent import licences on a case-by-case basis when

approached. While we appreciate these efforts, the Ministry has now stated that they will no longer consider granting such requests, posing a serious risk to all companies within the healthcare sector. Thus, the sector requires a suitable channel for companies to apply for an urgent import licence for medical products, if there have been delays to the process outside their control, and such mechanism would indeed benefit from a more formalised process.

Delays in product registrations and renewals can prevent important and, in some cases, life-saving medicines and equipment from entering the country. This lowers the quality and safety of healthcare available to Cambodian citizens and residents for two reasons: first, it prevents products from benefiting from the most recent and advanced research and development from reaching Cambodia. Secondly, it creates demand for unregistered and counterfeit products, as uncompliant pharmacies will seek out these products to maintain their inventory as they avoid the registration process entirely. Regulatory hinderances such as this also creates significant operational burdens for healthcare companies which could reduce their level of investment and diminishes the appeal of the sector.

IMPACT ON CAMBODIA

✓ **Reinstate a channel for companies to obtain urgent import licences for medical products awaiting renewal or registration by adopting a formal application process with clear guidelines outlining eligibility.**

2019 RECOMMENDATION

The Ministry of Health is undertaking an ambitious modernisation plan as they prepare for the implementation of the upcoming online platform (e-Registration and e-Importation) with the support of the World Health Organisation. We expect that this platform will bring greater efficiency to the product registration and import process by enabling companies to upload the necessary documentation for registrations and track their applications.

Nonetheless, until the online platform is launched and while communication issues remain, companies need a method to apply for an urgent import licence to ensure patient access to vital treatment when there have been significant delays to their application process due to factors outside their control. Recognising that our members agree with the six month timeframe to process renewals confirmed by the Ministry, we anticipate that urgent import licences should only be considered in the event that an application has taken longer than six months to process. To ensure the utility of this, we recommend publishing guidelines limiting the scenarios in which products may be eligible for urgent import licenses, such as where there is a critical medical need to help the product reach patients.

Scheduling of Registration and Renewal Committee Sessions

UPDATED

2017 RECOMMENDATION

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

POLICY RESPONSE

In their August 2018 letter to EuroCham, the Department of Drugs and Food outlined that the Ministry of Health is unable to publish a precise schedule of the registration and renewal committee sessions in advance as these are dependent on the participants' schedules. The Department was able to confirm that they intended to organise committee meetings between five to six times per year.

ISSUE DESCRIPTION

The decisions on medical product registrations and renewals take place during the Ministry of Health's committee sessions. This committee receives all relevant documentation required from the applicant beforehand to be reviewed before making a decision on whether to approve a product's application. As these meetings are a necessity for the approval process of all medical products in Cambodia, they are of the utmost importance for the functioning of the healthcare sector. While the Department has confirmed that the committee intends to meet five to six times per year, the compliant private sector believes that if the committee could meet with more frequency, Cambodia's healthcare system could respond to the needs of patients more effectively as product applications would be processed more efficiently.

IMPACT ON CAMBODIA

Prolonged product registration and renewal processes make it more difficult for healthcare companies to do business in Cambodia and negatively impacts prospective investors' perceptions of the market. More importantly, delays in product registration and renewal can prevent vital, life-saving medicines and equipment from entering the country. If the Ministry's registration and renewal committee was able to commit to meeting more frequently than 6 times per year, it would enable healthcare companies to better coordinate their applications and help reduce the reoccurring product registration and renewal delays.

✓ **Request that the Ministry of Health's Registration and Renewal Committee meet at least once a month, based on a published fixed schedule.**

2019 RECOMMENDATION

While EuroCham recognises the difficulties involved in the coordination of multiple committee members, we would encourage the Ministry of Health to hold registration and renewal committee sessions more frequently than six times per year. While we expect that this decision would be dependent on the schedules of committee members, we feel that it would be most beneficial if the sessions could be held at least once per month to provide the greatest opportunity to process applications.

We also believe that if the schedule was set and published for the year ahead, committee members could accommodate their schedules according to these meetings, as they are of the utmost importance to patients in Cambodia. Through doing so, the Ministry would support the industry to bring more innovative and life-saving treatments to Cambodia more efficiently, thus improving the overall healthcare system and quality of care for patients.

REAL ESTATE *and* CONSTRUCTION

The Cambodian real estate and construction sector remains a key driver of growth and is experiencing a lengthy boom, led by significant flows of foreign direct investment and rising domestic demand. It is crucial that the industry's regulatory framework matures and develops in line with this growth to ensure the market is adequately protected against potential vulnerabilities. Encouragingly, the Royal Government of Cambodia recognises this and has welcomed EuroCham's engagement and ongoing cooperation through the Ministry of Land Management, Urban Planning and Construction to provide technical assistance on a range of areas.

In terms of constructive progress since our last publication, we are pleased to report that the Royal Government of Cambodia has been particularly active in its efforts to raise the safety standards of workers and buildings. In July 2018, the Royal Government of Cambodia established the Project Advisory Board to promote and oversee occupational safety and health standards on construction sites, which is comprised of representatives from the Royal Government of Cambodia, private sector, unions and non-government organisations. EuroCham is pleased to act as a representative

from the private sector on this Board, through our Real Estate and Construction Committee as this supports our commitment to always strive for higher standards in Cambodia. Additionally, the Royal Government of Cambodia issued a new sub-decree to enhance fire safety regulations for commercial and mixed-use buildings, stipulating that these buildings must contain fire prevention and extinguishing systems. However, further details are still needed on what specifications and standards building owners will be required to implement to pass the newly established inspection regime.

The Real Estate and Construction chapter is the largest of this year's White Book, demonstrating the appetite from the compliant private sector for a strengthening of Cambodia's regulatory environment. The following recommendations are intended to be interlinked and implemented concurrently, to form a complete and comprehensive framework. As such, we have included a range of new, updated and retained recommendations across the four subject areas of Cadastral and Real Estate Development; Land Management and Urban Planning; Modernising Residential Property Regulations; and Construction.

For the Cadastral and Real Estate Development section, a new recommendation seeks to mitigate the risks associated with the design, engineering and other works undertaken by construction consultants, by requiring these professionals to hold civil liability insurance, as is common in many other markets. We have also updated two recommendations to bring such regulations in line with best practice – the need to standardise measurements for the real estate sector and to increase the financial controls for residential developments to provide protection in the event of a project failure.

As we continue to provide legal and technical support to the Royal Government of Cambodia on coastal management and development, we have updated our central recommendation for the Land Management and Urban Planning section to prioritise the legal framework for such developments and encourage the implementation of a model project to pilot public-private partnerships in Cambodia's coastal areas.

We have introduced a new section on Modernising Residential Property Regulations, as we believe this will enable the residential market to grow more sustainably and will increase the legal protections

available to Cambodia's residents. These recommendations focus on formalising and harmonising a number of the existing practices across different forms of residential property, while also suggesting the introduction of standards for the relatively new property management sector. Additionally, we encourage the Royal Government of Cambodia to continue in its efforts to modernise systems and procedures by prioritising the digitalisation of the property transfer process by developing an online platform.

Lastly for the Construction section, we seek to support and strengthen the Royal Government of Cambodia's initiatives to finalise Cambodia's Construction Law with the incorporated Building Code, and stress the importance of continuing the development of occupational safety and health standards on construction sites. Our final new recommendation highlights the need for mandatory quality assurance testing for structural building materials prior to their sale to ensure that such products are manufactured to an agreed standard, while the industry awaits the aforementioned Building Code.

Civil Liability Insurance

NEW

ISSUE DESCRIPTION

With the enormous scale of construction underway across Cambodia, companies operating within the sector must recognise how they can manage and mitigate their risks during and after the construction phase of a project. In Cambodia, construction insurance is a legal requirement before construction on any project can begin, as specified by the Law on Insurance and related Sub-Decree. This is due to the high-risk nature of construction activities, significant amount of capital and stakeholders involved and the need to protect third parties against any unforeseen damages. If a project does not have adequate insurance coverage, the project's owners and others connected may be liable for damages, which would heavily impact a project's viability, budget, duration, and in some cases cause the project to collapse.

While project owners are required to hold insurance coverage to overcome the uncertainties associated with the actual construction of a project, in Cambodia there is currently no such requirement placed on the specialist consultants responsible for the design, engineering, surveying and other significant works crucial to the success of a project to hold insurance. These professionals are typically not covered by the general construction insurance which is often narrowly defined, and they instead require their own civil liability insurance to indemnify them against exposed risks while undertaking their professional duties.

As the training, knowledge and expertise of consultants is relied upon, insurance is intended to cover any economic losses, such as increased cost of construction, loss of profits or loss of use as a result of their negligence or other faults during the delivery of their services. Similarly, if any injuries or property damage results from wrongful acts while performing their professional duties, this would be covered by an individual civil liability insurance plan. While the amount of coverage required is dependent on their services rendered, it should be sufficient to cover their involvement in the project and limit their vulnerability to claims from third parties.

Within ASEAN, Vietnam and Singapore have adopted regulations that require construction consultants to hold compulsory professional liability insurance, while in other markets, project owners and industry associations can often require insurance as a condition of tendering or membership. Due to this common practice, many construction companies operating in Cambodia already require the consultants that they work with, to hold a minimum level of civil liability insurance to ensure they will not be liable for the consultant's negligence. While this may be the case for many reputable companies, as it is not a legal requirement nor are the professional associations currently able to enforce an insurance requirement on their members, many consultants continue to operate without such protection.

As Cambodia's construction sector continues to flourish, attracting significant investment and the involvement of a growing number of stakeholders, the potential for negligence and accidents is also assumed to increase. Similarly, as Cambodia's legal system continues to strengthen, the likelihood of litigation being brought against those at fault of negligence will increase, exposing the professionals involved to subsequent liabilities.

Requiring construction consultants to take out an appropriate level of civil liability insurance will reduce the threat of insolvency, as individuals and companies rarely have sufficient resources to cover the costs of litigation to challenge claims or to pay the potential compensation. Thus, holding appropriate insurance will safeguard a construction consultant's future earnings and the longevity of their business, while ensuring that those affected by any negligence are protected.

Furthermore, requiring consultants to purchase insurance cover, in effect, becomes a licence to do business in the construction sector and forces greater compliance with all other regulations stipulated by the Royal Government of Cambodia. This is due to the significant level of due diligence undertaken by insurance companies during their underwriting process, as they will not cover non-compliant businesses or those that are not financially sound, deeming them too high risk. Likewise, project owners will be unlikely to work with consultants that do not hold valid insurance coverage as they could be held liable for the consultant's negligence.

Enforcing compulsory civil liability insurance may also provide additional benefit to the Cambodian economy, as consultants that do not already hold worldwide insurance cover will be forced to either purchase local insurance or those unable to do so, will need to partner with a local company who would assume their liability. This could lead to greater knowledge transfer to Cambodian companies and solidify stronger partnerships with foreign experts.

✓ **Consider requiring all consultants involved in construction projects in Cambodia to hold compulsory civil liability insurance.**

2019 RECOMMENDATION

We respectfully recommend that the Royal Government of Cambodia consider requiring all consultants operating in Cambodia, who are involved in the significant works of a construction project to hold compulsory civil liability insurance. Thus, ensuring adequate protection for third parties from negligence as a result of consultants undertaking their professional services, while also safeguarding a consultant's business from insolvency and the reputation of the construction industry.

This requirement could also be combined with a drive for local consultants to join their

respective professional associations such as the Board of Engineers Cambodia and the Board of Architects Cambodia. This would support the growth of these associations in becoming the collective voices of their professions and enhance the industry's standards and skills by promoting continued professional development.

Standardised Measurements

RETAINED

ISSUE DESCRIPTION

At present there is no standardised 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 in which real estate professionals may use differing techniques, obscuring the definition of what constitutes a measured area. For example, some real estate actors utilise Gross Area when describing an area of property, but in some instances, this may 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, in particular 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 used¹⁵; and even a small variation can have a significant impact on the valuation of a property.

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. Property measurement standards are increasingly becoming standardised 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.

IMPACT ON CAMBODIA

A lack of standardised 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 uncertainty and increases the likelihood of buyers and tenants losing confidence as a result of a bad experience. This may create difficulties for the real estate market and Cambodia’s investment environment as a whole. With cross border real estate investment increasing, having a standardised measurement approach which is widely recognised will reduce barriers to entry and increase confidence.



Prescribe a set of universal standards of measurement for the real estate industry.

2019 RECOMMENDATION

Prescribing a set of measurement principles will help to foster a standardised approach across the Kingdom, improving transparency and allowing real estate professionals to more readily instil confidence in their advice and the real estate market. Therefore, we respectfully recommend that the Royal Government of Cambodia standardise the methodology for measuring property by defining which components of a property should be included and

which should be subtracted from the total size to reduce the existing uncertainty.

Whilst it will be for the Royal Government of Cambodia to decide which set of measurement definitions is most appropriate, it is advisable to consider adopting the approach set out by the International Property Measurement Standards Coalition (IPMSC). IPMSC has emerged as a favoured path for globalised measurement standardisation and has been adopted by an international group of over 70 professional and not-for profit organisations, 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 confidence in global real estate.

Financial Controls During Project Development

UPDATED

In order to minimise financial risks within the real estate and construction sector, many countries have minimum capital requirements that must be met before a construction permit can be issued for a project. The developer must be able to demonstrate that it holds capital equivalent to a certain percentage of the value of the project.

ISSUE DESCRIPTION

Prakas No. 965 on the Management of Residential Development Business, issued 24 August 2016, has sought to address this concern by setting the minimum capital requirement for residential construction projects at KHR 2 billion (approximately US\$500,000). Similarly, if a developer intends to sell units to raise funds as construction progresses, they must have a bank guarantee of 2% of the total investment capital or by instalment. While this decision was certainly welcomed, our members consider this requirement to be insufficient to act as an adequate safety net for consumers and the overall market if a project was to collapse.

As a regional comparison, developers in Malaysia are restricted in accessing buyers' funds, as developers can only accept an initial 10% deposit before construction begins and thereafter payment is made in instalments according to the stage of works completed, ranging from 5% - 15% of the purchase price. These funds are deposited into a Housing Development Account regulated by Malaysia's Ministry of Housing, and are only accessible when progress is certified by the architect responsible for the project, ensuring appropriate access to funds while also protecting consumers if a project were to fail. Such provisions do increase the cost of embarking on a project but prevent developers from beginning projects that are financially dependent upon pre-sales funds, these projects are often at higher risk of running out of money prior to completion.

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 likely affect confidence in the market and have a knock-on effect whereby 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.

IMPACT ON CAMBODIA

Accordingly, it is within the interests of the Royal Government of Cambodia and all stakeholders to introduce stronger financial controls to regulate residential development projects to provide suitable protection and ensure the sustainable growth of the Cambodian economy.

2019 RECOMMENDATION

- ✓ **Consider increasing the financial controls set for residential development projects in line with ASEAN Member States, to provide adequate protection to consumers in the event of a project collapsing.**

Recognising that the Royal Government of Cambodia is already aware of the risks that surround developers who undertake projects with insufficient capital in Cambodia, EuroCham wishes to recommend that the minimum capital requirement be increased to bring it in line with Cambodia's ASEAN neighbours. Increasing the minimum capital required to develop a residential project to a value that appropriately balances consumer protection via additional regulatory oversight, with the desire for investment-friendly government policy that encourages further development.

We respectfully recommend engaging in consultation with the private sector in order to gather relevant data and information so as to set the most appropriate thresholds. Cambodia certainly can continue to encourage the flow of investment and improve its ease of doing business while simultaneously increasing regulatory controls to ensure the sustainability of the market.

Coordinating Public and Private Investment in Coastal Development

RETAINED

2017 RECOMMENDATION

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

POLICY RESPONSE

EuroCham, through our Real Estate and Construction Committee has actively pursued collaboration with the Royal Government of Cambodia in its drafting of the regulatory framework for the development and management of coastal areas, by facilitating the input of legal and technical support from foreign expertise. While this engagement was indeed beneficial in identifying priorities for the new legislation, including the adoption of new legal tools such as zoning regulations and the promotion of Public-Private Partnerships, there has been limited progress of the new regulations since then.

As Cambodia’s coastal provinces continue to attract significant levels of investment and such developments have become an increasing focus of attention, the adoption of new legislation to govern the management and development of coastal areas is of great importance and should be prioritised.

The Royal Government of Cambodia recognises the social and economic benefits that can be realised through effective development projects in the four coastal provinces of Kep, Kampot, Sihanoukville and Koh Kong. However, for these opportunities to be materialised, there is a need for a supporting body of legislation and regulations relating to coastal development.

ISSUE DESCRIPTION

At present, the legal framework for development projects is based on Sub-Decree No. 86 on Construction Permits from 1997, which describes the types of construction projects that require such 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 or infrastructure 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 of Cambodia to take more of a leadership role by setting a ‘master plan’ of the type of projects it would like to see developed and what infrastructure must 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 occur, there is a need for a more effective forum through which developers can understand the development priorities of the Royal Government of Cambodia, 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 to ensure security with their investment. The lack of a legal framework has proven to be a deterrent to developers considering major development projects within Cambodia.

EuroCham, through our Real Estate and Construction Committee and based upon the terms of our Memorandum of Understanding with the Ministry, has provided legal and technical inputs to the National Committee for Coastal Area Management and Development in the elaboration of a legal framework for coastal development. This 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. Furthermore, the framework was developed in line with the set of recommendations that were formed during the International Public-Private Conference on ‘Cambodia’s Coastline Development’ held in Sihanoukville in December 2016. We welcome the Royal Government of Cambodia’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 international financial institutions perceive too much uncertainty 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 potential of further Foreign Direct Investment into Cambodian coastal development and infrastructure, 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 infrastructure 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 maximises 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.

✓ **Prioritise the adoption of the new legal framework for development and management of coastal areas and consider permitting a 'model project' to showcase to prospective investors that coastal development under international standards is a viable possibility in Cambodia.**

2019 RECOMMENDATION

We respectfully recommend that the Royal Government of Cambodia prioritise the adoption of the new legal framework for development and management of coastal areas to bring the necessary regulatory clarity required for investors. Furthermore, we continue to emphasise the benefits of implementing a 'model project' in which a designated area of land is developed according to international best-practice. This pilot programme 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.

EuroCham is eager to continue in its support of the Ministry of Land Management, Urban Planning and Construction and would be happy to assist in developing the bidding process for a 'model project' by defining the deliverables that private sector partners must meet to be eligible for incentives like tax concessions.

Harmonise Regulations for Residential Buildings

NEW

ISSUE DESCRIPTION

The promulgation of Sub-Decree No. 126 on the Management of and Use of Co-owned Buildings in 2009 established the legal framework for the ownership, rights and obligations of private units within a co-owned building. This legislation was a defining moment for the Cambodian real estate market as it introduced a new residential ownership class and facilitated the arrival of foreign investment, following the adoption of the Law on Providing Foreigners with Ownership Rights in Private Units of Co-Owned Buildings in 2010.

While these laws were certainly welcomed and have had an overwhelmingly positive impact on the sector, our members perceive there to be uncertainty in respect to the interpretation of Sub-Decree No. 126 for residential properties such as apartments, that were constructed prior to 2010.

Apartment buildings have been a mainstay of Phnom Penh's residential property market well before 2010, and have historically played an important role in providing its residents with a cost-effective housing solution to manage population growth. As such, Phnom Penh has an abundance of properties that suitably match the description of a co-owned building as defined by Sub-Decree No. 126: "*a building or construction in which several co-owners are living. A co-owned building has parts that are the exclusive ownership of each co-owner, called 'private units' and other parts are commonly used by co-owners called 'common areas'*". However, many of these buildings were constructed even before the adoption of the current land title system, leaving these properties in a legal grey area, as their ownership is held under a Soft Title, which is recognised only at the local government level.

Although Sub-Decree No. 126 is flexible and does contain transition provisions under Chapter 5 to convert a building that was constructed before the enactment of the Sub-Decree into a co-owned building, to date, our members are unaware of any existing buildings that have successfully done so.

IMPACT ON CAMBODIA

A combination of limited historic maintenance, preservation and the regulatory uncertainty surrounding the private ownership of apartments, has caused a significant number of residential buildings in Phnom Penh to fall into disrepair, and now require serious renovations to enable them to remain inhabitable. However, as these properties are not recognised as private units within a co-owned building, they lack the internal regulations that condominiums require to govern the rights and obligations of property owners. Without such agreements in place, the shared management and maintenance of common areas such as access ways, structures and utilities is ignored, and there is no requirement for property owners to finance such maintenance.

As private ownership of these apartments remains uncertain and unrecognised nationally, many investors perceive these properties to be too high risk as they may be unable to recoup their investment or because the adjacent properties and common areas are unlikely to be maintained. Consequently, due to the sheer number of older apartments throughout Phnom Penh that require substantial maintenance and significant levels of investment,

there is a high potential that many of these architecturally iconic buildings will deteriorate until they become a serious danger to the city's residents.

✓ **Request clarification into the process to convert residential buildings that were constructed before Sub-Decree No. 126, into private units within a co-owned building, and outline how property owners can obtain their new respective co-ownership titles.**

2019 RECOMMENDATION

Although we recognise that Sub-Decree No. 126 on the Management of and Use of Co-owned Building does contain Transition Provisions under Chapter 5, we are unaware of any existing residential buildings that have been successfully recognised and registered as a co-owned building with private units held by a co-ownership title. Therefore, we respectfully recommend that the Royal Government of Cambodia clarify the process for property owners to convert their properties into private units in a co-owned building, and outline how they can obtain their new respective co-ownership or strata title.

Furthermore, this would harmonise the process for existing residential buildings with Article 6 of Sub-Decree No. 126 which states that, “*the procedure for registering the private units of a co-owned building shall be simple, easy, transparent and respecting the principles of decentralisation, deconcentration, and good governance.*”

Regulations to Enable Private Ownership of Parking Spaces

NEW

ISSUE DESCRIPTION

Sub-Decree No. 126 on the Management and Use of Co-Owned Buildings passed in August 2009 and the Law on Providing Foreigners with Ownership Rights in Private Units of Co-Owned Buildings in May 2010 were heralded as significant progress for Cambodia's real estate sector as they established the legal framework for co-owned buildings and opened the property market to foreign investors. These regulations were a catalyst for the tremendous growth of condominium developments across Phnom Penh, providing a diverse market for both local and foreign property purchasers.

Sub-Decree No. 126 defines the components of a co-owned building that are of the exclusive private ownership of each co-owner as well as components that are subject to common use. These shared use areas are of the benefit for all co-owners to enjoy and are under common management and ownership. Part 2, Clause 3 of the Sub-Decree designates the areas under common ownership and includes ground areas, courtyards, access ways, structural components and a number of other shared components. Notably, car parking spaces have also been included as a common area, meaning developers are unable to allocate a private parking space to property owners.

This is highly unusual, as typically in condominium developments around the world, when a buyer purchases a private unit, an allocated parking space is included in the sale for their exclusive use. This ensures that tenants can always park their vehicles within the grounds of their condominiums, otherwise the parking amenities could be at capacity, leaving co-owners disadvantaged within their own property. While EuroCham is aware of a number of developers that already offer private parking spaces for rent or sale due to the increasing demand from property purchases, at present Sub-Decree No. 126 does not provide a mechanism to allow this practice to be recognised legally, leaving property owners open to potential consequences.

IMPACT ON CAMBODIA

The current common use system for car parking in condominiums leaves scope for abuse by other co-owners who could take advantage of the good-faith of this commonality, which may increase the dissatisfaction of other co-owners and could lead to a hostile environment for all tenants. If developers continue to be unable to offer private parking spaces as part of condominium sales this may harm Cambodia's emerging property market by discouraging potential buyers from following through with their purchase. This issue is particularly apparent for Phnom Penh where residents are already struggling with the increased traffic congestion, which is expected to worsen as Phnom Penh's population and affluence continues to grow.

Creating a mechanism to allow for private ownership of parking spaces could also create a new tradable market for parking spaces, as tenants that do not utilise their space may sell or rent the unoccupied space to others. This is becoming a growing and increasingly valuable market in many countries where city centre parking is scarce and can be an effective means to help alleviate traffic congestion.

✓ **Adopt regulations that authorise developers to treat parking spaces within condominiums as private units, and allow for the issuance of private ownership certificates for parking spaces.**

2019 RECOMMENDATION

By amending Sub-Decree No. 126 to allow developers to treat parking spaces within co-owned buildings as private units, the Royal Government of Cambodia will help align Cambodia's condominium market with the majority of other markets around the world and in doing so, increase the satisfaction of new property purchasers. Adopting new regulations for car parking spaces will allow developers to issue private ownership certificates and uniformly distribute parking spaces among all tenants, for which they can use as they please.

EuroCham will be happy to assist the Ministry of Land Management, Urban Planning and Construction in the adoption of new regulations to enable the establishment of a system to issue certificates for private parking spaces, as outlined by our proposed Memorandum of Understanding with the Ministry.

Property Management Standards

NEW

ISSUE DESCRIPTION

Since Cambodia's real estate market was partly opened to foreign investment following the promulgation of the Law on Providing Foreigners with Ownership Rights in Private Units of Co-Owned Buildings (Law on Foreign Ownership) in 2010, condominium developments have skyrocketed across Cambodia, particularly in Phnom Penh. Condominiums provide an attractive investment opportunity for foreign buyers due to their relatively low price and centralised location, enabling their owners to contribute to and benefit from Cambodia's rapid economic progress.

Due to the overall size of condominium developments and the shared nature of their facilities and amenities, condominiums require a significant level of maintenance and management to ensure their condition does not deteriorate. Such properties often require professional management of the co-owned areas and components so that they retain their aesthetics, safety and function by ensuring maintenance is completed, staff are managed and fees are collected. These fees can include service charges or maintenance fees which provide for the costs of cleaning, security, service technicians and in most markets, owners are also required to contribute to a sinking fund for long-term structural upkeep.

Sub-Decree No. 126 on the Management and Use of Co-Owned Buildings issued in 2009, paved the way for the Law on Foreign Ownership by providing initial guidance on the management of shared buildings, requiring such buildings to implement internal regulations and establish an executive committee to oversee property matters. Although Sub-Decree No. 126 determines the procedure for decision making and the responsibility of expenses for upkeep, it falls short in specifying a number of important issues, including building insurance, the requirement of a sinking fund or the management of a building by third parties.

Since June 2017, property management services have been governed by Prakas No. 636 on Business Management of Evaluation Service Provision and Immovable Property Service. This regulation requires property management professionals to obtain a specific licence issued by the Ministry of Economy and Finance to lawfully conduct their services. However, this regulation lacks specific requirements or details regarding the duties and obligations property managers must provide for their clients. Therefore, Cambodia existing regulations for the property management industry are limited in scope and do not yet provide robust legal framework, which may be limiting the industry's growth.

While there are already a large number of companies offering property management services in Cambodia, as there are no agreed standard operating procedures to define what is required, considerable risks exist for both property owners and managers. Property owners may be unaware of the costs or the services that should be included within a property management service agreement. Similarly, there is limited legal recourse for property management companies to take in the event an owner stops paying maintenance fees or contributing to a sinking fund, which will impact all other owners. Appropriate access to property funds is also a serious issue that must be regulated, as the amount collected from tenants' swells significantly to sufficiently cover the costs of maintenance and servicing.

For comparison, in Malaysia, where foreign investment into its condominium market has also boomed and a substantial portion of its population now resides in co-owned properties, the Malaysian Government has been implementing regulations for the property management industry over the last two decades. More recently, the Malaysian Government issued a set of Property Management Standards and requires all professional property managers to register with the Board of Valuers, Appraisers, Estate Agents and Property Managers, with punitive sanctions for non-compliance. This was done in response to their survey data that repeatedly showed the majority of apartments and condominiums nationwide severely lacked appropriate management, due to owners refusing to pay maintenance fees, inexperienced property managers and limited enforcement of existing regulations.

Allowing the property management industry to continue with limited regulation brings about adverse and unnecessary risks to the Cambodian real estate market and has the potential to impact current and prospective investor sentiment. While some investors may have little concern for the long-term viability of condominiums if they intend to hold a property for only short period for speculative gains, if the co-owned property is not suitably maintained, it will fall into disrepair. Thus, if some owners neglect paying for maintenance, this will have a negative impact on the value of all other property owners, as well as the overall perception of the real estate market by investors.

IMPACT ON CAMBODIA

A lack of suitable management can severely impact one's enjoyment of their property, its resale value and potential rental returns as buyers or renters will choose other properties that have more effective management. As is evident in other markets throughout the world, poorly managed properties will always lead to deterioration or damage to both the common areas and individual condominiums, which will ultimately increase the expenses for all owners and raises possible safety concerns.

EuroCham is aware of companies who are experienced in property management in other markets but have postponed involvement in the industry in Cambodia due to the lack of adequate regulations and protections. To continue to attract more investors interested in long-term investment into Cambodia's real estate market, a high level of regulatory stability and predictability is required. Adopting stronger regulations for Cambodia's property management industry presents an opportunity for the Royal Government of Cambodia to stimulate the industry to deliver a higher quality service, greater protections, and increase job creation and tax revenue.

2019 RECOMMENDATION

- ✓ **Consider adopting a regulatory framework to govern the property management industry in Cambodia and consult with the private sector to develop a set of standard operating procedures.**

Recognising that Cambodia’s co-owned property market is relatively new and that traditionally property management has been a family affair, we believe that developing a supportive regulatory framework for the property management industry will be highly beneficial for all Cambodian residents. Developing specific standard operating procedures for property management professionals is a necessary step in setting the acceptable standard of service and will form the basis for best practice within the industry. Such standards can also be used to benchmark service performance for the market by measuring whether the service has been delivered accordingly, which will ultimately raise the quality of the industry.

We suggest basing the standard operating procedures upon international best practice, while we also respectfully encourage engaging with the private sector to determine what would be most appropriately applied to the Cambodian context. EuroCham would welcome the opportunity to support the Royal Government of Cambodia in developing the regulatory framework to govern Cambodia’s property management industry, as proposed in our Memorandum of Understanding with the Ministry of Land Management, Urban Planning and Construction.

Property Transfer Process

NEW

As a result of Cambodia's turbulent past, the legislation and regulations that govern private ownership of immovable property have been complex and challenging to interpret since private ownership was first recognised in 1992 through the Land Law. Following the subsequent update to the Land Law in 2001, property owners can register their property to be recognised by the Royal Government of Cambodia at the national level by securing an ownership certificate, commonly referred to as a Hard Title. Hard Titles are issued by the Cadastral Office within the Ministry of Land Management, Urban Planning and Construction and are the most secure form of property ownership as it is the only document required to prove ownership. This differs to a Soft Title, where ownership is recognised only at the local administrative level and can be contested by a third party, though as many properties have yet to be transferred into Hard Title, this remains the most common form of ownership in Cambodia.

ISSUE DESCRIPTION

As Soft Title ownership is not fully recognised by law, it is significantly simpler to process a property transfer to a new owner as this has less administrative involvement, fewer expenses and the risks and obligations associated with a property are transferred entirely to the new owner. In comparison, to transfer property owned with a Hard Title, the parties involved in the purchase are required to draw up a contract detailing the terms and conditions of the sale, prove their identities, pay taxes and engage with the Cadastral Office to facilitate the transfer.

While this conveyancing procedure is typical in most countries, there has been little guidance published by the Royal Government of Cambodia to support owners and purchasers to understand what is involved in the transfer process, expected processing time or required fees. Therefore, this uncertainty forces many people to use an agent to act as an intermediary to facilitate the transfer process with the Cadastral Office. These agents are unlicensed and their use unnecessarily increases the cost of property transfers and processing times, while adding considerable risk as agents can fraudulently take their fee without facilitating the transfer, with little recourse as there is no record or receipts documenting their service. As a result, if an agent has fulfilled their service, property transfers can take up to two to three months to be processed by the Cadastral Office, significantly increasing the time required to purchase legally recognised property in Cambodia.

EuroCham acknowledges that that some parties may wish to engage an agent to simplify their involvement and that administrative processes at the national level can take considerable time, particularly as transfers involve not only the Cadastral Office but also the Ministry of Interior and the General Department of Taxation at different stages of the process. Although property ownership is a right bestowed to all Cambodian citizens, without official guidance from the Royal Government of Cambodia detailing how to transfer property, owners and purchasers remain uninformed and beholden to unlicensed agents to facilitate their transfers. In the case of an agent taking payment and not fulfilling their service, this causes avoidable distress and dissatisfaction for those involved, and has the potential to impact investor sentiment if left unchecked.

IMPACT ON CAMBODIA

The lack of guidance specifying processing times and associated fees, limits the ability of investors and developers to effectively plan, finance or execute construction projects accurately as they require a high level of certainty and understanding of the perceived risks impacting their investments. Similarly, as the official fees are not published, the Royal Government of Cambodia loses an opportunity to efficiently collect revenue as the costs of property transfers are collected by the agent who then adds their fees, increasing the total cost of the service.

2019 RECOMMENDATION

✓ Prioritise the digitalisation of the transfer process of immovable property by launching an online platform.

To best ensure that the process to transfer immovable property is formal, consistent and transparent, we respectfully recommend that the Royal Government of Cambodia take steps to prioritise the digitalisation of this process by launching an online platform. This would allow the parties involved in a transfer to access all of the necessary information online, and submit and track their applications with the Cadastral Office electronically, enabling it to truly act as a ‘One-Stop-Shop’ for property transfers.

By launching an online property transfer platform, the Royal Government of Cambodia would bring much needed clarity to an essential administrative process that impacts all Cambodian citizens and real estate investments as property purchasers will be able to budget and plan accordingly. Furthermore, the electronic collection of fees and taxes will be streamlined and will limit any opportunity for potential abuse, while also removing the need for an agent to facilitate the process entirely.

We envisage that this would complement the Ministry of Land Management, Urban Planning and Construction’s existing modernisation programme, which has seen the launching of the Cambodia Construction app and updated land titles with QR codes. This would be in line with the similar efforts undertaken by Ministries of Labour and Vocational Training, Commerce and Economy and Finance, which have greatly improved their administrative efficiency and reduced resourcing demands by digitalising their services.

Recognise that this is a significant project and will require considerable resources to implement, the benefits of doing so will be felt throughout the Cambodian economy and will encourage greater investment into the real estate market.

Ensuring a Practical Set of Building Standards

UPDATED

2017 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 as the Ministry of Land Management, Urban Planning and Construction continues to actively review Building Codes from other regulatory systems to gain insights that may be applicable to the Cambodian context. EuroCham also wishes to acknowledge the valuable technical assistance the Ministry and the Institute of Standards of Cambodia have received from the Japanese Government through the Japan International Cooperation Agency (JICA), which has regularly mobilised experts to support the development of the new Building Code.

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 worker fatalities over recent years.

The Royal Government of Cambodia is currently in the process of drafting a Construction Law which will incorporate a Building Code, setting safety and quality standards for construction projects, with the support of international expertise. EuroCham welcomes this initiative and hopes to continue to facilitate dialogue between the Royal Government of Cambodia and the private sector, through our Real Estate and Construction Committee 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 adopt the Code upon its completion. Monitoring 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 governments to develop the capacity to implement such checks, and authorities in some other countries opt to authorise independent certification bodies from the private sector to carry out this task.

ISSUE DESCRIPTION

IMPACT ON CAMBODIA

The Royal Government of Cambodia clearly recognises the importance of introducing an effective Building Code to minimising safety risks, protecting people in Cambodia, and encouraging investor confidence; with the highest level of the Royal Government of Cambodia also publicly commenting on the risks that lax building standards can pose to the 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 adaption and certification costs which could potentially discourage foreign investment. Conversely, a robust yet practical set of building standards would increase investor confidence without creating too many burdensome costs.

2019 RECOMMENDATION

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

Effective implementation is key to ensuring the success of the Building Code and enhancing safety standards and investors’ perceptions of fair competition within the Cambodia real estate market, therefore we respectfully recommendation that the Royal Government of Cambodia,

- 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 foreign standards. The end product of this process will be a ‘Cambodian standard’ but we recommend that this standard is congruent with existing international standards.
- We suggest consultation with the private sector to determine what would be the most effective method of implementation of the new building code. The authorisation of an independent certification body from the private sector may be one option to consider.
- To assist in implementation, consider including a requirement within the Building Code 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.

Short-Term Measures to Address Fire Safety

UPDATED

2017 RECOMMENDATION

Prior to the realisation 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.

POLICY RESPONSE

On 25 June 2018, the Ministry of Interior issued Prakas No. 87, to enhance the fire protection of buildings in Cambodia by requiring installation of fire prevention systems to mitigate the damage and danger caused by fires. This Prakas requires all commercial and mixed-use buildings to have adequate fire prevention and extinguishing systems, and outlines the management and inspection by officials to ensure such systems meet the Royal Government of Cambodia’s standards. Buildings will be required to submit their fire prevention plans to the authorities prior to construction, with sanctions applied if owners fail to comply. Existing buildings that do not have fire-prevention systems in place will also be required to register with the authorities in an effort to align their buildings with the new requirements.

It is also important to note that these new regulations will not apply to private residences that are not in connection with commercial activities. While this provision is certainly welcomed, the Royal Government of Cambodia has not yet been determined what fire safety standards or systems building owners will be required to implement to pass inspections.

Since the promulgation of the Fire Prevention Law in 2013, the Royal Government of Cambodia has taken admirable steps to increase the fire safety standards in Cambodia, as demonstrated by recent adoption of Prakas No. 87, which requires all commercial and mixed-use buildings to install fire protection systems. While this legislation is certainly welcomed, as it does not yet outline the specific standards or systems that building owners are required to install to receive construction approval or pass inspections, therefore additional provisions are needed.

Acknowledging that the aforementioned Building Code is anticipated to include more specific regulations relating to fire safety, 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.

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.

ISSUE DESCRIPTION

IMPACT ON CAMBODIA

2019 RECOMMENDATION

- ✓ **Prior to the realisation of the Building Code, consult with the private sector to define an intermediary set of fire safety criteria which will form the basis for the inspection and approval process required by Prakas No. 87.**

Prior to the realisation of the Building Code, we recommend that the Royal Government of Cambodia engage in consultation 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. Implementation of these standards can then be appropriately inspected and approved as defined by Prakas No. 87.

While it remains the responsibility of the Royal Government of Cambodia to define what the most appropriate set of fire safety standards and prevention systems should be applied to buildings, as fire safety is a universal concern, we advise that they consider basing such measures on international best practice.

On 9 July 2018, the International Fire Safety Standards (IFSS) Coalition was launched, which aims to provide a universal set of rules for fire safety, delivering greater consistency of minimum levels of fire safety and professionalism in buildings across the world. While it is too early to base Cambodia's fire safety measures on the IFSS Coalition, as the real estate market becomes increasingly global with the flow of cross border investment, it is important that Cambodia progressively align its standards with best practice to continue to remain an attractive investment destination.

Ensuring Occupational Safety and Health on Construction Sites

UPDATED

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.

POLICY RESPONSE

On 16 July 2018, the National Committee on Occupational Safety and Health (OSH) under the Ministry of Labour and Vocational Training issued a decision to establish a consultative council to promote occupational safety and health standards in Cambodia's construction sector, referred to as the Project Advisory Board. The Project Advisory Board has been developed through the support of the International Labour Organisation and the Japanese Government, and is comprised of representatives from the Royal Government of Cambodia, private sector, unions and non-government organisations. The intentions of the Board are to share best practice and develop a legislative framework via a consultative process that will implement control measures to minimise accidents and injuries on construction sites. The Board has already begun drafting new OSH-related Prakas on protective equipment, working at heights, accommodation and social security, demonstrating the Royal Government of Cambodia's eagerness to tackle this growing issue as Cambodia undergoes a construction boom.

EuroCham is pleased to be a part of the Project Advisory Board through our Real Estate and Construction Committee as a representative from the private sector. EuroCham continues our commitment to increase the standards of OSH on construction sites in Cambodia, evidenced by our Breakfast talk on OSH and the publication of a Construction Site Safety Booklet in collaboration with the Ministry of Land Management, Urban Planning and Construction and sponsors. It is our hope that through these activities, EuroCham can support ongoing efforts to increase the importance of OSH on construction sites in Cambodia, and ultimately reduce the number of workplace accidents and injuries.

EuroCham welcomes the proactive initiatives undertaken by the Royal Government of Cambodia to increase the standards of OSH on Cambodia's construction sites and acknowledges that it will take some time before the regulatory framework can be implemented across the country. However, in practice there is insufficient capacity to ensure the implementation of new standards and many sites are able to operate with little oversight. Similarly, Cambodia lacks a professionally qualified construction workforce with many on-site workers lacking even basic safety training and they are typically the least informed of new legislation, which is reflected by Cambodia's low safety performance on sites. Greater awareness and education are essential for the effective enforcement of new OSH regulations and to improve safety standards on-site.

Accordingly, Cambodia requires an effective training strategy and programme to build a comprehensive knowledge base of OSH standards within construction companies, which would be most efficiently delivered by establishing a government-approved training facility. We believe that this training would be most appropriately delivered to Safety Officers who

ISSUE DESCRIPTION

play a key role in promoting actions to improve OSH at the enterprise level. The Royal Government of Cambodia could then enforce a requirement that companies must have their Safety Officers attend the approved training before construction on a new project can begin. This method would ensure that safety officers act as a conduit for safety information to their organisations and enforce OSH regulations on their managed sites. We envisage that this training programme could take place over three to five days and its course material could align with the information provided by the Construction Safety Handbook. This would include training on first-aid, personal protective equipment, hazard identification, working at heights and more.

EuroCham recognises the significant financial commitment such a facility would require, though this project presents a clear opportunity for the Royal Government of Cambodia to work with their development partners to identify potential funding channels. Alternatively, the training facility could be put out for public tender as a Public-Private Partnership, for which the operator could recoup its investment by charging for the delivery of training to construction companies' safety officers.

IMPACT ON CAMBODIA

Without adequate training and awareness, the implementation of newly adopted workplace safety and health regulations will be sporadic, as there will be limited on-site enforcement and therefore not provide the intended protections for construction workers. Fatalities and injuries on Cambodian construction sites have in the past occurred too frequently and can affect investor confidence in the industry. Developing an effective OSH training strategy and programme for safety officers will foster a proactive approach to site safety and complement the valuable efforts already undertaken by the Royal Government of Cambodia. Furthermore, this would provide the Royal Government of Cambodia with an opportunity to begin enforcing compliance with training and qualification requirements on Cambodia's construction sites. These additional measures would greatly contribute to a reduction of on-site injuries and accidents.

2019 RECOMMENDATION

✓ **Require all construction companies operating in Cambodia to have their designated Safety Officers undergo mandatory occupational safety and health training before starting a new project.**

We respectfully recommend that the Royal Government of Cambodia consider implementing a new regulation that require Safety Officers employed by Cambodian construction companies to undergo mandatory OSH training. This will ensure that all Safety Officers employed in Cambodia have completed the same basic level of safety training and will be aware of new OSH regulations as they develop, which they would then enforce on construction sites.

As the private sector is well-placed to provide support for curriculum development and

delivery, we would also encourage the Royal Government of Cambodia to hold public-private consultations prior to the establishment of a government-approved training facility. The advantage of requiring all Safety Officers to undergo similar training will allow the Royal Government of Cambodia to uniformly enforce safety standards, while increasing the skills of Cambodia's construction workforce.

Construction Material Quality Assurance Testing

NEW

ISSUE DESCRIPTION

The construction sector continues to be a dynamic driver of Cambodia's tremendous economic growth, with US \$5.7 billion invested in the sector in 2018, achieving an annual growth rate of 23%¹⁶. This surge of investment places considerable demand on suppliers to ensure vital access to construction materials, leading to an increase of imports and more suppliers entering the market to compete for the rising demand. In response to this mounting competition, some suppliers can be tempted to offer sub-standard materials to remain price competitive. These suppliers can sell low-quality materials unimpeded in Cambodia because the Construction Law or accompanying Building Code that is expected to set the minimum safety and quality standards for such materials have not yet been finalised.

While structural components like concrete blocks and steel may appear superficially similar, their fabrication is based on a manufacturer's knowledge, raw materials and quality control, which can be vastly different between one another and increase manufacturing costs. In the case of high-quality materials, this results in a superior final product that has been manufactured for its strength and durability, ensuring it will withstand the forces of construction and long-term use, whereas the use of low-quality materials can expect the opposite.

Recognising that many developers of large construction projects often already voluntarily adhere to international standards and use well-known brands to ensure quality or conduct their own quality testing, some developers and or contractors may take advantage of cheaper, lower quality materials to cut corners in pursuit of higher profit margins. As there is not yet a legal requirement for businesses to offer a warranty to guarantee their workmanship, these businesses are generally less concerned about the longevity of their projects, and therefore see little incentive to use higher quality materials as they will not be liable after construction has finished.

Similarly, as there is no requirement for construction materials to be independently tested for their quality and safety before they are sold in Cambodia, companies may be unaware that they are purchasing low quality or unsafe materials. Some manufacturers and or suppliers can take advantage of this and abuse consumer trust by falsely marketing their products as high-quality, while also leaving the Cambodian market vulnerable to possible dumping of substandard products by other countries.

In many countries, construction materials must be tested to ensure they meet the quality control and assurance requirements defined by their respective construction plans, specifications and building codes. As a regional comparison, the importation of materials into Malaysia that are not in accordance with specified standards is strictly prohibited and local manufacturers are required to register their products with the Construction Industry Development Board (CIDB). This is to ensure that manufacturers have certified that their materials meet the defined standards, with hefty fines applicable for those selling materials without CIDB compliance certification.

It is essential that such testing be conducted by an independent testing facility to ensure that the results measure a product's safety and quality without any internal bias. While there are a small number of independent testing facilities available in Cambodia, as there

is no legal requirement for materials to be tested, there has been limited investment within the industry. Therefore, due to less demand, these facilities only offer a limited range of testing procedures, forcing Cambodian manufacturers that want to test their materials independently to rely on facilities outside of Cambodia, often to Vietnam or Thailand, driving away important business and technical knowledge.

Locally produced substandard construction materials will negatively impact Cambodia's reputation as an emerging manufacturer as they can cause serious safety concerns, particularly when used as structural components crucial to a project's construction. The safety concerns surrounding the use of sub-standard building materials are of growing importance as Cambodia's construction projects continue to increase in height and a number of fatalities have already been recorded over the years. If sub-standard products begin to become synonymous with Cambodia, this can affect the entire economy as it reduces the value of workmanship and the costs goods can be sold for.

Although requiring structural construction components manufactured in Cambodia to undergo quality assurance testing may increase production costs, the benefits of such legislation will vastly increase the quality of materials produced. Not only will manufacturers be required to produce materials that meet the minimum standards, but some will also be incentivised to produce higher performing products to gain a competitive advantage, forcing lower-quality materials out of the legitimate market. This also increases the protection for consumers as the claims made by manufacturers must be demonstrated through specialised testing, thereby reassuring buyers that the materials they purchased will perform as expected, while ensuring the protection of workers that install them.

Furthermore, by mandating that structural building components manufactured in Cambodia be suitably tested prior to their sale, the Royal Government of Cambodia will encourage greater investment into local testing facilities as demand will increase significantly. In turn, this will place a greater emphasis on research and development to support industry to create new innovative technologies, essential for prosperous economic growth and job creation.

IMPACT ON CAMBODIA

✓ **Consider implementing regulations that require structural building materials manufactured in Cambodia to undergo independent quality assurance testing prior to sale.**

2019 RECOMMENDATION

While we recognise that the Cambodian Building Code will set the standards for materials used in construction projects, as this is a lengthy process and substandard materials are already available, we believe that the Royal Government of Cambodia should act swiftly to limit the potential damage this could have on the reputation of Cambodia as an emerging manufacturer.

Therefore, we respectfully recommend that the Royal Government of Cambodia consider implementing regulations that require structural building components, such as concrete blocks that have been manufactured in Cambodia, to undergo independent quality assurance testing prior to their sale. We believe that targeting this requirement towards components integral to the structure of a building would be an important first step, as failure of these products due to poor manufacturing, diminishes their structural stability. Following the introduction of this requirement, the Royal Government of Cambodia could expand the range of products for mandatory testing, as there will be adequate testing infrastructure to support the increased demand.

Abbreviations

ACIA	ASEAN Comprehensive Investment Agreement	KHR	Cambodian Riel
AEC	ASEAN Economic Community	KOPIA	Korea Programme on International Agriculture
AMDD	ASEAN Medical Device Directive	MEF	Ministry of Economy and Finance
APAEC	ASEAN Plan of Action for Energy Cooperation	MHZ	Megahertz
ASAPCP	ASEAN Strategic Action Plan for Consumer Protection 2016-2025	MOU	Memorandum of Understanding
ASEAN	Association of Southeast Asian Nations	MSME	Micro, Small and Medium Enterprises
ASYCUDA	Automated System for Customs Data	NHQC	National Health Product Quality Control Centre
CAIF	Cambodian Automotive Industry Federation	NSSF	National Social Security Fund
CAMCONTROL	Cambodia Import-Export Inspection and Fraud Repression Directorate General	OSH	Occupational Safety and Health
CDC	Council for the Development of Cambodia	OTC	Over-the-Counter
CEC	China Environmental United Certification Centre	PV	Photovoltaic
CGBC	Cambodian Green Building Council	PPCA	Phnom Penh Capital Administration
CIDB	Construction Industry Development Board Malaysia	QIP	Qualified Investment Project
CO₂	Carbon Dioxide	QR	Quick Response Code
CPC	United Nations Central Product Classification	REE	Rural Electricity Enterprises
CSR	Corporate Social Responsibility	SEZ	Special Economic Zone
CTA	Committee of Tax Arbitration	SME	Small and Medium Enterprise
EAC	Electricity Authority of Cambodia	UDC	Undetermined Duration Contract
EIA	Environmental Impact Assessment	UN	United Nations
EMA	European Medicines Agency	UNECE	United Nations Economic Commission for Europe
EPO	European Patent Office	US\$	United States Dollar
ESG	Environmental, Social and Governance	USFDA	United States Food & Drug Administration
FDI	Foreign Direct Investment	VAT	Value Added Tax
GDCE	General Department of Customs and Excise	VIN	Vehicle Identification Number
GDT	General Department of Taxation	WTO	World Trade Organisation
GDPR	General Data Protection Regulation	WGBC	World Green Building Council
GMO	Genetically Modified Organism		
G-PSF	Government-Private Sector Forum		
HR	Human Resources		
ICT	Information and Communication Technology		
IFSS	International Fire Safety Standards		
IPMSC	International Property Measurement Standards Coalition		
IPR	Intellectual Property Rights		
JICA	Japan International Cooperation Agency		
KAMSAB	Kampuchea Shipping Agency and Brokers		

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