

MUTUAL LEGAL ASSISTANCE AND RECOVERY OF PROCEEDS OF CORRUPTION

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I. INTRODUCTION

In the five mandates issued by the government of Cambodia the core of achieving social justice and sustainable and equitable socio-economic development was clearly identified. In order to further strengthen good governance, the Royal Government has firmly implemented key reform programmes, including: (1) fight against corruption; (2) legal and judicial reform; (3) public administration reform; and (4) reform of the armed forces. The ultimate objective of the reforms, as well as that of other reform programmes, including public financial management reform, land reform, and forestry and fisheries reform, is to strengthen the capacity, efficiency and quality of public services to raise public confidence in the government and respond to the needs and aspirations of the people and business community.

In Cambodia, there is a strong government commitment to combat the criminals and transnational crimes in the context of cooperation and mutual legal assistance among the ASEAN members and international community through bilateral and multilateral agreements. The government has developed legislation and policies aimed at prevention, criminalization of corrupt conduct and capacity building of judges, prosecutors and law enforcement officers through national and international training courses and workshops. These measures are important because addressing the issues of mutual assistance in combating corruption and recovery of proceeds of corruption leads not only to building trust for investors but also to promoting investment in Cambodia.

II. CURRENT LEGISLATION IN CAMBODIA

A. Criminalization and Penalties for Corrupt Conduct

The Penal Code of Cambodia contains protection against corruption and clearly identifies the criminal offences namely: the offences in article 278 (bribe taking by employees), article 279 (bribe offered to employees), article 280 (bribe taking by governor), article 283 (criminal responsibility by legal entity), article 387 (improper bidding), article 404 (definition of money laundering), article 405 (sentence to be served), article 406 (aggravating circumstance), article 409 (criminal responsibility by legal entity), article 517 (bribe taking by judges), article 518 (bribe offered to judges), article 519 (criminal responsibility by legal entity), article 547 (bribe taking by witnesses for false testimony), article 548 (bribe offered to witnesses), article 553 (bribe taking by interpreter), article 554 (bribe offered to interpreter), article 555 (bribe taking by experts), article 556 (bribe offered to experts), article 559 (criminal responsibility by legal entity),

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article 592 (definition of misappropriation), article 593 (sentence to be served), article 594 (bribe taking), article 595 (definition of passive business influence), article 597 (definition of embezzlement), article 598 (sentence to be served), article 599 (definition of favouritism), article 600 (sentence to be served), article 601 (intentional destruction and dishonest embezzlement), article 605 (bribe offering), article 606 (active business influence), article 607 (extortion), article 608 (destruction and embezzlement), article 625 (criminal responsibility by legal entity), article 637 (bribe offered to person who has competence to issue false certificate), article 639 (bribe taking by member of professional board of medicine to issue false certificate), article 640 (bribe offered to member of professional board of medicine to issue false certificate), article 641 (execution of misdemeanour of articles 639 and 640 for all medical professions), article 644 (criminal responsibility by legal entity).

The law on anti-corruption provides a comprehensive set of criminal offences relating to corruption. The law aims to guide as a fundamental tool against corruption within the country and promote effectiveness of all forms of service and strengthen good governance and the rule of law in leadership and state governance as well as to maintain integrity and justice, which is fundamental for social development and poverty reduction.

B. Conventions and Agreements

Cambodia has ratified several conventions and agreements, namely: the Convention on the Rights of the Child (1989) and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography 2000, the United Nations Convention against Transnational Organized Crime 2000 and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Woman and Children 2005, and the International Labour Organization's (ILO) Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour 1999. Agreements or conventions between Cambodia and ASEAN (Treaty on Legal and Mutual Assistance in Criminal Matters, Cambodia ratified 2010) each underpin increased border cooperation in anti-corruption matters. These instruments may assist with guiding efforts to strengthen frameworks for regional cooperation to target a wider range of offences; however, they provide little guidance for cooperation to specifically combat corruption. Moreover, Cambodia has already ratified the essential convention, the United Nations Convention against Transnational Organized Crime on 12 December 2015, and has acceded to the United Nations Convention against Corruption on 5 September 2007.

III. MUTUAL LEGAL ASSISTANCE

Procedures for implementing mutual legal assistance shall be in agreement with the principles stated in treaties or bilateral and multilateral agreements, and national law in force.

A. Mutual Legal Assistance in Civil Matters

The central authority has been established since 2011 within the Ministry of Justice to facilitate mutual legal assistance in matters of criminal, civil, commercial, extradition, and transfer of prisoners. For implementation of these activities the Ministry of Justice of Cambodia has signed a bilateral Memorandum of Understanding on Cooperation between Cambodia and Lao PDR and a Memorandum of Understanding on Cooperation between Cambodia and Viet

Nam for information exchange and capacity building among legal staff, judges and prosecutors. Recently, in order to strengthen mutual judicial assistance between Cambodia and Viet Nam in civil matters, both parties have agreed to provide assistance in civil matters as a service of the judiciary—extra of judicial documents, taking and transferring of evidence, summoning of witness and experts, recognition and enforcement of court judgement and decision, and exchange of legal information and documents relating to judicial assistance¹.

B. Mutual Legal Assistance in Criminal Matters

Cambodia’s legal framework for extradition is provided under the Criminal Procedures Code². The code provides a comprehensive set of requirements for carrying out extradition proceedings in case of absence of an extradition treaty with Cambodia; diplomatic channels may be used. On the other hand, a bilateral extradition agreement is more appropriate. Cambodia has extradition agreements with Thailand, Lao, China, South Korea and Viet Nam.

In the case of corruption offences, the court authority of the Kingdom of Cambodia may delegate power to the competent court authority of any foreign state and may also obtain power from the court authority of any foreign state, in order to collect evidence and information relating to the offence³.

There is a strong basis under bilateral and multilateral treaties for Cambodia and other countries to provide international legal cooperation to investigate and prosecute offences relating to corruption. Under international legal standards, each country is required to facilitate cross-border cooperation for extradition and mutual legal assistance in criminal matters in cases relating to transnational crime. A regional ASEAN treaty on mutual legal assistance in criminal matters is also in place; however, all ASEAN members have not implemented it yet⁴. Informal cooperation between law enforcement agencies is also an essential tool in fighting crime. Informal cooperation—also “police to police” or “agency to agency” (along border) assistance—typically does not require a legislative basis, and facilitates a wide measure of information sharing between primary law enforcement agencies of different countries. Informal cooperation allows police to share law enforcement intelligence (for example, criminal histories and movement records) during the investigation stage, while evidence is still being gathered. The importance of informal law enforcement cooperation is more appropriate because of its closer link compared with the formal mechanism of extradition and mutual legal assistance.

IV. RECOVERY OF PROCEEDS OF CORRUPTION

A. Corruption Proceeds Offences

Corruption proceeds offences are acts to conceal, keep or transport any kinds of goods with knowledge that those are corruption proceeds as mentioned in the anti-corruption law. Acts that can be counted as corruption proceeds offences are as follows: acting as an intermediary for

¹ Agreement on mutual judicial assistance in civil matters between the Kingdom of Cambodia and the Socialist Republic of Viet Nam 2013.

² Criminal Procedure Code , Book, Article 566 to 595.

³ Law on Anti-corruption, Article 51.

⁴ ASEAN Treaty on Mutual Legal Assistance in Criminal Matters (2004).

transporting items with the knowledge that they are corruption proceeds; or an act that benefits from corruption proceeds with clear knowledge⁵. If an employee is found guilty, he or she should be imprisoned from 6 months to 2 years⁶.

B. Liability for Corruption

When a person is found guilty of corruption, the court shall confiscate all his/her corruption proceeds including property, materials, instruments that are derived from corruption, and the proceeds shall be transformed into state property. If the seized asset is transferred/changed into different property from the nature of the original asset, this transformed asset will become the subject of seizure at the place where it is located. If the corruption proceeds make more benefits or other advantages, all of these benefits and advantages will be seized as well. If the corruption proceeds disappear or lose value, the court may order the settlement of the proceeds.

The hand-over of property is not mentioned clearly in the code. As a matter of practice, property is seized upon the extradition agreement and its requirement for the evidence of the case at the time of arrest, and the seizure is based on the Investigation Chambers' decision attached to the Appeal Court in Phnom Penh.

V. CONCLUSION

The current legal and policy framework demonstrates Cambodia's firm commitment to fighting against corruption. The criminal code and criminal procedure code play a crucial role as fundamental laws in anti-corruption proceedings. The code provides a comprehensive set of requirements for carrying out the extradition and the procedures of asset recovery which should be agreed to in the bilateral and multilateral agreements in principle.

The law on anti-corruption provides a comprehensive set of criminal offences relating to corruption and confiscation of all corruption proceeds including property, material, and instruments that are derived from corrupt acts, and the proceeds shall be transformed into state property.

The essential alternative to legal assistance is informal cooperation—also “police to police” or “agency to agency” (along border) assistance—typically does not require a legislative basis or reciprocity. Facilitating a wide measure of information sharing between primary law enforcement agencies of different countries is the appropriate, successful way of handling corruption offences.

⁵ The Anti-Corruption Law, Article 37.

⁶ The Criminal Code, Article 278.