

# Technical Update

April 2020



## Tourism - Tourism Licenses for Tour Operators, Travel Agents and Branches

**Ministry of Tourism (MoT) – Prakas No. 113 dated 09 July 2019 on the Issuance of Tourism Licenses for Tour Operators, Travel Agents and Branches (“Prakas” or “Prakas No. 113”)**

**Notification No. 488 dated 12 December 2019 on the Implementation of Prakas No. 113**

This Prakas aims to strengthen effective management and to promote the quality of the services of Tour Operators and Travel Agents to attract local and international tourists. The Prakas also set out the rules and management mechanisms for Tourism Licenses.

### The Prakas provides for three types of Tour Operators:

- 1. Inbound Tour Operators:** Individuals or entities providing package tours for overseas tourists for visiting inside Cambodia.
- 2. Outbound Tour Operators:** Cambodian individuals or Cambodian entities providing package tours for local tourists for visiting outside of Cambodia.
- 3. Domestic Tour Operators:** Cambodian individuals or Cambodian entities providing package tours for tourists for visiting inside Cambodia.

**Note:** Individuals or entities operating as Outbound Tour Operators or as Domestic Tour Operators must be Cambodian individuals or Cambodian entities.

### The Prakas also provides 2 (two) types of Travel Agents:

- 1. Travel Agents:** Cambodian individuals or Cambodian entities providing sales assistant involved with tourism services such as travel tickets, tourist accommodation services and other tourism services including package tours offered by Tour Operators.
- 2. Domestic Travel Agents:** Cambodian individuals or Cambodian entities providing sales assistant for tourism services specific to family such as travel tickets, tourist accommodation services and other services including package tours in Cambodia offered by Domestic Tour Operators.

**Note:** Under article 4 of Prakas No. 113, individuals or entities operating as Travel Agents or as Domestic Travel Agents must be Cambodian individuals or Cambodian entities.

Tourism Licenses for Tour Operators and Travel Agents (“**Licenses**”) will be issued based on each type of business operations as described above.

The Prakas also specifies the following:

- Criteria to obtain Domestic Travel Agent License:
  - (a) the applicant must be a Cambodian individual or entity;
  - (b) operating in the determined zone or within the province or municipality where the applicant resides;
  - (c) small family business not classified as taxable under the self-assessment tax regime;
  - (d) annual turnover not exceeding KHR50 million and capital equal to KHR20 million or less;
  - (e) having less than four employees with office space not exceeding three square meters
- The competent authorities of the Ministry of Tourism on the management, control, granting of Licenses, suspension or downgrading of Licenses.
- Rules, procedures and required documents to apply for the Licenses, opening of Branches, annual renewal, closure of business, change of License holder or owner and change of name.
- Obligations of the License holders; conditions on the usages of the Licenses; penalties for failure to obtain valid Licenses; and violation of the code of professional conduct and code of ethics governing the Licenses.

According to **Notification No. 448**, all new or renewal applications for Licenses and for Branches with the MoT or Provincial/ Municipal Departments are implemented from **1 January 2020**.

Each License is valid for one (1) year after the issuance date from the MoT or Provincial/Municipal Department or Sub-National Administration. Each License must be renewed annually, and the renewal must be made at least thirty (30) days before the expiry date.

All tourism operators are obliged to report their business operations to the MoT once every three (3) months and upon the MoT's request.

Prakas No. 113 replaces Prakas 041 dated 18 January 2016 on the Issuance of Tourism Licenses for Tour Operators and Travel Agents.

## **Tourism - Notification on the Provision of Grace Period from Transitional Financial Penalties for Tourism Businesses**

### **Ministry of Tourism (MoT) – Notification No. 154 dated 26 March 2020 on the Provision of a Grace Period from Transitional Financial Penalties for Tourism Businesses**

Due to the impact of COVID-19 on the tourism businesses, the Ministry of Tourism issued a notification to provide a grace period from transitional financial penalties (or fines) for all Tourism Licenses including:

- Tour operators
- Travel agents
- Tour guides
- Translators
- Hotels
- Tourist accommodation services
- Spa, massage and wellness centers
- Tourist Sports centers
- Restaurants and canteens
- Tourist transport
- Resorts.

The grace period will be effective from 26 March 2020 until **30 June 2020**.

The Ministry of Tourism requests all tourism business operators that have not obtained the Licenses or whose Licenses expired to apply for new Licenses or apply for renewals soon.

## Real Estate – Management of Real Estate Development Business

### Ministry of Economy and Finance – Prakas No. 089 dated 20 January 2020 on the management of real estate development business

This Prakas aims to regulate the real estate development business for both sales or long-term lease purposes. It extends the scope of former Prakas No. 965 by also regulating the land lot development business.

The conditions and requirements for obtaining licenses/permits for the (1) housing development business; (2) co-owned building development business; and (3) land lot development business; are stated in this new Prakas.

As with Prakas No. 965, there are two categories of license/permit for housing developers:

- (1) Category 1: Sales upon 100% completion of the construction.
- (2) Category 2: Sales while construction is in progress.

As one of the requirements for obtaining a license/permit for a land lot developer, this Prakas requires the deposit of a business security of 5% of the total investment value and this deposit could be withdrawn only after the land lot developer settles all obligations.

The real estate developers also have obligations to submit monthly and trimester reports to the Ministry/Department in-charge, on the progress, cash movements in real estate development accounts, and sales-purchases of the projects. Annually, real estate developers also have to submit the audited financial statement within three months after each fiscal year end to the Ministry/Department in-charge.

The housing development license provided to the housing developers before the implementation of this Prakas shall remain valid until the expiry date. Land lot developers must request a new license/permit.

Prakas No. 965 dated 24 August 2016 on the Management of the Housing Development Business and any regulations contrary to this Prakas are considered abrogated.

## Construction – Instruction on the Strengthening of the Construction Quality and Safety

### Ministry of Land Management, Urban Planning and Construction (MLMUPC)- Instruction No. 002 dated 10 January 2020 on the Strengthening of the Construction Quality and Safety

The MLMUPC issued an instruction to the competent authorities to strengthen the implementation of the Law on Construction and relevant regulations as follows:

- Prohibition on the construction work, repair work or demolition work without first having obtained a construction permit and a permit to open the construction site
- Prohibition on any construction work or demolition work by unlicensed builders
- Prohibition on any construction or demolition work without responsible site engineers
- Prohibition to reside in the buildings under construction even if it is temporary and no entry by outsiders into the buildings under construction without any obligations
- Prohibition on the use of all kinds of construction without first having obtained an occupancy certificate or a permit to close the construction site issued by the competent authorities

If there is any violation to the above prohibitions, the competent authorities must issue a letter suspending the construction work. If the construction work continues, the competent authorities must bring the case to the court.

To enforce the security and safety of the construction site, the competent authorities shall implement the below principles and measures diligently:

#### 1. Construction permit for construction, repair or demolition:

- Architectural and demolition design documents must be prepared, signed and sealed by a project study design company licensed by the MLMUPC.
- Any use, business operations, arrangement and other related works on the buildings without a construction permit or construction built not corresponding with its construction permit are prohibited.

## **2. Permit to open a construction site:**

- Construction structure and other technical design documents must be prepared, signed and sealed by a project study design company licensed by the MLMUPC and certified by a construction certifier recognized by the MLMUPC.
- Permit to open the construction sites must include identity of builder, site engineer, site liability insurance and construction site design documents signed by a technical director.

## **3. Construction site preparation:**

- Construction information board must be displayed in front of the construction site by including name of the construction project, name of the construction company, name of construction foreman, name of construction owner, name of site engineer and telephone, construction permit, permit to open the construction site, three dimensional picture of the construction plan, and address of construction site.
- The construction controllers must pay attention to security measures as outlined in the Prakas No. 32 on construction site management dated 20 March 2001 and the handbook on safety at construction sites (2018) of the MLMUPC.

## **4. Process of construction site:**

- Only a licensed construction company can enter into a construction contract.
- All construction sites must have a record book to regularly record the building or demolition work and such book shall be submitted to the construction controller upon inspection.
- The construction company or the site engineer must notify the construction controller for the inspection on construction work as per the stages below:
  - During the determination of the construction site;
  - During the implementation of piling work;
  - During the implementation of ground floor work; and
  - During the implementation of construction structure work.

## **5. Certification work:**

- Construction structure design and building work must be certified by a certifier recognized by the MLMUPC
- Construction certification is the document used by the competent authorities for the granting of occupancy certificate to use, lease construction, or conduct business with a construction.

The competent authorities shall implement this instruction effectively from 10 January 2020 onwards.

## Labor – Law on the Amendment of Law on Trade Unions

**The law on the amendment of Articles 3, 17, 20, 21, 27, 28, 29, 54, 55 and 59 of the Law on Trade Unions (the “Amended Law”) was promulgated on 03 January 2020.**

The new Article 3 of the Amended Law has reduced its scope to only cover the enterprises or establishments under the provisions of the Labor law. Note that the previous law also covered the personnel working in the air and maritime transportation in addition to the enterprises or establishments under the provisions of the Labor law.

The other new Articles which have been amended and key changes are set out below:

### **Article 17 (New): Maintenance of Registration**

- Only a registered union or employer association has legal personality and lawfulness. In order to maintain the approved registration as valid, a registered union or employer association shall fulfil certain requirements under this article.
- The Amended Law has removed the requirement for unions or employer associations to submit a copy of their annual financial statements and annual activity reports to the Ministry in charge of Labor.
- The Amended Law requires the annual financial statements and annual activity reports of a union or employer association to be audited by an independent audit institution legally registered in the Kingdom of Cambodia in case there is request from the following:
  - (a) 10% of the total members or any donor of local union and employer association; or
  - (b) 5% of the total members or any donor for a union federation, union confederation and employer federation.

### **Article 20 (New): Requirements for Leaders and Persons Responsible for the Administration of Unions in the Enterprises or Establishments**

- The requirements for the **Cambodian nationals** who are leaders and persons responsible for the administration of a union have been amended as follows:
  - (a) he/she must be at least 18 (eighteen) years of age or be an emancipated minor; and
  - (b) he/she shall make a self-declaration of a specific and legal residential address.
- The requirements for the **foreigners** who are leaders and persons responsible for the administration of a union have been amended as follows:
  - (a) he/she must be at least 18 (eighteen) years of age or be an emancipated minor;
  - (b) he/she must be able to read and write the Khmer language;
  - (c) he/she has been working for at least 2 (two) years in Cambodia; and
  - (d) he/she must have the rights to reside and have permanent residence in Cambodia in compliance with the Law on Immigration of Cambodia.

### **Article 21 (New): The Requirements for Leaders and Persons Responsible for the Administration of Employer Associations**

- The requirement for **Cambodian nationals** who are leaders and persons responsible for the administration of employer associations have been amended as follows:
  - (a) he/she must be at least 18 (eighteen) years of age; and
  - (b) he/she must make a self-declaration of a specific and legal residential address.
- The requirement for **foreign employers** eligible to stand as candidates for election to be leaders, and persons responsible for the administration of employer associations have been amended as follows:
  - (a) he/she must be at least 18 (eighteen) years of age;
  - (b) he/she must have the rights to reside and have permanent residence in Cambodia in compliance with the Law on Immigration of Cambodia; and
  - (c) he/she has been investing or working for at least 2 (two) consecutive years in Cambodia.

## Article 27 (New): Keeping of Financial Records

- The Amended Law has removed the requirement for unions or employer associations to send a copy of financial statements to the Ministry in charge of Labor.
- The Amended Law requires the financial statements to be audited by an independent audit institution legally registered in the Kingdom of Cambodia in case there is request from the following:
  - (1) 10% or more of the total members or any donor for a local union and employer association; or
  - (2) 5% or more of the total members or any donor for a union federation, union confederation and employer federation.

## Article 28 (New): Dissolution of Unions or Employer Associations

According to the law prior to amendment, in the event of a complete closure of an enterprise or establishment, a union or employer association is automatically dissolved.

According to the Amended Law, in the event of a complete closure of an enterprise or establishment, a union or employer association is automatically dissolved **once the wages and other benefits of employees/workers have been fully paid.**

## Article 29 (New): Grounds for Dissolution by the Labor Court

The Amended Law eliminates the ground for dissolution by the labor court if leaders and persons responsible for the administration were found to have committed serious misconduct or an offense in the capacity of the union or the employer association.

## Article 54 (New): The Most Representative Status in the Enterprises or Establishments Level

The criteria to obtain the most representative status for a union by having the most members with membership identification cards and a proper name list of members has been amended to having a name list of most members who have paid up their union contribution fees.

## Article 55 (New): The Most Representative Status in a Profession or an Economic Activity or a Sector

The additional criteria of having the most members with proper membership identification cards of all employees/workers has been replaced by having list of most members who have paid up union contribution fees of at least 30% of the total number of employees/workers in a profession or an economic activity or a sector wherein unions apply for the certification of the most representative status.

## Article 59 (New): Rights and Roles of Minority Unions in the Enterprises or Establishments where there is the Most Representative Worker Union

The Amended Law has added new rights and roles to the minority unions to represent their members in resolving collective labor disputes which do not arise from the implementation of collective bargaining agreements.

The Amended Law is effective from 03 January 2020.

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