



# Business Integrity Country Agenda (BICA) Assessment Report

## **Transparency International Cambodia**

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Transparency International Cambodia is the fully-accredited local chapter of Transparency International and was officially founded on 5 July 2010 by a number of anti-corruption activists and professionals committed to the creation of transparent and accountable Cambodia. It has since built a strong institution arduously fighting corruption and promoting integrity, transparency and accountability in the country.

We work together with individuals and institutions at all levels including government, civil society, business, media and the wider public to achieve sustainable economic development, promote integrity, and fight against corruption.

This document was produced with the financial assistance of the European Union, Sweden and Switzerland. The views expressed herein can in no way be taken to reflect the official opinion of the European Union, Sweden or Switzerland.

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**Transparency International is the global civil society organisation leading the fight against corruption. Through more than 100 chapters worldwide and an international secretariat in Berlin, we raise awareness of the damaging effects of corruption and work with partners in government, business and civil society to develop and implement effective measures to tackle it.**

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## List of Abbreviations

American Chamber of Commerce	AMCHAM
Anti-Corruption Unit	ACU
Anti-Money Laundering Strategy	AMLS
Asian Development Bank	ABD
Association of Southeast Asian Nations	ASEA
Australian Chamber of Commerce	AUSCHAM
Automated System for Customs Data	ASYCUDA
Better Factories Cambodia	BCF
Business Integrity Country Agenda	BICA
Business Integrity Program	BIP
Cambodia Advocacy and Legal Advice Center	ALAC
Cambodian Center for Human Rights	CCHR
Cambodia Centre for Independent Media	CCIM
Cambodian Chamber of Commerce	CAMCHAM
Cambodian Federation of Employers and Business Associations	CAMFEBA
Cambodian Freight Forwarders Association	CAMFFA
Cambodian Financial Intelligence Unit	CAFIU
Cambodian Human Rights and Development Association	ADHOC
Cambodian International Financial Reporting Standard	CIFRS
Cambodia Import-Export and Fraud Repression Directorate General	CAMCONTROL
Cambodian League for the Promotion and Defense of Human Rights	LICADHO
Cambodian National Rescue Party	CNRP
Cambodian People's Party	CPP
Cambodian Securities Exchange	CSX
Cambodian Women's Entrepreneurs Association	CWEA
Canadian Chamber of Commerce	CANCHAM
Centre for International Private Enterprise	CIPE
Civil Society Organisation	CSO
Committee for Free and Fair Elections	COMFREL
Complaint Handling Mechanism	CHM
Cooperation Council for Cambodia	CCC
Corporate Social Responsibility	CSR
Council for Development of Cambodia	CDC
Customs-Private Sector Partnership Mechanism	CPPM
European Chamber of Commerce	EUROCHAM
Extractive Industry Governance Form	EIGF
Federation of Association of Small and Medium Enterprises of Cambodia	FASMEC
Financial Action Task Force	FATF
Financial Intelligence Unit	FIU
Front Uni National Pour un Cambodge Independent, Neutre, Pacifique et Cooperatif	FUNIPEC
Garment Manufacturers Association in Cambodia	GMAC
General Department of Customs and Excise	GDCE
General Department of Taxation	GDT
German Corporation for International Cooperation	GIZ
Global Coordination Bureau	GCB

Government-Private Sector Forum	GSF
Gross Domestic Income (per capita)	GDI
Gross Domestic Product (per capita)	GDP
Gross National Income	GNI
Illicit Financial Flows	IFF
International Financial Reporting Standards	IFRS
International Labor Office	ILO
International Financial Reporting Standards	IFRS
Joint Procurement Monitoring Committee at the Sub-National Level	JPMC
Kampuchea Institute Certified Public Accountants and Auditors	KICPAA
Memorandum of Understanding	MoU
Least Developed Countries	LDC
Micro-finance Institutions	MFIs
Ministry of Commerce	MoC
Ministry of Economy and Finance	MEF
Ministry of the Interior	Mol
Ministry of Industry and Handicraft	MIH
Ministry of Justice	MoJ
Ministry of Land Management Urban Planning and Construction	MLMUPC
Ministry of Mines and Energy	MME
Ministry of Planning	MoP
Ministry of Public Works and Transport	MPWT
National Accounting Council	NAC
National Advisory Group	NAG
National Audit Authority	NAA
National Bank of Cambodia	NBC
National Committee for Sub-National Democratic Development	NCDD
National Council Against Corruption	NCAC
National Election Committee	NEC
National Integrity System Assessment	NISA
National Single Window	NSW
Organisation for Economic Cooperation and Development	OECD
Provincial Planning and Investment Division	PID
Purchasing Power Parity	PPP
Qualified Investment Projects	QIP
Real Regime Tax System	RRTS
Royal Government of Cambodia	RGC
Single Administrative Declaration	SAD
Small and Medium Enterprises	SMEs
Social Protection Policy Framework	SPPF
Special Economic Zones	SEZ
Strengthening Procurement System at sub-national Level	SPSL
Transparency International	TI
Transparency International Cambodia	TI Cambodia, TI-C
United Nations Convention Against Corruption	UNCAC
United Nations Convention Against Transnational Organized Crime	UNCATOC
United Nations Development Program	UNDP
United Nations Office on Drugs and Crime	UNODC



United Nations Transition Authority in Cambodia	UNTAC
World Bank Group	WBG
World Customs Organisation	WCO
World Trade Organisation	WTO

## Laws

Cambodian Constitution	1993, 2004	Constitution
Cambodian Civil Code	2007	Civil Code
Cambodian Code of Criminal Procedure	2007	Criminal Procedure
Cambodian Penal Code	2009	Penal Code
Law on Accounting and Auditing	2016	LAA
Law on Anti-Money Laundering and Combating Financing of Terrorism	2007	LAMCTF
Law on Anti-Corruption	2010	ACL
Law on Associations and Non-Governmental Organisations	2015	LANGO
Law on Commercial Arbitration	2006	LCA
Law on Commercial Enterprises	2005	LCE
Law on Commercial Rules and Commercial Register	1995, 1999	LCRCR
Law on Corporate Accounts (Their Audit and The Accounting Profession)	2002	LCA
Law on Customs	2007	LoC
Law on Election of Members of the National Assembly	2013	LEMNA
Law on General Statute of Public Enterprises	1996	LPE
Law on Financial Management	2017	LFM
Law on Investment of the Kingdom of Cambodia	1994, 2003	LoI
Law on Political Party	1997, 2017	LPP
Law on Public Procurement	2012	LPP
Law on Taxation	1997, 2003	LoT
Law on the Issuance and Trading of Non-Government Securities (Securities Law)	2007	SL
A Law		Kram
A proclamation signed by a minister or inter-ministerial entity <sup>1</sup>		Prakas

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# Foreword

Cambodia's economy continues to experience extraordinary growth. This economic growth is significant for Cambodians, as eventually more and more people will benefit from its occurrence. However, with significant growth there is a need to ensure that Cambodian citizens of all classes, but especially the poor, enjoy an equitable share. This growth also comes with significant changes, thus the public sector, private sector and civil society must be prepared to navigate those changes. Cambodia's move from a low-income economy to a lower-middle income economy represents a significant change in how the Royal Government of Cambodia will obtain revenue and puts increased emphasis on tax collection.

These changes are exciting for businesses; however, they can be daunting as well. Increased regulations signify more headaches for business, particularly small and medium enterprises. However, continuing to develop and enforce a strong legal framework will create a vibrant level playing field for all businesses.

It has come to the point where bureaucratic processes and informal payments are constraining Cambodia's businesses. It is our hope that new initiatives such as increased online mechanisms for business registration, tax payment, and import and export procedures will make these inhibitors a thing of the past. This report strongly recommends that more mechanisms be available online wherever possible. The legal framework must also be strengthened to be in line with Cambodia's World Trade Organization obligations and provide the necessary backbone for business to operate effectively. We have long advocated for the passage of a law to protect whistleblowers, and we continue to recommend that the draft law on the protection of reporting persons be promulgated. In addition, we recommend the passage of the draft law on competition to ensure a level playing field. Enforcement of the current legal framework supporting business integrity is difficult to measure because there is very little information that is publicly available. We call for greater transparency on enforcement measures, as we believe that knowing about enforcement of the law deters others from violating the law.

The private sector must also share in some of this burden to level the playing field and create fair competition for all businesses. Domestic companies are encouraged to develop strong internal mechanisms to increase their business integrity and compliance with the law. We recommend our Corporate Integrity Systems as a mechanism to equip companies with the policies and procedures they need to combat corruption. Larger companies should demonstrate greater transparency on their websites or in their annual reports about their organisational structure, tax payments, and revenue in Cambodia. Additionally, companies should make clear statements about their stance on corruption. Foreign companies must also be transparent about their activities in Cambodia in their annual reports and on their websites, and must remain compliant with Cambodia's laws. Business associations and chambers of commerce have long provided meaningful and valuable services to their members and we hope they will lead the way in promoting business integrity. Lastly, businesses who have not registered should become legally compliant and register with the Ministry of Commerce. While this is daunting for many, many businesses, it is the first step in creating a cleaner and less vulnerable business.

To our friends in civil society, we hope you will work with the public and private sectors to promote a level playing field for all businesses. Civil society can work with the private sector to promote responsible, sustainable businesses, as both sectors have important values and ideas that can be exchanged with one another. Additionally, civil society must maintain its watchdog role and bring to light abuses in the private sector that have had detrimental effects on society. This is and always will be a valuable role for both media and civil society organisations.

It is our hope that this report will provide valuable and meaningful information and actions for moving forward. The intention of the report was never to place blame on one sector or institution, but rather to provide a baseline for Cambodia's progress and growth. By taking an honest look at where we are, we can clearly see how we can move forward together. We hope that by increasing accountability, transparency and integrity in all sectors, Cambodia can level the playing field and experience growth that creates equal opportunities for all members of its society.



**Kol Preap**  
Executive Director  
Transparency International Cambodia

# Acknowledgements

The Business Integrity Country Agenda (“BICA”) assessment has been possible through the dedicated work of the researchers and partners, who made BICA a reality. Their hard work and expertise have produced a well-researched, informative and valuable report for Transparency International Cambodia.

We are grateful for BICA’s National Advisory Group: Tilleke and Gibbons, the Cambodian Women Entrepreneurs Association, the Federation of Association of Small and Medium Enterprises, the Cambodian Farmers Association Federation of Agricultural Producers, Phillip Bank, Thmey Thmey and the Cooperation Committee for Cambodia. In addition we acknowledge the Trade Training and Research Institute of the Ministry of Commerce, who provided significant feedback.

We are thankful to the other entities who provided valuable feedback on the report including, the business associations, chambers of commerce, and individual companies. We are grateful to legal expert, Mr. Sok Som Oeun, who conducted legal analysis and provided insight into the relevant legal framework. Thank you to SILAKA for letting us share the successes of your program. Throughout the project, our researchers talked with dozens of SMEs about their business practices, we are thankful to them for their candidness.

We are thankful to Katja Bechtel, Suzanne Mulcahy, and Anna Thayenthal from the Transparency International Secretariat for your initial training and following support.

Thank you to our Expert Reviewer, Megan Karsh, previously the Deputy Director of the Royal University of Law and Economics English Based Bachelor of Law Program and the Executive Director of the Stanford University Rule of Law Program who patiently provided invaluable feedback. Our copy editor, Rachael Barat, and Erika Bryson our layout designer who diligently provided the tools to make a visual appealing and typo free report.

We are thankful to our researchers and report writer, Samina Ullah and Nikola Kutin, who worked tirelessly and often creatively, to complete this report and to the Business Integrity Programme Manager, Sophia Aspesi Areias, who led the report, and researched and drafted sections.

This report would not have been possible without the support of the Transparency International Cambodia team, Sor San, for administrative support, Chhay Pidor, for tips and ideas, Chea Sokunthea for budget support, Seang Meng Aun for HR and administrative support. The Director of Programmes, Pech Pisey who reviewed and provided invaluable feedback. Finally, Sun Long, Houth Ratanak, Im Norin, Sok Sambo, Pen Raksa, and Keith Yeoh for reviewing the report and provided invaluable feedback.

Finally, we would like to thank our donors: the Swiss Agency for Development and Cooperation, the Swedish International Development Agency, and the European Union, for their generous support without which this report would not have been possible.

# The Role of Business Integrity in Fighting Corruption

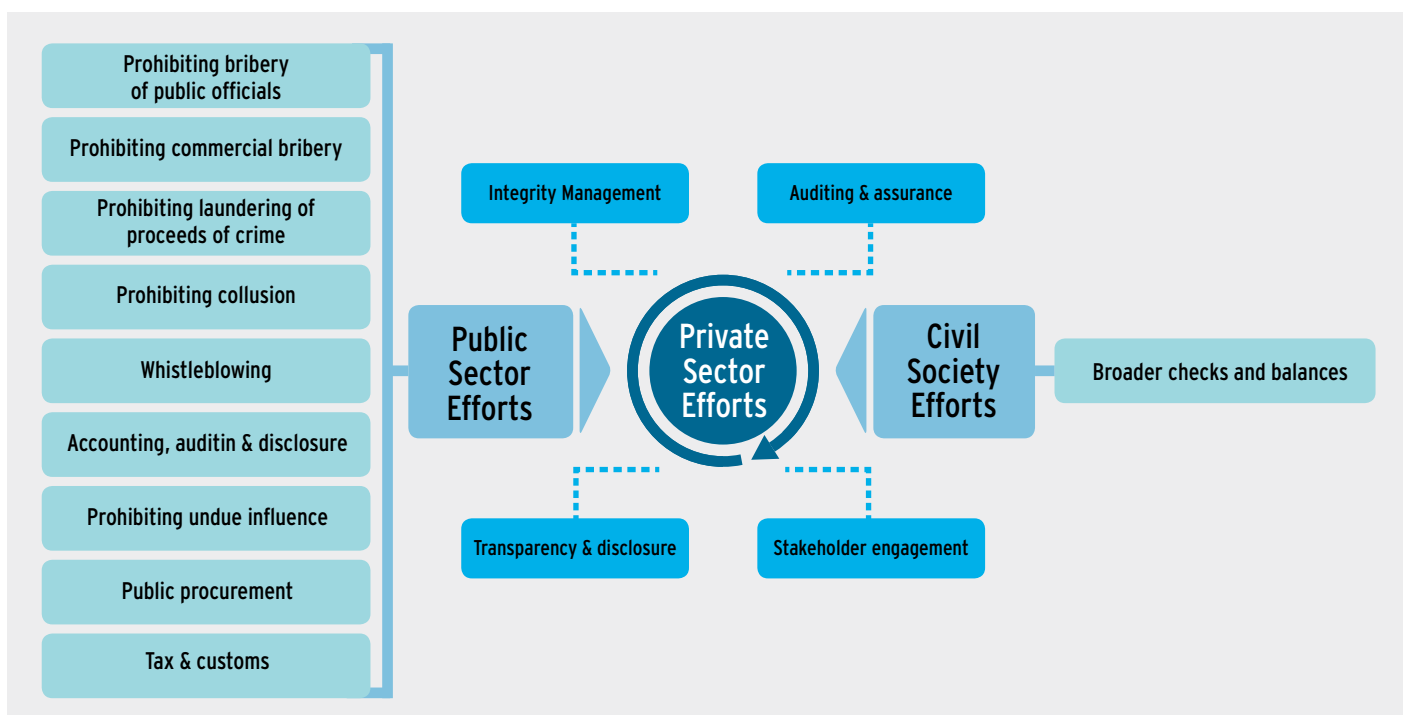
Cambodia's private sector is rapidly changing as the country continues to experience steady economic growth and development. Not all changes are positive, however, as companies continue to be incentivized to engage in corruption. The private sector is frequently viewed as the supply side of corruption, making informal payments to facilitate permits, licenses, and tax declarations. Private sector actors who refuse to engage in corruption may face an uneven playing field in terms of establishing their business and claiming a share of the market.

Improving business integrity counters both the supply and demand side of corruption. This report seeks to further understand the factors and actions that can increase business integrity. In order to address both sides of the corruption equation, this report analyzes:

- 1) The overall business environment created by the public sector;
- 2) The private sector's interaction with the public sector;
- 3) The private sector's behavior;
- 4) Civil society's role in checking both sides.

This report first examines the legal framework within which the private sector operates and how the relevant laws are enforced. That only tells part of the story, however. The report also examines the private sector's behavior in terms of the policies and procedures they implement and the standards they choose to uphold.

Figure 1: BICA Assessment Tool





Transparency International defines business integrity as, “adherence to globally-recognized ethical standards, compliance with both the spirit and letter of the law and regulations, and promotion of responsible core values (i.e. honesty, fairness, and trustworthiness)”.<sup>1</sup> This puts business integrity in line with corporate social responsibility in that private companies must go beyond the law to promote healthier employees and a stronger community. It is not sufficient simply to stay just within the bounds of the law; companies must pursue the values the law was created to protect and promote. Thus, the analysis looks beyond what is required by the law to further understand the commitment of companies to business integrity.

## Why BICA?

Transparency International’s Business Integrity Country Agenda (“BICA”) assessment is the first of its kind in Cambodia. BICA is the first report to analyse the overall business integrity environment in a given country by looking at the efforts of all stakeholders and it is the first comprehensive assessment aimed at reducing private sector corruption. The report creates a body of evidence and a benchmark to assess future progress in private sector anti-corruption movements. Additionally, BICA informs a collective action agenda that will be adopted based on the findings of the report. Other studies in Cambodia have analysed the business environment from an investment or development perspective and may be informative. These include:

- Transparency International’s Corruption Perception Index
- Transparency International Cambodia’s NISA Study
- World Bank Enterprise Survey
- World Bank Ease of Doing Business

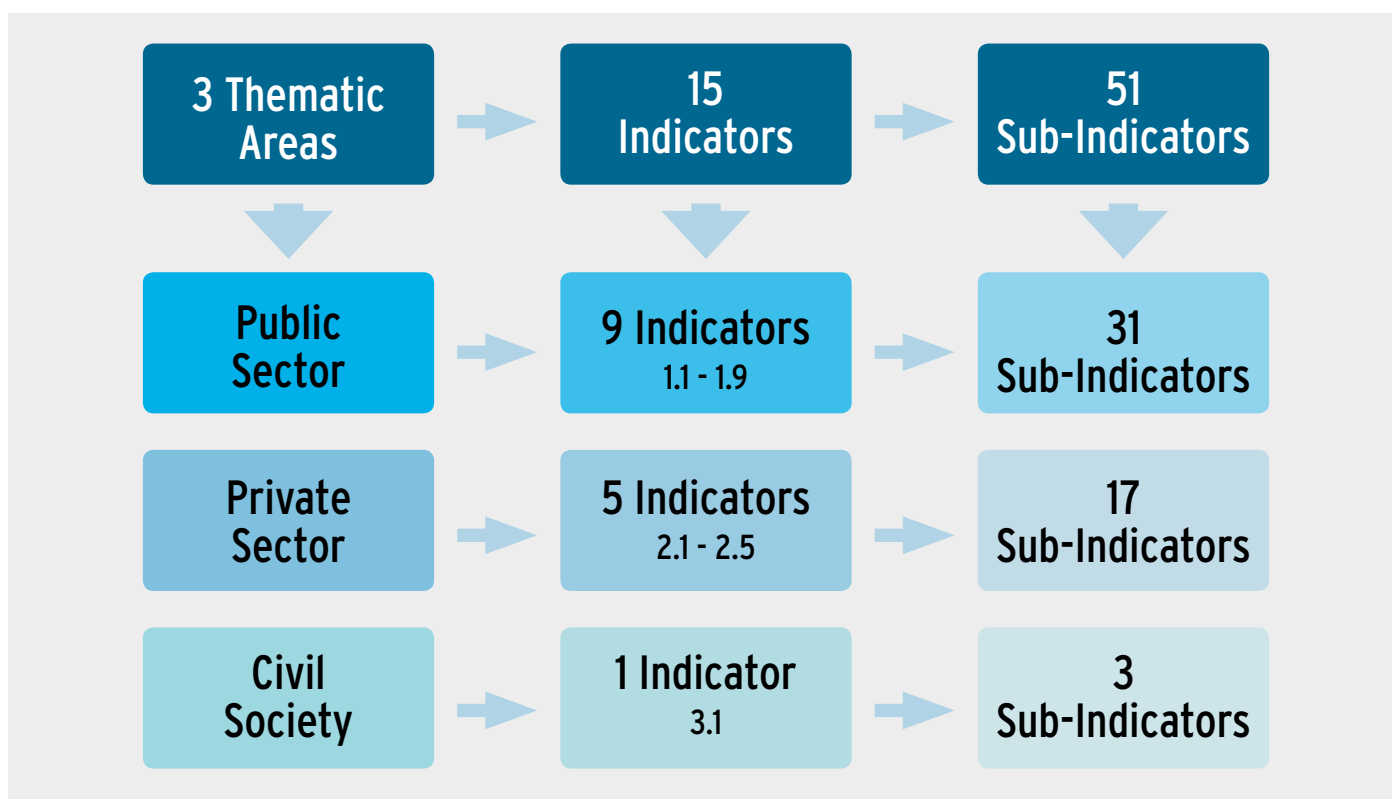
The BICA Assessment is designed to encourage all stakeholders to use the findings and collaborate to improve business integrity and level the playing field.

## Methodology

Transparency International’s Business Integrity Country Agenda (BICA) Assessment of Cambodia seeks to explore in detail the level of business integrity within the country by analyzing three thematic areas: public sector, business sector, and civil society. Each of these three areas is broken down to a set of indicators and each indicator is further broken down to a number of sub-indicators (Figure 1).

Scores are generated for each indicator and sub-indicator. There are a total of 15 indicators and 51 sub-indicators (Figure 2). Nine indicators and 31 sub-indicators relate to the public sector. Five indicators and 17 sub-indicators relate to the private sector, while 1 indicator and 3 sub-indicators relate to civil society.

Figure 2: Evaluation Framework



BICA Researchers used a combination of desktop research and expert interviews to assess all indicators and sub-indicators. The aim of BICA is to provide a comprehensive analysis framework that assesses efforts by all stakeholders to improve business integrity, therefore the legislative framework, law enforcement capacity, and strategies and policies undertaken by public, private and non-governmental organisations were evaluated. "Qualitative research examines events or experiences in context from the perspective of the individuals experiencing the phenomena. This approach allows the researcher to explore the depth and complexity of a phenomenon, identify and describe its components and their relationships, and develop a picture of the whole that can enhance and guide practice and future research...qualitative research is appropriate to address such questions as, "What is going on here? How can I explain it?" or to describe how people live or cope with particular experiences"<sup>3</sup>.

A key feature of BICA is that the researchers' assessments and observations must be discussed and validated by multiple stakeholders. A National Advisory Group (NAG) was created for this purpose that includes 9 organisations involved in the banking, agriculture, tourism, legal, non-governmental and public sectors. As stated in TI's "Conceptual Framework for BICA Assessment, Supplement #1: Assessment Process"<sup>4</sup>, the role of NAG is to:






- advise on research, for the selection or addition of thematic areas, and outreach;
- identify expert interviewees and workshop attendees;
- offer feedback on BICA findings (possible causes and solutions options);
- identify strategic recommendations;
- discuss ways to transform strategic recommendations into an operational reform agenda;
- strengthen the legitimacy and buy-in of key stakeholders into the BICA process and the final report;
- promote BICA findings and recommendations; and
- build up the project partner's network and contacts.

The inaugural NAG meeting was held early in the BICA assessment process to gather feedback on the research methodology.

## Scores of BICA Indicators

As mentioned, each indicator and sub-indicator is scored. The scoring system is based on internationally-accepted standards set forth in international conventions, such as the United Nations Convention against Corruption (“UNCAC”) of 2004,<sup>5</sup> the United Nations Convention against Transnational Organized Crime (“UNCATOC”) of 2003, and others. To facilitate the research, TI prepared a set of questions for each sub-indicator. Each indicator and sub-indicator<sup>6</sup> is evaluated on a scale of 5 (0, 25, 50, 75 and 100). There are only 5 possible scores. In order to facilitate communication, the scores were visualized through common and easily understood “traffic light” symbols (Table 1)

Table 1: Framework of BICA Indicator Scores

Scale of colors	Colors	Comment
0		The corresponding answer to the scoring question is <b>“Not at all”</b> . The evidence collected for the assessment criteria indicates that requirements are not met at all.
25		The corresponding answer to the scoring question is <b>“To a limited extent”</b> . The evidence collected for the assessment criteria indicates that few requirements are met or that many requirements are met to a limited extent.
50		The corresponding answer to the scoring question is <b>“To some extent”</b> . The evidence collected for the assessment criteria indicates that roughly half of the requirements are met or that most requirements are met to some extent.
75		The corresponding answer to the scoring question is <b>“Largely”</b> . The evidence collected for the assessment criteria indicates that many of the requirements are met or most requirements are met to a large extent.
100		The corresponding answer to the scoring questions is <b>“Fully”</b> . The evidence collected for the assessment criteria indicates that all, or almost all, of the requirements are met.

Scores were given and validated through a comprehensive process that included:

- **Desktop Research:** TI researchers conducted secondary research in response to each of the questions listed for every sub-indicator. They gathered information from Cambodian laws, Cambodian newspapers, reports from international institutions, local NGOs, private companies, and local media publications, such as the Cambodia Daily and the Phnom Penh Post. They also collected numeric data from the World Bank Development Indicators, World Bank Enterprise Survey, Statistics Bureau (Ministry of Internal Affairs and Communication, Japan) Transparency International, and other sources. A summary of the findings is provided in the comments section below each indicator.
- **Expert Interviews:** Where there was insufficient secondary data available to attribute a score, researchers conducted expert interviews. The experts were asked precise questions and in some cases were asked to evaluate some of the sub-indicators on the scale of 5.
- **Draft of the scores:** Following the desktop research, expert interviews, and the references for each sub-indicator<sup>7</sup>, TI Cambodia generated the first draft of scores along with the comments related to each indicator and sub-indicator. TI Cambodia researchers based the proposed scores on their holistic analysis of the aggregated data. Given the necessarily qualitative nature of the assessment, a certain degree of subjectivity is inevitable but TI Cambodia took steps to control for bias and to ensure that scores were well-informed.

- **Feedback from NAG:** TI Cambodia shared the indicator scores and comments with NAG members to increase the credibility of the BICA report and to ensure the objectivity of the results. Two workshops were held to discuss each indicator and validate each score. Some of the scores were modified based on the recommendations and feedback of NAG members.
- **Final scores attribution:** TI researchers revised the scores and comments based on NAG input and finalized the report. An independent expert reviewer edited and provided additional comments on the report.

It should be emphasized that some indicators have scores of 0 (red color) because there is no applicable law, (i.e. law on lobbying). While provisions in other laws or regulations may be relevant, the BICA researchers only scored indicators where specific laws to the indicator were promulgated. The 0 score simply means there is no clear legislative framework related to the indicator, not that the private or public sectors are completely inactive in that area.

The idea of the scoring is not to cast a negative light on stakeholders or suggest that they lack willingness to improve the business integrity in Cambodia. On the contrary, the purpose of scoring is to launch continued discussion and engagement with relevant stakeholders and to highlight where more efforts are needed in terms of law enforcement and legislative initiatives. A scoring metric creates benchmarks to assess continued progress, and TI Cambodia will conduct a follow-up BICA assessment in the future.

*“BICA National Advisory Group Meeting” was hosted on 12 September 2017 to revise BICA indicators results and receive comments from NAG members.*



## Timeline

The BICA Assessment began with the BICA Workshop at the Transparency International Secretariat in early February 2017. The first NAG meeting was held on 1 March 2017, and research commenced shortly after that. The second NAG meeting was held in September to discuss the initial scores, and a follow-up NAG meeting was held in early October. The report was sent to the Expert Reviewer, Megan Karsh, from 18-20 October 2017.

# The Role of Business Integrity in Fighting Corruption

## The Business Integrity Country Agenda (BICA) Initiative

The Business Integrity Country Agenda (BICA) Initiative is a new initiative designed by Transparency International (TI) aimed at reducing corruption and improving the overall business environment. The Initiative consists of two parts: 1) a research assessment of the business integrity environment in Cambodia resulting in the BICA report; and 2) the application of the report's key findings to inform an operational agenda aimed at improving the business integrity environment through collective action. BICA is based on the idea that all sectors, including government and civil society, working collaboratively is the most effective method for reducing corruption in the business environment.

The BICA assessment forms the basis for the report. The assessment examines the three main stakeholders of the business integrity environment: public, private, and civil society. The stakeholders are divided and analysed using 15 thematic areas and 51 indicators. The assessment scores and applies a colour code to each indicator and thematic area according to stakeholders' compliance with the scoring question. The score range is as follows: red (0) for an answer that corresponds to "not at all," orange (25) for an answer that corresponds to "to a limited extent," yellow (50) for an answer that corresponds to "to some extent," yellow-green (75) for an answer that corresponds to "largely," and green (100) for an answer that corresponds to "fully."

The BICA assessment report is the first of its kind to be conducted in Cambodia and will serve as a benchmark for further progress in the overall business environment. The assessment was carried out by Transparency International Cambodia. The assessment is based on evidence gathered from multiple sources: legislation, relevant reports, primary data, stakeholders, and interviews with experts. The process included the selection of a National Advisory Group (NAG) representing a cross-section of the private sector, public sector, and civil society. The NAG was responsible for validating the research scores and informing the recommendations that will be utilised to initiate collective action activities.

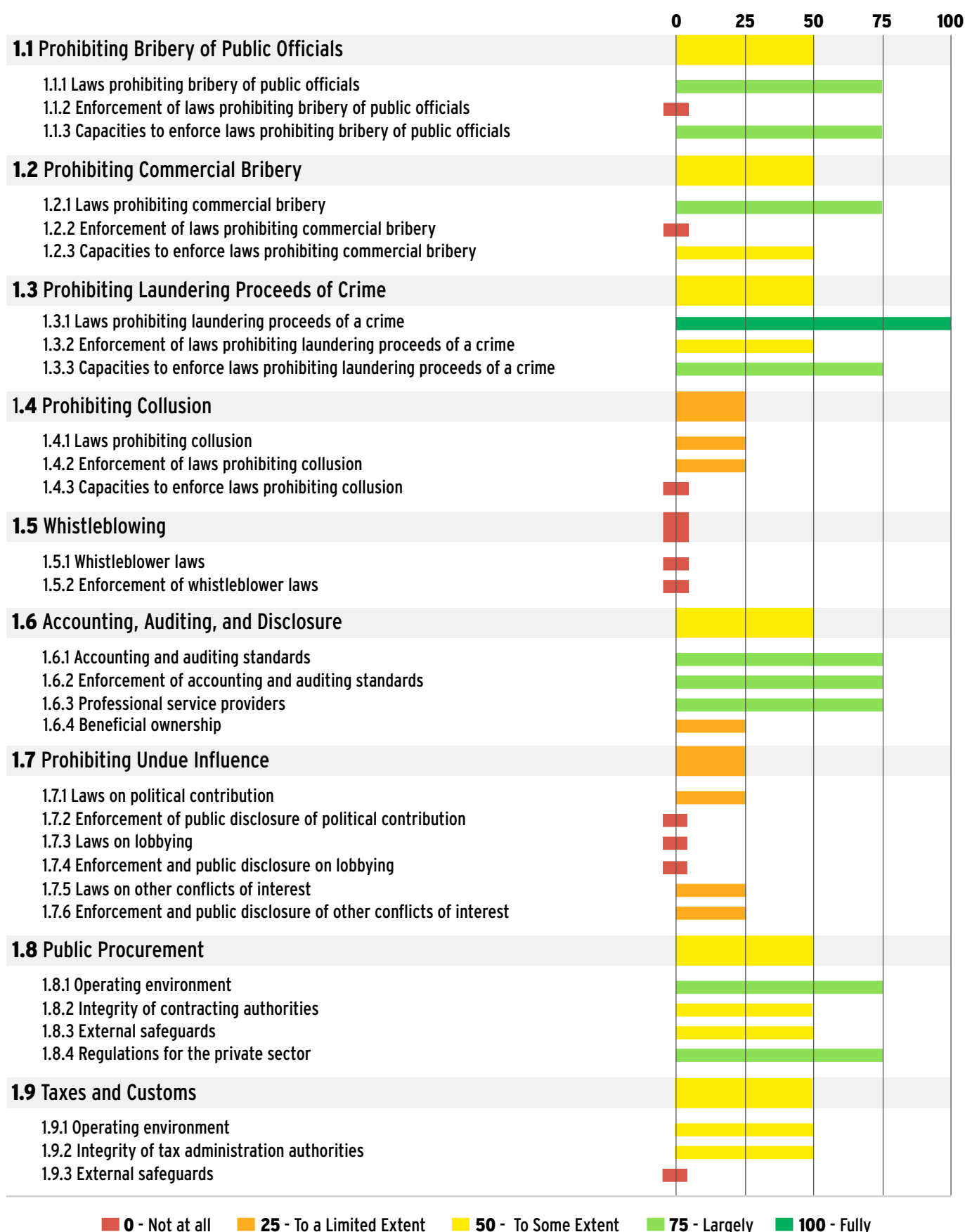
## Results of the BICA Assessment for Cambodia

### Public Sector

The public sector portion of the BICA analysis addresses the role and capacity of national and local governance institutions to promote a transparent and fair business environment and identifies specific areas for reform and reference. The public sector analysis includes the thematic areas of anti-corruption, bribery of public officials and commercial bribery, money laundering, economic competition, undue influence on political parties, protection for whistleblowers, accounting and auditing standards, public tendering and tax administration.



# Public Sector Assessment



## Public Sector Assessment Summary

Business integrity in the public sector is analyzed along three fronts, i) the legislative and policy framework within which the public and private sector operate; ii) the enforcement of this framework by the public sector; and iii) the capacity for enforcement in the public sector and compliance in the private sector.

The first step in assessing the degree to which the public sector is contributing to business integrity in Cambodia is identifying the relevant legal frameworks. Cambodia acceded to the World Trade Organisation (“WTO”) in 2004 and the United Nations Convention Against Corruption (“UNCAC”) in 2007.<sup>8</sup> The domestic legislative framework regulating business generally aligns with international standards, and includes the 2010 Anti-Corruption Law (“ACL”). Cambodia has also promulgated laws relating to the bribery of public officials, commercial bribery, money laundering, accounting and auditing, undue influence, public procurement and tax administration. The legal framework is not comprehensive, however. Several laws are either in draft stage or have yet to be drafted. Additionally, enforcement of existing laws has been problematic and there have been very few convictions or sanctions. Below is an overview of the public sector assessment based on the current legal framework, as well as the institutions responsible for implementation and enforcement.

Bribery of both national and foreign public officials is prohibited by the ACL, which incorporates by reference the Cambodian Criminal Code. Commercial bribery is also prohibited, although more explicitly by the Criminal Code than the ACL. The Anti-Corruption Unit (“ACU”) is the leading organisation with the mandate to investigate corruption complaints. The ACU is intended to interact with the Cambodian courts, which have jurisdiction to try cases<sup>9</sup>. Research indicates that the ACU actively promotes internal solutions to corruption issues with the private sector rather than publicly pursuing public prosecution. There have been very few prosecutions for bribery in Cambodia. However, since the formation of the ACU, only one high level official has been convicted of bribery.<sup>10</sup> The number of corruption claims made to the ACU have decreased since the unit’s formation, which some attribute to the public’s decreasing faith in its independence.<sup>11</sup> As for the courts, there is little information available about judicial capacity, and the judiciary is frequently criticized for corruption.<sup>12</sup>

Cambodia has adopted strong legislation, prakas (proclamations), and declarations concerning anti-money laundering and financing of terrorism, and a multi-stakeholder group coordinates the Anti-Money Laundering (“AML”) Strategy for Cambodia. While the legal framework is relatively strong, Cambodia suffers from a weak judicial system and “endemic corruption” that constrain effective enforcement.<sup>13</sup> The Cambodian Financial Intelligence Unit (“CAFIU”) has publicly stated that it lacks capacity to investigate money laundering and reporting institutions.<sup>14</sup> Only one AML case has been publicly prosecuted to date.<sup>15</sup>

**Despite minimal legislation and enforcement against collusion at the national level, there has been progress at the commune level. Local law enforcement has enforced blacklists against colluding bidders.**

A very limited legal framework exists regarding collusion, despite many highly publicized cases of collusion in natural resource industries. There is a draft Law on Competition, which will address establishing output restriction quotas and sharing or dividing markets, but the law is not in force as of this report’s publication. Despite minimal legislation and enforcement against collusion at the national level, there has been progress at the commune level. Local law enforcement has enforced blacklists against colluding bidders.<sup>16</sup>

Currently, Cambodia lacks a whistleblower law, although there is a draft law on the protection of reporting persons.<sup>17</sup> Additionally, the Cambodian Criminal Code and the ACL criminalize malicious or false denunciations, which arguably deters whistleblowing<sup>18</sup>. The ACL has a confidentiality clause for individuals who report corruption, however, it is unclear whether that provision would protect whistleblowers whose information is deemed malicious.

Cambodia's accounting and auditing standards are inline with international IFRS standards.<sup>19</sup> Domestic accountants, tax consultants and auditors receive a fairly high level of training and are considered professional competent and largely independent. By law, companies must document financial transactions, although some small to medium sized enterprises ("SMEs") are exempted. All companies must register with the General Department of Tax ("GDT") and the Ministry of Commerce ("MoC"), who aid in enforcing auditing and assurance standards. TI Researchers were unable to obtain information about sanctions applied by the National Accounting Council ("NAC") or the Kampuchea Institute of Certified Public Accountants and Auditors ("KICPAA") and ACU investigations into accounting and auditing standards are not publicly available. Obtaining beneficial ownership information is problematic under the current auditing and assurance framework as company registration is sporadic and information company's do disclose upon registration with the MoC is not publicly available as of 2015.

Cambodia has a very limited framework for laws on undue political influence, including conflicts of interest, and the concept of "lobbying" is still very new. The 2013 Amendments to the Law on the Elections of Members of the National Assembly ("LEMNA") does contain provisions on reporting requirements for political parties, including submitting a bank statement prior to the election<sup>20</sup>. This statement is not made publicly available. While anonymous contributions are not banned outright, all parties must report their source of income and expenses during the campaign<sup>21</sup>. There is very little information available about the NEC's enforcement of this new requirements and the NEC is the only entity with oversight.

Currently, there is no legislation on lobbying and none being drafted.

Conflicts of interest are currently only addressed in the Procurement Law, however further provisions are forthcoming in the Draft Competition Law. Under the prakas related to the Law on Procurement, there is a section on conflicts of interest<sup>22</sup> in the procurement process that defines the term and mandates that any bidder or staff of the procurement process must disclose a potential conflict of interest. Sanctions, including criminal penalties, are available under the law. There is no oversight body to monitor conflicts of interest at this stage.

There is a substantial legal framework to regulate public procurement processes in both domestic and international contexts. Two operational manuals (prakas) contain bidding forms and sample contracts, while the Law has several anti-corruption clauses. The public procurement process limits the opportunity of decision-makers to use their discretion during the tender process.<sup>23</sup> All contracting authorities and their employees must submit to the ACL, and corruption in public procurement is monitored by the ACU<sup>24</sup>. Internal monitoring and auditing bodies operate independently under the law, but they do not function consistently across all levels of government. Companies are permitted to tender only if they have sign a statement prohibiting fraud, corruption and collusion<sup>25</sup>. While the law provides incentives for companies who implement anti-corruption policies, these incentives are not applied in practice.<sup>26</sup> Sanctions include monetary penalties, being blacklisted and criminal penalties.

The General Department of Taxation ("GDT") and the General Department of Customs and Excise ("GDCE"), have made strong efforts in recent years to improve their transparency and service delivery<sup>27</sup>. Despite this, requests for informal payments continue to contravene tariff regulations and a high level of bureaucracy can impede private sector productivity and business integrity.<sup>28</sup> The most recent version of the Automated System for Customs Data ("ASYCUDA") has been implemented in 54 major customs branches<sup>29</sup>

and offices, which covers approximately 87% of trade activities, and helps to limit in-person interactions, thereby limiting opportunities for informal payments. Additionally, there is no formal mechanism for monitoring and evaluating GDT and GDCE staff. Tax incentives are available under Qualified Investment Projects (“QIPs”) projects and as incentives to companies who register with the Cambodian Stock Exchange (“CSX”). However, multinational enterprises and QIPs do not disclose their tax deals publicly. While the MoC and the GDT are working to encourage companies to register and be tax compliant, many companies are reluctant to do so, which causes compliant companies to be unfairly disadvantaged compared with unregistered businesses.

On 11 August, TI co-organized a training with FASMEC on “Transparency in Accounting Standard for SMEs” to its members. Around 80 participants attended the event, all of who are business owners and members of FASMEC.



## Recommendations for the Public Sector:

### Short-Term Recommendations:

- Increase online and one-window public services to reduce bureaucratic burdens and costs associated with doing business in Cambodia, particularly for SMEs, and coordination, responsiveness and accountability from relevant Ministries.
- Make business registration with the MoC and GDT publicly available, including access to information on beneficial ownership.
- Expedite the promulgation of key pieces of legislation to increase transparency and accountability such as the draft law on competition; the draft law on the protection of reporting persons; the draft law on the protection of experts, victims and witnesses and provide operational benchmarks for both public and private sectors that are in line with international standards.
- Engage with business associations and civil society to draft laws regulating e-commerce, consumer protection and commercial contracts as well as laws on environmental impacts assessments and building codes.
- The Cambodian Stock Exchange should provide training and encourage companies, particularly SME's, in corporate governance systems and business integrity.
- Strengthen monitoring and oversight of national and sub-national public procurement to assure public notification of contracts and transparency in the outcomes of awarding contracts on national level bids.
- Disclose all Qualified Investment Projects (QIPs) publicly and provide a list of beneficiaries and aggregated data regarding tax incentives and other benefits under the QIP program.
- Disclose all official tariffs levied by the GDCE, the GDT, and other officials publicly, and sanction any officers who request informal tariff payments. Disallow changes to tariff schemes without timely notification to the public.

- Introduce mechanisms to submit complaints directly to the GDT and GDCE and provide a mechanism for anonymous reporting by companies of any issues or wrongdoing involving customs and tax officers.
- Consistently and transparently enforce new amendments to the Cambodian tax code, under the 2017 Financial Management Law, across sectors to avoid creating a non-competitive business environment. Provide more training, incentives and support for businesses to become tax compliant.
- Increase the consistency of enforcement of the GDT of penalties provided under the Tax Code and ensure due process and appeal mechanisms for each application of a penalty by the GDT.
- Clearly define Micro, Small and Medium businesses according to the number of employees and revenues across relevant Ministries in order to have clearer expectations for compliance with taxation and business registration requirements.
- Increase the independence of the NCAC and the ACU by amending the legislation regarding the appointment of NCAC members and the ACU leadership as clearly stated in the TI-NISA Cambodia report.
- Continue to create an environment of integrity within the ACU and a better relationship between the ACU and the public by i) providing an anonymous mechanism for complaints against ACU investigators (i.e. through the online complaint mechanism administered by the Ministry of Civil Service) ii) making public the general process by which ACU investigations result in charges of corruption iii) providing mechanisms of due process and appeal for public allegations of corruption.
- Publish the terms and conditions of the MoUs that the ACU has signed with Cambodian and international companies and other ministries.
- Strengthen the effectiveness of CAFIU in investigating and sanctioning instances of suspected money-laundering and in coordinating and consistently reviewing financial institutions.

### Long-Term Recommendations:

- Improve transparency from the MEF and National Assembly regarding the annual budget and fiscal deficit by the public and timely release of an annual independent audit of the national budget by the national audit authority.
- Increase the independent functioning of the ACU and the Office of the Inspector General from the Executive and Government Ministries.
- The GDT should include more positive reinforcement for tax compliant companies, particularly SMEs, while continuing to work with the business associations and organise workshops and training on business registration and on tax compliance.
- The MoJ and RGC should amend legislation in order to require Judges at all levels of court to publish their decisions and reasoning and ensure that standards are established for open court proceedings.
- Publish and implement a clear and transparent mechanism for the recruitment and appointment of judicial officials and judges, including clear and well-publicised recruitment and appointment criteria.
- Innovate and implement a mechanism for monitoring and evaluating staff performance at GDT and GDCE for consistency and transparency in order improve good and fair working practices of taxes and customs' officers.
- Strengthen anti-corruption legislation within the Law on Taxation and the Law on Customs and link the Anti-Corruption Law with tax and customs regulations through a sub-decree.
- Create an online legal database of all laws in Cambodia, with translation of all new laws into English, in order to increase awareness of the legal framework in Cambodia and the ability of civil society organisations to monitor legal developments and their implementation.
- The RGC should update existing laws that are outdated, or run counter to anti corruption objectives in consultation with the private sector and civil society (Anti-Corruption Law, Law on Commercial Rules and Commercial Register, Investment Law, Law on Corporate Enterprises, Law on Customs, Law on Taxation).

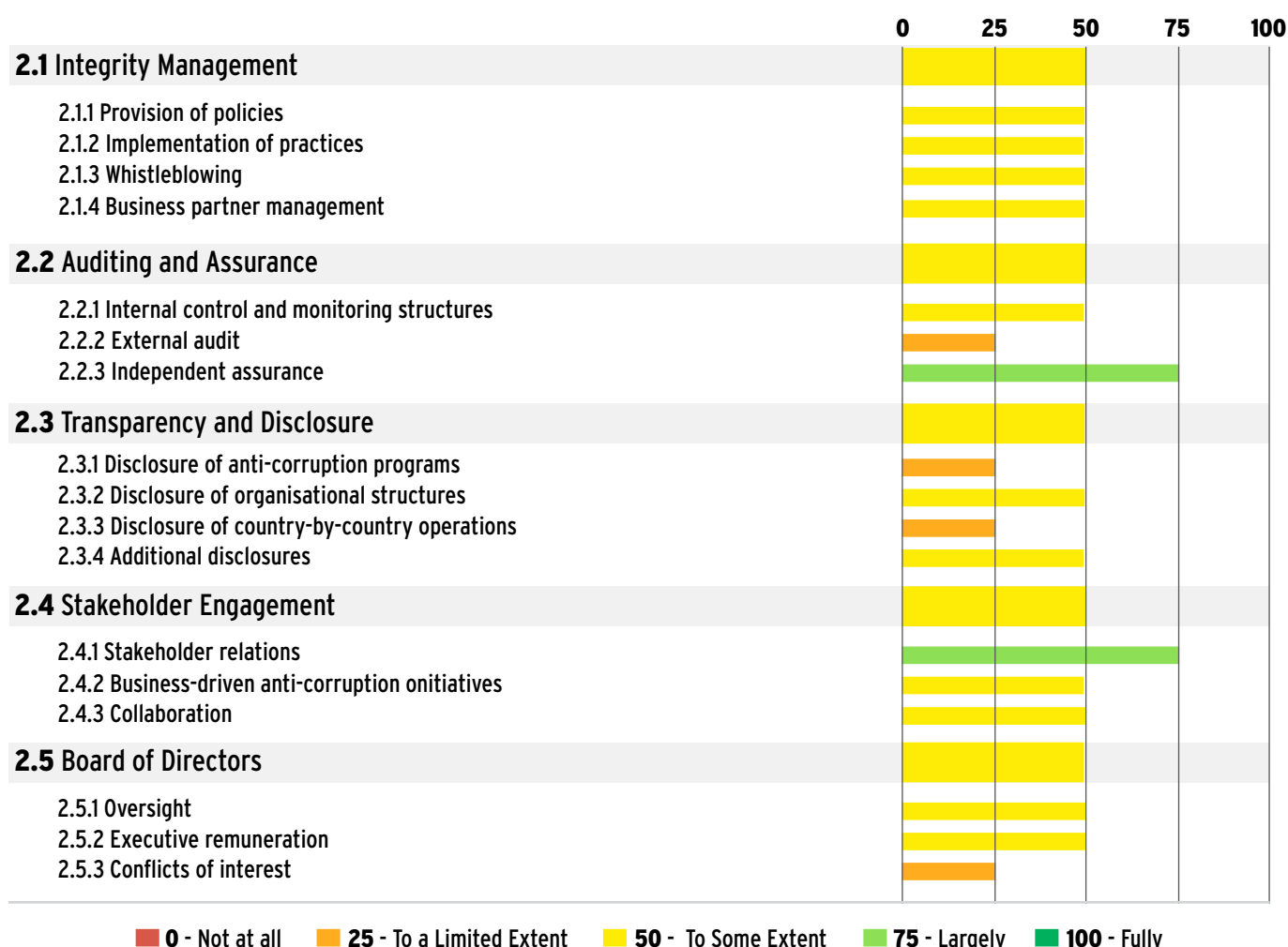


- The RGC should amend the Law on Commercial Enterprises to include legal obligations for companies to establish a code of conduct and anonymous whistleblowing channels.

*“Compliance Best Practice Training”, organised by TI Cambodia to approximately 130 companies interested in corporate compliance systems.*



# Business Sector Assessment



## Private Sector Assessment Summary

Most multinational and joint ventures establish clear strategies against corruption but very few domestic companies have integrity management policies in place. The legal framework in Cambodia does not require companies to adopt a code of conduct or to publicly disclose their anti-corruption policies. The domestic financial sector, including microfinance institutions, tends to have the most established and publicly available policies and procedures, including ethic codes. The ACU has offered substantial support to the private sector, by publishing a guide for companies to avoid corruption and signing MoUs with over 80 private sector entities<sup>30</sup>.

Companies' internal auditing and assurance structures depend on their size. A survey of members of the Federation of the Association of Small and Medium Enterprises in Cambodia ("FASMEC") found that 38% of SMEs had some internal control system.<sup>31</sup> All legally registered domestic companies are required by law to document every financial transaction. Most domestic companies, however, are not large enough to finance an internal audit structure and over 50% of SMEs do not have an official audit committee. External auditors are licensed, but the quality of firms can vary greatly. For larger companies, financial statements are typically externally audited every year, but there is no law requiring an independent assessment of internal audit structures.<sup>32</sup> Companies that are large enough to submit to external auditing often do disclose their audit reports. Very little information is available about whether companies undergo voluntary

independent assurance on the design and implementation of their anti-corruption programs. Cambodian companies are largely not in the habit of disclosing their anti-corruption programs, operations, or organisational layouts, in large part because this information is not legally required.

TI researchers conducted a survey of 47 companies (31 domestic and 16 international), based on the information available on their websites (following TRAC Methodology, see Appendix A). The purpose of the survey was to understand typical practice in terms of disclosing assurance information. Of the 31 domestic companies, only 4 shared any information about their anti-corruption programme or compliance with domestic laws, compared to 12 out of 16 foreign companies. This implies that either domestic companies do not have these policies or that they largely prefer to keep policies an internal matter rather than to publicly disclose them. By contrast, foreign companies and multinationals operating in Cambodia usually have more advanced and publicly available anti-corruption policies and procedures.

**Cambodian companies are largely not in the habit of disclosing their anti-corruption programs, operations, or organisational layouts, in large part because this information is not legally required.**

The main avenue for private sector companies to engage in multi-stakeholder initiatives on anti-corruption is through the business associations for domestic companies and Chambers of Commerce for foreign companies. The European Chamber of Commerce ("EUROCHAM") has a tax committee and works with authorities to provide free information to its members.<sup>33</sup> The Government-Private Sector Forum ("GPSF") is an initiative between the Prime Minister and his Cabinet and the business community that facilitate a series of working group committees that coordinate between the business associations, the Cambodian Chamber of Commerce and the Cabinet. Despite these initiatives and the improvement of several ministries, there is a need to establish better mechanisms for communication between businesses and the ministries, including allowing for more public services online.

The Law on the General Statute of Public Enterprises ("LPE") and the Law on Commercial Enterprises ("LCE") outline the roles and responsibility of the Board of Directors in Cambodian companies, requiring that directors and officers act honestly and make decisions in good faith.<sup>34</sup> Additional regulations outline the corporate governance requirements and the establishment of mechanisms to protect shareholder rights.<sup>35</sup> According to the research, while regulations are in place to govern the conduct of the Board of Directors, very little information is publicly available regarding implementation of these regulations. However, based on expert interviews, these regulations are largely followed where applicable.

## Recommendations for the Private Sector:

### Short-Term Recommendations:

- The chambers of commerce and business associations should disclose information about the benefits of engaging closely with the ACU to their members, particularly, the importance of protection for potential whistleblowers who report to the ACU.
- Business associations and chambers of commerce should continue to organise training in business integrity and corporate practices (i.e. codes of conduct, codes of ethics, anti-corruption reporting channels, anti-corruption policies), including working closely with the ACU to establish and train in best practices.

- Business associations should identify benchmarks for business integrity in each industry and acknowledge and reward companies who achieve them.
- Domestic and international companies should establish anonymous, and protected lines for whistleblowing to encourage employees at all levels to report cases of corruption or other wrongdoing.
- Companies should ensure compliance by registering with the MoC and the GDT. Business associations should encourage the process and assist whenever possible.
- Domestic companies, particularly SME's, should increase business integrity by adopting internal policies and procedures, including codes of conduct, whistleblowing channels and other anti-corruption measures.
- Companies who are required to conduct annual independent audits should conduct audits and publicly release their audited annual reports.
- Companies should disclose anti-corruption policies and activities in their annual reports and on their websites.

### Long-term Recommendations:

- Business associations should encourage companies to understand the value of clean accounting practices and the value added by professional accounting services.
- Companies should require anti-corruption due diligence of their partners and suppliers and create a database of clean companies.
- Private companies should offer more channels to report cases of corruption. Reporting exclusively to ACU is insufficient.
- Chambers of commerce should promote and advise ministries on drafting and promulgating relevant legislation, including the draft law on the protection of reporting persons, the draft law on the protection of experts, victims and witnesses and the draft law on competition and update existing laws which are outdated or run counter to anti-corruption objectives. This should be in consultation with the private sector and civil society.
- Business associations should promote a dialogue on challenges incurred in doing business in Cambodia to remove the shame associated with reporting and talking about problems in doing business.

*"Business Integrity and Introduction to Tax Compliance", organised by TI Cambodia with the Association of Cambodian Recruitment Agencies (ACRA) to around 37 participants in Phnom Penh.*



# Civil Society Sector Assessment



## Civil Society Assessment Summary

Civil society organisations (“CSOs”) have a strong presence in Cambodia, yet very few CSOs have historically emphasised business integrity. Recently, there have been some initiatives focused on business integrity and responsible business conduct. In 2008, 40 domestic and foreign companies supported PACT Cambodia’s Clean Business Initiative, which called for a commitment by companies to avoid bribery and the sale of fake and unsafe products, and to operate with fairness and integrity and to promote reforms to the business environment. In 2014, Transparency International Cambodia launched its Business Integrity Program (“BIP”), which focuses on creating greater transparency, accountability, and integrity in the business environment.<sup>36</sup> Specifically, the BIP works closely with companies to improve their internal structures to combat corruption. Finally, the Cooperation Council for Cambodia (“CCC”) launched their Responsible Business Conduct Program in 2017, which seeks to promote civil society and private sector interaction.<sup>37</sup>

CSOs have not historically served as watchdogs for the private sector around business integrity issues, but they have the capacity to do so. CSOs operating in Cambodia are well placed to serve as watchdogs, as many have done so for the public sector. The watchdog role is extremely important since Cambodia’s media is largely unable to play an accountability role as many media outlets are aligned with the ruling party. As of 2017, 7 of 10 TV channels are owned by individuals associated with the ruling party who are either government employees or are advisors to the government.<sup>38</sup> Other media outlets are disinclined to cover corruption issues because they are supported by advertisements from private companies. Independent journalists do exist and many maintain high standards of journalistic integrity, but they face significant challenges. In late 2017 all radio stations broadcasting Radio Free Asia and Voice of America were prohibited from broadcasting these programmes, coinciding with the closure one of the largest English-language newspapers for unpaid taxes without due process.<sup>39</sup> Some CSOs previously involved in human rights reporting and advocacy may be able to hold private companies accountable for business integrity. They have previously taken companies to task for human rights violations, specifically concerning land rights.

## Recommendations for Civil Society:

### Short-Term Recommendations:

- Civil society organisations should engage with independent media outlets to provide training in investigating and documenting private sector corruption and business integrity issues.
- Civil society organisation should continue to work closely with the private sector on initiatives that promote business integrity.
- Civil society should acknowledge and reward businesses who actively promote anti corruption and business integrity.



- Civil society organisations should actively monitor and report on the private sector with an eye towards anti-corruption and business integrity.

### Long-Term Recommendations:

- Civil society and the private sector should coordinate to promote initiatives that increase business integrity, including legislation and policy changes that increase integrity, transparency and accountability.
- Civil society should consult and engage the private sector and public sector on the passage of key pieces of legislation to increase transparency and accountability, such as the draft law on competition; the draft law on the protection of reporting persons and the draft law on the protection of experts, victims and witnesses.
- The media should continue to identify independent sources of income for their outlets, in order to maintain and promote independence.
- The media should increase investigation and reporting on business integrity.

## What YOU Can Do?

- Encourage your favourite companies to publish their Codes of Conduct and Anti Corruption Policies on their websites.
- Support companies who publicly state that they are against corruption and are known to uphold their commitment to business integrity.
- Report acts of corruption to the ACU.

- 2 Anti-corruption Glossary
- 3 Thompson & Walker, 1998
- 4 TI-BICA Supplement 1: Assessment, 2016, p.12
- 5 UNCAC, Articles 14, 23.
- 6 TI-BICA Supplement 2: Indicators, 2016
- 7 TI-BICA Supplement 2: Indicators, 2016
- 8 WTO Cambodia; UNODC, UNCAC Ratification
- 9 ACL, 2010. Chap. 6.
- 10 The Phnom Penh Post, 6 January 2012,
- 11 The Phnom Penh Post. 5 January 2017.
- 12 TI-NISA Cambodia 2014, p. 6.
- 13 US State Department, 2017
- 14 The Phnom Penh Post, 5 October 2015
- 15 The Cambodia Daily, 11 January 2017.
- 16 Expert Interview 13.
- 17 The Phnom Penh Post, 30 June 2016
- 18 ACL, 2010. Art. 17.
- 19 KPMG, 2016
- 20 LEMNA 2013, Article 37
- 21 LEMNA 2013, Article 37
- 22 Procurement Manual 1, Reg. 4.7.
- 23 Procurement Manual 1, Reg. 6.2.1
- 24 Procurement Manual 1, Reg. 4.3.5.
- 25 Procurement Manual 1, Reg. 14.2.2.
- 26 Procurement Manual 1, Reg. 17.1
- 27 EUROCHAM, 2017
- 28 WBG Enterprise Survey, 2016
- 29 ASYCUDA Project
- 30 US State Department Investment Climate, 2017
- 31 FASMEC Survey, 2017
- 32 FASMEC Survey, 2017
- 33 EUROCHAM, Tax Committee, 2017
- 34 LCE, 2005, Article 127
- 35 Prakas No. 013, Article 3
- 36 The Cambodia Daily, 24 September 2008.
- 37 CCC Strategy 2016-2021
- 38 Reporters Without Borders, 2016
- 39 HRW, 2017

# Country Context

## Population & Geographic Context

Cambodia is geographically situated in the southwest of the Indochinese peninsula, bordering Thailand, Vietnam, and Laos. It has a total land mass of 181,035 square kilometres and a 443km coastline along the Gulf of Thailand. Cambodia has twenty-five provinces including the capital city of Phnom Penh, which is a special administrative area that is administered at the same level as the other provinces. The UN Statistics Division reported that the population of Cambodia is over 15.8 million as of 2016.<sup>40</sup> Cambodian youth under 30 represent 65.3% of the population<sup>41</sup> and 21.4% of the Cambodians live in an urban environment.

## Political Context

In the last century, Cambodia experienced dramatic changes in its social, economic and political systems. After decades as a French Protectorate, Cambodia emerged as an independent state in 1953 with a market oriented economy and a democratic government led by the former King, Norodom Sihanouk. Samdech Sihanouk retained power until a military coup overthrew the government in 1970. The following years were defined by both civil war between the US backed Khmer Republic government and the Khmer Rouge militia, and the US led bombing campaigns along the border with Vietnam. The Khmer Rouge gained control of Cambodia from 1975 and 1979 and forcibly imposed a communist programme of nationalisation and agricultural self-reliance based on the Maoist economic and social model of the Great Leap Forward. This policy resulted in an estimated 1.5 to 2 million deaths from starvation, overwork, lack of medical treatment and harsh punishments imposed by the regime including extra-judicial executions of suspected traitors.<sup>43</sup> Vietnam took control of Cambodia in January of 1979 to stabilise the situation, but the fighting continued between the Khmer Rouge and the Vietnamese backed government until 1998, although in the 1990s it was mostly isolated along the Thai border.

The actions of the Khmer Rouge decimated the social and economic structures of Cambodia. Many families were relocated from their original homes and land during the regime and were separated from each other as a result. Internally displaced people lacked the means to produce their own food or make a livelihood, and their traditional familial support systems had disappeared. All enterprises were abolished, and any use of currency was banned under the regime; therefore, the market economy had to be rebuilt from scratch. The Vietnamese and Soviet backed government, the People's Republic of Kampuchea (1979-1989) rebuilt the Cambodian economy based on a policy of centralisation, relying on state-owned enterprises, communes, and family owned businesses but continued conflict and high levels of poverty continued.<sup>44</sup>

Due largely to international pressure following the end of the Cold War, the single-party system established in 1979 was phased out by the signing of the Paris Peace Agreement in 1991. This led to the creation of the UN Transitional Authority in Cambodia ("UNTAC")<sup>45</sup> who sponsored democratic elections in 1993 and facilitated the adoption of a national constitution guaranteeing a liberal multi-party democratic system.<sup>46</sup> Currently, Cambodia functions as a constitutional monarchy. The historical importance of the monarchy was retained in the Constitution and guarantees national independence, territorial integrity and respect for citizens' rights and freedom.<sup>47</sup>

There have been five national elections since the signing of the 1991 Paris Peace Accords, which ended over two decades of civil war and foreign occupation. An election is held after the end of the legislative term of the National Assembly and the Senate, every five

or six years,<sup>48</sup> respectively. There have been four general elections in Cambodia, for the National Assembly, since the UNTAC mandated elections in 1993 (1998, 2003, 2008, 2013) and two for the Senate after the opening of the first Senate session in 1999 (2006, 2012). The upcoming elections in 2018 will be the first time that the National Assembly and the Senate are elected within the same year. Administrative elections at the district, commune and municipal level are held with regular terms of five years.<sup>49</sup>

## The actions of the Khmer Rouge decimated the social and economic structures of Cambodia.

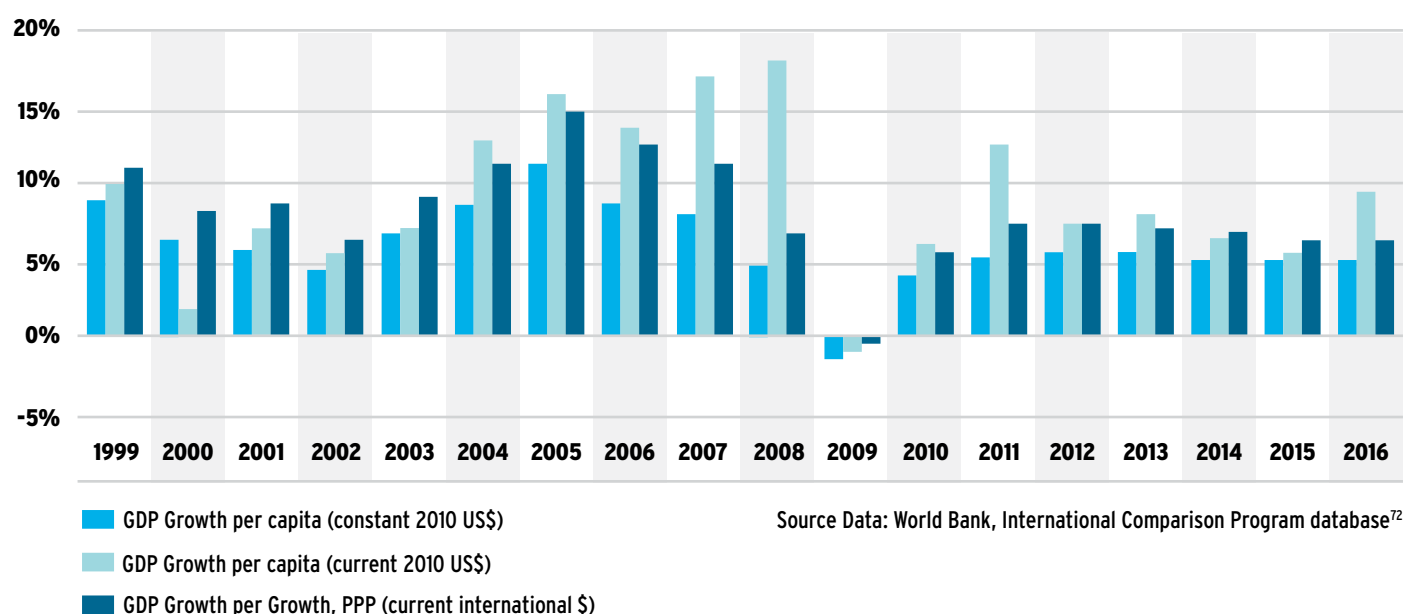
Currently, the Cambodian People's Party ("CPP") holds the majority in the National Assembly and the Cambodian National Rescue Party ("CNRP") was the largest opposition party prior to the dissolution of the party on 16 November 2017.<sup>50</sup> The current Prime Minister, has served in this role since 1985, as the sole Prime Minister since 1998, and as Member of Parliament for Kandal province.<sup>51</sup> The CPP has maintained control of the National Assembly since 1993 through a majority or coalition, but not without controversy. Cambodia's most recent National Assembly election in 2013 was widely seen as procedurally sound but marred by a pre-election environment of intimidation and threats against the opposition party and voters alike, and marked by irregularities.<sup>52</sup>

Since the 2013 national elections, there have been significant restrictions placed on the former leading opposition party and its leadership. The former leader of the CNRP has been living in self-imposed exile in France since November 2015 after a warrant for his arrest was issued over charges of defamation levied seven years prior.<sup>53</sup> A directive banning his entry into Cambodia was issued in October 2016,<sup>54</sup> but was rescinded in June 2017.<sup>55</sup> In February and July 2017 the National Assembly passed new amendments to the Law on Political Parties that ban party leadership from having criminal convictions, resulting in the resignation of the former leader of the CNRP<sup>56</sup> and restricting his future participation in the political arena.<sup>57</sup> A new president of the CNRP was elected on 2 March 2017,<sup>58</sup> but was subsequently arrested and detained on 3 September 2017 on charges of treason.<sup>59</sup> As of October 2017, several lawsuits have been filed demanding the dissolution of the CNRP and the redistribution of its seats among other parties in the National Assembly.<sup>60</sup> On 16 October 2017 the National Assembly approved amendments to Cambodia's election laws to allow for the majority of CNRP seats to go to a royalist-aligned party.<sup>61</sup> The continued detention of the leader of the CNRP has inspired an exodus of party members. Currently, twenty-six opposition MPs are out of the country and seven MPs have charges against them.<sup>62</sup> As of 16 November 2017 the Supreme Court of Cambodia ruled to dissolve the CNRP and ban 118 of the CNRP's senior officials from participating in politics for five years.<sup>63</sup> The National Assembly seats formerly held by the CNRP are being redistributed among the other parties using provisions provided under LANGO,<sup>64</sup> with FUNIPEC standing to gain the most seats.<sup>65</sup> The situation is developing as of the writing of this report.

## Economic Situation

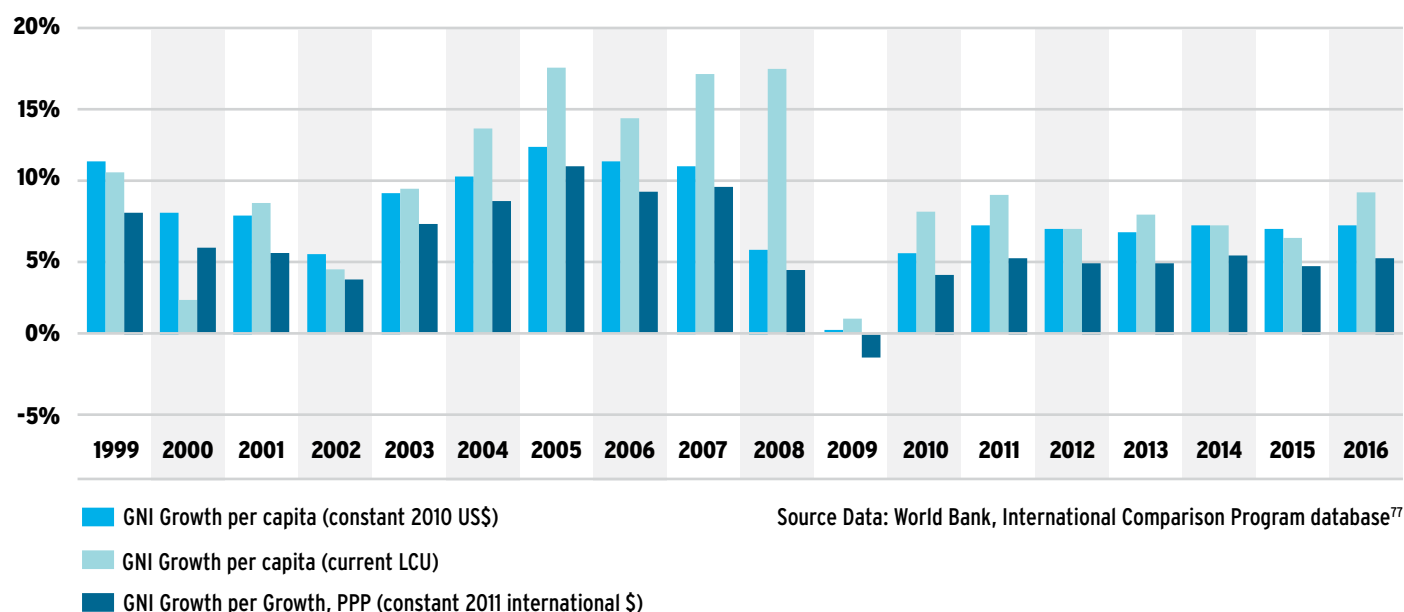
The Cambodian economy has sustained robust average economic growth, at a rate of 7.6% between 1994 - 2015<sup>66</sup> with a Gross Domestic Product ("GDP") of 20 billion USD in 2016.<sup>67</sup> The main driver of economic growth was the adoption of a liberal market economy in 1993<sup>68</sup> and the implementation of an economic policy of market liberalization in the form of increased foreign investment, economic integration into ASEAN, and accession to the WTO (2004).<sup>69</sup> Cambodia's accession to the WTO has led to an overhaul of the country's legal framework, as the RGC works to make Cambodia's laws align with international standards. New laws such as the draft Law on competition and recommended laws on commercial arbitration, e-commerce, and consumer protection are largely driven by Cambodia's membership in the WTO and other international trade associations such as EUROCHAM.<sup>70</sup> Cambodia's growing role on the world stage is clear as the country was selected to be the chair of the Global Coordination Bureau of the Least Developed Countries ("LDCs") at the WTO in 2017.<sup>71</sup>

Figure 3: GDP Growth in Constant (1999 - 2016), Current and PPP Prices



Cambodia's sustained economic growth can be attributed to two industries: garment manufacturing and tourism. More recently, growth in agriculture, construction, and real estate, as well as the diversification of garment exports to Europe and Japan have boosted the GDP.<sup>73</sup> The diversification of the Cambodian economy is expected to sustain the current growth rate into 2018.<sup>74</sup> This macroeconomic growth in Cambodia has translated into greater per capita wealth. Within the last ten years, the per capita Gross National Income (GNI) has more than tripled although distribution of this wealth remains an issue. In 2016, due to the rapid growth and the GNI reaching 1,140 USD,<sup>75</sup> the World Bank changed the status of Cambodia from low income to lower-middle income country. This new status is expected to reduce the country's eligibility for foreign assistance and will put pressure on the government to seek new sources of financing.<sup>76</sup> Additionally, Cambodia's transition will result in fewer preferential trade measures and less donor financing. At the same time, the increasing cost of living and low salaries are making it more difficult for many Cambodians to rely on simple commodity markets for economic stability.

Figure 4: GNI Growth in Constant (1999 – 2016), Current and PPP Prices



The Cambodian economy is highly dollarised and has remained so since the re-establishment of the first private bank after Cambodia's civil war.<sup>78</sup> A country transitioning from a political or economic crisis typically reverts to using local currency once the economy stabilises, yet the USD is still used in most domestic transactions. This is especially true in urban areas and industries that deal with high-cost transactions, such as foreign investment, donor aid, remittances, export industries, and tourism.<sup>79</sup> Since 1998, the National Bank of Cambodia ("NBC") has kept the exchange rate between the US dollar and Riel, the domestic currency, stable at approximately 4,000 Riel to 1 USD.<sup>80</sup> The Riel is more prevalent in rural areas, low-cost transactions, and agricultural-based transactions.<sup>81</sup>

## Foreign Direct Investment

The net inflow of foreign direct investment ("FDI") represented 9.4% of the Cambodian GDP in 2015 and 10.7% in 2016, a substantial increase from 2.1% in 1993.<sup>82</sup> The Cambodian foreign economic policy seeks to increase foreign investment by offering investment guarantees under the Law on Investment ("LoI"), which has been in force since 1994. The Law's most important provisions restrict the RGC from discriminating against foreign investors with the exception of land title ownership.<sup>83</sup> Special Economic Zones ("SEZ") and Qualified Investment Projects ("QIP") provide additional incentives, allowing for tax incentives and relief of import duties.<sup>84</sup> The majority of FDI inflows are from neighbouring Asian countries, most importantly China.<sup>85</sup> Net FDI increased by 30.5% to an estimated 2.2 billion in 2016 from the previous year, after declining by 8.1% in 2014 and 1.4% in 2015.<sup>86</sup> Construction and telecommunications had the highest growth in FDI for 2016, while inflows to manufacturing declined slightly.<sup>87</sup>

## Exports & Imports

Export of goods and services represent 11.2 billion USD of the 16.8 billion USD economy, of which 7.45 billion USD were goods, as of 2014.<sup>88</sup> In 2016 the Ministry of Economy and Finance ("MEF") reported the value of exports to be 10.07 billion USD.<sup>89</sup> The garment industry has the longest export history in Cambodia and accounts for approximately 70% of Cambodian exports.<sup>90</sup> The main export market for garments and footwear are the United States and the European Union, which account for 65% of Cambodia's exports. However, a couple of trends in the industry suggest that the country should prepare to diversify its export income and begin transitioning to a knowledge based economy. Exports posted 9.2% growth in 2016, down from 14.1% in 2015, due to slower growth in the garment industry.<sup>91</sup> The MoC reported 12.37 billion USD in imports in 2016, up by almost 16% from 2015.<sup>92</sup> The MEF projects that imports are expected to decline from representing about 66% of the GDP in 2016 to 63% by 2017, while exports are likely to stabilise at 46.2%.<sup>93</sup>



## Human Development

Cambodia ranks 143rd on the 2016 UNDP Human Development Index, placing it at the bottom end of Medium Human Development countries, just above Myanmar and Nepal.<sup>95</sup> Over two-thirds of the population live on less than 5.50 USD per day Purchasing Power Parity (PPP), which constitutes moderately poor or vulnerable to poverty.<sup>96</sup> Yet Cambodia's sustained economic growth has resulted in significant poverty reduction in recent years. The percentage of Cambodians living under the national poverty line fell from 47.8% in 2007 to 13.5% in 2014, according to estimates by the World Bank Group and UNDP.<sup>97</sup> The number of people living in extreme poverty is down yet people remain vulnerable to exogenous shocks and natural disasters.<sup>98</sup> The risk factors that Cambodia continues to face are the growing income disparity, particularly between urban and rural populations, and continued gender disparity in education and income equity.<sup>99</sup> Since 2009 inequality has improved significantly, marked by a 22% decline in the Gini coefficient, which measures the distribution of wealth in a country.<sup>100</sup>

Although more and more households are out of poverty, a large proportion are vulnerable to falling back into poverty from relatively small economic shocks.<sup>101</sup> Major development institutions recommend that Cambodia can mitigate the risks associated with income disparity and a large agriculturally-sustained rural population by increasing investment in human capital.<sup>102</sup> Sustaining Cambodia's high growth will require developments in agricultural productivity, diversification of the economy, and higher value-added production. This will necessitate increased spending on logistics and training to improve a wide range of skills.<sup>103</sup> This is especially important as Cambodian youth between the ages of 15-30 and children under 15 make up 33% and 32.3% of the population respectively but often do not have the skills to meet the requirements of the labour market.<sup>104</sup> The RGC developed the Social Protection Policy Framework (SPPF) to build a foundation for a social protection system but social protection remains limited, especially for vulnerable groups.<sup>105</sup> This is largely due to proportionally low public spending for the region and government spending not being targeted at poverty reduction,<sup>106</sup> such as in areas of sanitation, basic health care and education.

*Training to "Promote Small Medium Enterprises and Export Development" was conducted by TI Cambodia in cooperation with the Ministry of Commerce's Trade Training and Research Institute (TTRI), with approximately 60 participants, most of them were MoC public servants from Phnom Penh and other provinces, a few of whom were from private sector.*



## Employment

With its new World Bank Atlas status, Cambodia is expected to see a progressive decline in preferential trade treatment and an increase in labour costs.<sup>107</sup> The recent increase in the value of the US dollar makes Cambodian goods relatively more expensive in European markets.<sup>108</sup> This will result in more intense competition with garment industries in neighbouring countries like Vietnam and Myanmar.<sup>109</sup> A previous lack of investment in equipment and training as compared to Thailand and Vietnam will further hamper the transition into higher-value manufacturing. Between 1993-2014 Cambodia only grew 3.5% in labour productivity as compared to Vietnam and Thailand, who grew 4.7% and 7.1% respectively during their boom years.<sup>110</sup> Most production in Cambodia remains labour intensive, with little to no production of pieces and parts, restricting labour force mobility going forward. Although Cambodia enjoys a relatively low rate of unemployment, most of the jobs available are for labour intensive activities. Minimum wage is only available in the garment industry and is relatively low at 153 USD per month,<sup>111</sup> recently increased from 100 USD in 2014. This gives Cambodia a competitive advantage in foreign manufacturing but nearly a third of Cambodians continue to supplement their income with agriculture and fisheries due to income and food insecurities.

## Public Sector Expenditure

Cambodia's public-sector spending was 20.8% of the GDP in 2015 or 3.75 billion USD.<sup>112</sup> The 2016 budget gives future direction for increased expenditure in education and the health sector.<sup>113</sup> Total public expenditure increased by 5% in 2015 but the registered increase in public spending was partially due to a mandated increase in public servant wages.<sup>114</sup> In 2017, total public expenditure is projected to reach around 23.1% of GDP, with wage spending at around 7.7% of GDP.<sup>115</sup> Public expenditure on social assistance is not concurrent with the increased revenues generated by the government through broadening the sectors of the population subject to tax collection. As development assistance will decline in the future, it is imperative that targeted public spending on vulnerable groups offsets the tax burden on poor households.<sup>116</sup>

**Table 5: Current Expenditure by Sector (Share of Total Current Expenditure in %)**

Sectors	2011	2012	2013	2014	2015e	2016BL
Education	7.9	8.0	8.6	9.5	10.8	12.0
Health	6.1	6.3	6.3	5.7	6.5	6.1
Defense	7.5	7.4	7.5	8.0	8.5	8.5
Transport	1.1	1.1	1.2	1.2	2.9	2.8

Source: Ministry of Economy and Finance<sup>117</sup>

## Fiscal Deficit

The MEF reports that the current fiscal deficit remains modest with continued strong economic growth and minimal increase in public expenditure.<sup>118</sup> In 2015, Government revenues and public expenditures constituted approximately 18.0% and 20.9% of the GDP respectively, resulting in a deficit of nearly 3%.<sup>119</sup> Currently, the fiscal deficit is almost entirely financed externally, which is not sustainable in the long-term as the Cambodian economy continues to grow.<sup>120</sup> Going forward the Ministry projects that continued growth in revenues and modest increases in public expenditures should contain the fiscal deficit to below the RGC's targeted threshold of 5% of the GDP.<sup>121</sup> The adoption of a new tax system by the GDT to expand the tax collection base is projected to significantly increase national revenues, mitigating the risk of increasing the deficit.<sup>122</sup>

## Natural Resources

Unsustainable and often illicit economic activities have significantly degraded Cambodia's natural resources, which include timber, fisheries, and fresh water.<sup>123</sup> The protection of Cambodia's natural capital is particularly important to the most vulnerable citizens, who rely on subsistence agriculture for survival. Deforestation increased by over 10% between 2006 and 2014 with the result that 50% of Cambodia's forests and almost 45% of Cambodia's wetlands are gone.<sup>124</sup> Hydropower developments along the Mekong River and increased use of irrigation technology are also expected to impact vulnerable populations living along the Mekong. The World Bank Group recommended in its 2017 Outlook report that Cambodia expand sustainable tourism, improve fisheries and hydroelectric power and begin restoring deforested areas.<sup>125</sup>

**Unsustainable and often illicit economic activities have significantly degraded Cambodia's natural resources, which include timber, fisheries, and fresh water.**

## Current Economic Reforms

Cambodia economic reforms are focused on increasing the tax base and increasing foreign investment in line with the country's new economic status. The GDT is committed to raising taxpayer awareness and providing incentives to tax collection officials and businesses to increase tax compliance.<sup>126</sup> The implementation of the RGC's "Revenue Mobilization Strategy 2014-2018" increased Government revenues from 15.2% of GDP in 2013 to 17.6% in 2016.<sup>127</sup> Revenue collections by the GDT increased by 22% in the last year as these measures were implemented.<sup>128</sup> The GDT is seeking to implement more efficient tax collection measures through computerisation of tax payments and better coordination with financial institutions and customs authorities.<sup>129</sup>

The microfinance sector is increasing quickly in Cambodia as many family businesses are borrowing from microfinance institutions ("MFI") who have set up shop in rural areas. MFIs are typically funded by foreign borrowing.<sup>130</sup> They are growing more interconnected with the Cambodian financial services sector but lack regulations akin to the banking sector to curb risks. Credit from microfinance is growing at an unsustainable pace of nearly 50% per annum since 2013.<sup>131</sup> Average loans increased from 200 USD to 1,000 USD in a decade.<sup>132</sup> From March 2018, MFIs will have to comply with a much stricter set of capital requirements which may curb domestic borrowing.<sup>133</sup> Furthermore, due to the ascension to the WTO, Cambodia's legal framework continues to undergo significant reform to comply with WTO requirements.

- 40 UN Data Cambodia
- 41 UNDP Cambodia, 2017
- 42 MoP 2014 Economic Survey, 2015, p. vi, as of 2013.
- 43 ECCC Case 002/01 Trial Judgement, para. 174
- 44 ECCC Case 002/01 Trial Judgement, para. 174
- 45 Chhair and Ung, 2013
- 46 UNSC 745
- 47 Constitution, Article 1, Article 51 new
- 48 Constitution, Article 8
- 49 Constitution, Article 78 & 102 (new)
- 50 Legislative powers are distributed between the Executive and the Parliament of Cambodia. The bicameral parliament is made up of a lower house, the National Assembly (rotsaphea) and an upper house, the Senate (preutsaphea). The 123-seat Assembly members are elected through a system of proportional representation and serve a maximum term of five years (Constitution, Article 76-78). The Senate has 61 seats and serves for a maximum term of six years. Senate positions are elected by the commune councillors from the 24 provinces of Cambodia notwithstanding two seats that are appointed by the King and two others by the National Assembly (Constitution, Article 99 new – 102 new).
- 51 The Phnom Penh Post, 16 November 2017; BBC News, 16 November 2017; Reuters News, 16 November 2017 NEC
- 52 COMFREL, 2013
- 53 The Phnom Penh Post, 13 November 2015
- 54 The Phnom Penh Post, 24 October 2016
- 55 The Phnom Penh Post, 15 June 2017
- 56 The Phnom Penh Post, 21 February 2017
- 57 CCHR, 2017; UNHCHR, 2017
- 58 The Phnom Penh Post, 3 March 2017
- 59 The Phnom Penh Post, 4 September 2017; The Phnom Penh Post, 27 September 2017
- 60 Reuters News, 6 October 2017
- 61 Radio Free Asia, 16 October 2017
- 62 The Guardian, 13 October 2017
- 63 The Phnom Penh Post, 16 November 2017; BBC News, 16 November 2017; Reuters News, 16 November 2017
- 64 LANGO 2015, Chapter 7
- 65 The Phnom Penh Post, 19 October 2017
- 66 WB Diagnostic, 2017, p. 12; WB Data
- 67 WB Data
- 68 Constitution, Article 56
- 69 WTO Cambodia
- 70 EUROCHAM, 2017
- 71 RGC Vision, 2016
- 72 WB Data
- 73 MEF Macroeconomic Monitor, 2016, p. 15
- 74 ABD Cambodia
- 75 WB Data
- 76 CIA Cambodia
- 77 WB Data
- 78 The Cambodian Commercial Bank was created in 1991 to support the United Nation's transitional administrative activities using US dollars. Khou et al, 2016
- 79 Khou et al., 2016, p. 5
- 80 Khou et al., 2016, p. 11, XE Exchange Rates
- 81 Khou et al., 2016, p. 12.
- 82 WB Data
- 83 CDC Investment Guarantee
- 84 CDC Policies Toward FDI
- 85 MEF Macroeconomic Monitor, 2016
- 86 ADB Outlook, 2017, p. 227
- 87 ADB Outlook, 2017, p. 227
- 88 WB Data
- 89 MoC Trade Statistics: Value of Exports and Imports in 2016
- 90 ADB Outlook, 2017, p. 227
- 91 ADB Outlook, 2017, p. 227
- 92 MoC Trade Statistics: Value of Exports and Imports in 2016
- 93 MEF Macroeconomic Monitor, 2016, p. 16
- 94 CDC Trade Trend
- 95 UNDP, 2016
- 96 WBG Overview, 2017, p. 12
- 97 WBG Diagnostic, 2017; UNDP Cambodia, 2017
- 98 ADB Business Plan Cambodia, 2017, p. 1
- 99 UNDP Cambodia, 2017
- 100 OECD Development Pathways, 2017, p. 17
- 101 OECD Development Pathways, 2017, p. 17
- 102 ADB Business Plan Cambodia, 2017; UNDP Cambodia, 2017
- 103 ADB Business Plan Cambodia, 2017, p. 1
- 104 UNDP Cambodia, 2017
- 105 OECD Development Pathways, 2017, p. 19-20

- 106 OECD Development Pathways, 2017, p. 21
- 107 WBG Overview, 2017
- 108 WBG Overview, 2017
- 109 WBG Overview, 2017
- 110 WBG Overview, 2017
- 111 See: <https://tradingeconomics.com/cambodia/unemployment-rate>
- 112 MEF Macroeconomic Monitor, 2016, p. 12
- 113 MEF Macroeconomic Monitor, 2016, p. 13
- 114 The Phnom Penh Post, 25 September 2015
- 115 MEF Macroeconomic Monitor, 2016
- 116 OECD Development Pathways, 2017, p. 110
- 117 MEF Macroeconomic Monitor, 2016
- 118 as of 2016, MEF Macroeconomic Monitor, 2016
- 119 MEF Macroeconomic Monitor, 2016
- 120 MEF Macroeconomic Monitor, 2016, p. 21
- 121 MEF Macroeconomic Monitor, 2016
- 122 MEF Macroeconomic Monitor, 2016
- 123 WBG Overview, 2017
- 124 WBG Overview, 2017
- 125 WBG Overview, 2017
- 126 MEF Macroeconomic Monitor, 2016, p. 11
- 127 ADB Outlook, 2017, p. 228
- 128 ADB Outlook, 2017, p. 228
- 129 MEF Macroeconomic Monitor, 2016, p. 11
- 130 Khou et al, 2016
- 131 MEF Macroeconomic Monitor, 2016, p. 18
- 132 WBG Overview, 2017
- 133 ADB Outlook, 2017, p. 228.

# Business Sector Composition

## Dominant Industries

The main industries are garment manufacturing, tourism, construction, and agriculture. The economy is dominated by small and micro Cambodian businesses. According to the Cambodian 2014 Inter-Censal Economic Survey, foreign enterprises represent only 1% of the total number of companies operating in Cambodia and 94.3% of companies have an individual proprietor.<sup>134</sup> 59.5% of the businesses are in wholesale and retail trade, 14% are in manufacturing, and 10.9% operate in accommodation and food services sectors.<sup>135</sup> These three industries represent 39.4%, 37.1% and 4.8% of the total annual sales, respectively. A huge part of the economic activity is concentrated in Phnom Penh; 18.9% of the businesses are situated in the capital and they generate 51.3% of the total revenues and account for 29.5% of the total labour force. Two additional industrial centres are Siem Reap and Kampong Cham, representing 10.9% and 7.8% of the annual sales in 2014, respectively.<sup>136</sup> International firms are mostly operated by Chinese, South Koreans, Japanese, and Vietnamese citizens carrying out business in the garment, footwear, agriculture, agro-industry, tourism, construction and real estate sectors.<sup>137</sup>

With its export growth of 7.2% in 2016, the garment sector is the backbone of the Cambodian economy, accounting for 78% of the country's total merchandise exports.<sup>138</sup> In the same year, it provided employment for 605,129 people in 626 garment and footwear factories.<sup>139</sup> The employment and investment in the garment sector has decreased by 2.9% and 17%, respectively.<sup>140</sup> As a former Least Developed Country, Cambodia has benefited from the duty-free and quota-free access to EU markets under the "Everything but Arms" program.<sup>141</sup> This might change due to the revision of its status by the World Bank to a Lower-Middle Income Country. The country's competitive advantage of cheap labour could be negatively impacted due to the gradual increase of the minimum wage (from 80 USD in 2013 to 153 USD in 2017) and the potential trade agreement between EU and Vietnam, eliminating nearly 99% of tariffs.<sup>142</sup>

Despite its steady growth, Cambodia remains a rural country but in recent years, the value added by the agricultural sector has decreased. In 2011, agriculture products accounted for 37.1% of GDP, while in 2016 it was only 26.7%.<sup>143</sup> Despite a high annual GDP growth of 6.9% in 2016, the agricultural sector grew by only 1.2%.<sup>144</sup> The main agricultural commodity produced in Cambodia is rice. Since 2012, the average growth of rice exports has been 31.5%.<sup>145</sup> The main export markets are China, France and Poland which account for 23.6%, 14.7% and 11.4% of the total rice exports in 2016, respectively.<sup>146</sup> Growth can be explained by the improvement of irrigation systems and farmers' productivity.

Another important sector contributing to the steady economic growth of Cambodia is tourism. Since 2006, the average annual growth rate of international arrivals was 12% with over 5 million international tourists arriving in 2016.<sup>147</sup> According to the World Travel and Tourism Council, the tourist industry has a direct contribution<sup>148</sup> of 12.2% and total (direct plus indirect<sup>149</sup> spending) contribution of 28.3% of the total GDP.<sup>150</sup> The sector generates 988,000 direct jobs and 1.2 million indirect jobs, which is around 25.9% of total employment.<sup>151</sup> In 2016, travel and tourism investments accounted for 600 million USD, 15.5% of the total investments.<sup>152</sup>

The construction and real estate markets in Cambodia are booming. In 2016, 2636 projects covering more than 14,620 km<sup>2</sup> were approved. Their estimated cost is 8.5 billion USD, which is an increase of around 155% compared to the year prior.<sup>153</sup> The main foreign investors registered at Ministry of Land Management Urban Planning and Construction ("MLMUPC") are from Korea, China, Japan and Thailand. Most of the construction projects are in Phnom Penh. In 2017, concerns of oversupply in the capital were raised.<sup>154</sup>



## Relationship between multinational and national enterprises and the role of state-owned enterprises

In 1968 there were 57 state-owned, and private and public joint venture companies.<sup>155</sup> From 1979-1989 a centralised state-owned economic model was implemented, after 1991 Cambodia transitioned to a liberal market free trade economic model.<sup>156</sup> The Government has been gradually improving the performance of state-owned enterprises through corporatisation and privatisation, however, efforts to establish separation between ownership and regulation have been limited. Many activities within the Government are performed by private companies which are not state-owned but closely related to members of the Government.<sup>157</sup>

In 2014, state owned organisations<sup>158</sup> accounted for only 2.3% of the total number of enterprises and 9.3% of the employment.<sup>159</sup> However, big companies (more than 100 employees), who are state-owned establishments, represent 15.4% of the total and provide employment for 7% of the entire workforce.<sup>160</sup> State-owned companies operate in key industries of the Cambodian economy. Electricité du Cambodge, the main electrical supplier, had revenues of over 900 million USD in 2015, with an annual increase of around 27%.<sup>161</sup> The Phnom Penh Water Supply is a “Public Establishment having Economic Vocation”, listed on CSX. Its revenues in 2016 were around 48 million USD. The two major international ports, Sihanoukville Autonomous Port and Phnom Penh Autonomous Port, are also state owned and both are listed on the Cambodia Securities Exchange (CSX). In 2016, the two ports had revenues of around 51 million USD and 13 million USD, respectively.<sup>162</sup> Other major state-owned companies are Telecom Cambodia (telecommunication), Green Trade Company (logistics), Rural Development Bank and Cambodia Post. It should be highlighted that there are two types of state owned enterprises. The first includes companies whose capital is owned by the state such as Electricité du Cambodge, while the second are joint-ventures where the majority of the capital is owned by the state and a minor part by private investor, i.e. Phnom Penh Water Supply Authority.<sup>163</sup>

*“Reduce Corruption in Export Procedures for SMEs” was jointly organized by TI Cambodia and FASMEC.*



## Share of small and medium-sized enterprises

### Defining SMEs

Small and Medium Enterprises (“SMEs”) represent the majority of businesses in Cambodia and form the backbone of the domestic economy. The definition of SMEs in Cambodia is not without controversy as there are different classifications of SMEs between the UN, World Bank, ASEAN, TI and the Royal Government of Cambodia. The definition adopted in this report is displayed in the Table below (Table 6) and is consistent with the most recent economic census data released by the Ministry of Planning on 25 February 2015<sup>164</sup> and previous publications from Transparency International Cambodia.<sup>165</sup>

**Table 6: Number of Small and Medium Enterprises in Cambodia**

Type of Enterprise	Statistical Definition Based on the Number of Employees	Financial Definition for Assets (in USD) Excluding Land
Micro	Less than 10	Less than 50,000 USD
Small	Between 10 – 49	50,000 – 250,000 USD
Medium	Between 50 – 99	250,000 – 500,000 USD
Large	100 and Over	Over 500,000 USD

### SMEs and the Informal Economy

The Cambodian economy is predominantly composed of SMEs, most of which are not registered with the Ministry of Commerce (“MoC”) nor the General Department of Tax (“GDT”). According to the Cambodian 2014 Inter-Censal Economic Survey, 33% of businesses are run by a single person. Even though microenterprises (employing less than 10 people) account for 97.2% of all Cambodian enterprises, their share of total annual sales in 2014 was only 35.4%. Small companies (employing between 10 and 49 people) account for 2.5% of the total number of enterprises and 12.3% of the total annual revenues. Medium companies have a share of 0.1% of all enterprises and 2.1% of the annual sales. Finally, big companies account for 0.2% of all businesses in Cambodia but generate more than 50% of sales.

**Table 7: Types of Cambodian Enterprises According to the Number of Enterprises, Annual Sales and Annual Sales per Enterprise in 2014**

Type of enterprise according to the number of persons engaged	Number of enterprises	Share of the number of enterprises of the total	Annual sales except street businesses (thousand USD)	Share of annual sales of the total	Annual sales except street businesses per enterprise (thousand USD)
<b>Micro (less than 10)</b>	499,248	97.2%	8,005,980	35.4%	16.0
<b>Small (10-49)</b>	13,001	2.5%	2,781,672	12.3%	214.0
<b>Medium (50-99)</b>	615	0.1%	462,898	2.1%	752.1
<b>Big (100 and more )</b>	895	0.2%	11,361,084	50.2%	12,692.4

Source: Computed from the data on Cambodian 2014 Inter-Censal Economic Survey<sup>167</sup>

**Table 8: Types of Cambodian Enterprises According to the Number of Persons Engaged, Annual Sales and their Efficiency (Annual Sales per Person Engaged) in 2014**

Type of enterprise according to the number of persons engaged	Number of persons engaged	Share of persons engaged of total	Annual sales except street businesses (thousand USD)	Annual sales in thousand USD per person engaged <sup>168</sup>
<b>Micro (less than 10)</b>	1,069,856	57.1%	8,005,980	7.5
<b>Small (10-49)</b>	230,833	12.3%	2,781,672	12.1
<b>Medium (50-99)</b>	43,772	2.3%	462,898	10.6
<b>Big (100 and more )</b>	530,209	28.3%	11,361,084	21.4

Source: Computed from the data on Cambodian 2014 Inter-Censal Economic Survey<sup>169</sup>

The majority of the workforce in Cambodia is engaged in micro businesses, 57.1%, followed by big companies at 28.2% of the total. Small and medium enterprises account for 12.3% and 2.3% of the labour force, respectively. In order to understand the efficiency of different types of companies based on the annual sales generated by worker, divide the Annual Sales by the Number of Persons Engaged. These results suggest that there is a disparity between different types of businesses, which is normal. The big companies are able to realize economies of scale and maximize their profits.

**Table 9: Number of Cambodian Enterprises Except Street Businesses by Size of Persons Engaged and Whether Registered at the Ministry of Commerce or Not in 2014**

Type of establishments according to the persons engaged	Registered	Not registered
<b>Micro (less than 10)</b>	1.2%	98.8%
<b>Small (10-49)</b>	28.6%	71.4%
<b>Medium (50-99)</b>	50.5%	49.5%
<b>Big (100 and more )</b>	80.9%	19.2%

Source: Computed from the data on Cambodian 2014 Inter-Censal Economic Survey<sup>170</sup>

As of 2011, nearly 100% of all enterprises in Cambodia are classified as SMEs and they employ or engage almost 75% of the workforce. According to Cambodian 2014 Inter-Censal Economic Survey, the majority of SMEs and microenterprises are not registered with the Ministry of Commerce (Table 9). In comparison, the majority of big companies are registered with the MoC. This reveals that while the economy in Cambodia is highly liberalised, the reality on the ground is that enterprises remain largely informal. Official infrastructure and logistics services are lagging,<sup>171</sup> and a vast majority of SMEs and single or small business operators in the service industries operate outside of legal or official channels. The most recent data published by the International Labour Organisation ("ILO") in 2003 indicates that the informal economy accounted for 62% of GDP and 85% of the total labour force.<sup>172</sup> This figure is largely inaccurate for 2017, but no current data is available.

Industries such as tourism, construction, natural resource and small-scale goods and services allow for a wide entry-point into the informal economy. This is particularly the case for the large proportion of Cambodians connected to village life or who supplementing their income with subsistence agriculture. Workers in the informal economy are typically self-employed or working without a contract, and work from their homes, small shops, or on the street.<sup>173</sup> It is clear that there remains a substantial gap between the stated market objectives in Cambodia and the realities of doing business.

The incorporation of a business as a legal entity is governed by multiple laws in Cambodia: the Law on Commercial Rules and Commercial Register ("LCRCR"),<sup>174</sup> the Law on Amendments to the Law on Commercial Rules and Commercial Register, the Law on Commercial Enterprises ("LCE")<sup>175</sup> and the Law on Anti-Money Laundering and Combating Financing of Terrorism ("LAMCTF").<sup>176</sup> Enforcement of the provisions in the legal framework governing businesses in Cambodia will remain a significant issue moving forward, but one the government is moving to address.

134 MoP 2014 Economic Survey, 2015

135 MoP 2014 Economic Survey, 2015

136 MoP 2014 Economic Survey, 2015

137 B2B Cambodia Business Startup

138 ILO 2017

139 ILO 2017

140 ILO 2017

141 European Commission

142 ILO 2017

143 WB Data

144 WB Data

145 COMTRADE Statistics, 2017

146 COMTRADE Statistics, 2017

147 WB Data

148 Direct contribution refers to the total spending and generated employment within a particular country on travel and tourism by residents and non-residents for business purposes, as well as government 'individual' spending".

149 Indirect contribution to GDP and jobs include capital investment spending by all industries directly involved in travel and tourism, Government spending in support of general tourism activity, and purchases of domestic goods and services directly by different industries within travel and tourism as inputs to the final tourism output.

150 World Travel and Tourism Council, 2017

151 World Travel and Tourism Council, 2017

152 CCA website

153 The Cambodia Daily, 1 March 2017

154 The Cambodia Daily, 1 March 2017

155 Chhair and Ung, 2013

156 Chhair and Ung, 2013

157 OECD 4th Meeting, 2017

158 State-owned Organisations include (1) Public corporation owned and operated by the central government and all other State-controlled institutions (2) Autonomy-owned organisations or local government-owned organisations whose fund is shared by the state (3) Public corporations such as provincial hospitals, district schools and so on which are owned and operated by local governments.

159 MoP 2014 Economic Survey, 2015

160 MoP 2014 Economic Survey, 2015

161 EAC, 2016

162 MoP 2014 Economic Survey, 2015

163 OECD 4th Meeting, 2017

164 OECD 4th Meeting, 2017

165 NOTE: the data cited in the Transparency International Cambodia report on Corruption Perceptions in Cambodian SMEs relies on 2005 data from the Sub-committee on Small and Medium Enterprises SME Secretariat (TI Cambodia SMEs, 2015, p. 12). The classification of micro enterprises in the TI-C report is 10 employees or less while the most recent survey data from Statistical Bureau of Japan (SBJ) measure a standard of less than 10 employees. Similarly the number of employees defining a small business in Cambodia is 11-50 in the TI-C report and 10-49 in the SBJ analysis. The slight variations in the classifications of SMEs reflects the 2015 standards reported by the Ministry of Planning with the assistance of the SBJ.

166 Annual Sales per establishment = Annual Sales except Street Businesses/Number of establishments

167 MoP 2014 Economic Survey, 2015

168 Annual Sales per person engaged = Annual Sales except Street Businesses /Number of persons engaged

169 MoP 2014 Economic Survey, 2015

170 MoP 2014 Economic Survey, 2015

171 Hill et al., 2014

172 ILO Handbook, 2006

173 ILO Handbook, 2006

174 LCRCR 1999

175 LCRCR, 1995

176 LAMCTF, 2007

# Corruption Profile

While there is no concise definition of corruption in Cambodia's current legal framework, Transparency International defines corruption as the abuse of entrusted power for private gain. The definition of corruption contains several classifications, including grand, petty, and political depending on the amount of money lost and the sector involved in the corrupt act. Grand corruption is defined as the abuse of power by the few at the expense of many, while petty corruption is defined as the everyday abuse of power by trusted public officials in their interactions with citizens attempting to access daily and basic services, such as education or schools. Political corruption is defined as manipulation of policies, institutions, and procedures in the allocation of resources and financing by decision makers, who abuse their position to sustain their power, status, and wealth.<sup>177</sup>

In Cambodia, corruption is viewed by experts to be entrenched economically, politically, and culturally.<sup>178</sup> In a 2015 survey of 100 Cambodian business owners, 47% stated there was a culture of corruption in Cambodia that required them to pay unofficial fees.<sup>179</sup> In 2016, only 35% of Cambodians perceived corruption as increasing, which suggests that petty corruption could be decreasing since that is the form of corruption most Cambodians face; however, 40% of Cambodians reported paying a bribe for basic public services.<sup>180</sup> Grand corruption is still perceived to be a problem since 56% of Cambodians believe the government is doing "badly" with combating corruption.<sup>181</sup>

Contextually, it is important to understand that gift giving is institutionalised in Cambodian culture, especially to monks and the poor.<sup>182</sup> Giving a gift without sincerity is the vocabulary used to describe corrupt practices. In some situations, a gift can be perceived as corruption particularly when the giver and the receiver know each other and when there is an expectation of something to be given in return. Gifts that lack sincerity can often blur the line between gift-giving and corruption.<sup>183</sup> Gifts without sincerity are widely given throughout Cambodia, which may indicate that Cambodians understand the implications of these transactions, but prefer to call them gifts.<sup>184</sup> For example, Cambodians frequently give small gifts to inspectors to thank them, these are viewed as normal.<sup>185</sup>

## Corruption level

Reports and data demonstrate consistently high levels of corruption in Cambodia. In 2016, Cambodia was ranked 156 out of 176 countries on Transparency International's Corruption Perception Index. For the second year in a row, Cambodia received a score of 21, making it the most corrupt country in Southeast Asia.<sup>186</sup> This score puts Cambodia on par with the Democratic Republic of Congo and Uzbekistan according to the report. In terms of corruption in public institutions, 59% of Cambodians believed most or all judges and magistrates are corrupt, 52% perceived the police to be corrupt and 44% believed government officials are corrupt.<sup>187</sup> On the TRACE International Matrix section on Anti-Bribery Laws and enforcement, Cambodia scored a 60 out of 100 or (high), based on a moderate level of laws, and a low quality of enforcement on the TRACE International Matrix. Cambodia scored a 92, or very high, in the category of business interaction with government based on a moderate degree of government interaction, very high expectation of bribes, and high regulatory burdens. Cambodia's overall score is a 92,<sup>188</sup> making it a high-risk country for instances of bribery in business.<sup>189</sup> In 2010, a survey conducted by an international NGO, PACT, found that urban people were exposed to corruption more than individuals living in rural areas, due to increased interactions with government officials.<sup>190</sup>

## Corruption in the Private Sector

In 2017, Cambodia was ranked 131 out of 190 countries in the World Bank's Ease of Doing Business survey. This represents a loss of three spots from 2016, where it sat at 128.<sup>191</sup> The Ease of Doing Business ranking considers a variety of factors, including how long it takes to legally start a business, whether there is a comprehensive and clear regulatory framework, and the ability to enforce contracts. On average, it takes 99 days to start a business legally in Cambodia versus 23.9 days in the region.<sup>192</sup> In 2016, 25% of Cambodians viewed most or all business executives working in Cambodia as corrupt.<sup>193</sup> The TI Cambodia Advocacy and Legal Advice Center ("ALAC") has been contacted by 770 clients between July 2013 and August 2017. Of these, 9 complaints involved the private sector, which is roughly 5% of all complaints for comparison. ALAC received 31 complaints (16%) involving the public sector, 31 (16%) complaints involving public service fees, and 27 complaints (14%) involving the judiciary. ALAC referred 10 total complaints to the ACU.<sup>194</sup> ALAC has also referred 11 complaints, that are not related to corruption, to other law enforcement agencies.

**The link between business and corruption could originate in the concept that gift-giving is cultural appropriate in Cambodia.**

The link between business and corruption could originate in the concept that gift-giving is cultural appropriate in Cambodia. Many businesses often feel an obligation to offer gifts during the Khmer or Chinese New Year holidays; however, gift giving for the purposes of obtaining influence is illegal under the Criminal Code.<sup>195</sup> In the 2016 World Bank Enterprise survey of 363 firms, 64.7% of private enterprises reported receiving at least one bribe payment request. Additionally, in 59.4% of public transactions, a gift or informal payment was requested and 50.3% of businesses had to pay a bribe to receive an operating license, 63.4% to receive an import license and 86.8% to receive a construction permit. Finally, 66.3% of surveyed businesses were required to pay a bribe in order to "get things done."<sup>196</sup> Annually, these percentages translate into approximately 19,028 USD for large companies, 1,028 USD for medium companies and 623 USD for small companies.<sup>197</sup>

Small and Medium Enterprises ("SMEs") are a large and important segment of the Cambodian economy. SMEs encounter corruption at all stages of their business, from registration to day-to-day operations. 57% of 100 SMEs surveyed by Transparency International Cambodia reported that corruption was an external factor impeding their business.<sup>198</sup> In addition to potential requests for extra payments or gifts, businesses also face problems dealing with the bureaucracy within certain institutions. According to the Enterprise Survey, 48% of medium companies spent 48% of their time on dealing with requirements imposed by government regulations, while small companies spent 54% of their time dealing such requirements.<sup>199</sup> Therefore, small and medium companies spend a significant amount of time annually dealing with "red tape".

## Legal Framework

Cambodia is a party to United Nations Convention Against Corruption ("UNCAC"), which it acceded to in 2007. Cambodia passed the Anti-Corruption Law ("ACL") in 2010, which was viewed as a positive step in eliminating corruption. The ACL was amended once in 2011 to provide more independence of its budget under the Council of Ministers. The ACL does contain some loopholes that undermine its effectiveness in identifying and preventing corruption.<sup>200</sup> These loopholes include no requirements for family members of public officials to conduct asset declarations, and that the asset declarations of public officials themselves are kept highly confidential.<sup>201</sup> Additionally, under Article 41



the law punishes complainants whose complaints are deemed to be defamatory, which is viewed by rights groups as a mechanism to silence complaints.<sup>202</sup> The ACL created the Anti-Corruption Institution, which consisted of the Anti-Corruption Unit (“ACU”) and the National Council Against Corruption (“NCAC”).<sup>203</sup> The Cambodian Criminal Code contains multiple provisions prohibiting bribery of various officials or individuals, including judges, experts, and high-level individuals in business.<sup>204</sup> The Criminal Code criminalises both the offering and accepting of bribes. The Law on Public Procurement also prohibits corruption from public officials, bidders, contractors or suppliers involved in the bidding process or in public procurement contracts.<sup>205</sup> Cambodia is in the process of drafting the law on the protection of reporting persons; the law on the protection of experts, victims and witnesses, which would help to encourage individuals to report instances of corruption.

## Anti-Corruption Efforts

In 2013 the RGC underwent its first UNCAC Implementation Review, where it organised an inclusive approach for its review process. The RGC organised a Steering Committee of 16 members representing different sectors, to provide oversight of the implementation of the articles under the Review.<sup>206</sup> The UNODC Implementation Review Group highlighted the RGC’s inclusive process as well as the ACUs memoranda of understanding with various private entities.<sup>207</sup> In addition to recommendations on mutual legal assistance and extradition, the Review Group recommended the RGC build a mechanism to share and analyse data and strengthen cooperation between regional and local authorities.<sup>208</sup>

The RGC prioritises the fight against corruption in its Rectangular Strategy for Growth III, where the strategic objective is to implement a set of interlocking and cross-cutting measures through education, prevention, strengthened accountability, and institutional capacity, public support and involvement, private sector participation and strengthened law enforcement.<sup>209</sup> Additional efforts by the RGC include: 1) broadly disseminating the ACL throughout the country, particularly to line ministries and state institutions; 2) establishing focal points in government agencies to coordinate with the ACU; 3) requiring civil servants to declare assets at regular intervals; 4) establishing public lists of public service fees and time limits for services; and 5) arresting and prosecuting those who commit corrupt practices.<sup>210</sup>

Another initiative of particular note, undertaken by the Public Sector, is the One Window Service Office Project, which demonstrates transparent practice in the delivery of services at the sub-national level.<sup>211</sup> The Ministry of Mines and Energy (“MME”) has committed to effect positive changes in the mining sector following criticisms by civil society regarding illegal mining, bribery, and corruption. The MME initiated a multi-stakeholder initiative, the Extractive Industry Governance Form (“EIGF”), to promote a multi-stakeholder approach in the governance of the extractive industry. This approach builds on partnerships with industry, government, the public, and civil society and is modelled after the widely used EITI governance model. While this is a relatively new initiative, the first stakeholders’ meeting was held in January 2017, followed by a workshop to validate the group’s findings. In June 2017, the Governance Risk Assessment report was publicly released by TI Cambodia in a joint effort with the MME and EIGF. The report identified and analysed governance risk associated with the process for granting mineral exploration licenses.<sup>212</sup>

Publicly, the ACU has investigated and charged only a handful of cases involving bribery or misappropriation of public funds. In 2013, the ACU arrested two employees of a UK biofuel firm who were accused of forging documents.<sup>213</sup> They were later sentenced to seven and eight years in prison.<sup>214</sup> In March 2017, a government official in the intellectual property office of the Ministry of Interior was charged with misappropriation of public funds for illicitly taking money from 100 businesses in Phnom Penh. This case is still ongoing.<sup>215</sup> In 2016, a government official was accused of soliciting bribes from a foreign

clothing company, convicted of misappropriation of public funds, and given a suspended one year sentence and fined approximately 1,500 USD.<sup>216</sup>

## Business Integrity Activities

Cambodia's membership into the World Trade Organisation in 2004 had a significant impact on all sectors and businesses in Cambodia. The most significant effects of WTO membership were the adoption of a broader legal framework, as well as improvements in judicial and quasi-judicial processes.<sup>217</sup> In terms of the legal framework, with ascension to the WTO, the RGC committed to the passage of 50 new laws in order to comply with WTO standards.<sup>218</sup> The Law on Commercial Enterprises, the Commercial Arbitration Law, the Anti-Corruption Law, and the Securities Law are examples of the expansion of the legal framework following WTO ascension.<sup>219</sup> Laws currently being drafted include the Consumer Protection Law, the Competition Law, and the Commercial Contract Law.<sup>220</sup> The WTO agreements obligate Cambodia to establish a dispute resolution system consisting of: 1) judicial, arbitral, or administrative tribunals or procedures for prompt review and correction of administrative action relating to customs matters, and 2) laws, regulations, decisions, and rulings should be administered in a uniform, impartial and reasonable manner.<sup>221</sup>

In an effort to reduce bureaucracy and corruption in service provision, the RGC rolled out the One Window Service Office project to increase transparency in service delivery at the sub-national level.<sup>222</sup> In 2016, the Ministry of Commerce introduced an online platform for business registration, that has been viewed by businesses as an effective mechanism for reducing corruption in the registration process. The introduction of online platforms to assist in service provision, is a trend that both the Ministry of Commerce and the Ministry of Economy and Finance plan to utilise in order to limit bureaucracy in registration and licensing processes.<sup>223</sup> The General Department of Customs and Excise (GDCE) plans to rollout a National Single Window to create a single, standardised entry point for all import export, and transit related regulatory requirements in 2017-2018.<sup>224</sup> Additionally, GDCE plans to expand the use of electronic transactions by implementing e-payment of duties and taxes and accepting electronic copies of attached documents, such as invoice and transportation documentation.<sup>225</sup> These plans are in line with GDCE's strategy to strengthen its legal framework, promote good governance, and reduce corruption.<sup>226</sup>

*Sharing session on "Business Integrity & CSR in ASEAN" on 28 April to Impact Hub's young entrepreneurs. They are from the LEAD Program which is designed for mature start-ups looking to scale up their activities through both peer learning and one-to-one coaching. All of them already owned a business; some of them faced one mutual problem which is business and tax registration. They said it takes time and is a complicated process.*



Business associations, such as the Federation of Association of Small and Medium Enterprises in Cambodia ("FASMEC"), the Cambodian Women's Entrepreneurs Association ("CWEA"), the Cambodian Federation of Employers ("CAMFEBA"), the Garment Manufacturers Association of Cambodia ("GMAC"), and the Cambodian Freight Forwarders Association are powerful entities in providing trainings and support to their private sector members. In an interview we conducted with the director of a leading business association, we learned that the businesses within the association were able to reduce the cost of informal payments from 700 USD to 300 USD by joining together and refusing to pay the informal fees.<sup>227</sup> In addition to the business associations, the chambers of commerce, including the American Chamber of Commerce ("AMCHAM"), the European Chamber of Commerce ("EUROCHAM"), and the Australian Chamber of Commerce ("AUSCHAM"), are effective support organisations for their private sector members and are active in improving business integrity. EUROCHAM signed an MoU with the Anti-Corruption Unit, which strengthened the link between EUROCHAM, its members, and the ACU. The ACU has organised an event with EUROCHAM to encourage the Chamber's members to work with the ACU and to contact the ACU with questions or complaints.<sup>228</sup>

The MoUs between private sector companies and the Anti-Corruption Unit, though confidential, seem to be an effective mechanism for promoting business integrity, according to companies with whom we spoke. Thus far, the ACU has signed MoUs with approximately 80 companies, with a couple hundred more planned. According to EUROCHAM, the MoUs create a mechanism for companies to access the ACU and informally resolve complaints with the ACU's assistance.<sup>229</sup>

In terms of foreign aid, the largest donors in 2008 were Japan, China, and the European Union, with pledges of 113 million USD, 257 million USD, and 214 million USD respectively.<sup>230</sup> Other donors and multilateral institutions operating in Cambodia are the UN Office of Drugs and Crime, who oversees the formal review process for UNCAC,<sup>231</sup> the Asian Development Bank and the Organisation for Economic Cooperation and Development who are both committed to anti-corruption in the region<sup>232</sup>. The World Bank has supported anti-corruptions in terms of the formation of the Arbitration Councils and the One Window Service Initiative.<sup>233</sup> USAID has been active in promoting anti-corruption activities since its 2004 report on corruption in Cambodia. USAID supported PACT Cambodia in many of its anti-corruption projects, including its corruption in business campaign.<sup>234</sup> The Swedish International Development Cooperation Agency (2015) supports the current TI Cambodia strategic plan from 2015-2019, while the Swiss Development Cooperation Agency supported TI Cambodia's Business Integrity activities in 2017.<sup>235</sup> GIZ has funded several programmes to promote good governance, including the National Audit Authority (2006-2014), and Japanese development projects support Cambodia's legal and judicial reform.<sup>236</sup> While donors have supported anti-corruption efforts in Cambodia for quite some time, there has been less of a focus on promoting anti-corruption efforts in the private sector, with the bulk of funding seeming to go to strengthening public institutions' anti-corruption efforts.

In addition to heavily relying on donor aid, Cambodia also houses 607 NGOs as of 2003, 407 of which were local. The NGO Forum of Cambodia ("NGO Forum") and the Cooperation Council for Cambodia, both NGO umbrella organisations, each have approximately 100 NGO members.<sup>237</sup> NGO activities are diverse, according to NGO Form 22% of NGO activities are focused on rural development, followed by activities in education and training, health and social development, capacity building and institutional development, sectoral analysis, policy, advocacy, and monitoring of large scale development projects.<sup>238</sup> While civil society organisations have been active in Cambodia since the late 1990's focusing on a variety of initiatives, CSOs have largely focused on business and human rights, with very few initiatives targeting business integrity issues directly. The United Nations Office of the High Commissioner for Human Rights actively trains private sector and CSOs on the UN Guiding Principles for Human Rights. The Cambodian Center for Human Rights ("CCHR")'s Business and Human Rights programme seeks to increase respect for human rights of corporate actors working in the land sector.

In 2008, forty domestic and foreign companies supported PACT Cambodia's Clean Business Initiative, which called for companies to commit to avoid bribery or selling fake and unsafe products, to operate with fairness and integrity and to promote reforms to the business environment.<sup>239</sup> The initiative closed in 2010.<sup>240</sup> In 2012, Transparency International Cambodia launched their three-year strategic plan, which included a focus on private sector anti-corruption measures. The Business Integrity Programme was officially established in 2014 and began offering compliance and business integrity training, as well as one on one consultative services to companies interested in establishing Corporate Integrity Systems, to better equip their staff with policies and procedures to ward off corruption. However, prior to the establishment of the Business Integrity Programme, most anti-corruption efforts in Cambodia were focused on improving anti-corruption in the public sector, such as the passage of the Anti-Corruption Law and the establishment of the ACU.

There is also a focus amongst civil society on promoting responsible business conduct. The Oxfam led Corporate Social Responsibility ("CSR") Platform consists of private companies and NGOs with the objective of coordinating the government, the private sector, and civil society to promote corporate social responsibility principles in business practices.<sup>241</sup> While the Platform focuses on a broad range of CSR issues, anti-corruption and business integrity are included in the Platform's focus. Impact Hub Phnom Penh seeks to promote entrepreneurs who have business ideas that seek to make a positive social impact. Finally, the Cooperation Council for Cambodia ("CCC") launched its Responsible Business Conduct Program in 2017, which seeks to prepare CSO's for increasing engagement with the private sector. Their aim is to enable sustainable inclusive development and to strengthen CCC and its CSO members' capacity to engage with the private sector and understand and promote responsible business conduct.<sup>242</sup> In 2017, USAID and Development Innovations supported SHE Investments to produce an online platform for business owners aimed at explaining some of the logistical issues of registering a business and maintain tax compliance. The platform also shares information with companies about how to avoid corruption in their business practices.<sup>243</sup>

**While donors have supported anti-corruption efforts in Cambodia for quite some time, there has been less of a focus on promoting anti-corruption efforts in the private sector, with the bulk of funding seeming to go to strengthening public institutions' anti-corruption efforts.**

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- 179 TI -C SMEs, 2015
  - 180 TI-C SMEs, 2015
  - 181 TI-GCB, 2017
  - 182 PACT Cambodia, 2010, p. 35
  - 183 PACT Cambodia, 2010, p. 35
  - 184 PACT Cambodia, 2010, p. 36.
  - 185 TI-C SMEs, 2015
  - 186 TI-CPI 2016
  - 187 TI-CPI 2016
  - 188 100 is the worst possible score and indicates a high risk of corruption
  - 189 TRACE Matrix, 2016
  - 190 Ear, p. 160, PACT Cambodia, 2010
  - 191 World Bank Doing Business 2017
  - 192 WB Doing Business 2017
  - 193 TI-GCB, 2017
  - 194 TI Cambodia Press Release 2017
  - 195 Ear, 2016
  - 196 WBG Enterprise Survey, 2016
  - 197 WBG Enterprise Survey, 2016
  - 198 TI-C SMEs, 2015
  - 199 WBG Enterprise Survey, 2016
  - 200 TI NISA 2014
  - 201 TI-C NISA 2014, p. 34
  - 202 TI-C NISA 2014, p. 36
  - 203 Rectangular Strategy for Growth Phase III
  - 204 Criminal Code, Articles 517, 555
  - 205 LPP, 2012, Article 67
  - 206 UNCAC Coalition, 2013
  - 207 UNODC Cambodia, 2015
  - 208 UNODC Cambodia, 2015
  - 209 Rectangular Strategy for Growth Phase III
  - 210 Rectangular Strategy for Growth Phase III
  - 211 TI-C NISA, 2014
  - 212 TI-C Governance Risk Assessment
  - 213 TI-C NISA, 2014
  - 214 The Khmer Times, 30 December 2016
  - 215 The Cambodia Daily, 27 March 2017
  - 216 The Cambodia Daily, 20 August 2016
  - 217 DFDL, 2017
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  - 221 DFDL, 2017
  - 222 TI-C NISA, 2014
  - 223 DFDL, 2017
  - 224 GDCE, 2014, p. 59
  - 225 GDCE, 2014, p. 59
  - 226 GDCE, 2014, p. 79
  - 227 Expert Interview 9
  - 228 Expert Interview 10
  - 229 Expert Interview 10
  - 230 Ear, 2013, p. 28
  - 231 TI-C NISA, 2014
  - 232 TI-C NISA, 2014
  - 233 TI-C NISA, 2014
  - 234 TI-C NISA, 2014
  - 235 TI-C NISA, 2014
  - 236 TI-C NISA, 2014
  - 237 Ear, 2013, p. 30
  - 238 Ear, 2013, p. 31
  - 239 The Cambodia Daily, 24 September 2008
  - 240 TI-C NISA, 2014
  - 241 Impact Hub EPIC Fellowship, <http://www.epiccambodia.com/>
  - 242 CCC Strategy 2016-2021
  - 243 The platform is available here: <http://ngeayngeay.co/>

# **Business Integrity Country Agenda Assessment (BICA)**

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## **INDICATORS**



# Summary of Public Sector Indicators

## Public Sector Overview

In most thematic areas under the public sector BICA analysis, Cambodia has a sound legal and policy framework that is in line with international standards. This was the result of Cambodia's legal frameworks initially being structured under the guidance of international organisations when Cambodia made the transition to a liberal democratic market economy in the 1990s. The RCG's continued willingness to receive and implement guidance from donors and international organisations, such as the WTO and ASEAN, resulted in further progress. Benchmarks include significant improvements in human development indicators, GDP growth, and substantial foreign investment. Cambodia has also signed and ratified international and regional anti-corruption agreements, and administrative protocols in areas such as tax and accounting to meet its international and regional obligations. Areas where improvement in legislation are required are in the protection of whistleblowers and legislation controlling undue influences on political parties.

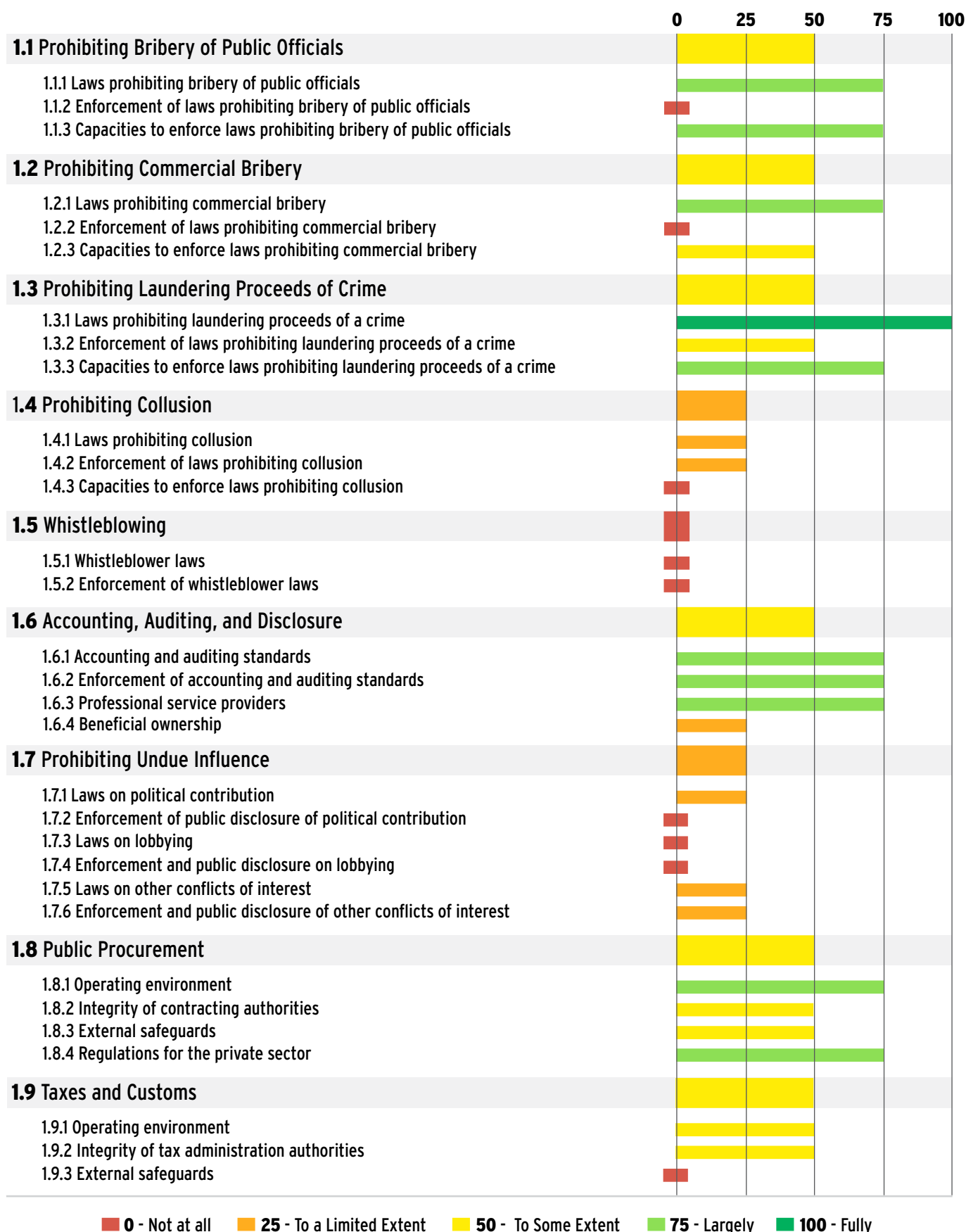
Despite robust legal standards, the implementation of these frameworks is an ongoing challenge in Cambodia. There are many reasons for these challenges. Worth mentioning are the differing capacities between urban and rural populations to transition to a more regulated operational framework in doing business, coupled with the entrenched reliance on informal networks and economic systems. Additionally, the post-conflict context of Cambodia remains relevant as governance institutions must transition from functioning through patronage networks meant to exclude large portions of the population to implementing transparent bureaucratic measures to govern the state as a whole. As Cambodia transitions from an aid reliant low-income economy to a lower middle-income economy, the state must transition its governance measures to reduce reliance on informal systems. It can do so by ensuring compliance with revenue-generating activities such as taxation and accurate accounting and by providing a base of social services such as healthcare, education and water and sanitation. Furthermore, agencies entrusted with implementing the new laws are not uniformly effective. Some Ministries and provincial level governance bodies are making great strides in areas such as taxation and procurement, but others lack oversight and training and have lower operational capacities that interfere with their ability to enforce the adopted standards.

As detailed below in the in-depth analysis of the indicators, the effectiveness and ineffectiveness of existing legal frameworks stem from several factors, including:

- Capacity of enforcement agencies to implement the laws;
- Capacities among domestic firms to develop their business in compliance with the law;
- Inadequate coordination between nationally directed projects and provincial management;
- The challenge of competing for foreign investment while shifting the business environment;
- Lack of political will to call out lagging institutions on sensitive issues in combatting corruption.

The public and private sectors have historically been very interwoven in Cambodia, making the creation of an open, fair, and transparent business environment all the more challenging. Destabilizing systems of patronage requires a delicate balance of increasing the capacity of actors who were formerly excluded from the table and limiting behaviours that result in opacity and lack of due process from actors who enjoy the majority of the table. In an economy reliant on imports and exports, Cambodia must also increase its competitiveness between two much larger economies (Thailand and Vietnam) in an environment where transparency and public accountability are not universally prioritized.

# Public Sector Assessment



## Summary of Public Sector Indicators

The business environment in Cambodia is known for being facilitated by gifts and unofficial fees. Although this is seen as culturally appropriate in Cambodia, it is not conducive for fostering a culture of transparency and business integrity. Most commonly, anti-bribery practices in Cambodia are based on the anti-corruption policies of foreign enterprises operating within the country rather than internal structures mandated under the law by the Cambodian Government. Cambodia's legal framework on anti-corruption is sound with the adoption of the Law on Anti-Corruption in 2010 that prohibits the bribery of public officials and commercial bribery. While the law sets out effective definitions and sanctions for both direct and indirect forms of bribery, enforcement of the law is still sporadic with only a handful of investigations resulting in convictions.<sup>244</sup> A lack of transparency in the investigative process prevents external actors from knowing whether the investigations meet standards of due diligence.

The capacity of investigations to be fully independent may be hampered because the Chairman and Vice-chairman of the ACU are appointed by the related Ministries and the Prime Minister. Information of where investigations are stalled once the ACU receives a complaint is not clear, whether that is within the ACU itself, the police investigation, or the judiciary. The ACU is well integrated into the public sector, with representatives in most Ministries, and has opened five provincial offices as of early 2017.<sup>245</sup> 200 additional judicial police officers will increase the capacity of the ACU to carry out thorough investigations and monitor key sectors. The Ministry of Justice (MoJ) would also benefit from greater transparency and oversight as very few charges of bribery are prosecuted.

Cambodia is considered the most at-risk country for money laundering in Southeast Asia but recent changes to the laws promise improvement. Cambodia passed its first law on the proceeds of crimes in 2007<sup>246</sup> and later mandated the creation of the Cambodian Financial Intelligence Unit ("CAFIU") to investigate reports of money laundering.<sup>247</sup> In 2008, the National Bank of Cambodia ("NBC") issued Prakas requiring banks to conduct due diligence to confirm the identification of customers opening an account or for one-off transactions more than 10,000 USD.<sup>248</sup> Additional Prakas were issued covering insurance firms, investment and pension funds, real estate agents, lawyers, casinos, trusts, and NGOs. A National Coordination Committee on Anti-Money Laundering and Combating the Financing of Terrorism was created in 2012 to coordinate efforts. The existing regulations are generally in line with international standards, particularly those of the NBC, but enforcement is problematic. Instances of suspected money laundering are not being investigated by the CAFIU, border control is problematic, a standardised reporting mechanism and beneficial ownership registration are lacking, and there is no coordination with other nations or international organisations on investigations or such measures as asset seizure.

Under Cambodian Law collusion is prohibited solely under the Law on Public Procurement. Acts constituting collusion according to the definition provided by Transparency International<sup>249</sup> include the formation of cartels, fraud and price fixing are addressed in multiple laws, including the Cambodian Criminal Code and the Anti-Corruption Law. In addition to stronger legislation, fighting collusion within a business environment requires strong whistleblower protection. Unfortunately, there is not yet a Cambodian law to protect whistleblowers, though there is a draft of such a law. There are protections for those reporting suspicious behaviour in the Anti-Corruption Law and the Law on Public Procurement, yet there are equal measures to punish perceived defamation for false reporting, which may have a silencing effect.<sup>250</sup>

Cambodia's scattered legislation prohibiting collusion will soon be bolstered by several draft laws on competition, contracts, e-commerce and the protection of reporting persons, but it is doubtful that tangible improvement will be realised in the near future. Enforcement against collusion practices is an ongoing problem. On the one hand, Cambodia's economic context includes capitalising on cheap labour and producing low

value-added items, which makes cartels and price fixing unlikely. On the other hand, collusion facilitates illicit financial flows and trade mis-invoicing, which have increased in Cambodia to over 4 billion USD, or 20% of the GDP in 2014. Moreover, the political context exacerbates enforcement as public allegations of collusion are often used as a tool to deter and subvert political opposition and civil society rather than promote business integrity.

The National Assembly adopted a comprehensive procurement law and two operational manuals in 2012. Public procurement is an area of high risk for collusion and corruption because it involves the spending of public resources. The Ministry of Economy and Finance implemented new procurement processes but enforcement of this framework and transparency in the bidding process are inconsistent<sup>251</sup>. Building capacity among local actors at the national, provincial, district and Commune/Sangkat level to implement the technical aspects of the regulation will be a key component of identifying irregularities and stamping out old systems of doing business.

There is currently a very weak legal framework that sets limits on campaign financing, political contributions, or political lobbying from the private sector, political parties, or civil society. This lack of structure gives the ruling party an advantage during election cycles, with greater capacity to raise funds from the public and private sector. The 2013 Election Law adds marginal regulations on campaign finance contributions.<sup>252</sup> The parties are generally inexperienced with political lobbying and have a limited understanding of how it can affect party platforms and decisions in both the election campaign and the administrative term. The lack of provisions on political lobbying in any law in Cambodia, leave a large area of political influence that is unmonitored and unregulated. The legal framework on conflicts of interest between the public and private sector deserves mention here. Similar to collusion, a definition of conflict of interest is found only in the Law on Public Procurement. A definition is also pending in the draft competition law, which has remained in draft form since 2006. The Manual on Public Procurement recognises the role of civil society in promoting transparency and accountability in financial interactions between the public and private sector, thereby creating some space for external monitoring of political lobbying and fundraising.

*TI Cambodia and CWEA conducted a workshop on "Financial Management for SMEs" to 40 female participants attended the event on 22 November with a guest speaker from a local accounting firm.*



Cambodia's auditing and accounting standards are the most well-developed area of the law related to business integrity in the public sector and the most rigorously implemented. Both auditors and accountants are licensed under a national regulatory body, the National Accounting Council of Cambodia, which operates with a high degree of independence from the Government. The International Financial Reporting Standards ("IFRS") have been adopted for both larger businesses and SMEs, and are

being increasingly implemented among domestic businesses. The Ministry of Economy and Finance recently extended a deadline to implement IFRS standards in banking and insurance institutions to 2019. This is expected to increase the reporting of beneficial ownership information, which is currently underreported due to a previously low level of business registration with the MoC and the GDT. The major constraint to broader implementation of accounting standards is cost and education. Many SMEs and family owned businesses perceive the transition to tax compliance as onerous, uneven or express concern at paying back-taxes. Most NGOs implementing internationally funded projects and larger globally or regionally connected businesses have their accounts audited by one of the major internationally affiliated accounting firms operating in Cambodia (PWC, KPMG, E&Y, Deloitte).

Cambodia's economic reclassification in 2015 from low-income economy to lower-middle income economy by the World Bank has incentivised the RGC to generate more revenue by increasing the tax base and enforcing tax compliance. The adherence to auditing and accounting standards is largely due to the role of the GDT who have implemented new laws and sub-decrees designed to increase awareness and fulfilment of tax obligations for a larger portion of Cambodian businesses. Measures taken by the GDT to increase engagement have been to simplify accounting for small businesses, place more services online and carry out more training for both tax audit officers and domestic businesses. Furthermore, the GDT is using business supply chains to increase tax compliance by disallowing deductions for services unless the service provider is tax compliant. Incentives to attract foreign investment with tax exemptions, such as Qualified Investment Projects ("QIPs"), require audited financial statements with their registration and annual reports to the Council for Development of Cambodia ("CDC"). Several Ministries are cooperating on assuring that auditing and accounting standards are implemented and upheld, thereby reinforcing a culture of compliance and increasing capacity among local businesses.

## Known challenges to private sector importers and exporters doing business in Cambodia are excessive bureaucracy and a high likelihood of unforeseen informal payments and facilitations fees.

Known challenges to private sector importers and exporters doing business in Cambodia are excessive bureaucracy and a high likelihood of unforeseen informal payments and facilitations fees. Companies doing business in Cambodia reported that in some cases tariffs for services (administration fees, facilitation fees, and other charges) are not announced in advance and are requested by customs at the time of service.<sup>253</sup> The inconsistent business environment for imports and exports reduces efficiency and productivity and is challenging, particularly for international businesses who have detailed budgets for the fiscal year and must comply with accounting and transparency standards within their home jurisdiction. Since 2014, the average growth of exports and imports is 12.3%<sup>254</sup>. The GDCE has become 155th member of World Customs Organisation (WCO) in June 2011 and is implementing several projects which contributed to the trade facilitation and reduction of bureaucracy.<sup>255</sup>

# 1.1 Prohibiting Bribery of Public Officials

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Cambodia's Law on Anti-Corruption is largely viewed as a strong step towards limiting corruption, however, some provisions are considered problematic and the effectiveness of its main institutions has been questioned. The law posits effective definitions of bribery and punishes direct and indirect bribery of public officials, but enforcement of the law is viewed as sporadic and potentially ineffective.

The Anti-Corruption Unit ("ACU") is responsible for enforcement of the Law, yet in the 7 years since its establishment, only a handful of complaints have led to convictions. While the ACU claims to investigate hundreds of cases, it does not make public whether or why it does or does not pursue a particular case. Because of this lack of transparency, it is difficult to identify whether the complaint is dropped with the ACU or with the judiciary. Recently the overall number of complaints to the ACU have dropped. Some hypothesise that the public has lost confidence in the ACU's independence and efficacy, however, the decrease in complaints could be due to the public now knowing where to make certain complaints.

According to an ACU official, the ACU has adequate resources and coordinates well with other Ministries. Ministry of Commerce ("MoC") officials also acknowledged that the ACU has officials in most Ministries and Departments of the RGC, including the General Department of Taxation ("GDT") and the General Department of Customs and Excise ("GDCE"), to coordinate on preventing and detecting corruption. There is little available information about the coordination between the ACU and foreign law enforcement agencies. This doesn't mean that coordination does not exist, but the scope is unclear if it does.

The independence of the ACU is difficult to ascertain since the Chair and Vice Chair are chosen by the Prime Minister and the remaining officials are appointed by various government entities. This coupled with the lack of transparency about decisions lead to questions about the independence of the ACU. The Royal Government of Cambodia, however, recognizes the problems associated with corruption and does seem to be taking steps to combat it, with Law on Anti-Corruption a strong step in that direction.

## 1.1.1 Laws prohibiting bribery of public officials

Do the country's laws prohibit bribery of national and foreign public officials?

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The Anti-Corruption Law ("ACL") was passed in 2010, after a lengthy legislative journey that began in 1994. The ACL addresses bribery of national public officials, foreign public officials and officials of public international organisations, including receiving and offering, "...directly or indirectly, a donation, promise or any benefit," in order to perform or refrain from carrying out their duty.<sup>256</sup> Therefore, passive and active forms of bribery, as well as direct and indirect bribery, are banned under the law.<sup>257</sup> Payments made to "facilitate any process during the exercise of an official's function," are also a violation of the anti-corruption law. The law also includes a broad definition of bribery, including benefits or promises that are not explicitly of financial value; therefore there can be a range of benefits incurred by the public official. The ACL links to the Cambodian Criminal Code, covering bribe-taking by employees, and bribe-offering and taking.<sup>258</sup> Article 606 of the Criminal Code prohibits the proffer directly or indirectly of a gift, promise or interest in order to induce a public official or holder of public office, to use their influence to obtain public tenders or any other favourable State decision.<sup>259</sup> While the ACL links extensively to the Cambodian Criminal Code, the Law does not link to the Law on Taxation. In fact, bribery or any proceeds of any illegal activities are not mentioned in the unallowable deductibles section.



While the ACL provides a good initial framework for combatting corruption, there are some aspects of the law that are not consistent with international standards. International standards require the creation of independent body to investigate corruption complaints. The ACL created the National Council Against Corruption (“NCAC”) and the ACU but allows for members of both of these bodies to be appointed by the Prime Minister or other government entities.<sup>260</sup> The ACU is also not required to disclose information relating to their investigations.<sup>261</sup>

## 1.1.2 Enforcement of laws prohibiting bribery of public officials

Are sanctions and incentives applied in practice to deter bribery of public officials?

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Under the ACL and the Cambodian Criminal Code, national and foreign public officials can receive a jail sentence from 7 years to 15 years for unrightfully asking for, demanding, or accepting any benefits.<sup>262</sup> Meanwhile, a person who directly or indirectly offers a donation, promise or a benefit to a foreign public official can be sentenced to jail for between 5 and 10 years.<sup>263</sup> The ACL does not include a statute of limitations provision, however, the Criminal Code sets the statute of limitations at 15 years for felonies and 5 years for misdemeanours.<sup>264</sup> Any crime that incurs a prison sentence of more than five years is considered a felony.<sup>265</sup> Therefore, although in the ACL bribery of a public official is not explicitly deemed a felony, given that the prison sentence is typically over five years, it can be assumed bribery of a public official is a felony and carries a statute of limitation of 20 years. This should be clearer under the ACL.<sup>266</sup> Under the ACL, legal entities that commit corruption are required to pay a fine between 10,000,000 and 100,000,000 riel (between 2,368 and 23,686 USD).<sup>267</sup> In addition to fines, legal entities are subject to dissolution, expulsion from public procurement, or barring of operation from activities.<sup>268</sup> There are no penalties under the Anti-Corruption Law for insufficient oversight or supervision.

In terms of active enforcement, very few cases are passed to the Municipal Court for prosecution. In 2012, the ACU Chairman reported that the institution received 800 complaints in the first 8 months of 2012, of which it investigated 30%.<sup>269</sup> At least 240 cases, should have been investigated in 2012 but were not.<sup>270</sup> It is very difficult to gauge whether the cases are not investigated further at the ACU level or with the Municipal Court.

As of January 2014, only 11 corruption investigation cases have been documented on the ACU website since 2010.<sup>271</sup> In 2017, the ACU announced that the number of complaints had halved between 2014 and 2016, with the Unit receiving only 597 complaints in 2016.<sup>272</sup> While the ACU attributed this drop in complaints to the public directing their complaints to the proper entities, the ACU pattern of receiving a complaint, questioning the public official, publishing the official's response on their website, and closing the complaint, is not viewed by the public as an effective mechanism for investigating corruption complaints. Additionally, the ACU does not publish justifications about why a particular case has been chosen for investigation over another. Only a limited number of corruption cases appear to have been prosecuted in the courts.

However, according to one ACU official, since there is a culture of corruption in Cambodia, it would be hard for the ACU to investigate and punish everyone.<sup>273</sup> In 2013, the ACU arrested three employees of a UK biofuel firm who were accused of forging land documents and fraud. The three were ultimately convicted and sentenced to several years in prison each.<sup>274</sup> In 2016, a high ranking official with the Council of Development of Cambodia was arrested for demanding bribes from foreign and domestic investors to process paperwork. He was ultimately convicted of “misappropriation of public funds,”

fined 4 million riel (1,000 USD), and received a suspended 2 year prison sentence.<sup>275</sup> This followed a recent trend of offering public officials accused of bribery suspended sentences once convicted.<sup>276</sup> Therefore, while suspended sentences are offered to public officials, they are often offered in a way that undermines the strength of the law. In the six years since the ACU was established only one high-ranking official has been prosecuted and sentenced to life in prison for taking bribes and syphoning drugs from confiscation piles.<sup>277</sup>

### 1.1.3 Capacities to enforce laws prohibiting bribery of public officials

Do relevant public authorities possess adequate capacities for enforcing laws prohibiting bribery of public officials?

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The ACL established the ACU in 2010 with the aim to implement laws, orders, and regulations related to corruption.<sup>278</sup> The ACU is charged with receiving, reviewing and taking appropriate action for all corruption complaints.<sup>279</sup> Members of the ACU who are appointed as judicial police have the power to take charge in investigating corruption allegations.<sup>280</sup> The ACU receives its budget from the RGC, but also accepts donations from domestic and international sources.<sup>281</sup> In terms of inter-Ministry cooperation, a member of the ACU is appointed to liaise and sit with various Ministry officials, including the General Department of Taxation (“GDT”) and the General Department of Customs and Excise (“GDCE”). According to an ACU official, the ACU is independent but is able to work closely with GDT, the Ministry of Public Works and Transport (“MPWT”), and other Ministries. Also, according to an ACU official, the Unit engages and cooperates with foreign authorities, funding and staff are sufficient and the ACU is independent.<sup>282</sup> However, the independence of the ACU has been called into question, particularly since under the ACL the Chairman and Vice-Chairman of the ACU are appointed by the Prime Minister. In 2016, the independence of the ACU was called into question following corruption allegations against the Cambodian National Rescue Party (“CNRP”)’s Deputy Minister and the related investigation and arrest of one former National Election Commission employee and four other civil society members. These investigations and arrests were characterised by civil society as politically motivated and cast scrutiny on the ACU’s operational independence.<sup>283</sup>

The ACU works with foreign institutions to receive training and participate in exchange programs, however very little information is available about the ACU’s collaboration on investigations with foreign institutions to date. In an effort to reduce corruption faced by private sector entities, the ACU has signed memorandums of understanding (“MoU”) with dozens of companies, that affirm the company’s commitment to anti-corruption and are meant to prevent illicit payments to government officials. However, information relating to the content of the MoU are kept confidential, so it is difficult to gauge how they help to combat corruption.

In addition to the ACU, the NCAC was created to provide guidance and recommendations on anti-corruption work. The Council is comprised of a variety of individuals representing Cambodian institutions, including the King, the Senate and National Assembly, the National Audit Authority, the Council for Legal and Judicial Reform, and the Human Rights Committee.<sup>284</sup>

It is unclear whether the judiciary and the police have the proper resources to investigate and prosecute the number of cases they receive. There is very little information available about whether cases are dropped by the ACU or the judiciary.

## 1.2 Prohibiting Commercial Bribery

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Cambodia was given a score of 60 on the TRACE Matrix for its Anti-Bribery Laws and enforcement, based on its moderate quality of anti-bribery laws but low quality of anti-bribery enforcement.<sup>285</sup> Many aspects pertaining to commercial bribery are covered in the current legal framework, namely the Criminal Code and the Law on Anti-Corruption, including active and passive bribery. However, enforcement seems to be lacking, which is troubling in terms of effectively improving the integrity of the business environment. Very few cases of commercial bribery have been publicly prosecuted following an investigation by the ACU. The ACU is responsible for investigating cases and then referring to the judiciary, which is supposed to bring forward cases. It is unclear where complaints are stopping in the system. In the cases that have been brought forward, the charges ultimately filed or convictions handed down were lessened if compared to the initial allegations.

In terms of capacity, the number of MoUs signed between the ACU and many companies is promising, as well as ministerial coordination with the ACU. Finally, the announcement earlier this year that the ACU would open offices in 5 provinces, coupled with the training of 200 judicial police, mark promising progress in building the ACU's capacity.

However, concerns remain about the transparency of the ACU's budget and independence, as well as how the ACU solves complaints outside of the courts.

### 1.2.1 Law prohibiting commercial bribery

Do the country's laws prohibit commercial bribery?

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The legislation against commercial bribery is largely found in the Criminal Code of Cambodia, with a reference in the ACL. The ACL prohibits bribery offering and taking by employees.<sup>286</sup> The Criminal Code prohibits an employee from "requesting or accepting unbeknownst to his employer and without their authorisation, any donation gift, promise or reward for performing or refraining from their duties."<sup>287</sup> Additionally, offering a donation, gift, promise, or reward to an employee so they perform or refrain from performing is illegal.<sup>288</sup> The undue advantage is not limited to material goods and can include a promise or reward. Despite this, the law encompasses broad incentives for bribery.

Again, there is a gap between the ACL, the Criminal Code, and the Law on Taxation, because neither bribes nor other illicit materials are mentioned to be non-tax deductible. Article 278 of the Criminal Code, which requires the request for a bribe be unbeknownst to the employer, is a broad section of the provision that could lead to a lack of enforcement of the law. In addition to bribery of employees, Article 280 criminalizes bribes committed by individuals who serve as Governors or supervisors of a legal entity. The penalty for demanding or receiving such bribes is 5 to 10 years in prison. The goods are also to be confiscated or a monetary payment should be made to recover any remainder.<sup>289</sup> As previously mentioned, legal entities can also be held liable for bribery and required to pay a fee of between 10,000,000 and 100,000,000 riel.<sup>290</sup> By applying the bribery laws to both staff and supervisors, the law covers most individuals in a company or business as well as the legal entity itself.

Overall, the Criminal Code has reasonably strong provisions in place to prohibit commercial bribery, which is also covered by the ACL although a few gaps still remain in the law as discussed above.

## 1.2.2 Enforcement of laws prohibiting commercial bribery

Are sanctions and incentives applied in practice to deter commercial bribery?

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There are very few cases of individuals who have been prosecuted and convicted for commercial bribery offences. Instead, many individuals are charged with crimes other than bribery. In 2016, a Council for the Development of Cambodia official was convicted of misappropriation of public funds and sentenced to two years in prison after he was accused of soliciting bribes from a Dutch sportswear company.<sup>291</sup> Charges were not brought against the company.<sup>292</sup> In early 2017, a Ministry of Interior Official was arrested and charged with misappropriation of public funds following allegations that he demanded bribes from more than 100 business owners in Phnom Penh. That case remains pending.<sup>293</sup> In 2014, two former Canada bank employees were arrested and tried for forgery and fraud; one bank manager was sentenced to time served for embezzlement and required to pay a fine, while another employee was sentenced to two years in prison and a 1,000 USD fine.<sup>294</sup>

The lack of enforcement of the law leads many businesses to continue paying informal fees or to participate in gift-giving. According to one financial institution, gift-giving is a common practice therefore, it is difficult for them to refuse gifts or not give gifts to clients.<sup>295</sup> A business association that works closely with the customs department estimated that companies pay approximately 350 USD per shipment coming or leaving the port in unofficial fees.<sup>296</sup>

While the punishment for bribery is moderately severe, cases or charges are frequently lessened to misappropriation of public funds or, more often than not, are not prosecuted at all. The statute of limitations for bribery of an employee or a supervisor is a misdemeanour and therefore five years, which seems adequate given the lack of current cases that are prosecuted. A source who works closely with the ACU explained that often the ACU will solve disputes informally, rather than prosecuting cases, particularly in the case of companies who have signed MoUs with the ACU. Thus far, over 80 companies have signed MoUs with the ACU and in 2017 the ACU chairman announced his intention to sign MoUs with 200 Chinese companies in order to eliminate corruption.<sup>297</sup> While this may be an effective mechanism for solving complaints, it lacks transparency regarding the terms of the MoUs, how complaints are solved and potential punishments allocated.

## 1.2.3 Capacities to enforce laws prohibiting commercial bribery

Do relevant public authorities possess adequate capacities for enforcing laws prohibiting commercial bribery?

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The ACU is the only agency in Cambodia charged with investigating complaints of corruption in Cambodia. The ACU is funded through its own budget decided by the Council of Ministers. Information about that budget is not publicly available. As mentioned, the independence of the ACU has been questioned because the Chairman and Vice Chairman are appointed by the Government. In 2016, the ACU was involved in the investigation of a highly political case with no finding of corruption. There are suspicions that the ACU chose not to pursue the complaint since there are many complaints that never reach judicial prosecution.<sup>298</sup> This is difficult to prove, however, since information about when complaints get dropped or resolved is not publicly available.

One of the biggest indicators of the capacity of the ACU in working with the private sector has been through the MOUs that the ACU has signed with companies operating

in Cambodia.<sup>299</sup> The ACU has also published a manual for businesses on combatting corruption. Ministry and ACU sources with whom we spoke mentioned that the ACU enjoys a good level of coordination between Ministries, including the MoC and the MEF, with a member of the ACU sitting in every Ministry office.

In early 2017, the ACU announced that it would open five provincial offices throughout Cambodia, in Preah Sihanouk, Kampong Speu, Siem Reap, Svay Rieng and Kampong Cham in order to effectively combat corruption. In addition to the offices, the ACU announced they would hire and train 200 new judicial police officers to add to their existing 500 officers, which would help to increase investigations into corruption related crimes in Cambodia's provinces.<sup>300</sup> There is no information available regarding the ACUs cooperating with foreign law enforcement.

Thus, while the capacity of the ACU seems to be increasing, information about the ACU's budget and mechanisms for solving complaints with companies remains largely unknown to the public. Additionally, very little information is available regarding the police investigations or judiciary decisions.

## 1.3 Prohibiting Laundering of Proceeds of Crime

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Cambodia has shown some signs of improvement in effectively prohibiting laundering of the proceeds of crime, moving from 3rd on the Basel Anti-Money Laundering Index in 2014 to 9th in 2017.<sup>301</sup> Cambodia has been in the Index's top ten list of most at-risk countries since the Index started in 2012. In 2016, Cambodia was listed as a country of primary concern by the US State Department.<sup>302</sup> Recent improvements are largely based on changes to the regulatory framework, while conviction rates for money laundering remain low.<sup>303</sup>

Cambodia has made significant strides in improving its legal framework for prohibiting the laundering of the proceeds of a crime since the first law was passed in 2007. In 2015, the Financial Action Task Force ("FATF") removed Cambodia from its list of countries that were, "Subject to FATF's ongoing AMT/CFT Compliance Process." The FATF praised Cambodia for its significant process in improving the legal and regulatory framework.<sup>304</sup> However, despite these efforts, issues still remain in terms of coordination between relevant Ministries and entities, and the Cambodian Financial Intelligence Unit ("CAFIU") seems to lack serious capacity to investigate reporting mechanisms for money laundering. Therefore, despite the legislative efforts, Cambodia still remains a potential hotbed for money laundering.

### 1.3.1 Laws prohibiting laundering of proceeds of crime

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Do the country's laws prohibit laundering of proceeds of crime?

Cambodia's laws prohibiting money laundering are found in the Criminal Code and the Law on Money Laundering and Combatting Funds from Terrorism ("LAMCFT"). Under the Criminal Code, money laundering is "the act of facilitating by any means the false justification of the origin of the direct or indirect proceeds of a felony or misdemeanour."<sup>305</sup> The Law also includes assisting in the concealing of funds. The act of money laundering is punishable by imprisonment from 2 to 5 years and a fine of 5 million riels, and is therefore a felony under Cambodian law. In addition to individuals, legal entities can be punished under the law by a fine from 100 million to 500 million riels.<sup>306</sup>

Article 3 of the LAMCFT has a more detailed definition of the acts that constitute money laundering, including 1) the conversion or transfer of property known to be the proceeds of a crime, with the purpose of intentionally concealing or disguising its origin and helping those involved in the original offense to evade legal consequences; 2) concealment or disguise of the true nature, source, location, or disposition of property, knowing the property is the proceeds of an offense; 3) the acquisition or possession or use of the property with knowledge of its origin; and 4) participation in and attempts to commit or force to commit any of the above acts.<sup>307</sup>

In addition to the legislation, in 2008 the National Bank of Cambodia ("NBC") issued Prakas to provide further regulations on anti-money laundering activities. Specifically, the prakas outline the necessary customer due diligence that banks and financial institutions should conduct to obtain satisfactory evidence and properly establish the identity of individuals with whom they are doing business. Banks and financial institutions should conduct due diligence when establishing a business relationship with a customer who is opening an account or requesting safety deposit facilities, or "individuals carrying out an occasional or one off transaction that involves more than 10,000 USD".<sup>308</sup> Customer due diligence should comprise of: 1) identifying the customer and verifying their identity using reliable independent source documents or data; 2) determine if the customer conducting business is acting on behalf of himself or a beneficial owner; 3) understand the beneficial ownership and control structure; 4) obtain information on the purpose and the nature of the business



relationship; and 5) conduct ongoing due diligence and scrutiny to ensure the information is updated and relevant.<sup>309</sup> Additionally, a second set of Prakas, regulates reporting entities who are not under the purview of the National Bank of Cambodia. These entities include insurance firms, investment and pension funds, real estate agents, lawyers, casinos, trusts, and NGOs charged with fundraising, as well as any institution or profession that falls under the LAMCFT.<sup>310</sup>

The Law and the Prakas issued by the National Bank of Cambodia provide substantial regulations for preventing money laundering. While the LAMCFT and associated Prakas are largely in line with international standards, the National Strategies 2013-2017 on Anti-Money Laundering and Countering Funding Terrorism identified gaps in the regulatory framework. These gaps included a lack of standard reporting format for banks, and other reporting entities, a need for enhanced measures for high risk customers and transactions, a clear process for identifying beneficial owners and regulations to mitigate the risk of transactions flowing into the informal sector.<sup>311</sup>

### 1.3.2 Enforcement of laws prohibiting laundering of proceeds of crime

Are sanctions and incentives applied in practice to deter the laundering of proceeds of a crime?

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In 2008, a Sub-decree established the Cambodia Financial Intelligence Unit (“CAFIU”). Additional Prakas in 2009 outlined the functions of the CAFIU, which include receiving suspicious and cash transaction reports and information regarding suspected money laundering, to collect information considered relevant to money laundering, to have timely access to information and materials, and to analyse and assess all suspicious transaction reports.<sup>312</sup> Additionally, a National Coordination Committee on Anti-Money Laundering and Combating the Financing of Terrorism as a permanent and senior level coordination mechanism for preventing and controlling money laundering was created in 2012.<sup>313</sup>

Despite the laws and regulations on anti-money laundering, Cambodia’s money laundering susceptibility is characterised by “a weak and ineffective AML regime, a cash-based dollarized economy, porous borders and the National Bank of Cambodia’s limited capacity to oversee the fast-growing financial and banking industries. A weak judicial system and endemic corruption also constrain effective enforcement.”<sup>314</sup>

Under the law, money laundering or any of the acts defined in Article 3 of the LAMCTF carry a prison sentence of from 2 to 5 years and a fine of between 100 and 500 million riels. Since a conviction for money laundering is considered a misdemeanour, the statute of limitations is only 5 years. The Criminal Code also provides penalties for legal entities that include of fines of 100,000,000 to 500,000,000 riels and additional penalty options, including 1) dissolution; 2) placement under court surveillance; 3) prohibition against operating activities 4) expulsion from the public marketplace; 5) prohibition against conducting public campaigns; 6) confiscation of modalities for which the offences occurred; 7) confiscation of incomes and properties; 8) posting decision on punishment; and 9) publication of decision in newspaper or broadcasting.<sup>315</sup> None of these penalties are mentioned in the LAMCTF.

In one case a domestic financial institution recognised criminal activity and called the police who immediately apprehended the suspect at the airport.<sup>316</sup> This arrest was not widely reported. A foreign financial institution did state that there were clear criteria that separated suspicious activity from criminal activity and that the authorities were quick to respond when suspicious activity rose to the level of criminal.<sup>317</sup> In 2017, two Congolese men were sentenced to eight years in prison after being convicted of forging public documents and using public documents to open multiple bank accounts in a money laundering scheme.<sup>318</sup>

While mitigation incentives are technically available depending on the seriousness of the crime, due to the limited information currently available on AML prosecutions, it is difficult to analyse whether and how these incentives are actually applied.

### 1.3.3 Capacities to enforce laws prohibiting the laundering of the proceeds of crime

Are adequate enforcement capacities available for enforcing laws prohibiting laundering of the proceeds of a crime?

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In 2007, CAFIU was established as the central body responsible for receiving, analysing, and disseminating reports on suspicious transactions and other information regarding money laundering or financing of terrorism within the National Bank of Cambodia (“NBC”).<sup>316</sup> CAFIU initially lacked mechanisms to freeze assets, however, in 2014, a Sub-decree created a mechanism for freezing assets of designated terrorists or money launderers and organisations. However, a weakness of the mechanism is that it cannot share assets with foreign governments.

The National Coordination Committee on Anti-Money Laundering and the Financing of Terrorism was created comprising of the 1) The Governor of the National Bank of Cambodia; 2) Representative of the Ministry of Economy and Finance; 3) Representative of the National Counter Terrorism Committee; 4) CAFIU BOD from the Ministry of Interior; 5) CAFIU BOD from the Ministry of Economy and Finance; 6) CAFIU BOD from the Ministry of Justice; 7) CAFIU BOD from the Council of Ministers; 8) Representative of the Ministry of Foreign Affairs and International Cooperation; and 8) Secretary General of the Cambodia Financial Intelligence Unit.<sup>320</sup> The Committee was created to prevent and control money laundering and the financing of terrorism; therefore, the inclusion of a several different ministries, including Finance, Justice, and Interior seems to suggest coordination amongst different agencies. Because the National Council Against Corruption (“NCAC”) contains members from different organisations, it appears to maintain operational independence, along with CAFIU which is overseen by the NBC.

In December 2014, the RGC revised Strategy 5 in the National Strategies on Anti-Money Laundering and Financing of Terrorism 2013-2017 by adding seven more actions to build capacity of the CAFIU and law enforcement officials and to strengthen cooperation among relevant domestic agencies in AML activities.<sup>321</sup> Primary concerns regarding enforcement and implementation of the Law involve the willingness of domestic authorities to share information amongst themselves and to investigate and prosecute cases. For that reason under the National Strategies, the RGC established a Review Panel managed by the Counter Terrorism Department of the General Commissariat of National Police. The Panel is comprised of CAFIU and law enforcement agencies and serves to strengthen cooperation and share information amongst relevant entities.<sup>322</sup> The National Strategies also recommended increased coordination with international law enforcement through mutual legal assistance, request for freezing, seizing and confiscation of assets or proceeds of crime and extradition, by potentially ratifying any remaining UN Conventions, entering into memoranda of understanding with other nations, enhancing and strengthening international coordination by information sharing and working with neighbouring countries.<sup>323</sup>

Some trainings for officials have been organised. In 2017, 30 ACU officials participated in a training on investigating and preventing money laundering crimes.<sup>324</sup> In terms of coordination with financial institutions, a foreign financial institution noted reporting requirements are inconsistently applied and one institution may be more compliant than another with little to no enforcement from the NBC. The financial institution has sent numerous reports identifying suspicious activity; however, reports are usually not followed up on.<sup>325</sup> In the January 2017 conviction of two Congolese men for forgery related to a money laundering scheme, the Ministry of Interior stated they would coordinate with Interpol to pursue additional suspects in Thailand.

## 1.4 Prohibiting Collusion

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Transparency International's plain language definition of collusion is "a secret agreement between parties, in the public and/or private sector, to conspire to commit actions aimed to deceive or commit fraud with the objective of illicit financial gain. The parties involved often are referred to as 'cartels'".<sup>327</sup> Collusion is an assortment of acts that pave the way for a corporate and/or government culture to support corrupt acts such as bribery, price fixing, transfer pricing or the creation of slush funds. The only operational definition of collusion under Cambodian law is in the 2012 Law on Public Procurement. Collusion is defined as "a plot or an arrangement organised by two or more bidders to create an artificial price that has no real competitive nature, or to influence the activity of any party in the public procurement process, or the implementation of the contract".<sup>328</sup>

In the 2012 Law on Public Procurement, a bidder, contractor, or supplier who is found to be involved in corruption or collusion will be immediately terminated and blacklisted from current and future bidding processes.<sup>329</sup> Although acts under the broader definition of collusion are included under the Cambodian Criminal Code (i.e. Fraud)<sup>330</sup> and the Anti-Corruption Law<sup>331</sup> they are not specific or comprehensive enough to satisfy the standard of prohibiting collusion. Further, although prohibitions of corrupt practices under the Cambodian Criminal Code and Civil Code - such as fraud, bribery, extortion and cheating - exist they are rarely enforced. A more comprehensive treatment of collusion exists under the draft law on competition, but it remains in draft form and thus is not yet applicable to this analysis. Although the draft was expected to be put before the Council of Ministers at the end of 2016, it has yet to reach this stage of the legislative process.<sup>332</sup> Passing and implementing the draft law on competition will be vital to combatting collusion since protecting open market competition is one of the key mechanisms which weakens a culture of opportunism and poor business ethics.

Legal frameworks prohibiting collusion and protecting whistleblowers who report acts of corruption, increasing communication between business associations, consumer groups and anti-corruption organisations and building adequate capacity in the business sectors to report cartels and price fixing are only starting to take root in Cambodia. It will take many years, with a significant level of capacity building and training, before a culture of self-reporting, civil society monitoring, and a strong legal framework are in place. Enforcing the minimal prohibition on collusion in public procurement is a starting point until the legal framework is further developed to be sufficiently robust.

### 1.4.1 Laws prohibiting collusion

Do the country's laws prohibit collusion?

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The Law on Public Procurement provides the only definition of collusion under Cambodia law. Collusion is defined as "a plot or an arrangement organized by two or more bidders to create an artificial price that has no real competitive nature, or to influence the activity of any party in the public procurement process, or the implementation of the contract".<sup>333</sup> The definition infers a prohibition on price-fixing in the bidding process.<sup>334</sup> The Cambodian Law on Investment has a provision on price fixing that prohibits the Government from imposing price controls on products or services of investors who have received prior approval from the RGC.<sup>335</sup> It also provides guarantees that the RGC will not undertake nationalisation policies that will adversely affect the private properties of investors.<sup>336</sup>

The draft law on competition offers broader regulations on the Cambodian market, such as general prohibitions on price fixing, artificially dividing markets and restrictive quotas, when it is promulgated. The draft law on competition includes three articles prohibiting the sharing or dividing of markets on both horizontal and vertical agreements<sup>337</sup> and two articles prohibiting the restriction of the quantity of goods on both horizontal and

vertical agreements.<sup>338</sup> The draft law also includes two articles prohibiting price fixing in both horizontal and vertical agreements, which will reinforce the existing prohibition in the Law on Public Procurement.<sup>339</sup> It will also prohibit the manipulation of bidding in the private sector on vertical and horizontal agreements when it is enacted. The purpose of the draft law is to establish provisions and procedures to promote a freely competitive market economy in Cambodia.<sup>340</sup> Even when it becomes law, it will be some time before the Cambodian market develops sufficiently for the law to be widely applied.

Currently, market regulation operates through officially sanctioned and supported local trade associations who set prices/tariffs for local goods and services to mitigate the bottoming effect of a completely unregulated market. These trade associations typically operate on a municipal level, such as an organisation that regulates Tuk-Tuk prices in Sihanoukville.<sup>341</sup> Larger trade associations such as Cambodian Federation of Employers and Business Associations ("CAMFEBA") and the Federation of Association for Small & Medium Enterprises in Cambodia ("FASMEC") exist to give a voice to the small and medium size businesses that make up the majority of the Cambodian economy. At its current stage of development, the connections and negotiating powers of the trade associations have a greater effect on market prices than would competition legislation.<sup>342</sup>

## 1.4.2 Enforcement of laws prohibiting collusion

Are sanctions and incentives applied in practice to deter collusive practices?

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Law enforcement agencies demonstrate weak enforcement of cases of collusion at the national level. Furthermore, any enforcement activity is limited by the narrow scope of collusion under the Law on Public Procurement, as discussed above. Under the Law, a bidder, contractor, or supplier who is found to be involved in corruption or collusion will be immediately terminated and blacklisted from current and future bidding processes.<sup>343</sup> Public procurement officials involved in collusion or corruption receive administrative sanctions and the possibility of criminal prosecution.<sup>344</sup> There is no public record of complaints or accusations of collusion in public procurement at the national level. Under the Law there are no statute of limitation periods listed nor are there incentive programs or protections to reduce or suspend sanctions for whistleblowers who report acts of collusion in the bidding process.

The only active enforcement of regulations regarding collusion under the Law on Public Procurement was reported by civil society organisation SILAKA.<sup>345</sup> SILAKA piloted the Joint Procurement Monitoring Committee at the Sub-National Level (JPMC) which creates procurement monitoring committees at the Commune/Sangkat level.<sup>346</sup> For example, the JPMC group in Kampong Thom province reported bidders colluding together to the provincial authority, the Provincial Planning and Investment Division (PID).<sup>347</sup> The colluding bidders were blacklisted from the bidding process and the PID brought the concerns to the National Committee for Sub-National Democratic Development ("NDCC"). The NDCC initiated a change to the Procurement Implementation Manual which now requires bidders to place a 2% deposit to enter the bidding process at the Commune/Sangkat level.<sup>348</sup>

Despite the narrow definition of collusion under Cambodian law it is clear that instances of collusion occur in Cambodia by the reported large amounts of illicit financial flows (IFFs). It is estimated that Cambodia lost 1.5 billion USD to illicit financial flows between 2004-2013, which necessarily depends on acts of collusion.<sup>349</sup> Sources of IFFs in Cambodia are typically, but not limited to, illicit natural resource extraction such as the timber industry<sup>350</sup>, sand dredging exports<sup>351</sup> and unregulated fishing. Within the time frame where IFF losses were reported there has been a sharp increase in the monetary amount of IFFs between 2011 to 2014, increasing from 1.7 billion USD to 4 billion USD.<sup>352</sup> One lawmaker pointed out that the money lost to IFFs in 2013 was more than the national budget of that year<sup>353</sup> profoundly impacting everything from public expenditures to taxation.

For example, illicit logging has been an issue along Cambodia's borders since the 1970s and there have long been accusations of collusion between local enforcement agencies and illicit loggers. In 2017 the Ministry of Agriculture, Forestry and Fisheries registered a significant drop in the amount of illegal timber seized, compared to a much smaller decline in the number of logging cases, in the same period last year.<sup>354</sup> The ministry attributes this drop to an anti-logging task force formed in 2016, specifically targeting North eastern provinces in Cambodia.<sup>355</sup> Civil society organisations alternatively reported that forestry crimes have not dropped and that law enforcement remained lax because of collusion between timber traders and local officials.<sup>356</sup>

Most of the IFFs leaving Cambodia are through trade mis-invoicing,<sup>357</sup> where exporters or importers incorrectly report the value or volume of their imported or exported product on their shipping manifest.<sup>358</sup> This process allows large sums of money to flow through international borders undetected. From 2005-2014 as much as 3.6 billion USD were not represented on exports and imports of goods passing through Cambodian ports because of mis-invoicing, but the amount is likely much greater.<sup>359</sup> This figure also does not include services and other intangibles. This indicates that regulation of export markets through enforcement of corruption standards is not effective under the current legal framework. The challenge of stopping IFFs in Cambodia also suggests a poor connection between Government Ministries and local administrators at the provincial or district levels. That being said, trade mis-invoicing is a global problem which accounts for 83% of the 1 trillion USD leaving developing countries annually.<sup>360</sup> Thus, Cambodia will need to participate in global efforts to curb IFFs and trade mis-invoicing in the future.

### 1.4.3 Capacities to enforce laws prohibiting collusion

Are adequate enforcement capacities available for enforcing laws prohibiting collusion?



The draft law on competition has not been enacted thus there is no enforcement. There is limited information and enforcement of the prohibition on collusion in public procurement, particularly at the national and provincial levels. The greatest success being at the Commune/Sangkat level in the provinces who are implementing the programme managed by SILAKA. There is no general information on whether funding is adequate for staff of enforcement authorities. Given that enforcement is both limited and weak, funding is unlikely to be adequate. The PIDs enforcing Commune/Sangkat level procurement processes in Kampong Thom function effectively and have operational independence.<sup>361</sup> Enforcement of the limited prohibitions on collusion in sectors vulnerable to IFFs remains a challenge. Cooperation with other anti-corruption agencies is limited to the increased activity reported by the General Department on Tax, who are increasing the pressure for SMEs to register their business activities. There is limited information on cooperation with foreign law enforcement authorities.

## 1.5 Whistleblowing



There is currently no whistleblower protection law in Cambodia. In 2016, a draft law was introduced that, if passed, could provide a good legal framework for protecting whistleblowers.<sup>362</sup> As a signatory to UNCAC, a whistleblower law would be in accordance with Article 33 on the protection of reporting persons. Additionally, a whistleblower law would encourage individuals to come forward and report corruption. For example, after passing a whistleblowing law, the Republic of Korea's Anti-Corruption and Civil Rights commission recovered 50,000,000 USD in 183 cases.<sup>363</sup> In November 2014, the ACU and the National Assembly's Commission on anti-corruption, Commission X, expressed a joint commitment to drafting a whistleblower protection law.<sup>364</sup> Currently the drafting process has progressed into two laws, the draft law on the protection of reporting persons and the draft law on the protection of experts, victims and witnesses.

Of note are two provisions in the Criminal Code and the Anti-Corruption Law that penalise individuals who maliciously report or report false or defamatory information. These two provisions could arguably deter potential whistleblowers from reporting.

### 1.5.1 Whistleblower laws

Do the country's laws provide for protection to public and private sector whistleblowers regarding corruption?



Cambodia does not have a comprehensive law to protect whistleblowers. A draft whistleblower law has been developed by the ACU to encourage people to report wrongdoings, related to corruption, to the ACU. The draft creates a potentially sound legal framework for protecting whistleblowers and handling complaints.<sup>365</sup> However, there are some problematic areas, particularly Article 12, which states that an individual who reports, "...shall be excused from administrative, civil, and criminal responsibility of acts relating to his or her reporting".<sup>366</sup> This provision limits liability only to acts related to reporting, therefore the whistleblower may be liable for other acts, which can be used to deter whistleblowing. Additionally, Article 10 states that the protection will not be granted if the whistleblower or a person close to them leaks the information.<sup>367</sup> This provision again creates an exclusion to the law that can be used against the whistleblower.

In the Anti-Corruption Law, the Anti-Corruption Unit is charged with "keeping absolute confidentiality of corruption-related sources".<sup>368</sup> However, there are also legal provisions in the ACL and the Criminal Code that discourage individuals from serving as witnesses or reporting wrongdoing to a competent authority. In the Criminal Code, the provision on malicious denunciation can criminalise a person who reports any crimes or who files a complaint to a competent authority.<sup>369</sup> This provision only criminalises people who file reports maliciously or a fake report, however, due to the lack of trust in the judiciary and the lack of presence of a whistleblower law, individuals do not report at all.<sup>370</sup> Despite statements by the Chairman of the ACU, who has repeatedly and publicly stated that he would not prosecute anyone under this provision who reported to the ACU, few whistleblowers have come forward.<sup>371</sup> Additionally, in the Anti-Corruption Law, defamation or disinformation complaints on corruption lodged with either the ACU or the Court can be punished from 1 month to 6 months in prison and a fine from 1,000,000 to 10,000,000 riels.<sup>372</sup>

Whistleblowing protections are also provided under the Manual on Procurement in both the sections on the Complaint Handling Mechanism and the section referring to the Anti-Corruption Law. The Law shields the identity of a person reporting a complaint or corruption during the procurement process.<sup>373</sup>



The current draft law does not strongly outline comprehensive and accessible civil and/or employment remedies and should be clarified. The law also does not state what criminal or disciplinary sanctions are available against those responsible for retaliation.<sup>374</sup> Finally, while the law intends to create a reporting mechanism for whistleblowers, it does not include specifics about what those mechanisms are and how much authority they will enjoy.<sup>375</sup> While the draft law is lacking in certain areas, there is undoubtedly a need for a comprehensive law, covering all sectors, which protects whistleblowers who report corruption.

### 1.5.2 Enforcement of whistleblower Laws

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To what extent does the public sector enforce the laws protecting whistleblowers in the public and private sector?

Since there is not currently a whistleblower law, enforcement is currently impossible. There is also no information available on the protection of those reporting corruption during the procurement process.

## 1.6 Accounting, Auditing and Disclosure

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Cambodia has a robust legal framework of accounting and auditing laws and regulations and an independent professional monitoring body that governs the implementation of accounting regulations and accounting and auditing professionals. Under the Law, most enterprises and organisations are required to prepare financial statements within three months of the fiscal year-end. The 2017 Law on Financial Management significantly restructured the tax regime into small taxpayers, medium taxpayers and large taxpayers to require more businesses to file financial statements with their tax returns.<sup>376</sup> Enterprises whose yearly revenues are less than 62,500 USD do not need to report their revenues in compliance with accounting standards. In the past two years, the General Department of Taxation (GDT) has substantially increased its activities in promoting tax compliance. This is the main driver of enforcing accounting and auditing standards in Cambodia.

The low level of registration among SMEs and micro businesses means that tax compliance, and therefore compliance with auditing and accounting legislation, remains a challenge. Business associations representing SMEs report challenges and frustration among their membership regarding the changes to the Real Regime Tax System ("RRTS") in 2016. The inconsistent implementation of tax reporting standards by the GDT exacerbates this problem as many SME business owners see the regulations as restricting their competitiveness in non-tax-compliant sectors.<sup>377</sup> Multinational companies, on the other hand, are required to comply with international auditing and accounting standards from their home jurisdictions; therefore, the changes to the law were not overly burdensome.

### 1.6.1 Accounting and auditing standards

Does the country's accounting and auditing regulatory framework adhere to international recognized standards?

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The regulatory environment of accounting and auditing standards in Cambodia is independent and technically skilled for both international and national level accountants and auditors. The National Accounting Council ("NAC") of Cambodia implemented International Financial Reporting Standards ("CIFRS") for both regular companies and Small and Medium-sized enterprises ("SMEs") beginning on or after 1 January 2010 and 1 January 2012, respectively. The MEF adopted IFRS standards as the national standard in Cambodia in 2009 without modification.<sup>378</sup> CIFRS for SMEs have simplifications that reflect the needs of SMEs and also take account of cost-benefit considerations.<sup>379</sup> Mandatory implementation of CIFRS Standards for commercial banks and microfinance institutions is delayed to 2019 for all banking and financial institution and general insurance companies.<sup>380</sup> A senior accounting consultant with a major firm confirmed that Cambodia has implemented IFRS standards and when assisting clients, their audited financial statements are IFRS compliant.<sup>381</sup>

Companies are required to prepare regular financial statements following the accounting standards set by the Kampuchea Institute Certified Public Accountants and Auditors ("KICPAA") and the National Accounting Council ("NAC").<sup>382</sup> Financial statements "shall include the balance sheet, the income statement, the cash flow statement and explanatory notes".<sup>383</sup> Companies are also required under the Law on Corporate Accounts to maintain accurate books and records available for inspection that properly and fairly document all financial transactions.<sup>384</sup> The Prakas set by the MEF in 2009 require all enterprises to submit their accounts to an independent auditor if they meet the following criteria: i) an annual turnover of 750,000 USD ii) Assets totalling more than 500,000 USD or iii) more than 100 employees (also the qualification for a large enterprise).<sup>385</sup> Companies that are

traded on the Cambodia Stock Exchange are required to publish their independently audited financial statements on the CSX website.<sup>386</sup> There are only five companies listed on the exchange at the time of writing. Considering that SMEs make up the majority of Cambodian businesses and that most SMEs are unregistered with the MoC or GDT, Cambodia's accounting and auditing regulatory framework does not apply to many Cambodian businesses. Further, despite the efforts by the GDT, there is not an effective mechanism to deal with the large informal sector of the economy under the current auditing and accounting regulatory framework.

## 1.6.2 Enforcement of accounting and auditing standards

Is the adherence of the country's accounting and auditing regulatory framework enforced in practice?

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The primary enforcement agency for accounting and auditing laws and regulations is the General Department of Tax ("GDT").<sup>387</sup> The 2017 Law on Financial Management has restructured the tax regime and created new business categories for reporting and taxation: small, medium and large taxpayers. Small taxpayers, starting at 62,500 USD in revenues per annum, are required to follow simplified accounting standards and submit a monthly tax return in one single form.<sup>388</sup> The next category of medium taxpayers (175,000 - 500,000 USD revenue per annum) are required to follow the international accounting standards of Cambodia and submit their tax returns to the GDT on an annual basis.<sup>389</sup> Medium taxpayers now have the same tax liabilities as legal entities; therefore, it is to their benefit to register as a legal entity with the Ministry of Commerce ("MoC") and the GDT.<sup>390</sup> Large taxpayers, who earn more than 500,000 USD per annum, are required to follow the same reporting standards as medium taxpayers.<sup>391</sup> The biggest shift since 2016 is for SMEs or small taxpayers. Prior to the 2016 amendments, small tax payers were required to file an estimated annual income, which was impossible for the GDT to audit.<sup>392</sup> The estimated taxpayer category reinforced poor accounting and record keeping standards and under reporting of income among SMEs, which is why the current transition to simplified accounting standards is causing confusion. Since 2015, the GDT has been very active in both enforcement of reported taxpayer irregularities and providing training to SMEs to build their capacity to implement the accounting standards under their new taxpayer status.<sup>393</sup>

The main challenge for enforcement of auditing and accounting standards is getting businesses to register with the MoC and GDT. A large proportion of the over 500,000 businesses in the Cambodian economy are micro-businesses and SMEs, only 7.8% of businesses are registered.<sup>394</sup> An example of how the GDT meeting this challenge and enforcing reporting standards is by ensuring that registered enterprises use suppliers and service providers who are also registered with the tax authority.<sup>395</sup> The GDT can ensure reporting down the supply chain by disallowing any tax deduction from the supplier or service provider that are not registered with the GDT and tax compliant. A senior accountant confirmed that their firm changed the travel agency they used in order to ensure that the services provided were tax deductible.<sup>396</sup> As discussed above, the GDT is incentivising its officers to enforce the laws by providing 30% bonuses for giving penalties, even though about 50% of those penalties fail on appeal in independent arbitration.<sup>397</sup>

The reason behind the increased activity of the GDT is that Cambodia has been reclassified by the World Bank Group ("WBG") as a Lower-Middle Income economy from a lower Income economy.<sup>398</sup> The WBG classification depends on Gross National Income ("GNI"). Cambodia's GNI for 2015 was 1,070 USD, just slightly above the threshold of 1,025 USD for Lower Income economies.<sup>399</sup> A reclassification will lead to a scale-back of foreign aid and preferential trade access<sup>400</sup> thereby requiring the country to expand its tax base to increase tax revenue. In the opinion of a senior accountant working in Cambodia the

GDT is going about expanding the tax base in an effective manner, by targeting larger enterprises in construction, hospitality, manufacturing and car dealerships and then using their investment in the economy to promote compliance.<sup>401</sup> Alternatively, business associations reported an inconsistent application of the new tax requirements resulting in an uneven playing field.<sup>402</sup>

Effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to keep or for omissions and falsification of books, records and accounts for the purpose of concealing corruption are available in both the Law on Corporate Accounts<sup>403</sup> and the Law on Accounting and Auditing<sup>404</sup> and the Criminal Code<sup>405</sup> but the application of sanctions is almost exclusively through the GDT enforcing the new amendments to the Tax Law.<sup>406</sup> It should also be noted that enforcement of auditing and accounting standards without due process is also allegedly being used to target civil society and independent press organisations that are seen as critical of the Government.<sup>407</sup> For example, the Cambodia Daily publisher was quoted that “[t]his is clearly a tax bill that is not meant to be paid but whose purpose is to close down the Cambodia Daily” with regards to the closure of the Cambodia Daily in September 2017.<sup>408</sup>

### 1.6.3 Professional service providers

Are the country's professional service providers required to comply with internationally recognised standards?

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Professional auditors and accountants are formally licensed under the Kampuchea Institute Certified Public Accountants and Auditors (“KICPAA”) under the Ministry of Economy and Finance and regulated by the National Accounting Council (“NAC”) as of 2016.<sup>409</sup> Both the KICPAA and the NAC are mandated to implement Cambodian IFRS standards.<sup>410</sup> A senior international accountant working in Cambodia also confirmed that Cambodian trained accountants and auditors are technically proficient and it is quite common for domestically trained accountants to undertake the qualification for accountants in the UK (Association of Chartered Certified Accountants).<sup>411</sup> Accountants and auditors in Cambodia enjoy a high degree of independence from the government both in practice and in law. The original Law on Corporate Accounts and the new 2016 Law on Accounting and Auditing include articles enshrining the independence of the accounting and auditing profession.<sup>412</sup> The KICPAA and the NAC are the professional bodies that govern auditors and accountants in Cambodia and apply sanctions for unethical behaviour.<sup>413</sup> In practice, the GDT is providing most of the training on accounting practices to local Cambodian businesses in its efforts to increase tax compliance. The accounting professionals interviewed in writing this report did not report any interaction with the NAC.

### 1.6.4 Beneficial ownership

Do the country's laws require public information on beneficial ownership for companies, trusts and other legal structures?

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The understanding of and value placed on collecting beneficial ownership information for companies registered in Cambodia and in the wider ASEAN trade area is relatively low. Even the definition of a beneficial owner is often unclear and inconsistent. For example, in the bilateral double tax agreement signed between Cambodia and Singapore in 2016, the definition of a beneficial owner is: “a trustee liable to tax in a Contracting State in respect of dividends, interest or royalties shall be deemed to be the beneficial owner of that interest or those dividends or royalties”.<sup>414</sup> This definition contradicts the definition of an “ultimate beneficial owner” from the 2007 Law on Anti-Money Laundering and Combating Financing of Terrorism (“LAMCFT”): “a person who ultimately owns or

controls a customer on whose behalf a transaction is being conducted, including those persons who exercise ultimate effective control over a legal person or arrangement.”<sup>415</sup> No information on the ownership structure of a business is required when registering a new business with the MoC.<sup>416</sup> Businesses in Cambodia must be registered with the MoC at least 15 days prior to the commencement of business activities. To register a business in Cambodia, one needs a valid identification and visa, or a national ID Card, a work permit and 1,000 USD in a Cambodian bank account.<sup>417</sup> Businesses in Cambodia can be 100% foreign-owned, and it is only recently that a domestic bank account is required to register a business. Theoretically, the information on businesses registered in Cambodia should be available with the Ministry of Commerce, but this information has not been listed publicly on their website since 2015.<sup>418</sup> Registry of a business with the MoC includes the full name, birth date, nationality, address of the registered office and the principle place of business. A description of business operations is required but a description of how the ownership or control is exercised is not.<sup>419</sup>

Registered businesses represent a small fraction of the total businesses operating in Cambodia. Most large Cambodian businesses, such as the major banks, airlines and public service providers, may have their audited financial statements on their websites but not information on ownership of the controlling interests in the respective companies. For the five businesses listed on the Cambodian Stock Exchange, ownership information, including major shareholders, is publicly available on the website in both English and Khmer.<sup>420</sup> The CSX ownership information, listing substantial shareholders, does not account for trusts, Special Purpose Vehicles or LLCs whose sole purpose is to invest on behalf of anonymous parties, therefore the beneficial ownership information, even on the Cambodian Stock Exchange, is relatively limited. Furthermore, beneficial ownership information is often misreported, an example being the construction industry.<sup>421</sup> A Special Purpose Vehicle will obtain a license for construction, which can qualify for tax incentives, but a significant portion of the budget will go to an anonymous individual or company.<sup>422</sup>

LAMCFT includes measures under customer due diligence for reporting entities that requires companies to look behind the information that is reported to their service providers or suppliers.<sup>423</sup> This Law designates the MoC as the “competent supervisory authority” who is legislated to ensure “that the management and shareholders of reporting entities are fit and proper so as to prevent criminals or their associates from holding, or being the beneficial owners of, a significant or controlling interest or management function in such entities”.<sup>424</sup> Whether these provisions in LAMCFT have been applied is unknown and highly unlikely given the low level of registration of businesses in Cambodia.

Under LAMCTF, customer due diligence should consist of 1) identifying the customer and verifying their identity using reliable independent source documents or data; 2) determine if the customer conducting business is acting on behalf of himself or a beneficial owner; 3) understand the beneficial ownership and control structure; 4) obtain information on the purpose and the nature of the business relationship; and 5) conduct ongoing due diligence and scrutiny to ensure the information is updated and relevant.<sup>425</sup> However, the National Strategies on Anti-Money Laundering and Countering Funding Terrorism identified gaps in the regulatory framework of LAMCTF, including a lack of standard reporting formats for banks and other reporting entities, enhancing measures for high risk customers and transactions and developing a clear process for identifying beneficial owners.<sup>426</sup>

Reporting entities, including trusts, are required by law to “take customer due diligence measures, including the identification of their customers and the verification of their customers’ identity”.<sup>427</sup> The LAMCFT offers the most comprehensive regulation on trusts under the jurisdiction of the Financial Intelligence Unit (“CAFIU”)<sup>428</sup> but this does not include information on beneficiaries and the enforcement of these reporting laws is weak. Disclosure of nominees fronting directors or shareholders are not

required on record including the name of the beneficial owners behind the nominee. The only requirement under Law is to report suspicious transactions to the CAFIU.<sup>429</sup> Wilful misrepresentation of beneficial ownership information does not directly provide grounds for criminal and civil penalties, nor the possibility of imprisonment. Failure to disclose nominees fronting directors or shareholders are also not grounds for criminal

On 24, October 2017 at Impact Hub Phnom Penh, Ms Chhay Pidor, Senior Program Officer with TI Cambodia, trained 7 young entrepreneurs on the topic of "Corporate Social Responsibility".





## 1.7 Prohibiting Undue Influence

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Undue influence on the public sector, through unregulated political contributions from the private sector, lobbying, and a lack of disclosure of conflicts of interest, occurs when there is a weak regulatory framework or a lack of enforcement mechanisms. Cambodian law has minimal regulations prohibiting undue political influence from the private sector. Monitoring of the mechanisms of undue influence also remain weak and thus enforcement is sporadic and does not often result in sanctions.

The newly amended (2017) Law on Political Parties (“LPP”) details financial reporting requirements for registered political parties and places restrictions on the sources of funding received by political parties. The Law lacks specificity on reporting of political contributions from the private sector and fails to place any limit on their amount. Sanctions can be applied immediately under the Law by the Ministry of the Interior (“MoI”) or the Ministry of Economy and Finance (“MEF”) for parties found in violation, including the immediate suspension of all party activities. The recent Law on Election of Members of the National Assembly (“LEMNA”) adds additional financial reporting requirements for election campaigns, both for political parties and individual candidates, but this information is not publicly reported.

The concept of political lobbying in Cambodia remains undeveloped. This is not surprising given that Cambodia is transitioning from a low-income economy relying on the guidance of international organisations to a lower-middle income economy seeking to attract foreign investors. As such, professional associations, trade associations and civil society organisations do work to influence government decisions but they are not registered as political lobbyists and there is no formal regulation on these interactions. Similarly, the legal framework regulating conflicts of interest for public sector officials is not well developed. Disclosing ties to the private sector is not mentioned in either the Law on Political Parties nor LEMNA. The only mentions of conflicts of interest under Cambodian law are in the Law on Public Procurement, precluding bidders from participating in the bidding process who have a conflict, and in the draft law on competition, which has yet to become law.

### 1.7.1 Laws on political contributions

Is undue influence in the form of political contributions from the private sector to political parties and/or individual candidates prohibited by law?

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There are limited mechanisms in place under Cambodian law to determine direct public and private funding for electoral campaigns. Under the 2013 Law on Election of Members of the National Assembly (“LEMNA”), the monitoring and facilitation of electoral campaigns is under the purview of the National Election Committee (“NEC”).<sup>430</sup> Political parties campaigning for an electoral cycle must register with the NEC between 70 and 90 days prior to polling and provide an approved bank statement by the National Bank of Cambodia (“NBC”) that includes contributions from “whatever sources, has been deposited by the political party in any bank in the Kingdom of Cambodia”.<sup>431</sup> LEMNA also details that all political contributions shall be deposited in a party bank account and all electoral campaign spending shall be debited from the same bank account.<sup>432</sup> Furthermore, each registered party must keep an account book to record the source of income and the expenses for the electoral campaign, which the NEC has the right to inspect at any time.<sup>433</sup>

The information gathered by the NEC on the campaign finances of the political parties registered in an electoral cycle is not made public, making it difficult for election

monitoring organisations to identify and investigate irregularities. In the last National Assembly election in 2013, a civil society organisation estimated that campaign spending by the incumbent party (15,000,000 USD)<sup>434</sup> was five times more than the highest contesting party (3,500,000 USD) and thirty times more than the next highest party (500,000 USD).<sup>435</sup> The use of state resources in favour or against a political party or individual candidate is not strictly prohibited under the Law.

Under the LPP, registered political parties must send an annual report of activities and a financial report to the Ministry of the Interior and the Ministry of Economy and Finance under the Law.<sup>436</sup> The financial report includes a bank statement, statement of income and expenses and a statement of assets and liabilities.<sup>437</sup> These reports are not made public but are available by Law to relevant competent institutions, including the judiciary.

New amendments passed by the Senate in February 2017 to the Law on Political Parties have increased state regulations on the funding options of all political parties. The Law on Political Parties (1997) mandated that “the State could allocate the national budget of equal amounts to all political parties, for a purpose of using only in the campaign for election of Representatives of the people”<sup>438</sup> but civil society organisations report unequal electoral spending in the latest National Assembly elections in 2013.<sup>439</sup> The new amendments to the Law on Political Parties ban political parties from receiving contributions from “state institutions, non-governmental organisations, associations, public enterprises, public foundations, public institutes” with the exception under Article 28.<sup>440</sup> The new amendments also prohibit a political party from receiving contributions from foreign institutions, companies or organisations which have funding from foreign sources.<sup>441</sup> The UNHCHR commented that restrictions on campaign funding are necessary and common in most democracies, but too much regulation places an undue burden on non-ruling political parties.<sup>442</sup>

The current legal framework sets no limits on the total amount of funds parties can raise for campaign financing, or otherwise. The restrictions on political party funding under the new amendments on the Law on Political Parties are worrying because the Ministry of Interior is authorised to suspend activities of a political party when it finds that a party has “acted in contradiction to the Constitution, Law on Political Parties and other laws currently in force”.<sup>443</sup> This includes the new restrictions on political parties receiving contributions from organisations with foreign funding sources. This framework gives the ruling party a distinct advantage over other opposition parties, particularly with the 2017 amendments to the Law on Political Parties limiting foreign funding, such as contributions from the large Cambodian diaspora. Under the new amendments, the Ministry of Interior may impose a fine of just over 5,000 USD or suspend political activities for parties in violation of receiving contributions from sources listed under Article 29 new.<sup>444</sup> This Amendment has the potential to unduly restrict citizen engagement in the political process, particularly given the remitting of monies from abroad and a high level of integration of foreign aid in Cambodia’s civic environment.<sup>445</sup>

There are no regulations governing the amount of loans available to political parties and individual candidates, other than the reporting requirements to the NEC of a bank statement during an electoral campaign, or the annual report to the MEF and Mol as detailed above. There are also no limits on corporate donations to political parties and individual political candidates. Anonymous contributions to political parties or individual candidates are not outrightly banned under the Law, save reporting to the NEC during the election cycle and to the Mol and MEF annually.<sup>446</sup>

## 1.7.2 Enforcement and public disclosure on political contributions

Is the prohibiting of undue influence in the form of political contributions from the private sector to political parties and/or individual candidates monitored in practice?

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The NEC is the main oversight body for elections in Cambodia at the provincial and national levels. It is an independent agency that is mandated to neutrally implement its jurisdiction to ensure a free, fair, and just election in accordance with the principles of a multiparty, liberal democracy, as guaranteed under the Constitution.<sup>447</sup> Under LEMNA political parties or individual candidates must include a bank statement in their registration to the NEC but there is no detail of whether it must be itemised, only that it must include “contributions from whatever sources”.<sup>448</sup> The NEC has the authority under its mandate to review the financial records of political parties.<sup>449</sup> A civil society organisation reported that as of 2013 the NEC has not examined campaign expenditure of any political party including the last National Assembly election.<sup>450</sup> Furthermore, neither the MEF nor MoI, the annual reporting institutions for registered political parties, have publicly reported irregularities in political party accounts at the time of writing. The annual reports from registered political parties must include “a balance sheet stating of incomes and expenses for the year by category”.<sup>451</sup> These reports are not made public but are kept for seven years and are available for control/inspection with the decision of the courts or a competent institution.<sup>452</sup>

## 1.7.3 Laws on lobbying

Is undue influence of lobbying by the private sector prohibited by law?

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There are no lobbying restrictions or laws that exist in Cambodia for lobbying by the private sector including by corporate lobbyists, professional associations, trade unions, law firms, or civil society organisations. As such no public registry of lobbying exists nor does a global registry of targets by international trade organisations to which Cambodia is a member. A “legislative footprint” procedure is not required for key pieces of legislation nor is there a “cooling-off” period for public officials to work in the private sector as unofficial “lobbyists”. Personal and political connections are highly important for conducting business in Cambodia and this includes connections to public officials.

## 1.7.4 Enforcement and public disclosure on lobbying

Is the prohibition of undue influence in the form of lobbying by the private sector monitored in practice?

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As there are no lobbying regulations or restrictions, there is equally no independent, mandated and well-resourced oversight body that manages registration of lobbyists, offers guidance to individuals and organisations, and investigates apparent breaches or anomalies. Nor is information, registration or data on lobbyists available online.

## 1.7.5 Laws on other conflicts of interest

Is undue influence in the form of other conflicts of interest between the private sector and public sector prohibited by law?

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There is limited regulation preventing undue influence in the form of conflicts of interest between the private sector and public sector. The Law on Public Procurement and the draft law on competition both address conflicts of interest between the private and public sector in their respective areas. The new draft law on competition offers an operative definition of conflict of interest in most areas of interaction between the public and private sector. It will also mandate a commission to address conflicts of interest in most areas of trade when promulgated. The Manual on Public Procurement (Vol. 1) includes a section defining conflicts of interest in the procurement process and mandates that any bidder or staff disclose potential areas of conflict and precludes them from the bidding process.<sup>453</sup> There is no mention of a cooling-off period in either legislation.

## 1.7.6 Enforcement and public disclosure of other conflicts of interest

Is the prohibition of undue influence in the form of other conflict of interest between the private and the public sector monitored in practice?

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As detailed more fully in Section 2.8 on public procurement, monitoring disclosures of conflicts of interest during the public procurement process is not common in practice, although mandatory under the Manual on Public Procurement (Vol. 1).<sup>454</sup> Public officials and senior civil servants do not commonly declare their business interests or relationship with the private sector nor are bidding documents typically available to the public. The Procurement Committee and ultimately the MEF are responsible for monitoring conflicts of interest, but in practice, no instances of declared conflicts of interest have been publicly reported. Since the passing of the 2012 Law on Public Procurement, there are several reports in English newspapers of irregularities in the procurement process with some Ministries and national bodies.<sup>455</sup> One instance of procurement malpractice involving the Ministry of Health was investigated by the ACU, but the outcome of the investigation remains unclear.<sup>456</sup> Procurement irregularities reported in the Cambodian media point to the existence of undisclosed conflicts of interest.<sup>457</sup> Therefore, despite the strength of public procurement legislation and regulations in Cambodia interactions between the public and private sectors regarding conflicts of interest remains opaque.

## 1.8 Public Procurement

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Regulation of public procurement has been legislated in some form in Cambodia since 1995,<sup>458</sup> following the United Nations Transitional Authority in Cambodia (“UNTAC”) handover of the governance of the Cambodian state in 1993. Cambodia first regulated its public procurement process with technical support from the Asian Development Bank (“ADB”) in order to make public spending more transparent and effective and in line with the international standards. At first only the loans and aid received from ADB were monitored. This legal framework was progressively expanded upon until the Royal Government of Cambodia (“RGC”) decided to use the regulations as the guiding principles to create a public procurement system for all public institutions.<sup>459</sup>

In 2004, the World Bank and ADB published an assessment report on public procurement in Cambodia analysing the strength and weakness in implementing existing procurement regulations and meeting international standards.<sup>460</sup> Based on these findings, the Prime Minister placed renewed emphasis on effective and transparent public procurement. This led to the creation of a draft law in 2010 which was completed and subsequently approved in 2012.<sup>461</sup> The 2012 Law on Public Procurement are publicly available online in both English and Khmer. The law includes administrative safeguards designed to avoid intentional or inadvertent influence during the bidding, contracting and implementing processes. It also serves to limit the opportunity for decision makers to use their discretion during the process.

In 1995, in cooperation with the United Nations Development Program (“UNDP”), the RGC piloted a programme on decentralising management authority to five provinces. The programme transferred the role of management and organisation of provincial matters to the provincial authorities. This programme expanded to the rest of the country by 2002 and included provincial management of the Commune/Sangkat Council elections. To date, there have been elections for three mandates under this system. The decentralisation of the state budget to the District level, including district procurement, was implemented in 2013.<sup>462</sup> Public procurement at Commune/Sangkat and District level is managed and carried out by specialised departments that include the Commune Council.<sup>463</sup>

With the decentralisation of the state budget, public procurement at the national level operates fairly independently from the District and Commune/Sangkat level. The implementation of the Law on Public Procurement differs substantially between Ministries providing services at a national level and public works projects administered at a local level. Public procurement is estimated to consume 40% of public expenditures as of 2012,<sup>464</sup> therefore continued implementation of the comprehensive set of Laws is essential to increase transparency across Cambodia. There has been great success with a civil society project that began in 2013 that empowered local stakeholders to monitor Commune/Sangkat public procurement.<sup>465</sup> Monitoring and reporting at the national level will increase the incentives of Ministers to implement public procurement processes, as mandated under the Law.

## 1.8.1 Operating environment

To what extent do the country's public procurement processes ensure that contracts are awarded in a fair and impartial manner?

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The passing of the Law on Public Procurement<sup>466</sup> in 2012 and two Manuals on Public Procurement (for externally-financed projects)<sup>467</sup> established a robust legal framework to ensure that Cambodia's procurement processes are awarded in a fair and impartial manner. These Laws and Sub-decrees are published and easily available on the website of the Ministry of Economy and Finance in Khmer and English (though the English translation remains unofficial). The Laws detail each stage of the procurement process including the notification and bidding stages, awarding the contract, oversight of implementation, and complaint mechanisms. In 2013, the management of the state budget for public procurement was decentralised to the District level. Public procurement at Commune/Sangkat and District levels is managed and carried out by specialised municipal departments.<sup>468</sup> Procurement implementation manuals exist at the Commune/Sangkat and District levels to regulate procurement at a community level but are not available in English.<sup>469</sup> It is not clear whether the Commune/Sangkat procurement manuals are consistent, but they are intended to give direction in implementing the 2012 Law on Public Procurement.

Information on new bids is often an area where public procurement lacks transparency. The 2012 Law provides several articles to assure that the notification of bidding is unbiased and openly competitive. Notification of on the pre-qualifications, bidding, and other amendments must be posted, under the Law, on the public procurement website and the press and the information board of the procurement implementing institution.<sup>470</sup> With the decentralisation of the municipal budgets, announcements of bids under Commune/Sangkat projects can be found at the National Committee for Sub-National Democratic Development ("NCDD"). All bidding proposals are open publicly and immediately after the bid entry deadline.<sup>471</sup>

The administration processes set out in the Law and Sub-Decrees limit the discretion of both the procurement committee and bidders in the context of international and domestic procurement processes. The law further includes administrative safeguards designed to avoid intentional or inadvertent influence during the bidding, contracting and implementing processes. There is a clear chain of responsibility for reporting and monitoring procurement processes under the Law. All public bids are organised by a Committee on Public Procurement at each relevant institution,<sup>472</sup> who report an annual procurement plan to the MEF for approval. Any act of public procurement is subjected to audits and inspections by the MEF.<sup>473</sup> The Procurement Committee receives reports from the Procurement Unit who are responsible for implementing the contracts as set out under the Procurement Plan.<sup>474</sup> Any alteration to the Procurement Plan provided by the relevant institution requires approval by the MEF.<sup>475</sup>

The Law also includes safeguards limiting the influence of people in positions making decisions on public procurement. For example, Article 9 of the Law stipulates that "[t]he [procurement] unit shall be led by a chief whose roles and duties do not involve with other financial matters at their own institution. Chief of the procurement unit is a secretary of the procurement committee".<sup>476</sup> Additional oversight is provided by the development partners in externally financed projects, civil society organisations at the Commune/Sangkat level<sup>477</sup> and ultimately the Cambodian Courts.

Procurement regulations and policies in both Manual Sub-decrees (Vol. 1 & 2) require that each bid include an anti-corruption policy and mechanisms for safeguarding integrity and enforcing accountability.<sup>478</sup> All bidders are required to complete the Statement on Ethical Conduct and Fraud and Corruption when submitting the bid.<sup>479</sup> The anti-corruption statement submitted by the company during the bidding process does not apply to suppliers or sub-contractors of the company submitting the bid. To fill this



gap, the Sub-decrees specify that the Anti-Corruption Law in Cambodia is applicable and complements existing policies of the contracting parties and any companies with whom they contract.<sup>480</sup> These regulations apply to competitive bidding procurement processes. Non-bidding processes listed under Article 13 of the Law are not mentioned in the regulations. Integrity Pacts are not part of the procurement practices in Cambodian legislation or regulations at the time of writing.

To make public procurement more transparent, there are specific standards in the Laws regulating when public bids must be subject to international bidding and to what degree notifications must be publicised. Tenders for work above 1 million USD are subject to international competitive bidding; the same applies for contracts of 300,000 USD or more for goods.<sup>481</sup> Similar monetary thresholds, outlined in the Manuals on Procurement, trigger different bidding processes such as national competitive bidding, shopping, petty cash and direct contracting. Requirements for the breadth of bidding notifications are associated with each bidding process. For example, international competitive bids must be published in a minimum of one English and one Khmer newspaper, while nationally competitive bids need only be published in Khmer newspapers.<sup>482</sup> At a more local level, shopping of goods and services need only be published in a provincially circulated newspaper.<sup>483</sup>

An area of concern in the Law worth mentioning, although it does not seem to be used excessively in practice, is the availability of alternative non-competitive bidding processes under Article 13. This article allows for non-competitive bidding processes to be used as an alternative to competitive bidding with the pre-authorisation of the MEF. The use of direct contracting in case of an emergency under the Article is not sufficiently detailed to prevent abuse. The only limitation is the approval of the MEF and what constitutes an emergency is not defined under the Law. The Anti-Corruption Law and regulations on conflict of interest, which are applicable to all procurement scenarios, mitigate some of the risk of an alternative bidding process.

## 1.8.2 Integrity of contracting authorities

To what extent do the country's contracting authorities and their employees adhere to internationally recognized standards of integrity and ethical behaviour?

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The Law on Public Procurement in 2012 mandates that contracting authorities and their employees have a strict anti-corruption policy as part of their code of conduct, both under the Law on Public Procurement and the Anti-Corruption Law.<sup>484</sup> Although the Law is robust, the capacity of key actors within Ministries responsible for public procurement contracts must be improved to implement and enforce the procedural framework laid out under the Law. At the national level additional training, oversight and enforcement are needed to meet the international standards of integrity and ethical behaviour set out in the Law. There is no mandate for continued training of public procurement officials in the Law but the Manuals are intended for use as a training tool.<sup>485</sup> At the time of writing, there is no information on training regarding public procurement processes through the MEF or ACU on their websites or in a public forum. No representative of the MEF or ACU was available to give further details.

At the Commune/Sangkat level, a civil society partner (SILAKA) has successfully implemented a project to organise and train community monitoring committees<sup>486</sup> to address problems with Commune/Sangkat and District level procurement in two provinces (Kampong Thom and Kandal Province).<sup>487</sup> The community monitoring committees have increased transparency and competence in the procurement processes among local communities, who have in turn reported irregularities to provincial authorities.<sup>488</sup> Beyond these two provinces, proper procurement procedures are not consistently implemented

and contracting through preferential networks remains a challenge to procurement processes at the municipal level.

The MEF functions as the ultimate control authority for public procurement at the national level. The Inspectorate General is responsible for conducting internal audit on public procurement projects and making a report to the Minister.<sup>489</sup> The Law mandates “that internal auditors must maintain their professional independence by closely adhering to the audit standards”.<sup>490</sup> External audits are conducted by the National Audit Authority (“NAA”), an independent authority from the Ministry subject to the audit.<sup>491</sup> External audits are ultimately reported to the National Assembly.<sup>492</sup> The regularity or necessity of either internal and external audits is not specified under the Law nor are they available to the public on the MEF website.

Transparency regarding procurement documents, such as procurement plans from procurement implementing institutions, audit reports from the Ministries or National Assembly or financial statements of contracting parties is an issue. A procurement implementing institution is required to submit an annual procurement plan to the MEF for review and endorsement every year at minimum<sup>493</sup> but there is no indication of whether the report must be independently audited. Public procurement contracts can be subject to audit and inspection by the MEF and relevant competent institutions but this is at the discretion of the institution and not publicly available.<sup>494</sup> Financial asset reports for senior managers of contracting authorities are not available to the public. Although, bidders must submit audited or certified financial statements to the procurement committee, but these documents remain private.

Anonymous reporting or whistleblowing protections are paramount to discover potential irregularities during the procurement process because audit reports of procurement projects or financial statements of contracting authorities are confidential. Whistleblowing protections are provided under the Manual on Procurement in both the sections on the Complaint Handling Mechanism and the section referring to the Anti-Corruption Law. The Law shields the identity of a person reporting a complaint or corruption.<sup>495</sup> The Manual references that the ACU must keep “confidential the identity of persons who report corruption and take necessary measures to provide security to corruption whistleblowers”.<sup>496</sup> As further outlined in Section 2.5, there is currently no general law protecting whistleblowers in Cambodia from sanction, threat, or prosecution other than what is listed in the Procurement Manual and Anti-corruption Law.

Dissuasive, proportionate sanctions are in place under the Law for contracting authorities and employees upon a determination of corruption, including both monetary penalties, blacklisting from future tenders and imprisonment of 1-3 years. Public civil servants at all levels who have violated the provisions of the Law or have committed irregularities, are subject to both administrative and criminal sanctions.<sup>497</sup> Bidders, contractors, or suppliers found to be involved in corruption in the public procurement process, or to have given false or incorrect evidence while filing a complaint in the procurement process, are stopped from the ongoing public procurement and the present contract is immediately terminated and recorded in the blacklist.<sup>498</sup> For example, when the Office of the Investigator General was investigating misuse of funds by the Ministry of Health it threatened to withhold 100 million USD in grant money unless information requested for the investigation was produced.<sup>499</sup> At the Commune/Sangkat level, a company was blacklisted when collusion between bidders was discovered, and this sanction was seen as common and appropriate.<sup>500</sup> The challenge for community members who monitor the companies who bid at the Commune/Sangkat level is investigating whether blacklisted companies have changed their names and placed bids in the future.<sup>501</sup>

The offences listed under the Law on Procurement are under the jurisdiction of the ACU.<sup>502</sup>

### 1.8.3 External safeguards

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To what extent do the country's public procurement processes include external safeguards for detecting and reporting violations?

The Law on Public Procurement guarantees that external control and auditing bodies function independently but their reports are not made available for review.<sup>503</sup> The process for both internal and external audits is laid out in Manual on Procurement Vol. 1 and guarantees the professional independence of auditors for both internal and external audits as described above.<sup>504</sup> Under the rules on audits discussed in indicators 2.7 and 3.2, auditors function independently in their professional capacity as per the Law on Auditing and Accounting.<sup>505</sup> There is no voluntary disclosure programme that enables companies to report on corruption in return for the mitigation of sanctions. There is institutional discretion within procurement implementing institutions and the ACU regarding incentives for companies to report corruption but there is not a formal tip-line or similar program.

Robust, independent appeals processes are in place under the Law and in the Manuals on Public Procurement for aggrieved bidders.<sup>506</sup> The first forum to resolve a complaint is through the procurement implementing institution, who is responsible under the Law for examining and resolving complaints made by bidders at each stage of the procurement process.<sup>507</sup> A complainant who disagrees with the decision of the concerned procurement implementing institution can file a suit with the MEF to review and address the case<sup>508</sup> and with the ACU if the complainant is claiming retaliation.<sup>509</sup> A complainant who disagrees with the decision of the Ministry of Economy and Finance can file a suit with the competent court of the Kingdom of Cambodia.<sup>510</sup> The Complaint Handling Mechanism ("CHM") is further outlined in the Manual on Public Procurement.<sup>511</sup> An important factor in the effectiveness of the CHM are the time frames for responses from the institutions listed above. A formal mechanism to satisfactorily respond to bid complaints is in place, which typically allows 10 working days for the project manager to review the complaint and render a written decision. The complainant has the right to lodge a written appeal of that decision with the MEF within ten working days.<sup>512</sup> The frequency of use of the CHM is not known as all bids are evaluated behind closed doors by the Procurement Committee<sup>513</sup> and often bidders are not notified of whether they were successful or not in the bidding process.

There are no independent complaints mechanisms, apart from the one listed above, for reporting allegations of corruption. All staff involved in the procurement process have a duty to report to the procurement review committee, or any other agency that they feel appropriate including the ACU, all suspected instances of fraud, corruption and collusive or coercive practices when identified.<sup>514</sup> The ACU is the institution that generally receives reports or allegations of corruption. Under the Manual on Procurement, "any procurement official who receives, or learns of, a communication alleging that a person or persons attempted to commit or committed any act defined in the articles related to public procurement" must report this to the ACU in writing and fully cooperate with any investigation.<sup>515</sup> In the past three years, the ACU has been much more active in investigating allegations of corruption regarding public spending. For example, in 2015 an English newspaper reported that the ACU investigated reports alleging irregularities in procurement procedures in three state-run bodies.<sup>516</sup> The outcomes of these investigations are unknown.

The importance of including civil society organisations in monitoring public procurement is recognised in the Manual on Procurement in two different areas, following complaints and grievances and increasing a sense of civic duty in monitoring procurement processes. On a national scale, no specific programs are in place for civil society organisations to act as independent monitors at any stage of the procurement process.<sup>521</sup> Both civil society

and business associations are interested in improving the transparency of procurement processes in Cambodia. For business associations, the focus is on improving record keeping and accounting standards. Civil society organisations and national media representatives can monitor reports by the ACU regarding public spending, to follow-up on the outcomes of allegations when they are available.

The value of participation of civil society organisations as independent monitors at all stages of the procurement process is demonstrated at the Commune/Sangkat level through a project run by SILAKA.<sup>522</sup> SILAKA is working directly with communities in Kampong Thom and Kandal provinces to increase the level of awareness and competency among key stakeholders to understand and monitor public procurement. The Joint Procurement Monitoring Committee at the Sub-National Level (JPMC) is a local citizen-based advisory group that was recognised by the Kampong Thom provincial authority in June 2013.<sup>523</sup> The JPMC enables discussion and consultation from citizens and the private sector to monitor procurement at the Commune/Sangkat and district level.<sup>524</sup> They have reported irregularities in the procurement process to the district authorities, which then reported the challenges to the NDCC at the provincial level. The concerns raised by the JPMC resulted in a change to the local procurement regulations, requiring bidders to place a 2% deposit when placing their bids to prevent collusion amongst bidders who withdraw before the end of the bidding process.<sup>525</sup>

## 1.8.4 Regulations for the private sector

To what extent do the country's public procurement processes require integrity measures in the bidding entities?

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Each bidding entity must abide by a strict anti-corruption policy, and each company must include an anti-corruption clause in all bids. The Law on Public Procurement stipulates that, "[i]n the process of public procurement, head, deputy head and members of the procurement committee, procurement officers, bidders, and other relevant officers and personnel shall respect and follow the procurement code of conducts".<sup>526</sup> On a national level, companies are permitted to tender only if they have implemented a code of conduct under which the company and its employees commit to a strict anti-corruption policy and certify that they have not engaged in illegal conduct as part of their bid. Bidders must sign and submit The Bidders/Consultants Declaration on Ethical Conduct and Fraud and Corruption, with every bid. The declaration includes a clause that reads: "That neither we nor any of our employees, associates, agents, shareholders, partners consultants or their relatives or associates have entered into corrupt, fraudulent, coercive or collusive practices in respect of our bid or proposal".<sup>527</sup> The Manual on Procurement includes examples of unethical conduct for clarity, such as, "[i]gnoring illegal or unethical activity by bidders or prospective bidders, suppliers, contractors, service providers or consultants, including any offer of personal inducements or rewards or otherwise."<sup>528</sup> Companies bidding on works contracts must file an audited financial statement, including any lines of credit, with their bid.<sup>529</sup> They are permitted to tender without disclosing their ownership structure or disclosure of their beneficial ownership information as well as the ultimate beneficiary of associated parent companies.

Sanctions available against companies and their representatives are deemed effective, proportionate and dissuasive if applied. They include monetary and non-monetary penalties for violating the Laws on Public Procurement such as fines, publication of misdeeds and exclusion from any future projects. Under the jurisdiction of the ACU, allegations of corruption, collusion and coercion can be investigated and brought before the Cambodian Courts for criminal charges, such as the crime of Infringement on Freedom of Bidding.<sup>530</sup> The allowable monetary sanctions under the Law on Public Procurement are comparable to those under the Criminal Code. There are no known examples at the time of writing of criminal sanctions being applied for misfeasance during

the procurement process. Blacklisting of bidders who were found guilty of collusion was reported at the Commune/Sangkat level.<sup>531</sup> As explained above, settlement mechanisms and procedures are detailed and publicly available in the Law on Public Procurement and Manuals on Procurement. There are no genuine incentives for companies with effective anti-corruption programmes in place under the Law, nor is there much discretion under the bid evaluation guidelines to include an anti-corruption programme amongst the factors when evaluating a bid.<sup>532</sup>

*TI and CWEA signed MoU on 20 November to engage on improving business integrity and building its member's capacity.*



## 1.9 Taxes and Customs

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Since the ratification of the WTO agreement in 2004, the RGC has significantly improved the operational efficiency of Taxes and Customs. The General Department of Taxation ("GDT") and the General Department of Customs and Excise ("GDCE") are within the Ministry of Economy and Finance ("MEF"). In the last decade, considerable progress has been made in tax collection. Since 2009, the average annual increase of tax collection is 19%. This increase could be explained by the introduction of many online services, casting the tax net wider to petty taxpayers, simplified accounting, the improved capacity of GDT to carry out duties and increase of training for tax audit officers.

Since 2014 the average growth of exports and imports is 12.3%.<sup>533</sup> The GDCE became the 155th member of WCO ("World Customs Organization") in June 2011. It has implemented several projects which contributed to trade facilitation and reduction of bureaucracy. Cambodia has implemented in many customs offices and branches the most recent version of The Automated System for Customs Data ("ASYCUDA"). ASYCUDA is a computerised system designed by the United Nations Conference on Trade and Development ("UNCTAD") to administer a country's customs. The system allows companies to increase their efficiency by processing the documents of their shipments online. Moreover, the National Single Window ("NSW") was launched in 2015, which allows companies to use one entry point to fulfil all import, export, and transit-related regulatory requirements. In 2016, the MoC also introduced online registration for companies.

Despite the increase of government revenues and the implementation of important reforms, representatives from the private sector reported that there still exists a high level of bureaucracy and often, customs officers request informal payments.<sup>534</sup> In addition, some non-transparent tariffs are still applied, which are a major concern for international companies because they must be accounted for in their records. The World Bank Enterprise survey shows that for most companies a major obstacle in Cambodia is the informal sector and informal payments for issuing licenses and permits<sup>535</sup>.

While the RGC is rapidly reforming the policies, regulations, and practices of GDT and GDCE, there is a need for transparency regarding tax agreements with international companies. Increased sanctions and remuneration of tax and customs employees' mechanisms would serve to improve overall business integrity.

### 1.9.1 Operating Environment

Are the country's tax and customs administrations utilising processes in accordance with international recognised standards?

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Cambodia has a developing tax and customs legal framework, which is in accordance with international standards, however, some key commercial laws remain missing.<sup>536</sup> In the last few years, the collection of taxes by the GDT has increased. The GDT has made substantial efforts to enforce the existing laws by conducting more rigorous audits and penalising noncompliant companies. Along with this increase in tax collection, the GDT has improved its customer service and helped to provide guidelines to taxpayers to encourage legal compliance.

More progress is needed to facilitate trade and improve the transparency of tariffs under the GDCE. The country manager of a leading international shipping company reported that in some cases, tariffs for some services requested by customs (administration fees, facilitation fees and other charges) are not announced. In these cases, a local company is hired to transport the shipment and to pay the informal payments. The local company



subsequently provides a proper receipt to the international company, thus circumventing the issues of accounting for informal payments in their records.<sup>537</sup> The World Bank's 2016 survey reveals that on average senior management of large companies spend 17% of their time dealing with requirements imposed by the Government. On the other hand, the senior management of small and medium companies spend considerably more time, 54% and 48% respectively.<sup>538</sup> These figures suggest a high level of red tape. It should also be highlighted that the GDCE has implemented The Automated customs processing system called Automated System on Customs Data ("ASYCUDA"). ASYCUDA WORLD system was established at 54 major customs branches and offices, which covers almost 99% of Single Administrative Declaration ("SAD") and approximately 87% of trade volume.<sup>539</sup> ASYCUDA WORLD is a major step towards the reduction of bureaucracy.

The World Bank Enterprise Survey shows that for 36.5% of all companies, tax administration is not an obstacle, while 17.7% and 40.2% perceive it to be a moderate and minor obstacle, respectively. In January 2016, the Ministry of Commerce launched an online service for the registration of companies, which considerably reduced the time for establishing and registering a business.

The Council for the Development of Cambodia ("CDC") provides investment incentives (i.e. Profit tax exemption (Selective): A tax holiday period is composed of a "Trigger period" + 3 years + Priority Period (Maximum total 9 years).<sup>540</sup> There are also tax incentives for companies listed on the CSX. However, a register of multinational companies and their tax agreements with the government is not available. It has also been reported that in order for a given project to become a QIP, informal payments are often required.<sup>541</sup>

## 1.9.2 Integrity of tax administration authorities

Are the country's tax and customs administrations and its employees committed to internationally recognised standards of integrity and ethical behaviour?

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Among the values that the GDCE maintains, the values of transparency, integrity and discipline are required to curb and protect custom's wrongdoing. The GDT's missions and values include the enhancement of the capacity of tax officers through "modern and highly responsible policies".<sup>542</sup> However, it seems that anti-corruption measures are not sufficiently present in the strategy of either department. It has been reported that there is some training on codes of conduct and anti-corruption measures; however, the exact number of such training courses is unknown.

Under the Criminal Code, the sanctions for tax and custom administration employees, as well as private sector staff, for a bribery conviction seem to be dissuasive. An employee soliciting or accepting any gifts and informal payments could be sentenced to jail for a period of between 6 months and 2 years, and to pay a fine of up to 1,000 USD. The same sanctions are applied to persons offering gifts and informal payments. The sanctions are more severe for a "Governor or another Person" who provide illegal assistance, they can be "punished to imprisonment of between 5 to 10 years". In cases of negligent violation of the Law on Taxation, the sanctions vary between 10% and 40% of the unpaid taxes.<sup>543</sup> According to the Law on Customs, administrative fines for any wrongdoing are between 250 USD and 1,250 USD and imprisonment up to 1 year. In cases of export or import of prohibited goods, the sanction is up to three times the value of the goods and maximum imprisonment of 5 years. On the websites of the GDCE and the GDT online links to the ACU or other authorities to report cases of wrongdoing or corruption do not exist.

In order to improve dialogue with the private sector, the Customs-Private Sector Partnership Mechanism ("CPPM") was launched. Among the results of this mechanism is the establishment of a Public Relations Unit to receive requests or complaints from

the private sector and to provide information to the public about the evolution of the GDCE. The GDT also maintains the Department of Tax Payer Services and Tax Arrears where taxpayers can raise their issues. Even though there is not a specific entity in charge of public relations, the GDT actively cooperates with stakeholders. For example, in the 2017 EUROCHAM White Book, the GDT and the MEF responded to all 11 issues related to the taxes and resolved 3 of them. Regarding the issues related to transport, customs and logistics, none of them has been resolved, 5 had a response and for 2 issues, there was no feedback from the GDCE or other relevant authorities.

There are not any publicly available sources of information about the exact amount of remunerations, nor a mechanism for monitoring and evaluation of staff performance of tax and customs officers.

### 1.9.3 External safeguards

Are the country's tax and revenue collection processes integrating safeguards for detecting and reporting violations?

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Despite the progress in the tax collection, many businesses remain unregistered with the MoC or any relevant Ministry.<sup>544</sup> Among the respondents of the World Bank Enterprise survey, only 69.5% of firms were formally registered when they started operations in the country. The survey also indicates that 77% of the companies compete against informal businesses and 32% have major problems with identifying practices of competitors in the informal sector. Consistent registration and tax collection requirements should be further applied and enforced.

Many respondents were expected to give informal payments and gifts to public authorities for issuing operating licenses (50.3%), import licenses (63.4%) and construction permits (86.8%).<sup>545</sup> It is necessary to establish an external safeguard mechanism to limit these informal payments to the relevant authorities. Regarding custom licenses, a representative of a major logistics' association reported that for every border checkpoint where products are imported and exported, a different custom license is needed.<sup>546</sup>

Both the GDCE and the GDT maintain specific departments in charge of internal auditing. They have clearly defined roles and responsibilities. However, their reports or the results of their audits are not publicly disclosed. Moreover, every Qualified Investment Project (QIP) must submit annual audited financial statements by independent auditors. According to the Law on Taxation, the GDT has the authority to carry out audits of taxpayer activities and to reassess tax liabilities.<sup>547</sup> An independent audit is conducted on all issuers trading on the CSX. GDT officials also receive payment incentives if they do identify and report errors in tax declarations or filings.<sup>548</sup>

In January 2010, the Customs-Private Sector Partnership Mechanism ("CPPM") was launched. The CPPM aims to encourage private sector participation in promoting compliance with law and regulations as well as the effectiveness of trade facilitation in Cambodia. The CPPM is composed of members from the GDCE and representatives from the private sector. Through this mechanism, companies are able to report corruption allegations.

Some voluntary disclosure programs exist that allow companies to report on corruption in return for mitigating sanctions. It has been reported that a letter to the court could be issued by the ACU, stating that the person voluntarily disclosed a valuable information for the investigation. According to an ACU source, the court often takes into account such letters and mitigates the penalty of the offender.<sup>549</sup>

# Dispute Resolution Mechanism

While the Cambodian Constitution calls for an independent judiciary, many investors and companies are reluctant to use the courts because they are perceived as unreliable and susceptible to political influence or bribery.<sup>550</sup> Local and foreign companies alike report problems with inconsistent rulings, corruption, and difficulties in enforcing decisions.<sup>551</sup> One Director of a business association mentioned that he was not interested in using the court system, because there was only one court who heard all the cases, criminal or civil and the court was too slow.<sup>552</sup>

For these reasons, companies have frequently turned to alternative dispute resolutions to solve disputes. Negotiations are often facilitated through institutions such as the Ministry of Commerce, the Council for the Development of Cambodia, and the Cambodian Chamber of Commerce.<sup>553</sup> In 2006, the National Commercial Arbitration Center (“NCAC”) was established and officially launched in 2013, in order to arbitrate commercial disputes for domestic and foreign companies.<sup>554</sup> In August 2017, it was announced that the NCAC had settled its first two cases - one involving a construction contract between a Cambodian company and a foreign entity, and the other a supplier contract between a private company and a Government agency.<sup>555</sup> To date, details of the settlement or the dispute have not been publicly disclosed. In addition to the NCAC, the Arbitration Council was established in May 2003 to review and settle collective labour disputes. The Arbitration Council has heard hundreds of cases since its inception in 2003 and publishes each decision online in order to share the legal reasoning of the Council.<sup>556</sup> Because very little jurisprudence is available from the Court, this information is extremely helpful to companies seeking to understand the relevant interpretation of the law.

Individual departments are also starting to develop dispute mechanisms. For example, in 2016 the General Department of Taxation (“GDT”) introduced the Committee for Tax Arbitration to handle customs, excise, and tax disputes arising from final decisions or rulings from the General Department of Customs and Excise or the General Department of Taxation. The Committee is comprised of the Minister of Economy and Finance, the Secretary of Economy and Finance, a representative from the National Accounting Council, the General Director for the General Department of Policy for Economy and Public Finance, and the General Director from the General Department of Internal Auditors.<sup>557</sup> Since previously the decision made in all disputes related to taxation were solved by the GDT, an independent Arbitration Committee to help resolve tax disputes was welcomed by the private sector.<sup>558</sup>

In 2014, the Law on Organization of the Courts was promulgated, which created a specific Court of First Instance for commercial cases, which could help increase the court’s efficiency and reduce trial times, while helping judges to develop more specialised skills for handling commercial cases.<sup>559</sup>

Dispute resolution is an important component of business integrity since the private sector must be able to resolve disputes without turning to corruption. The recent developments in alternative dispute resolution seem to be a promising signal that the private sector can seek resolutions with integrity.

- 244 ACL 2010
- 245 The ACU has signed MOUs with over 80 companies in the private sector to prevent and prohibit commercial bribery and has expressed the intention to sign MOUs with an additional 200 Chinese companies.
- 246 LAMCTF, 2007
- 247 Sub-decree No. 10
- 248 Prakas No. B7-08-089
- 249 'collusion' is "a secret agreement between parties, in the public and/or private sector, to conspire to commit actions aimed to deceive or commit fraud with the objective of illicit financial gain. The parties involved often are referred to as 'cartels'. (TI Plain Language Guide, 2009)
- 250 ACL, Article 41
- 251 which includes notice and bidding stages, awarding of the contract, oversight of implementation, complaint mechanisms for unsuccessful bidders and sanctions for violating the process
- 252 LEMNA, 2013, Article 37 new, 16 new
- 253 Expert Interview 2
- 254 MoC
- 255 GDCE
- 256 ACL, 2010. Art. 33-34.
- 257 Id.
- 258 Id. at Art. 32.
- 259 Penal Code 2009, Article 606.
- 260 ACL, 2010, Article 10,11
- 261 ACL, 2010, Article 13
- 262 ACL, 2010 Article 33; Penal Code, 2009, Articles 594, 605
- 263 ACL, 2010, Article 34
- 264 Penal Code, 2009, Article 144
- 265 Penal Code 2009, Article 46
- 266 ACL, 2010, Article 46
- 267 ACL, 2010, Article 46
- 268 TI- NISA 2014, p. 143
- 269 TI-NSA 2014, p. 143
- 270 TI-NISA, 2014, p. 143
- 271 The Phnom Penh Post, 5 January 2017
- 272 The Phnom Penh Post, 5 January 2017
- 273 Expert Interview 3.
- 274 The Khmer Times, 30 December 2016.
- 275 The Phnom Penh Post, 25 July 2017
- 276 The Phnom Penh Post, 25 July 2017
- 277 The Phnom Penh Post, 6 January 2012.
- 278 ACL, 2010, Article 13
- 279 ACL, 2010, Article 13
- 280 ACL, 2010, Article 25.
- 281 ACL, 2010, Article 16.
- 282 Expert Interview 3.
- 283 The Cambodia Daily, 26 March 2016.
- 284 ACL 2010, Article 6.
- 285 TI-Trace Matrix, 2016
- 286 ACL 2010, Article 32.
- 287 Penal Code 2009, Article. 278
- 288 Penal Code 2009, Article 279
- 289 Criminal Code, Article 280
- 290 Anti-corruption Law, Art. 46.
- 291 The Cambodia Daily, 20 August 2016,
- 292 The Cambodia Daily, 20 August 2016,
- 293 The Phnom Penh Post, 27 March 2017
- 294 The Cambodia Daily, 19 August 2014.
- 295 Expert Interview 11
- 296 Expert Interview 9
- 297 The Phnom Penh Post, 9 January 2017.
- 298 The Phnom Penh Post, 5 January 2017.
- 299 ACL 2010, Article 16
- 300 The Phnom Penh Post, 9 January 2017
- 301 Basel AML Index Report, 2017, p. 1
- 302 US State Department, 2016
- 303 US State Department, 2017, p. 59
- 304 FATF, 2015
- 305 Penal Code 2009, Article 404
- 306 Penal Code 2009, Article 409
- 307 LAMCTF, 2007
- 308 Prakas B 7-08-089 Pro Kor, Article. 5.2.
- 309 Prakas B 7-08-089 Pro Kor, Article. 5.3.
- 310 Prakas B 7-08-089 Pro Kor, Article. 2.
- 311 National Strategies on Anti-Money Laundering, 2017, Strategy 4.1

- 312 Prakas B 7-08-089 Pro Kor , Article. 2  
 313 Sub-Decree No. 79  
 314 US State Department, 2017, p. 59  
 315 Penal Code 2009, Article 409.  
 316 Expert Interview 11  
 317 Expert Interview 11  
 318 The Cambodia Daily, 11 January 2017  
 319 LAMCFT, Article 3  
 320 Sub-Decree No. 79  
 321 US State Department, 2017, p. 88.  
 322 US Department of State, 2016, p. 89.  
 323 National Strategies on Anti-Money Laundering 2017, Strategy 6.1-6.3.  
 324 The Phnom Penh Post, 10 January 2012  
 325 Expert Interview 11  
 326 The Cambodia Daily, 11 January 2017.  
 327 TI Plain Language Guide, 2009  
 328 LPP, 2012  
 329 LPP, 2012, Article 66  
 330 Penal Code, Article 377  
 331 ACL, 2010, Article 32  
 332 AEGC, Cambodia; The Khmer Times, 1 November 2017  
 333 LPP, 2012  
 334 LPP, 2012“an artificial price that has no real competitive nature”  
 335 Lol, 1994, Article 10  
 336 Lol, 1994, Article 9  
 337 Draft Competition Law, Article 5-7  
 338 Draft Competition Law, Article 5,6  
 339 Draft Competition Law, Article 5,6  
 340 The legal deregulation of competition is meant to police non-competitive behaviour in established markets rather than newly forming markets. While a competitive environment is a prerequisite for a well-functioning market, regulations that prohibit price-fixing, sharing or dividing of markets apply mainly in developed markets to prevent unfair pricing and market manipulation. Overly restrictive policies in forming business entities, excessive bureaucracy and corrupt public officials are a greater threat to the development of a free market in developing economies than are private cartels and price fixing agreements.  
 341 NAG Meeting 1  
 342 Eurocham Cambodia, White Book 2017 Presentation, 26 September 2017, Phnom Penh Cambodia  
 343 LPP, 2012, Article 66  
 344 LPP, 2012, Article 65  
 345 Expert Interview 13  
 346 SILAKA Manual, 2014  
 347 Expert Interview 13  
 348 Expert Interview 13  
 349 GFI, 2015  
 350 The Phnom Penh Post, 19 July 2017  
 351 The Phnom Penh Post, 12 July 2017  
 352 GFI, 2015  
 353 The Phnom Penh Post, 12 December 2015  
 354 The Phnom Penh Post, 19 July 2017  
 355 The Phnom Penh Post, 19 July 2017  
 356 The Phnom Penh Post, 19 July 2017  
 357 The Phnom Penh Post, 12 December 2015  
 358 GFI, 2017, p. 2  
 359 The Phnom Penh Post, 3 May 2017; GFI, 2017  
 360 The Phnom Penh Post, 12 December 2015  
 361 Expert Interview 13  
 362 The Phnom Penh Post, 30 June 2016.  
 363 TI-C Policy Brief 2016  
 364 TI-C Policy Brief 2016  
 365 The Cambodia Daily, 3 April 2017  
 366 Draft Law on Whistleblowers, Article 12.  
 367 Draft Law on Whistleblowers, Article 12.  
 368 ACL 2010, Article 13  
 369 Penal Code, Article 311  
 370 Penal Code, Article 311; Expert Interview 14  
 371 Expert Interview 14  
 372 ACL 2010, Article 41  
 373 Procurement Manual 1, Reg. 4.6.3 & 4.3.7; ACL, Article 13  
 374 Legal Expert Commentary.  
 375 The Cambodia Daily, 3 April 2017  
 376 KPMG, 2016  
 377 NAG Meeting 2  
 378 Prakas No. 068

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- 379 CIFRS for SMEs
  - 380 KPMG, 2016
  - 381 Expert Interview 8
  - 382 LCA, 2002, Articles 14, 15; LAA, 2016, Article 7
  - 383 LCA, 2002, Articles 8
  - 384 LCA, 2002, Articles 5
  - 385 Prakas No. 643; KPMG, 2016
  - 386 CSX Listed Companies, 2017
  - 387 Expert Interview 12
  - 388 KPMG, 2016
  - 389 KPMG, 2016
  - 390 Expert Interview 12
  - 391 KPMG, 2016
  - 392 Expert Interview 12
  - 393 Expert Interview 12
  - 394 TI-C SMEs, 2015, Table 6.
  - 395 EUROCHAM, 2017; Expert Interview 8
  - 396 Expert Interview 8.
  - 397 TI-C Tax Seminar, 26 September 2017.
  - 398 WBG Cambodia
  - 399 WBG Cambodia
  - 400 The Phnom Penh Post, 5 July 2016
  - 401 Expert Interview 8
  - 402 NAG Meeting 2
  - 403 LCA, 2002, Article 18, 19
  - 404 LAA, 2016, Article 31-34
  - 405 Penal Code, Article 528
  - 406 Expert Interview 8
  - 407 The Phnom Penh Post, 14 August 2017; BBC News, 3 September 2017; Radio Free Asia, 5 September 2017
  - 408 The Cambodia Daily, 4 September 2017
  - 409 LCA, 2002, Articles 14, 15; LAA, 2016, Article 7
  - 410 Prakas No. 068
  - 411 Expert Interview 8.
  - 412 LCA, 2002, Articles 1, 116; LAA, 2016, Article 9 is the most strongly worded provision, "The accounting and auditing professions in the Kingdom of Cambodia shall be governed by only one professional body of accounting and auditing; and shall have their professional independence".
  - 413
  - 414 LCA, 2002, Article 6, 7, 14, 15; LAA, 2016, Article 7
  - 415 Tax Treaty Cambodia Singapore, 2016
  - 416 LAMCTF, 2007
  - 417 Expert Interview 8
  - 418 B2B Cambodia Business Startup
  - 419 MoC
  - 420 MoC
  - 421 CSX, 2017
  - 422 Expert Interview 8
  - 423 Expert Interview 8
  - 424 LAMCTF, 2007, Article 8 (2)(b)
  - 425 LAMCTF, 2007, Article 18
  - 426 Prakas No. B 7-08-089, Article. 5.3
  - 427 National Strategies on Anti-Money Laundering, 2017, Strategy 4.1
  - 428 LAMCTF, 2007, Chapter IV Article 5, 8
  - 429 LAMCTF, 2007, Article 5(4)
  - 430 LAMCTF, 2007, Article 12
  - 431 LEMNA, 2013, Article 16 new, Article 14
  - 432 LEMNA, 2013, Article 37 (new)
  - 433 LEMNA, 2013, Article 83
  - 434 LEMNA, 2013, Article 82
  - 435 Does not include political propaganda through mass media, or voter buying, gift giving.
  - 436 COMFREL, 2013, p. 26
  - 437 LPP, 2017, Article 31
  - 438 LPP, 2017, Article 31
  - 439 LPP, 2017, Article 28 (emphasis added)
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  - 442 LPP, 2017, Article 29 (new)
  - 443 UNHCHR, 2017
  - 444 LPP, 2017, Article 38 new
  - 445 LPP, 2017, Article 39 new & 40 new
  - 446 Constitution, Article 35.
  - 447 LPP, 2017, Article 31
  - 448 NEC



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 452 LPP, 2017, Article 31.  
 453 LPP, 2017, Article 30.  
 454 Procurement Manual 1, Reg. 4.7  
 455 Procurement Manual 1, Reg. 4.7.1  
 456 Open Development Cambodia, 2015; The Cambodia Daily, 16 September 2015  
 457 The Phnom Penh Post, 2 January 2014; The Cambodia Daily, 6 August 2015  
 458 Open Development Cambodia, 2015  
 459 Sub-decree No. 60  
 460 SILAKA Manual, 2014  
 461 SILAKA Manual, 2014  
 462 SILAKA Manual, 2014  
 463 SILAKA Manual, 2014  
 464 SILAKA Manual, 2014  
 465 Procurement Manual 1, Vol. 1, Reg. 4.4.4  
 466 SILAKA Manual, 2014  
 467 LPP, 2012  
 468 Procurement Manual 1 & 2  
 469 SILAKA Manual, 2014  
 470 Expert Interview 13  
 471 LPP, 2012, Article 40  
 472 LPP, 2012, Article 44  
 These institutions include government ministries, national bodies, public enterprises, administrative institutions and sub-national administrative organisations.  
 473 national administrative organisations.  
 474 LPP, 2012, Article 52, Open Development Cambodia, 2015  
 475 LPP, 2012, Chapter 3  
 476 LPP, 2012, Article 31-36  
 477 LPP, 2012  
 478 SILAKA Manual, 2014  
 479 Procurement Manual 1, Reg. 3.6.1, Procurement Manual 2, Section I, Reg. 3.2  
 480 Procurement Manual 1, Section VII  
 481 Procurement Manual 1, Reg. 4.1.1  
 482 Procurement Manual 1, Reg. 6.2.1  
 483 Procurement Manual 1, Annex III  
 484 Procurement Manual 1, Annex III  
 485 Procurement Manual 1, Reg. 4.3.5  
 486 Procurement Manual 1, Reg. 2.2.5  
 487 Joint Procurement Monitoring Committee at the Sub-National Level (JPMC)  
 488 Expert Interview 13  
 489 SILAKA Manual, 2014  
 490 Procurement Manual 1, Reg. 4.5  
 491 Procurement Manual 1, Reg. 4.5.4  
 492 Procurement Manual 1, Reg. 4.5.6  
 493 Procurement Manual 1, Reg. 4.5.7  
 494 LPP, 2012, Article 35  
 495 LPP, 2012, Article 52  
 496 Procurement Manual 1, Reg. 4.6.3 & 4.3.7; Anti-corruption Law (2010), Article 13  
 497 ACL, 2010, Article 13.  
 498 LPP, 2012, Article 65  
 499 LPP, 2012, Article 66  
 500 ODC, 2015; The Phnom Penh Post, 2 January 2014  
 501 Expert Interview 13  
 502 Expert Interview 13  
 503 LPP, 2012, Article 73  
 504 Procurement Manual 1, Reg. 4.5.6  
 505 Procurement Manual 1, Reg. 4.5.5, 4.5.7  
 506 LAA, 2016, Article 9.  
 507 Procurement Manual 1, Reg. 4.6 Complaint Handling Mechanism  
 508 LPP, 2012, Article 62  
 509 LPP, 2012.  
 510 Procurement Manual 1, Reg. 4.6.4  
 511 LPP, 2012, Article 63  
 512 Procurement Manual 1, Reg. 4.6  
 513 Procurement Manual 1, Reg. 4.6.9  
 514 LPP, 2012, Article 45  
 515 Procurement Manual 1, Reg. 4.2.2  
 516 Procurement Manual 1, Reg. 4.3.9  
 521 ODC, 2015; The Cambodia Daily, 16 September 2015  
 522 Procurement Manual 1, Reg. 4.4.6, 4.4.8, 4.6.5  
 523 SILAKA Manual, 2014

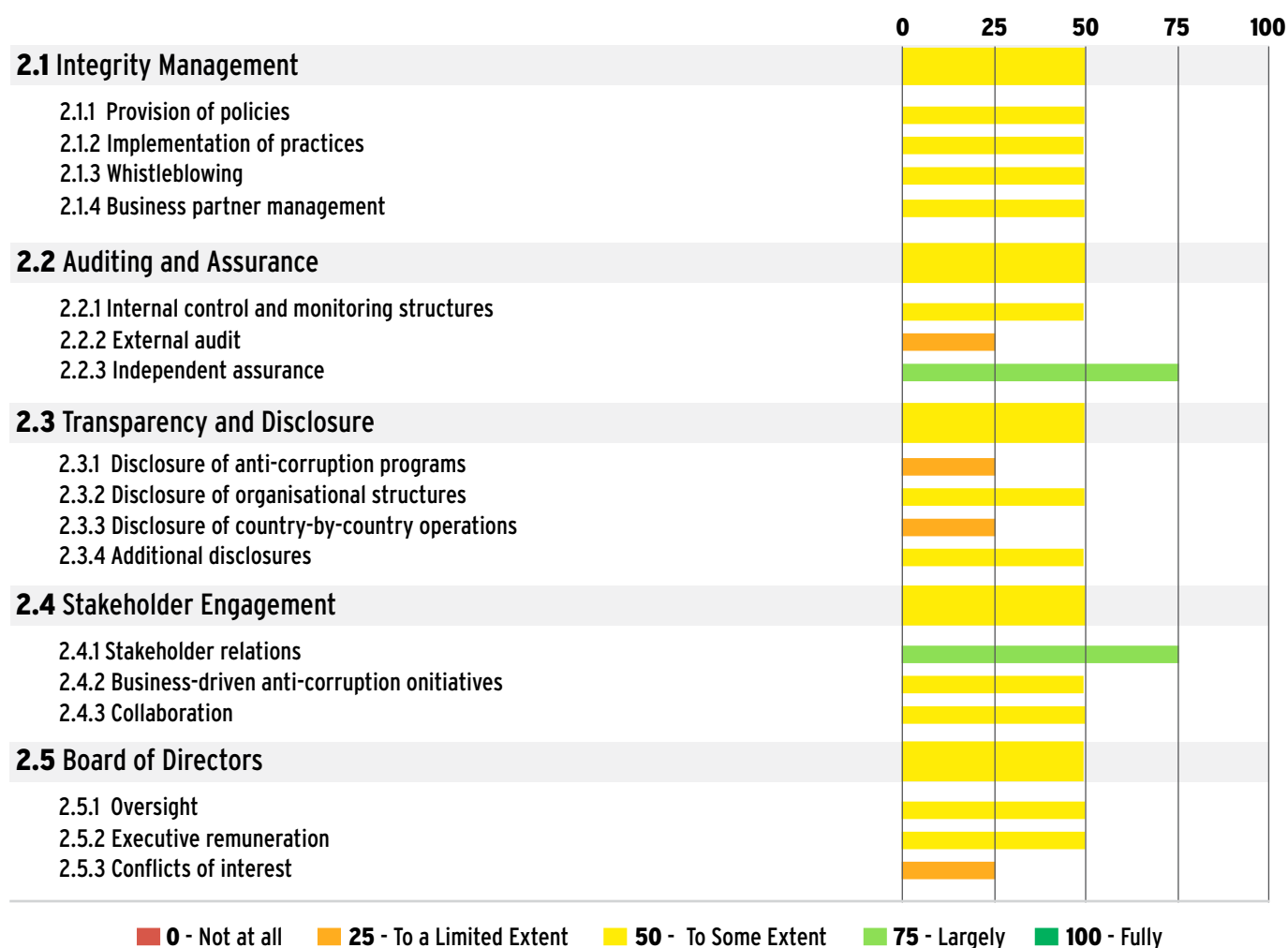
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- 524 SILAKA Manual, 2014
  - 525 Expert Interview 13
  - 526 Expert Interview 13
  - 527 LPP, 2012, Article 64
  - 528 Procurement Manual 1, Annex III
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  - 531 Penal Code, 2009, Article 387-390.
  - 532 Expert Interview 13
  - 533 Procurement Manual 1, Reg. 17.1
  - 534 MoC Data
  - 535 Expert Interviews 1,2 and 6
  - 536 WBG Enterprise Survey, 2016
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  - 538 Expert Interview 2
  - 539 Computed using the data of WBG Enterprise Survey, 2016
  - 540 ASYCUDA Project
  - 541 CDC Investment Guarantee
  - 542 NAG Meeting 2
  - 543 GDT, About
  - 544 DFDL, 2017
  - 545 EuroCham, 2017
  - 546 WBG Enterprise Survey, 2016
  - 547 Expert Interview 6
  - 548 DFDL, 2017.
  - 549 TI-C Tax Seminar, 26 September 2017
  - 550 Expert Interview 3
  - 551 US State Department Investment Climate, 2017
  - 552 US State Department Investment Climate, 2017
  - 553 Expert Interview 9
  - 554 Expert Interview 9
  - 555 LCA, 2006
  - 556 The Phnom Penh Post, 29 August 2017
- Arbitration Council Website: [www.arbitrationcouncil.org](http://www.arbitrationcouncil.org)

# Summary of Business Sector Indicators

## Business Sector Overview

Cambodian businesses largely have not adopted international corporate integrity standards. This is particularly true for domestic SMEs and family enterprises. Generally, these companies lack a corporate culture and do not see the benefits of adopting codes of conduct, internal and external whistleblowing channels for cases of corruption and public disclosure of corporate information. Moreover, companies are not legally required to adopt many of these practices. Only listed public and private enterprises on the CSX have such obligations. The MEF and its two key departments, the GDT and GDCE, have made substantial efforts to encourage company compliance and to increase public revenues. However, a large part of the Cambodian economy remains informal.<sup>560</sup> There is a significant need for additional law enforcement compliance initiatives and trainings on relevant laws and regulations.

## Business Sector Assessment



## Summary of Indicators

The business sector is evaluated based on the following thematic areas: integrity management, auditing and assurance, transparency and disclosure, stakeholder engagement, and the role of the Board of Directors.

Due to ongoing globalisation and integration of Cambodia in the ASEAN Economic Community, many Cambodian companies have publicly or internally implemented a set of good practices, which have improved their integrity management. More than 80 companies have engaged publicly to cooperate with ACU. In 2015, ACU published a manual on the implementation of business integrity practices. However, the outcomes and benefits in engaging with the ACU for individual companies, especially SMEs are not clear. Mainly foreign and joint-venture enterprises have business integrity programs because they have to be accountable to stakeholders and directors abroad. Most domestic companies do not have any anti-corruption policies, codes of conduct or whistleblowing mechanisms, however, the Law on Commercial Enterprises does not legally require such programs. Domestic companies that adopt business integrity policies are mainly in the financial and insurance sectors. The Law related to Listed Public and Private Enterprises Listed on CSX impose legal obligation to be more accountable and transparent. There are substantial efforts from the Securities Exchange Commission of Cambodia ("SECC") to increase the number of companies listed on CSX, which could increase transparency in those companies.

Cambodia's legislation on auditing is compliant with international standards ("IFRS").<sup>561</sup> Only big companies which have a turnover of more than 750,000 USD, 500,000 USD assets and 100 employees must submit annual financial statements to an independent auditor certified by KICPAA. In recent years, GDT has considerably improved the tax collection by maintaining a good dialogue with stakeholders, conducting audits of companies' financial statements and providing online services and training.

Companies largely are not transparent about disclosing information about their anti-corruption programme or their corporate information on their websites. For this report, 47 domestic and foreign companies were anonymously evaluated based on the amount of information publicly accessible on their websites. Overall, there was a clear disconnect between the information that was available on a foreign company's website and a domestic company's websites. Domestic companies tend not to disclose any anti-corruption policies and corporate information due to the lack of legal obligations and low corporate governance culture.

Overall, Cambodian chambers of commerce and business associations maintain a good dialogue with public institutions and provide many services such as legal support, tax information and networking to their members. Private companies experience some difficulty in collaborating with governmental institutions. It has been reported that private companies are missing effective channels of communications with key ministries. Even though there are many outcomes related to the investigations undertaken by ACU, it should be highlighted that in many cases the actions of the ACU are informal but have a substantial dissuasive effect.

There is a need for more legislative initiatives regarding the promotion of corporate governance and adoption of anti-corruption policies. In practice, the Board of Directors is not typically independent from company management. Cambodian legislation and particularly the Law on Commercial Enterprises does not specify in detail the duties and responsibilities of the Board's members.

Overall, many companies indicate a willingness to adopt anti-corruption programs and become legally compliant with current legislation. More cooperation with stakeholders and training is necessary to further develop corporate governance especially within domestic companies.

## 2.1. Integrity Management

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Recently many Cambodian companies have publicly or internally implemented a set of practices, which have improved their integrity management. More than 80 foreign and Cambodian enterprises have signed MoUs with the ACU. Most of the business associations and chambers of commerce encourage their members to collaborate more with the ACU.<sup>562</sup> Despite the lack of evidence of outcomes of such collaboration, the fact that a given enterprise has a public engagement with ACU seems to have a dissuasive effect. In many cases, the ACU intervenes without privately taking any legal action. Currently, the Law on Commercial Enterprises does not require medium and large companies to establish a code of conduct. The ACU published a “Guidebook on Anti-Corruption Program for Business in Cambodia” that is a useful tool for the business to implement their anti-corruption practices. The Guide shows a number of case studies on good business practices undertaken by big and medium size companies. In addition, it offers clear guidelines on how to implement anti-corruption policies and specific internal rules and regulations, such as codes of conduct and codes of ethics and their disclosure.

Integrity is among the core values of many companies, but this is not necessarily translated into concrete anti-corruption policies. Whistleblowing mechanisms are not explicit in all companies with integrity programs, for example, handling information on illicit practices and protecting whistleblowers from retaliation. ACLEDA Bank Plc. and Amret have established code of conducts and reporting channels, which could make them positive benchmarks for other local companies. Not surprisingly, multinationals and joint ventures businesses are more likely to implement their programs in their subsidiaries, since they associate corruption with a higher cost. According to the trends, ongoing globalisation and ASEAN integration will improve transparency in Cambodian companies. As domestic companies interact more frequently with foreign companies that maintain established business integrity practices, domestic companies will either be required to improve their programs or more actively to choose to do so in order to build partnerships and investment opportunities. Another positive trend is the active support of the ACU to business and public institutions to implement good anti-corruption practices. Finally, companies listed on CSX have a legal obligation to be more accountable and transparent. The Security and Exchange Commission of Cambodia (“SECC”) supports SMEs in capacity building to be able to be listed on the CSX.

### 2.1.1. Provision of policies

To what extent do companies establish formal policies to counter corruption?

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Companies establishing clear, visible anti-corruption policies are mainly large multinationals and joint ventures. These enterprises have real incentives to maintain anti-corruption policies because they increase trust among their shareholders. However, it should be highlighted that 97.6% of all established companies have up to 10 employees.<sup>563</sup> For these establishments, implementing formal anti-corruption policies would be costly. In addition, laws in Cambodia do not legally require companies to adopt a code of conduct or publicly disclose information on their anti-corruption policies, therefore many local enterprises do not disclose such information on their websites. A representative from a major accounting firm stated that most companies do not have written anti-bribery policies or tools to monitor corruption, however they do have informal, oral systems.<sup>564</sup>

Foreign companies maintain public policies of integrity management because, for them, corruption is associated with higher cost. Foreign companies must be fully accountable

to their shareholders and directors abroad. The growing number of signed MoUs between the ACU and foreign and domestic companies confirms the unwillingness of many companies to engage in corrupt practices. However, the benefits and the risks of this cooperation are not clear enough.

Many Cambodian companies do also express a stance against corruption, according to their websites or other public statements. Among domestic companies, ACLEDA Bank Plc. and Amret Microfinance Institution have established some business integrity measures (code of conduct, anti-corruption program, corporate policies, public statements, etc.). Additionally, the RGC is undertaking considerable efforts to support private companies to implement anti-corruption policies. In 2015, the ACU published the “Guidebook on Anti-Corruption Program for Business in Cambodia” which aims to make the business environment more conducive to resilience and sustainable growth.<sup>565</sup> The Guide has a clear set of recommendations and actions to be implemented with specific case studies. Inputs for the guide were provided by 27 private companies and business associations.

## 2.1.2 Implementation of practices

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To what extent do companies have anti-corruption programmes in place?

Few local companies maintain specific policies, like ACLEDA Bank Plc., such as a conflict of interest policy that is mandatory for all staff members. The company has stated a “zero tolerance” towards corruption, both internally and externally, and transgressions are dealt with summarily. ACLEDA Bank Plc. is one of the few domestic institutions with an established code of conduct which “sets ethical standards for all staff members”<sup>566</sup>. The Microfinance Institution, Amret, maintains a Risk Oversight Committee, which assesses all internal and external risks and ensures that the company is fully compliant with applicable laws and regulations. The company also has an Audit Committee chaired by an independent non-executive board member. The Audit Committee’s tasks include: overseeing the integrity of financial statements, accounting and financial reporting processes of the audited financial statements.<sup>567</sup> Representatives from business associations reported that local SMEs have an established culture of favouring their relatives and friends, thus it is necessary to raise their awareness regarding the implementation of anti-corruption programs.

International companies such as H&M have a clear Code of Ethics.<sup>568</sup> In addition, H&M publicly discloses the grades of their suppliers.<sup>569</sup> Coca Cola Beverage company also has a code of conduct,<sup>570</sup> but it does not disclose any specific recommendations or business risks in Cambodia. AEON Specialized Bank (Cambodia) Plc. conducts monthly regional risk management meeting to monitor credit risk, market risk, liquidity risk and operational risk and also to advise each other.<sup>571</sup> In addition, all companies listed on the CSX have the legal obligation to establish a code of conduct.

Most of the companies in Cambodia do not disclose publicly any human resource practices, training for managers and employees, internal communication, feedback mechanisms and other internal processes related to their anti-corruption programmes. However, these programmes do exist, for instance, a representative of a leading shipping company stated that there is an active collaboration with stakeholders in providing training and giving recommendations on how to deal with some specific issues, such as hacking emails and bribery.<sup>572</sup> Representatives from the business community stated that cooperation with ACU has been useful and helps to improve business integrity in Cambodia.<sup>573</sup>



### 2.1.3 Whistleblowing

To what extent do companies provide secure and accessible channels to raise concerns and report violations in confidence and without risk of reprisal?

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To what extent do companies provide secure and accessible channels to raise concerns and report violations in confidence and without risk of reprisal?

Accessible channels to report information about actual, suspected or perceived corruption in the company are practices implemented mainly by large multinational companies. Not surprisingly, most of the local enterprises do not disclose such channels. A representative of a major business association reported that most of the companies in Cambodia prefer to deal with such issues internally.<sup>574</sup>

Representatives of domestic and foreign companies stated that they provide secure and accessible channels to report information about actual, suspected or perceived corruption in their enterprises. But often, such channels are not disclosed on their websites.<sup>575</sup> Very few local enterprises have channels that enable employees and others to raise concerns or report violations of suspected breaches of their anti-corruption policies. An exception is the ACLEDA Bank code of conduct which states that, “management will establish a hotline or other avenues to allow staff members, suppliers, third party service providers and customers to report questionable activity or instances where this Policy is not being followed, and to have their concerns addressed in a confidential manner.” Amret also provides a whistleblower report form in Khmer and English, which could also be confidential.<sup>576</sup> These practices should be adopted by other domestic companies, as the existence of reporting channels does have a substantial dissuasive effect on corruption.

Many of the foreign companies in Cambodia have established reporting channels. Chevron<sup>577</sup>, DHL<sup>578</sup> and Manulife<sup>579</sup> are good examples to follow. These companies have social or corporate responsibility reports and inform their customers and employees about possible scams and how to report any irregularities. However, we do not have any clear evidence whether the Cambodian branches of these companies provide any corruption reporting channels.

### 2.1.4 Business partner management

To what extent do companies apply their anti-corruption programme to relevant business partner?

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Mainly multinational companies implement their anti-corruption programs in all business entities over which they have effective control, which serves to build a sense of trust and stability in their shareholders. These practices are rarely fully implemented in Cambodia due to the lack of legal obligations and local business culture. Many Cambodian enterprises do not publicly share their anti-corruption programmes. A representative of a major business association stated that such integrity programs are mostly applied in Phnom Penh, as implementing them in the provinces is challenging due to some “cultural factors.”<sup>580</sup> This could be partially explained by the fact that the headquarters of most big foreign and domestic companies are situated in Phnom Penh. The employees in the capital have access to more seminars and training related to corporate governance. In addition, in some provinces, traditional Khmer values, such as a strong family identity, non-confrontation in disagreements, tolerance for ambiguity, and willingness to accept the status quo<sup>581</sup> might be an obstacle to implementing business integrity practices.

A representative of a major joint venture company stated that due diligence plans are applied when they undertake major investments, mergers and acquisitions. A Japanese investor stated that, “mergers and acquisitions are not so popular in Cambodia yet, but they are becoming a good and fast way for foreigners to get into business here.”<sup>582</sup> This statement was confirmed by Mr. John McGinley, from Mekong Strategic Partners, who stated that mainly companies in the financial sector are performing merges and acquisitions because most of these companies “have already embedded strong corporate governance and strong management systems, making them easy to look at as potential assets.”<sup>583</sup> Private equity is a new practice in Cambodia which should be further promoted by including an exit option on the CSX. The Law on Commercial Enterprises provides a good framework for any significant investment, merges or acquisitions. However, the amount of some major acquisitions, such as the acquisition of the country’s fourth-largest operator Beeline by Metfone, are undisclosed.<sup>584</sup>

Cambodian companies listed on the CSX should adopt codes of conduct, adequate financial reports and accounting principles. In August 2017, the Securities and Exchange Commission of Cambodia (“SECC”) launched its “Excellence Program” to support SMEs to list on the Cambodian stock exchange’s Growth Board. More than 70 SMEs have joined this new initiative offered by the market regulator.<sup>585</sup>

*The BIP team was trained on “ISO 37001 Anti-Bribery Management System (ABMS)” by Anti-Bribery Management expert, Dr KM Loi. Several companies have expressed interest in ISO 37001.*



## 2.2 Auditing and Assurance

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Cambodia's legislation on auditing and assurance is compliant with international standards ("IFRS"), therefore the country has a sound legal framework for external and internal controls of companies. Assurance is not well represented in domestic law nor is it overly emphasised in international accounting standards. Auditing and assurance of company records are unevenly applied depending on whether the enterprise or not-for-profit falls under the Prakas requiring an independently audited financial statement. The Prakas, set by the MEF, require all enterprises which meet the following criteria to submit their annual financial statements to an independent auditor certified by the Kampuchea Institute Certified Public Accountants and Auditors ("KICPAA"). The criteria are: i) an annual turnover of 750,000 USD ii) Assets totalling more than 500,000 USD or iii) more than 100 employees (also the qualification for a large enterprise).<sup>586</sup> The majority of domestic Cambodian businesses are not compliant, either because they do not believe they qualify because of poor record keeping or because they are trying to minimise their tax liability by underreporting assets or revenues.<sup>587</sup> The General Tax Department ("GDT"), in its efforts to increase tax compliance among Cambodian businesses, is increasingly conducting audits of companies' financial statements submitted with their annual tax return.<sup>588</sup> Tax officers receive a 30% bonus of the penalty if they find an irregularity during their initial audit. This thematic area looks at audit and assurance practices, and how they affect internal and external control and monitoring mechanisms that seek to detect and prevent corruption.

### 2.2.1 Internal control and monitoring structures

To what extent do companies establish internal control and monitoring structures that seek to detect and prevent corruption?

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Internationally affiliated companies establish and maintain an effective system of internal controls over corruption, comprising financial and organisational checks and balances over accounting and record-keeping practices and other business processes. A senior accountant with an international firm in Cambodia confirmed that large companies operating internationally generally have anti-corruption policies in place through either legal requirements in their jurisdictions of incorporation or through public commitments to meeting international standards.<sup>589</sup> All enterprises are required to keep accurate accounts and have them audited in accordance with the terms provided for under the Law on Corporate Accounts, but many businesses are not compliant.<sup>590</sup> For large companies, typically with international franchising or affiliations, internal audits are usually ongoing, or at a minimum conducted annually by an independent or external reviewer.<sup>591</sup> This often takes the form of auditing financial statements that many registered companies must prepare and present to their shareholders at the end of each fiscal year.<sup>592</sup> For example, ACLEDA Bank Plc., one of Cambodia's predominant banks, has its 2017 first and second quarter Audited Interim Consolidated Financial Statements on their website, audited by PWC Cambodia.<sup>593</sup> For large and medium size companies the CEO and/or Head of Finance must certify in writing to the Board of Directors that the financial statement accurately portray the affairs of the company.<sup>594</sup>

SMEs and family businesses, who comprise most of the businesses in the Cambodian economy, have not conventionally kept accurate records of transactions or separated their business assets from personal assets. Part of the challenge in complying with the new provisions requiring an independent audit of financial statements is that SMEs do not have independent and sufficiently resources internal audit structures in place. Most SME business owners lack awareness of the benefit of using a domestic accounting firm or believe that employing accounting services would be too costly. A survey of FASMEC member recorded that over 75% of respondents thought their businesses

maintained accurate records to some extent and 26.5% of respondents replied that they thought companies were fully compliant.<sup>595</sup> Recent changes in the laws on accounting and auditing require more SMEs to comply with new accounting standards, but there remains much confusion on what steps SMEs need to take in order to be compliant.<sup>596</sup> Most SMEs have informal or verbal checks and balances, including anti-bribery and anti-corruption policies, but not written codes.<sup>597</sup> In survey conducted among members of a business association representing SMEs (FASMEC) 38% of respondents stated that they have some system of internal controls to detect and prevent corruption.<sup>598</sup>

## 2.2.2 External audit

What extent do companies subject their financial reporting to external audits?

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All auditors in Cambodia are licensed by the Kampuchea Institute Certified Public Accountants and Auditors ("KICPAA"), under the MEF and regulated by the National Accounting Council ("NAC") as of 2016. Therefore, enterprises whose accounts must be audited annually, as set out in the Prakas, and which are compliant with the Law on Corporate Accounts, utilise external auditing services.<sup>600</sup> The Prakas, set by the MEF, require all enterprises which meet the following criteria to submit their annual financial statements to an independent auditor certified by KICPAA. The criteria are i) an annual turnover of 750,000 USD ii) Assets totalling more than 500,000 USD or iii) more than 100 employees (also the qualification for a large enterprise).<sup>601</sup> Annual audits are conducted by an independent, competent and qualified auditor certified by the KICPAA and objective assurance is provided to shareholders when required.

For companies whose financial statements must be externally audited, audit services are compliant with IFRS standards (implemented in 2009) and therefore auditors are rotated frequently.<sup>602</sup> Under the 2016 Law on Accounting and Auditing, auditors are prohibited from conducting their services for an enterprise for more than five consecutive years and have a mandated three year cooling-off period.<sup>603</sup> Auditors must be independent "up to a 3rd level benign" from not have any conflicting interests or management rights in the enterprises.<sup>604</sup> Enterprises and not-for profit organisations are not required to publish their external audits but many do, such as the some banks in Cambodia, companies listed on the Cambodian Stock Exchange<sup>605</sup> and larger NGOs. An observation throughout the research is that a large majority of enterprises and not-for-profit organisations that post their audited financial statements publicly have their audits done by internationally affiliated firms (PWC, KPMG, E&Y, Deloitte) operating in Cambodia.

There are few incentives for SMEs in Cambodia to conduct internal or external audits other than what is required for tax compliance. Most SMEs are struggling to meet the record keeping and accounting requirements and therefore do not yet see the benefit of hiring auditing and accounting services. There are a growing number of new tax consulting firms who are now assisting SMEs in becoming tax compliant following the CIFRS standards for SMEs.<sup>606</sup> Small businesses who do work with small domestic accounting and auditing firms report high levels of competence generally but the quality of service varies.<sup>607</sup>

### 2.2.3 Independent assurance

To what extent do companies undergo voluntary independent assurance on the design, implementation and/or effectiveness of the anti-corruption programme?

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There is very little information on whether companies undergo a voluntary independent assurance on the design and implementation of their anti-corruption programme. As most businesses in Cambodia (SMEs) do not have such a programme, or only have informal internal controls, such assurance is unlikely. Most internationally affiliated firms comply with their parent company's obligations which would include an anti-corruption programme or policy and independent assurance.<sup>608</sup> They may also have internal processes that provide assurance to the directors of the parent companies that their subsidiaries are following the anti-corruption programmes.<sup>609</sup> Assurance opinions for such firms are generally not disclosed publicly, an example of non-disclosure being the companies listed on the Cambodian Stock Exchange nor major financial institutions in Cambodia. SMEs do not undergo any form of assurance.

## 2.3 Transparency and Disclosure

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In order to gather information on the transparency and disclosure practices of companies operating in Cambodia, 16 foreign and 31 domestic companies were surveyed to gather information about their reporting practices. The companies were selected based on market size to cover a broad spectrum of Cambodian industries. Each company's website was consulted and scored based on a total of 26 questions analysing their transparency and disclosure. Companies could receive a score of 1 or 0.5 for each question based on the information readily available on their website. Annual, financial, and sustainability reports were examined if available on a company's website. (See TRAC Methodology (Annex I) for more information). Since companies were not directly contacted, the companies remain anonymous in order to give a broad overview of reporting practices. The companies surveyed included domestic and foreign-owned companies, including multinational corporations. The companies varied across sectors, including telecommunication, finance, agriculture, and pharmaceuticals. The survey examined three areas of reporting: 1) the companies anti-corruption programme; 2) organisational transparency; and 3) country by country reporting.

Overall, there was a clear disconnect between the information that was available on a foreign company's website and a domestic company's website. By and large, foreign companies had well developed websites that contained information regarding their anti-corruption policies. Domestic companies frequently had underdeveloped websites, with very little information available at all, and very rarely contained links to their Annual Reports. Since this was the case in many of the domestic companies surveyed, it is clear that domestic organisations are not in the habit of using websites as a mechanism for sharing information to consumers, investors, or the public. This may change as companies register with the Cambodian Stock Exchange and the Cambodian economy continues to grow and develop. However, it should be cautioned that the lack of transparency on company websites may not reflect whether the company is willing to share information about their organisation or sales revenue to the public, or that they do not have an anti-corruption programme in place. Legally, Cambodian companies are not required to publicly report this information, therefore most companies simply do not. Finally, while foreign companies were clear about their anti-corruption programmes and organisational transparency, often they did not explain well their revenue or taxes in all of the countries in which they operate, rather choosing to share this information on a regional basis rather than by country. Overall, the trend indicated that foreign companies reported their anti-corruption programmes and organisational structure, but were limited in their country by country reporting. While domestic companies, frequently did not build websites that were very informational.

### 2.3.1 Disclosure of anti-corruption programmes

To what extent do companies report publicly on their anti-corruption programmes?

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In examining a company's anti-corruption commitment, 13 questions examined whether company websites included Code of Conducts or Ethics for their employees and directors, policies on facilitation payments, channels for whistleblowing, and policies for political contributions.

In a survey of 47 of the largest companies operating in Cambodia, with 31 domestic companies surveyed, only four domestic companies stated any commitment to anti-corruption on their websites, two of which were finance institutions. Two companies mentioned a commitment to integrity but did not define what that commitment entailed.



In addition to the two domestic companies who stated a commitment to anti-corruption, four additional domestic companies stated a commitment to all applicable laws, although only one company mentioned anti-corruption laws as well. Three domestic companies shared information about channels to report wrongdoings, which indicates that there may be internal anti-corruption policies.

12 out of the 16 foreign companies surveyed did include an anti-corruption statement on their websites. However, the policies were included on their home or headquarter websites rather than their Cambodian webpages. Although one company did have the Code of Conduct translated into Khmer, the policy could be found on their headquarter page, rather than the local site. In 11 out of 16 foreign companies, the policy either explicitly applied to both staff or directors or did not specify. Five out of 16 companies have a policy that barred facilitation payments and 10 out of 16 companies had a gift and hospitality policy and some channels to report wrongdoing. Overall, only six companies scored a 65% in reporting on their anti-corruption programme, with only two companies scoring an 80%.

In the survey, it was clear that domestic companies largely do not share much information on their websites about their company, which leaves consumers, investors, and the public without information about the company. The relatively small number of domestic companies who have chosen to build websites with significant content is surprising given that 48% of Cambodians use a smartphone, with 37% of Cambodians having used the internet at least one time.<sup>610</sup>

## 2.3.2 Disclosure of organisational structures

To what extent do companies report publicly on their organisational structure?

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The survey of 47 of the largest companies operating in Cambodia also evaluated the company's transparency regarding its organisational structures. For the purpose of this study, the research utilised 8 questions regarding a company's fully consolidated holdings, percentage owned, and the company's non-consolidated holdings. More than half (9 out of 16) of foreign companies disclosed some information about their subsidiaries, including the percentage of shares owned. However, only two companies adequately provided all information about their subsidiaries as required by the survey (receiving a score of 8). 3 companies received scores between 5.5 and 7.5, and 12 companies received a 5 and below.

There was a clear lack of transparency in organisational reporting for domestic companies. However, many of the largest companies operating in Cambodia, do not have subsidiaries to report. Of the 31 companies surveyed, only 10 had subsidiaries, of this figure, one company received a score of 8. As Cambodian companies grow, properly reporting information about their subsidiaries is recommended, particularly as companies build more informative websites. Based on the survey, both foreign and domestic companies could improve in terms of their reporting on their holdings and financial flows.

## 2.3.3 Disclosure of country-by-country operations

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Do companies report publicly on their countries of operation?

The survey of 47 of the largest companies operating in Cambodia, also evaluated the company's transparency regarding its country by country operations. This final section included four questions on revenue and profits, pre-income and income taxes, and capital expenditure. For these questions, the analysis was slightly adapted to examine

only whether companies shared this information about their operations in Cambodia, rather than in multiple countries.

Foreign companies had little available information about country by country operations, rather focusing on overall revenue and taxes, or sometimes reporting on regional revenue and tax information. Of the 16 foreign companies included in the survey, only two received a score of 4, adequately answering all questions. 9 companies did not have any available information.

In domestic companies, information about a company's revenue/sales and pre-income and income taxes was also largely not readily available. Only five companies out of 31 received a score of 2 or higher in this section, with only two companies receiving a score of 4. Despite the large push from the General Department of Taxation for smaller companies to register their businesses and become tax compliant, large domestic companies are often also withholding this information and choosing not to reveal their revenue or income tax paid in Cambodia. However, legally domestic companies are not required to report this information publicly.

The lack of information from foreign companies is equally troubling because in many cases it is impossible to tell how much they are profiting from their business operations, and how much tax they are required to pay in Cambodia.

### 2.3.4 Additional disclosures

To what extent do companies publish information on charitable contributions, sponsorships and lobbying activities both domestically and internationally (for example corporate reporting or corporate social responsibility reports)?

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To what extent do companies publish information on charitable contributions, sponsorships and lobbying activities both domestically and internationally (for example corporate reporting or corporate social responsibility reports)?

The last survey question evaluated the company's disclosures on their charitable contributions and corporate social responsibility ("CSR"). In total, 18 out of 47 companies disclosed information about their corporate social responsibility program. Of those 18 companies, only 3 foreign companies disclosed financial amounts tied to their community contributions. Companies did not disclose their lobbying activities in Cambodia; however, Cambodian companies are under no legal obligation to report lobbying activities since there are no regulations on lobbying.

Additionally, throughout the survey process, it was clear that domestic companies do not typically have advanced websites for disclosing information about their company, including their CSR programs. Overall, while quite a few companies were willing to showcase their CSR activities on their websites, very few were willing to tie a financial figure to those activities.

## 2.4. Stakeholder Engagement

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A corporate stakeholder is a member of a group without whose support the organisation would cease to exist.<sup>611</sup> A stakeholder can affect or be affected by the overall business environment. A stakeholder could be an employee, consumer, corporate partner, or non-governmental organisation. Corporate shareholders are also considered stakeholders.

Cambodian business associations and chambers of commerce provide many services, such as legal support, tax information and networking to their members. The International Chamber of Commerce, EUROCHAM, CAMFEBA and CAMFFA actively collaborate with public institutions. However, there is only limited evidence of joint-efforts against corruption, i.e. the MoU between EUROCHAM and ACU.

Private companies encounter some difficulties collaborating with governmental institutions. Representatives of major local and foreign companies reported that many ministries do not have a clear vision and it takes time to obtain or request any information. Key ministries such as the MoC, Ministry of Agriculture Forestry and Fisheries ("MAFF"), Ministry of Industry and Handcraft ("MIH") should improve their communication strategy and engage in a closer dialogue with the private sector. A positive sign of increasing efforts of the private sector to implement anti-corruption measures is the increasing number of MoUs between private companies and the ACU. However, the benefits of signing a MoU with the ACU are not clear. Even though there is a lack of any concrete joint-efforts and outcomes between the private sector and the ACU (beyond administrative dimension, signing MoU), representatives of major business associations reported that business integrity does improve when companies publicly show their engagement.

Foreign companies are more transparent than domestic ones. They better communicate their anti-corruption efforts and organisational structure. Additionally, the securities regulatory framework in Cambodia is effective, requiring the few listed enterprises to establish a set of good corporate practices. All issuers are obligated to disclose financial and other important information to their shareholders.

### 2.4.1. Stakeholder relations

To what extent do businesses engage their own stakeholders (including shareholders) in ensuring sound corporate governance?

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Chambers of commerce and business associations in Cambodia actively support and work with their members in training and implementation of good practices related to sustainability of financially sound enterprises. Members of different business associations and chamber of commerce have access to market insights and legal and financial data. The European Chamber of Commerce has a Tax Committee, which is a platform that seeks to provide up-to date information to its members and to work with Cambodian authorities on tax related issues.<sup>612</sup> The Garment Manufacturers Association in Cambodia ("GMAC") provides free of charge legal pointers and trainings related to taxes and auditing. CAMFFA also encourages cooperation and engagement in multi-stakeholder initiatives to promote good management and financial practices. The Government-Private Sector Forum ("GPSF") is another initiative between the Prime Minister and his Cabinet and the business community. The International Chamber of commerce is actively involved in the Working Group on Law, Tax and Governance. Better Factories Cambodia ("BFC") is an established partnership between civil society and the private sector. BFC discloses factory compliance on key legal requirements and information related to strikes and garment worker human rights.

Only companies listed on the CSX have the legal obligation to provide shareholders with the right to participate in and to be sufficiently informed on decisions concerning fundamental corporate changes. The Law on the Issuance and Trading of Non-Governmental Securities and its Sub-decrees legally require all issuers on the Cambodian Securities Exchange to comply with a set of corporate requirements such as maintaining corporate records, including shareholders' agreement and shareholders resolutions. Moreover, issuers must set up a management monitoring system to facilitate disclosure and transparency.

## 2.4.2. Business-driven anti-corruption initiatives

To what extent do companies engage in multi-stakeholder initiatives aimed at reducing corruption?

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According to a representative of a large domestic agricultural company, there is a need for effective channels to work with the Government to quickly process decisions and feedback related to payments, issuing certificates, permissions, etc. This is particularly true for the MIH.<sup>613</sup> An individual affiliated with a major business association stated that the communication with the MIH is not efficient. On the other hand, all interviewed experts stated that ministries have significantly improved recently, especially the MoC, MEF and MPWT. An example of partnership between private and public sector is the Customs-Private Sector Partnership Mechanism. The GDCE works closely with representatives of the private sector to "draft regulations and to reduce/eliminate other illegal unofficial fees".<sup>614</sup>

Engagement with the ACU is necessary to prevent corruption in Cambodia. Companies who engage with the ACU are expected not to engage in corrupt acts and to report any solicitation of corruption to the ACU for investigation.<sup>615</sup> In general, SMEs do not have significant public engagement with the ACU, potentially because they are afraid of possible repercussions. It should be highlighted that even though not much evidence is available regarding productive collaboration between businesses and the ACU, good practices have been reported. In many cases, the ACU solved the incident without any legal actions and many of its activities have a dissuasive purpose. For instance, in a case with one private company, the public administration was slow in processing administrative documents. Following a submitted complaint from the company to the ACU, the staff of the ACU solved the problem by communicating with the administrative staff and their supervisors, without taking any formal legal action. Overall, signing an MoU with the ACU seems to have some secondary effects which are important and can save companies a lot of time and money.

## 2.4.3 Business associations: collaboration

To what extent do business associations support companies in fighting corruption?

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Business associations and chambers of commerce play a key role in the implementation of good practices and corporate policies against corruption. For example, among the core values of the Cambodian Rice Federation is integrity. In 2015, EUROCHAM signed a MoU with the ACU. It was the first business association in the Kingdom to do so. In addition, EUROCHAM aims to have the reputation of being the "Chamber of compliant companies". Every membership request is carefully examined and only fully compliant companies are accepted to become members. It was reported that the ACU is ready to conduct training on anti-corruption and implementation of codes of conduct with every business association.

In an interview, a representative of CAMFFA stated that the association is against corruption and its members do not want to engage in corruption. The Association actively encourages their members to directly engage with the ACU. CAMFEBA implements projects such as “Strengthening the Business Associations”<sup>616</sup> with private stakeholders in order to create an enabling environment for policies, relationships and behaviours that foster economic growth and allow enterprises to thrive.

Business associations provide many trainings to their members. However, very few are focused on anti-corruption topics. The Federation of Association of Small and Medium Enterprises (“FASMEC”) signed an MoU with Transparency International Cambodia in 2016 for a three-year partnership aimed at promoting business integrity. FASMEC works with TI Cambodia to train their members on issues such as taxation, procurement, and important export procedures with a focus on business integrity. A representative of a major business association reported that the GDCE, GDT and CamControl,<sup>617</sup> Cambodian Ports and the Police provide some materials related to corruption, but it is not enough.<sup>618</sup> Business associations should establish good relations with governmental institutions and request supporting materials. EUROCHAM, CANCHAM, the American Chamber of Commerce, CAMFFA and CAMFEBA and others are important platform for enterprises to voice their concerns and receive legal advice.

## 2.4. Stakeholder Engagement

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### 2.5. Board of Directors

Cambodian legislation and particularly the Law on Commercial Enterprises does not specify in detail the duties and responsibilities of a Board of Directors. Prakas on Corporate Governance for Listed Public Enterprises require more transparency regarding conflict of interest of public enterprises. More legislative initiatives regarding the promotion of corporate governance are necessary. In practice, the Board of Directors is not typically independent from the companies' management. Based on the research, there were no legislative requirements or practices related to anti-corruption policies and training. However, all experts with whom Transparency International Cambodia conducted interviews stated that due to globalisation and ASEAN integration, Cambodian companies have significantly improved the integrity of their management structures.<sup>619</sup> It is expected that corporate governance structures will continue to improve as will the growing discipline of the Government to enforce laws on taxes and customs. There is a need for closer collaboration with the ACU, the Ministry of Commerce, and the Ministry of Economy and Finance, as well as with other stakeholders to build the capacity of Cambodian companies to implement corporate governance practices, which will bring confidence to shareholders and ensure the boards' accountability.

#### 2.5.1. Oversight

To what extent is the Board of Directors responsible for the oversight of their company's anti-corruption program?

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Responsibilities of Board of Directors are defined in several laws and provisions. According to Article 4 of the Kram on the General Statutes of Public Enterprises, the highest governing body of public companies is "The Council of Administration". It determines the objectives and controls of the management of the enterprise, and ensures the rationality and effectiveness of the organisation. President, General Director, or member of the Council of Administration's function is incompatible with the function of members of the National Assembly. One of the seats is occupied by a representative of the employees of the public enterprise who is selected from and by the employees.<sup>621</sup> Every public enterprise must send to the responsible ministry minutes of meetings, the budget, report on activities (balance, management account) and report on the audit of various activities.<sup>622</sup> There is a state controller attached to each public enterprise. They are selected based on "their personal merits and experience".<sup>623</sup> The Law of the General Statute of Public Enterprises does not have provisions related to anti-corruption and integrity programs.

According to the Law on Commercial Enterprises, private enterprises are governed by a Board of Directors headed by a chairman.<sup>624</sup> If necessary, the Board of Directors can establish different committees and delegate them a set of rights and responsibilities.<sup>625</sup> These committees function similarly to the Board. All directors and officers have the following duties: "act honestly and in good faith with a view to the best interests of the company and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstance".<sup>626</sup> However, the Law does not give any obligation to implement any anti-corruption practices or to establish a corporate code of conduct.

Article 3 of the Prakas on the corporate governance for listed companies, requires all enterprises listed on the CSX to "assure good corporate governance through the establishment of mechanisms to protect shareholders' rights, arrange the governance



and management structure of the company, define the authority and obligations of the board of directors, set up an effective system of controls and protect stakeholders' rights." Every company must establish an Audit Committee attached to the Board of Directors, which is responsible to the board for review and oversight of the company's financial reporting and report on the company's risk and risk management.<sup>627</sup> Moreover, listed companies also have a Nomination Committee for the Board which reviews and evaluates the qualifications of candidates for the position of directors and for senior officers who have been approved by the Board.<sup>628</sup> At least 20% of the members of the board must be independent directors (not previously directly engaged with the company). "The board shall act honestly, in good faith and in the best interest of the company and the shareholders".<sup>629</sup> Directors of each listed company are responsible for monitoring and implementing policies, to ensure compliance with the law, to appoint the CEO, to ensure the financial solvency of the company, proper financial management and control and protection of shareholders assets. The law also states that Directors shall not take improper advantage of their position, shall not misuse information acquired as a Director, shall not accept personal benefit from third parties, and shall make conflict of interest declarations.<sup>630</sup>

The Board of Directors of publicly listed companies on the CSX shall approve a Code of Conduct for directors and senior officers.<sup>631</sup> These codes of conduct should be publicly disclosed. Moreover, information regarding conflicts of interest should be also made available to the public.

## 2.5.2 Executive remuneration

To what extent are the Board member and senior executive remuneration of companies determined according to good corporate governance standards?

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The To what extent are the Board member and senior executive remuneration of companies determined according to good corporate governance standards?

The Law on Commercial Enterprises states that the Directors of the company have the power to "set the salaries and other compensation of such officers".<sup>632</sup> According to the Kram on the General Statute of Public Enterprises, the Council of Administration "determine[s] the organisational structure of the enterprise, the statute of the personnel and the salary system".<sup>633</sup>

None of the existing laws in Cambodia require a special committee to handle the remuneration policy and employment contracts for Board members. Companies listed on CSX may establish such committees, but it is not compulsory.<sup>634</sup> The salaries of the Board members must be approved by the shareholders of the company. Prakas on the corporate governance for listed companies and public enterprises stipulate that "the Company shall establish a formal and transparent policy for fixing the compensation and remuneration of individual and senior officers".<sup>635</sup>

The disclosure of executive and benefits packages depends on the type of the company. Article 134 of the Law on Commercial Enterprises stipulates that directors or officers have to disclose the nature and extent of their interest if: "(a) is a party to a contract or proposed contract with the company, or (b) has a material interest in any person who is a party to a contract or proposed contract with the company." Article 17 of the Prakas on the Corporate Governance for listed companies stipulates that "the Company's report shall separately disclose the aggregate, direct or indirect compensation and remuneration of the Board and Senior Officers including the CEO."<sup>636</sup> The same article also defines the parameters of executive remuneration and compensation: "the Board is responsible for ensuring that levels of compensation or remuneration are appropriate to attract and retain the executive directors and senior officers needed to run the

company successfully. A proportion of fixed and variable incentives may be structured for executive directors and senior officers in order to link their rewards to individual, team and sustainable company performance for shareholders".<sup>637</sup>

All representatives of private companies with whom BICA researchers interviewed stated that the performance of senior management is tightly linked to their salaries. It was also reported that in some cases, a bonus package is distributed to employees based on their performance.

### 2.5.3 Conflicts of interest

To what extent are safeguards in place to govern Board of Directors conflicts of interest?

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The duties and responsibilities of the Board of Directors are defined in the respective laws and regulations. Even though the Law on Commercial Enterprises does not clearly state the responsibilities of the Board of Directors, it states that all management activities are conducted by directors and managers. The Law says that, "if all directors vote to approve a matter, it is deemed approved by the board".<sup>638</sup> The Board of Directors has the power to propose a merger and to adopt a resolution approving a merger.<sup>639</sup> The resolution must be approved by a majority of a quorum of the Directors. Representatives from large companies in the shipping and agricultural sectors stated that the members of the Board of Directors are directly involved in the management of the company. Cambodian law lacks provisions related to safeguards for the Board of Directors against insider trading.

Regarding the disclosure of potential conflicts of interest to the Board of Directors and the company, the Law on Commercial Enterprise clearly states that "a director or officer of a company shall disclose the nature and extent of his interest in writing to the company or request to have a statement entered in the minutes of meetings of directors".<sup>640</sup> Generally, regulations on Listed Companies (public and private) on the CSX have multiple disclosure requirements related to conflict of interest. The Prakas on Corporate Management for Listed Public Enterprises states that "Directors shall be independent in judgment and action, and take all reasonable steps to ensure the soundness of board of directors' decisions."<sup>641</sup> They also have to make public announcements on their conflicts of interest.<sup>642</sup> The Board also must ensure that the appointed independent directors are free of any material relationship with the listed public enterprise's senior officers or other employees.<sup>643</sup> Independent directors could be dismissed if they do not disclose information related to conflict of interest. The Law also requires that incentive policies, codes of conducts and policies on conflict of interest must be publicly disclosed.<sup>644</sup>

Contrary to publicly listed enterprises, commercially listed enterprises have fewer requirements related to the disclosure of conflict of interest of their Boards of Directors. For instance, in Article 7 of the Prakas on the Corporate Governance for Listed Companies, the obligation of directors to resolve conflict of interest does not exist.<sup>645</sup> Article 20 of the same provision does not stipulate that the directors have to publicly disclose announcements on their conflicts of interest related to the enterprise. Members of the Board of Directors of a commercial enterprise listed on the CSX cannot be disqualified due to a conflict of interest. The other texts related to conflict of interest are similar to those written in the Prakas on Corporate Governance for Listed Public Enterprise.

Due to ASEAN integration, Cambodian businesses, especially those relying on networks of family members, relatives and friends, face significant challenges. These companies should adopt appropriate corporate governance structures in order to build up the confidence of shareholders. Regarding the overall transparency and the board of directors "there is quite a control gap in Cambodian companies".<sup>646</sup>

561	International Financial Reporting Standards
562	Expert Interviews 9 and 10
563	MoP 2014 Economic Survey, 2015
564	Expert Interview 8
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# Summary of Civil Society Indicators

## Civil Society Overview

The purpose of the civil society analysis is to examine the ways in which Cambodian civil society serves as a valuable check on the public and private sectors. This section examines through a narrow lens the role of media and civil society organisations to interact and monitor the private sector with a focus on business integrity. The three indicators in this section analyse: i) to what extent Cambodia's media is fair and independent; ii) whether civil society engages with the private sector to promote accountability, transparency, and integrity in business practices; and iii) to what extent civil society is active and engaged in monitoring private sector corruption.

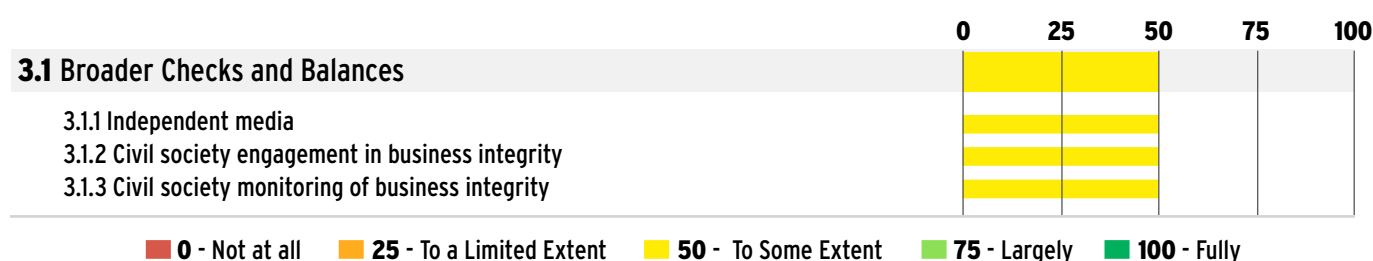
## Summary of the Indicators

The independent media indicator assesses whether media in Cambodia is free and independent, as well as the media's capacity to monitor business integrity. Cambodia's media is generally not classified as being free and independent.<sup>647</sup> Many of the media outlets maintain close ties to the RGC.<sup>648</sup> While there are journalists committed to unbiased and independent news coverage, many journalists lack training and independent resources to adequately cover anti-corruption and business integrity issues, thereby serving as a necessary check on the public and private sectors.<sup>649</sup>

The first indicator related specifically to civil society examines the extent to which civil society organisations engage with the private sector to promote transparency, accountability, and integrity in business practices. Several recent initiatives build partnership between civil society and the private sector in order to improve issues through multi-stakeholder engagement.

The final civil society indicator looks at the extent to which civil society monitors the private sector and whether actors are using transparency, accountability, and integrity in their business practices. Cambodia has an extensive network of civil society organisations. While many civil society organisations are experienced in working with human rights issues related to land, very few civil society organisations have historically focused on business integrity or on responsible business conduct. The situation also appears to be evolving, however, as more NGOs focus on responsible business conduct and coordinate relevant initiatives amongst each other. The tools and expertise previously used by NGOs to advocate for communities affected by the land sector can be applied to similar areas of private sector engagement. Therefore, while civil society is well primed and able to monitor the private sector on certain issues, there has not been a consistent approach by civil society to monitor specifically business integrity in the private sector.

## Civil Society Sector Assessment



## 3.1 Broader Checks and Balances

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Since the early 1990s Cambodia has experienced a large and often robust civil society presence, additionally the presence of media outlets has also increased since that time. However, business integrity has been highlighted or explored rather infrequently by both the media and civil society groups. For the media, reporting on business integrity issues or implicating the private sector in corruption can carry great risk, as many media outlets rely on the private sector for financing through advertising sales.<sup>650</sup> Additionally, many media outlets lack the investigative training to explore potential cases of private sector corruption. For civil society, the focus has largely been on the linkages between business and human rights, rather than on advocating for increased business integrity. Despite this, civil society groups are well placed and well trained to promote advocacy efforts and serve as private sector watchdogs, in order to promote and increase business integrity. In recent years, civil society organisations have identified responsible business conduct and business integrity as objectives that civil society could help private sector partners to achieve, therefore collaboration between civil society and the private sector on these efforts does seem to be increasing to some extent. Additionally, many multi-stakeholder initiatives have been developed that seek to engage the private and public sectors and promote responsible business conduct.

### 3.1.1 Independent media

To what extent is the country's media perceived as being free and independent?

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Cambodian press is largely considered not free, with Reporters Without Borders ranking Cambodia 132 out of 180 countries in 2017.<sup>651</sup> This ranking dropped four points from 128 in 2016, due to threats against media outlets in 2016.<sup>652</sup> The TV sector is the most popular but highly concentrated with four media companies, controlling 78% of viewership.<sup>653</sup> 7 out of 10 TV channels are owned by individuals associated with the ruling party. These individuals are either paid by the Government or are advisors to the Government.<sup>654</sup> Meanwhile, the print sector is also highly concentrated with the top 4 outlets reaching 59% of the available audience.<sup>655</sup> The top 4 media corporations and owners reach in total 83.4% of the audience across all media sectors, which leaves these four companies to have considerable influence over public opinion.<sup>656</sup> In addition to the close ties between the largest media organisations and the ruling parties, journalists are often subject to threats and violence that seem aimed at chilling independent investigative media reports.<sup>657</sup> One of the most difficult subjects for journalist to report on is corruption.<sup>658</sup>

There are several media organisations and outlets seeking to provide independent, fair and accurate news to the Cambodian public. The Cambodian Club of Journalists articulates a Code of Conduct that requires journalists to collect information based on, "honesty, dignity and justice," and to refuse to write or publish false texts that are beneficial to a business or individual or group.<sup>659</sup> For many media outlets, fairness and accuracy is very important to their journalistic integrity despite the pressures of being the first to break the story. In political stories, media outlets try to get both sides in order to avoid being called pro or anti-government.<sup>660</sup>

In March 2017, the Cambodian Center for Independent Media ("CCIM") with the support of TI Cambodia re-launched a weekly radio programme that offers listeners who experience corruption opportunities to join in discussions related to corruption and address their potential consequences.<sup>661</sup> In August 2017, CCIM radio broadcasts were shut down.<sup>662</sup> Some media outlets are less inclined or are unable to cover corruption issues because they are supported by advertisements from private companies.<sup>663</sup> Additionally, many journalists do not have the capacity to conduct investigations into



corruption, because they lack the skills, the resources, or the time to carry out the type of investigative journalism corruption stories require.<sup>664</sup> In 2017, all radio stations that broadcast Radio Free Asia and Voice of America into the provinces were closed by the Ministry of Information, 19 radio stations in total.<sup>665</sup> The closure of the radio stations coincided with one of the leading independent, English-language, newspaper sources, the Cambodia Daily, receiving a 6,300,000 USD tax bill from the General Department of Taxation for unpaid back taxes, and ultimately closing due to its inability to pay.<sup>666</sup> Based on these recent events, the space for independent media appears to be shrinking in Cambodia.

### 3.1.2 Civil society engagement in business integrity

To what extent are civil society organisations engaged with companies in order to strengthen their commitment towards integrity, accountability and transparency?

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To what extent are civil society organisations engaged with companies in order to strengthen their commitment towards integrity, accountability and transparency?

Cambodia has a strong and active civil society presence, with many organisations operating despite political pressures on human and civil rights. While civil society organisations (“CSOs”) have been active in Cambodia since the late 1990’s focusing on a variety of initiatives, CSOs have focused on largely on business and human rights, with very few initiatives targeting business integrity issues directly. In 2008, 40 domestic and foreign companies, supported PACT’s Clean Business Initiative, which called for companies to commit to avoiding bribery, or selling fake and unsafe products, to operate with fairness and integrity and to promote reforms to the business environment.<sup>667</sup> The initiative closed in 2010.<sup>668</sup> In 2012, Transparency International Cambodia launched their three-year strategic plan, which included a focus on private sector anti-corruption measures. The Business Integrity Programme was officially established in 2014 and began offering compliance and business integrity training, as well as one on one consultative services to companies interested in establishing Corporate Integrity Systems, to better equip their staff with policies and procedures to ward off corruption. However, prior to the establishment of the Business Integrity Programme, most anti-corruption efforts in Cambodia were focused on improving anti-corruption in the public sector, such as the passage of the Anti-Corruption Law and the establishment of the ACU.

Historically, CSOs in Cambodia have focused on advocacy efforts surrounding business and human rights issues as part of their engagement with the private sector, particularly in issues related to land rights and the rights of factory and agricultural workers. Therefore, a large proportion of CSOs have experience in working on and serving as watchdogs on business and human rights initiatives, such as Equitable Cambodia, Inclusive Development International, the Cambodian Center for Human Rights and UNOHCHR.<sup>669</sup> Often in these initiatives, however, there is more emphasis on the human rights issue or abuse, than the potentially related business integrity issue.

Recently CSO’s have sought to promote responsible business conduct and corporate social responsibility in the private sector through coordinated efforts with the private sector. In 2017, the Cooperation Committee for Cambodia launched its “Responsible Business Conduct and Corporate Social Responsibility Strategy 2016-2012,” which seeks to prepare CSO’s for increasing engagement with the private sector in order to enable sustainable inclusive development and to strengthen CCC and its CSO members’ capacity to engage with the private sector and understand and promote responsible business conduct.<sup>670</sup> Also in 2017, the Extractive Industries Governance Forum (“EIGF”) was launched, which builds critical partnerships through multi-stakeholder engagement for key players involved in the extractive industries including industry, government, community and civil society and seeks to promote greater transparency and

accountability in the extractive industry.<sup>671</sup> Additionally, in 2015 the Cambodian Corporate Social Responsibility (“CSR”) Platform, with support from Oxfam, was established to encourage companies to promote, implement and understand CSR policies and to support advocacy efforts to encourage the RGC to adopt CSR framework for companies operating in Cambodia. Through these initiatives, the TI Cambodia’s Business Integrity Programme has sought to promote business integrity as part of a larger effort to improve responsible business conduct and promote corporate social responsibility.

### 3.1.3 Civil Society monitoring of business integrity

To what extent does the country have an active and engaged civil society monitoring private sector corruption?

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As already mentioned, CSO engagement with the private sector is relatively recent in terms of anti-corruption efforts and in monitoring business integrity. The 2008 PACT Cambodia Clean Business Project, was supported by several major Cambodian banks and sought to support the private sector by enabling businesses to work in a fair environment and to promote clean business practices within company operations.<sup>672</sup> Overall, 40 local and foreign businesses endorsed the PACT Cambodia Clean Business Project including an initiative to create a certification for Cambodian businesses that adheres to international best business practices.<sup>673</sup> However, the project finished in 2010, along with efforts to make a lasting certification for companies. The Oxfam led CSR platform is also supported by the business community, with over 20 domestic businesses joining the platform. Based on the examples of PACT Cambodia’s Initiative and the CSR Platform, the private sector has proven its willingness to engage with civil society initiatives to promote business integrity.

In another initiative, SILAKA Cambodia has established a project to monitor corruption in public procurement at the sub-national level in Kandal and Kampong Thom provinces. The public campaign is intended to promote awareness of public procurement and to engage local citizens to join and monitor bidding meetings, as part of SILAKA’s “Strengthening Procurement System at Sub-National Level (SPSL)”.<sup>674</sup> Finally, TI Cambodia’s Business Integrity Programme (“BIP”), monitors the private sector’s commitment to business integrity. The (“BIP”) offers training on a variety of issues relevant to business and to business integrity, including taxation, procurement, and public service fees. The BIP works with companies to implement Corporate Integrity Systems, which provide companies with strong policies and procedures to avoid corruption and operate a cleaner business.

As mentioned, Cambodia has a vibrant civil society community, however many CSOs have focused on business and human rights issues, including supporting communities impacted by business and generating advocacy campaigns on human rights violations committed by companies. CSOs such the Cambodian Center for Human Rights (“CCHR”), the Cambodian League for the Promotion and Defense of Human Rights (“LICADHO”), and Cambodian Human Rights and Development Association (“ADHOC”) may be able to hold private companies accountable for business integrity. They have had practice taking companies to task for human rights violations, specifically concerning land and labour rights. Often the corruption issues are behind or secondary to the human rights abuses. For example, Inclusive Development International, Equitable Cambodia, and the Cambodian League for the Promotion and Defense of Human Rights have all assisted in filing international complaints against businesses who allegedly committed human rights abuses. In this regard, CSOs have developed their watchdog role is well developed, though still lacking in terms of business integrity specifically.

## SILAKA Public Procurement Project

One project has made significant progress in increasing local capacity and transparency in public procurement at the Commune/Sangkat level. The Participatory Public Procurement Watch Program, run by NGO partner SILAKA and funded by the Centre for International Private Enterprise ("CIPE"), established a community based monitoring committee that observes and monitors the notification and bidding processes at the sub-national level. This project is significant on two levels, it first increases community participation in the bidding process at the Commune/Sangkat level and secondly elevates the capacity of procurement officials at the commune and district level to follow the procedures laid out in the 2012 Law on Public Procurement and the Commune/Sangkat Project<sup>675</sup> Implementation Manual.<sup>676</sup>

SILAKA piloted the Joint Procurement Monitoring Committee at the Sub-National Level ("JPMC") in Kampong Thom in 2013 and Kandal provinces in 2015. The JPMC performs two main functions: i) it facilitates the dissemination of information on the provincial budget and notifications of new procurement projects for local enterprises and ii) it monitors, documents, reports and consults with local officials on abuses or irregularities in the procurement process with the Commune/Sangkat Procurement Committee.<sup>677</sup> The JPMC is a voluntary group comprised of representatives of local authorities, private enterprises as well as civil society members. The group enables the discussion and consultation with citizens and the private sector to monitor Commune/Sangkat and District procurement (from bidding announcement to bidding opening).<sup>678</sup> They are watchdogs and information providers on the proper procurement process, supporting good governance within local communities. Since its initial pilot in 2013 the programme resulted in the reporting of several irregularities to the Provincial Planning and Investment Division ("PID").<sup>679</sup> The JPMCs are intended to function independently with limited support from SILAKA in future.

SILAKA facilitated 18 outreach meetings in Kampong Thom province, providing training on basic concepts of good governance, social accountability and civil engagement in the procurement process at the Commune /Sangkat level.<sup>680</sup> The outcome of these meetings and the JPMC's continued engagement is a better awareness by citizen's that procurement projects are funded by and belong to them through taxation and paid public services. Attendees reported a greater understanding that they have the right, and it is to their advantage, to report irregularities in procurement at the local level. The success of this programme hinges on awareness of proper procurement procedure by the JPMC and adequate reporting mechanisms. In Kampong Thom, JPMC members successfully monitor communal boards for new notices of bidding and follow the processes and outcomes bidding in their communities.<sup>681</sup> The outcome has been an increase in bidding announcements posted to communal boards at the commune and district levels.<sup>682</sup> The main challenge is that bidding meetings are held in the district hall, not the commune office, making it difficult for citizens to attend.<sup>683</sup>

Another significant achievement of this project is the reporting of commune level challenges and best practices to the provincial and national authorities.<sup>684</sup> The meeting minutes from the JPMC of Kampong Thom were incorporated into the PID's annual workshop with the NCDD (National Committee for Sub-National Democratic Development) in 2014 and 2015. The NCDD is an inter-ministerial mechanism for promoting democratic development in Cambodia and implementing the administrative laws on the management of the Capital, Provinces, Municipalities, Districts, Khans (Organic Law) and Commune/Sangkats.<sup>685</sup> PIDs from different provinces meet annually with the NCDD to discuss best practices and recommendations for changing laws governing the administration of the provinces. This resulted in several changes to improve how the procurement process is implemented.<sup>686</sup>

The JPMC has observed 9 bidding processes in the two provinces where the project is active. As a result of monitoring the bids, the JPMC was able to suggest changes to the Commune/Sangkat Procurement Implementation Manual in Kampong Thom through the PID and NCDD (as mentioned above).<sup>687</sup> The JPMC noticed that bidders would place a bid and then withdraw the bid before the closure of the bidding process, or register multiple bids under different names, thereby influencing bidding prices. The Commune/Sangkat addressed this behaviour by requiring a 2% deposit for all bids, to prevent collusion amongst bidders.<sup>688</sup> Furthermore, the timeframe for bidding on most projects was changed to earlier in the year (from April/May to February/March) to avoid project implementation during the rainy season, beginning in June, which caused delays and additional costs.<sup>689</sup>

*How about this: Meeting with the JPMC in Kampong Thom province as part of the Participatory Public Procurement Watch*



Moving forward the JPMCs are working towards registration with the Ministry of Interior as a civil society organisation, which would enable them to fundraise independently and work towards operational independence from SILAKA. Furthermore, SILAKA<sup>690</sup> intends to expand the scope of the project by creating community monitoring associations at the district level.<sup>691</sup> This project is particularly effective because it is implemented at the commune level where communities are most impacted by procurement projects. Local leaders are being trained in civic engagement and bidding procedures and are effectively implementing this training, resulting in improvements.<sup>692</sup> In comparison, bidding processes at the national level are not yet open to civil society monitoring, or participation and bidding notifications are often not well publicised.<sup>693</sup> This grassroots strategy to educate and raise awareness is rare in the technical arena of public procurement, but the effects of this programme have been transformative. The aspiration is that the programme will grow to create sufficient awareness to affect change at the Ministerial level for national procurement projects, thereby increasing transparency and accountability from the ground up.

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# Recommendations

## Recommendations for the Public Sector:

### Short-Term Recommendations:

- Increase online and one-window public services to reduce bureaucratic burdens and costs associated with doing business in Cambodia, particularly for SMEs, and coordination, responsiveness and accountability from relevant Ministries.
- Make business registration with the MoC and GDT publicly available, including access to information on beneficial ownership.
- Expedite the promulgation of key pieces of legislation to increase transparency and accountability such as the draft law on competition; the draft law on the protection of reporting persons; the draft law on the protection of experts, victims and witnesses and provide operational benchmarks for both public and private sectors that are in line with international standards.
- Engage with business associations and civil society to draft laws regulating e-commerce, consumer protection and commercial contracts as well as laws on environmental impacts assessments and building codes.
- The Cambodian Stock Exchange should provide training and encourage companies, particularly SME's, in corporate governance systems and business integrity.
- Strengthen monitoring and oversight of national and sub-national public procurement to assure public notification of contracts and transparency in the outcomes of awarding contracts on national level bids.
- Disclose all Qualified Investment Projects (QIPs) publicly and provide a list of beneficiaries and aggregated data regarding tax incentives and other benefits under the QIP program.
- Disclose all official tariffs levied by the GDCE, the GDT, and other officials publicly, and sanction any officers who request informal tariff payments. Disallow changes to tariff schemes without timely notification to the public.
- Introduce mechanisms to submit complaints directly to the GDT and GDCE and provide a mechanism for anonymous reporting by companies of any issues or wrongdoing involving customs and tax officers.
- Consistently and transparently enforce new amendments to the Cambodian tax code, under the 2017 Financial Management Law, across sectors to avoid creating a non-competitive business environment. Provide more training, incentives and support for businesses to become tax compliant.
- Increase the consistency of enforcement of the GDT of penalties provided under the Tax Code and ensure due process and appeal mechanisms for each application of a penalty by the GDT.
- Clearly define Micro, Small and Medium businesses according to the number of employees and revenues across relevant Ministries in order to have clearer expectations for compliance with taxation and business registration requirements.
- Increase the independence of the NCAC and the ACU by amending the legislation regarding the appointment of NCAC members and the ACU leadership as clearly stated in the TI-NISA Cambodia report.
- Continue to create an environment of integrity within the ACU and a better relationship between the ACU and the public by i) providing an anonymous mechanism for complaints against ACU investigators (i.e. through the online complaint mechanism administered by the Ministry of Civil Service) ii) making public the general process by which ACU investigations result in charges of corruption iii) providing mechanisms of due process and appeal for public allegations of corruption.
- Publish the terms and conditions of the MoUs that the ACU has signed with Cambodian and international companies and other ministries.



- Strengthen the effectiveness of CAFIU in investigating and sanctioning instances of suspected money-laundering and in coordinating and consistently reviewing financial institutions.

### Long-Term Recommendations:

- Improve transparency from the MEF and National Assembly regarding the annual budget and fiscal deficit by the public and timely release of an annual independent audit of the national budget by the national audit authority.
- Increase the independent functioning of the ACU and the Office of the Inspector General from the Executive and Government Ministries.
- The GDT should include more positive reinforcement for tax compliant companies, particularly SMEs, while continuing to work with the business associations and organise workshops and training on business registration and on tax compliance.
- The MoJ and RGC should amend legislation in order to require Judges at all levels of court to publish their decisions and reasoning and ensure that standards are established for open court proceedings.
- Publish and implement a clear and transparent mechanism for the recruitment and appointment of judicial officials and judges, including clear and well-publicised recruitment and appointment criteria.
- Innovate and implement a mechanism for monitoring and evaluating staff performance at GDT and GDCE for consistency and transparency in order improve good and fair working practices of taxes and customs' officers.
- Strengthen anti-corruption legislation within the Law on Taxation and the Law on Customs and link the Anti-Corruption Law with tax and customs regulations through a sub-decree.
- Create an online legal database of all laws in Cambodia, with translation of all new laws into English, in order to increase awareness of the legal framework in Cambodia and the ability of civil society organisations to monitor legal developments and their implementation.
- The RGC should update existing laws that are outdated, or run counter to anti corruption objectives in consultation with the private sector and civil society (Anti-Corruption Law, Law on Commercial Rules and Commercial Register, Investment Law, Law on Corporate Enterprises, Law on Customs, Law on Taxation).
- The RGC should amend the Law on Commercial Enterprises to include legal obligations for companies to establish a code of conduct and anonymous whistleblowing channels.

## Recommendations for the Business Sector:

### Short-Term Recommendations:

- The chambers of commerce and business associations should disclose information about the benefits of engaging closely with the ACU to their members, particularly, the importance of protection for potential whistleblowers who report to the ACU.
- Business associations and chambers of commerce should continue to organise training in business integrity and corporate practices (i.e. codes of conduct, codes of ethics, anti-corruption reporting channels, anti-corruption policies), including working closely with the ACU to establish and train in best practices.
- Business associations should identify benchmarks for business integrity in each industry and acknowledge and reward companies who achieve them.
- Domestic and international companies should establish anonymous, and protected lines for whistleblowing to encourage employees at all levels to report cases of corruption or other wrongdoing.
- Companies should ensure compliance by registering with the MoC and the GDT. Business associations should encourage the process and assist whenever possible.

- Domestic companies, particularly SME's, should increase business integrity by adopting internal policies and procedures, including codes of conduct, whistleblowing channels and other anti-corruption measures.
- Companies who are required to conduct annual independent audits should conduct audits and publicly release their audited annual reports.
- Companies should disclose anti-corruption policies and activities in their annual reports and on their websites.

#### Long-term Recommendations:

- Business associations should encourage companies to understand the value of clean accounting practices and the value added by professional accounting services.
- Companies should require anti-corruption due diligence of their partners and suppliers and create a database of clean companies.
- Private companies should offer more channels to report cases of corruption. Reporting exclusively to ACU is insufficient.
- Chambers of commerce should promote and advise ministries on drafting and promulgating relevant legislation, including the draft law on the protection of reporting persons, the draft law on the protection of experts, victims and witnesses and the draft law on competition and update existing laws which are outdated or run counter to anti-corruption objectives. This should be in consultation with the private sector and civil society.
- Business associations should promote a dialogue on challenges incurred in doing business in Cambodia to remove the shame associated with reporting and talking about problems in doing business.

## Recommendations for Civil Society

#### Short-Term Recommendations:

- Civil society organisations should engage with independent media outlets to provide training in investigating and documenting private sector corruption and business integrity issues.
- Civil society organisation should continue to work closely with the private sector on initiatives that promote business integrity.
- Civil society should acknowledge and reward businesses who actively promote anti-corruption and business integrity.
- Civil society organisations should actively monitor and report on the private sector with an eye towards anti-corruption and business integrity.

#### Long-Term Recommendations:

- Civil society and the private sector should coordinate to promote initiatives that increase business integrity, including legislation and policy changes that increase integrity, transparency and accountability.
- Civil society should consult and engage the private sector and public sector on the passage of key pieces of legislation to increase transparency and accountability, such as the draft law on competition; the draft law on the protection of reporting persons and the draft law on the protection of experts, victims and witnesses.
- The media should continue to identify independent sources of income for their outlets, in order to maintain and promote independence.
- The media should increase investigation and reporting on business integrity.

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# **Business Integrity Country Agenda Assessment (BICA)**

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## **ANNEXES**



# Annex I:

## TRAC Research Questionnaire

Score each question between 0-1 pts, 4 points are possible

### I. Reporting on anti-corruption programs (ACP)

**1.** Does the company have a publicly stated commitment to anti-corruption?

Score\_\_\_\_\_

**2.** Does the company publicly commit to be in compliance with all relevant laws, including anti-corruption laws?

Score\_\_\_\_\_

**3.** Does the company leadership (senior member of management or board) demonstrate support for anti-corruption?

Score\_\_\_\_\_

**4.** Does the company's code of conduct/anti-corruption policy explicitly apply to all employee's and directors?

Score\_\_\_\_\_

**5.** Does the company's anti-corruption policy explicitly apply to persons who are not employees but are authorized to act on behalf of the company or represent it (for example: agents, advisors, representatives or intermediaries)?

Score\_\_\_\_\_

**6.** Does the company's anti-corruption program apply to con-controlled persons or entities that provide goods or services under contract (for example: contractors, subcontractors, suppliers)?

Score\_\_\_\_\_

**7.** Does the company have in place an anti-corruption training program for its employees and directors?

Score\_\_\_\_\_

**8.** Does the company have a policy on gifts, hospitality and expenses?

Score\_\_\_\_\_

**9.** Is there a policy that explicitly prohibits facilitation payments?

Score\_\_\_\_\_

**10.** Does the program enable employees and others to raise concerns and report violations (of the program) without risk of reprisal?

Score\_\_\_\_\_

**11.** Does the company provide a channel through which employees can report suspected breaches of anti-corruption policies and does the channel allow for confidential and/or anonymous reporting (whistle-blowing)?

Score\_\_\_\_\_

**12.** Does the company carry out regular monitoring of its anti-corruption program to review the program's suitability, adequacy and effectiveness and implement improvements as appropriate?

Score\_\_\_\_\_

**13.** Does the company have a policy on political contributions but either prohibits such contributions or if it does not, requires such contributions to be publicly disclosed?

Score\_\_\_\_\_

## II. Organisational Transparency

**1.** Does the company disclose all of its fully consolidated subsidiaries?

Score\_\_\_\_\_

**2.** Does the company disclose percentages owned in each of its fully consolidated subsidiaries?

Score\_\_\_\_\_

**3.** Does the company disclose countries of incorporation for each of its fully consolidated subsidiaries?

Score\_\_\_\_\_

**4.** Does the company disclose countries of operations for each of its fully consolidated subsidiaries?

Score\_\_\_\_\_

**5.** Does the company disclose all of its non-fully consolidated holdings?

Score\_\_\_\_\_

**6.** Does the company disclose percentages owned in each of its non-fully consolidated holdings?

Score\_\_\_\_\_

**7.** Does the company disclose countries of incorporation for each of its non-fully consolidated holdings?

Score\_\_\_\_\_

**8.** Does the company disclose countries of operations for each of its non-fully consolidated holdings?

Score\_\_\_\_\_

### III. Country-by-Country Reporting

**1.** Does the company disclose its revenues/sales in country X?

Score\_\_\_\_\_

**2.** Does the company disclose its capital expenditure in country X?

Score\_\_\_\_\_

**3.** Does the company disclose its pre-tax income in country X?

Score\_\_\_\_\_

**4.** Does the company disclose its income tax in country X?

Score\_\_\_\_\_

**5.** Does the company disclose its community contribution in country x?

Score\_\_\_\_\_

