



## POLICY BRIEF

# Improving Beneficial Ownership Transparency in Cambodia's Land and Property Sector

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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 corruption.



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Beneficial ownership transparency is the availability of information of the ultimate beneficial owner (ie the natural person) of a legal entity or arrangement. It promotes transparency and accountability in the effort to combat corruption, money laundering and other illegal activities around the world. Knowing the identity of the natural person behind a transaction helps countries to fight corruption and financial crimes. Its purpose is to prevent individuals from hiding behind complex legal structures within a jurisdiction or across different jurisdictions to evade a financial trail, and ultimately the law.

Corruption in the land and property sector is particularly relevant for states that are undergoing economic transitions such as Cambodia. When governance processes do not keep up with the rate of economic development, the high-cost purchase or sale of land or property is an opportune way to facilitate corrupt activities. The identity of the ultimate beneficial owner is therefore an important step in Cambodia's continued economic development.

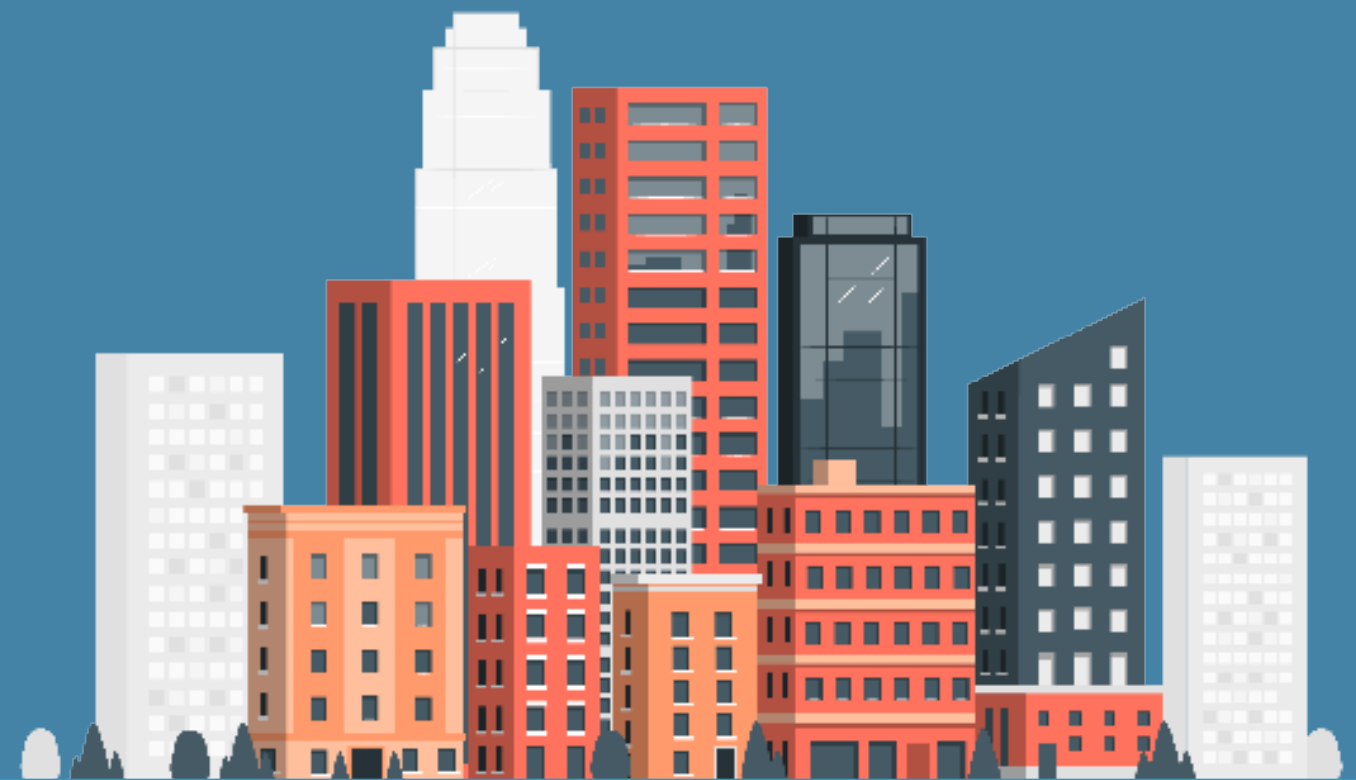
The Royal Government of Cambodia has ratified the United Nations Convention Against Corruption (**UNCAC**). The government therefore has a responsibility to enact and enforce laws that prevent corruption that involves the private sector (Article 12).

This includes taking measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities (Article 12(2)(c)).

This policy brief outlines how beneficial ownership obligations operate in Cambodia in relation to land and property transactions. It highlights international best practices examples in view of providing recommendations on how to support those with an obligation under the law to minimize corruption in Cambodia's land and property sector.

*“ To Fight Corruption, We Must Embrace Transparency. ”*

## *Corruption and the Land and Property Sector*



Corruption can take many forms and involve anyone. It involves the abuse of public trust or power for private gain. It happens in the shadows with the help of professional enablers such as real estate agents, lawyers, accountants and bankers. Corruption slows economic development, undermines democratic institutions, threatens social and political stability, and is a central cause of poverty. Key preventions for corruption are to create robust reporting mechanisms that encourage people to report suspected or actual wrongdoing. Strong enforcement measures also work to counter corrupt activity.

The land and property sector is particularly vulnerable to corruption because of the economic value placed on land. In states with weak land governance, it creates opportunities for large sums of money to transfer between individuals and companies with little oversight.

The sale and purchase of land and property affects both urban and rural land holders, women and indigenous communities. Many different stakeholders can be involved in transactions, and potential buyers of property may seek out favors to secure prime development opportunities.

The governance process for determining who holds title to land in Cambodia is also not transparent. Cambodia has a Land Registry and the cadastral registry unit is responsible for recording the sale and purchase of land (Land Law Article 65-66). The register records the names of the owner(s), as well as details of the land: identification of the land parcel, the size of land parcel, the easements, and any other encumbrances (Land Law Article 238). While landowners are responsible for submitting any changes in ownership to the relevant cadastral office, no beneficial ownership information is required. The information contained on the Land Registry is in principal publicly available (for a fee), but in practice the information is difficult to access without the consent of the land owner. (Land Law Article 240). Real estate agents or individuals must first request a copy of the title from the landowner, and then go in person to the cadastral office to confirm ownership.

High levels of corruption and poor governance also attract undesirable local and foreign investment from actors, who use the opportunity to hide dirty money. Understanding who is in control of the land becomes increasingly difficult to identify as complex corporate and financial structures and secretive external jurisdictions may be used to obscure the ultimate beneficial owner.

Strengthening governance and processes to support beneficial ownership transparency is an important step to combating corruption.

## *UBO Legal Framework in Cambodia*



The Law on Anti-Money Laundering and Combating the Financing of Terrorism (2020) (AML Law) governs beneficial ownership transparency in Cambodia. It outlines obligations for reporting entities, establishes the Financial Intelligence Unit (FIU), and sets out sanctions for non-compliance or violations of the AML Law. It also defines professional institutions that are subjected to the anti-money laundering law, including real estate agents (AML Law, Article 4(h)).

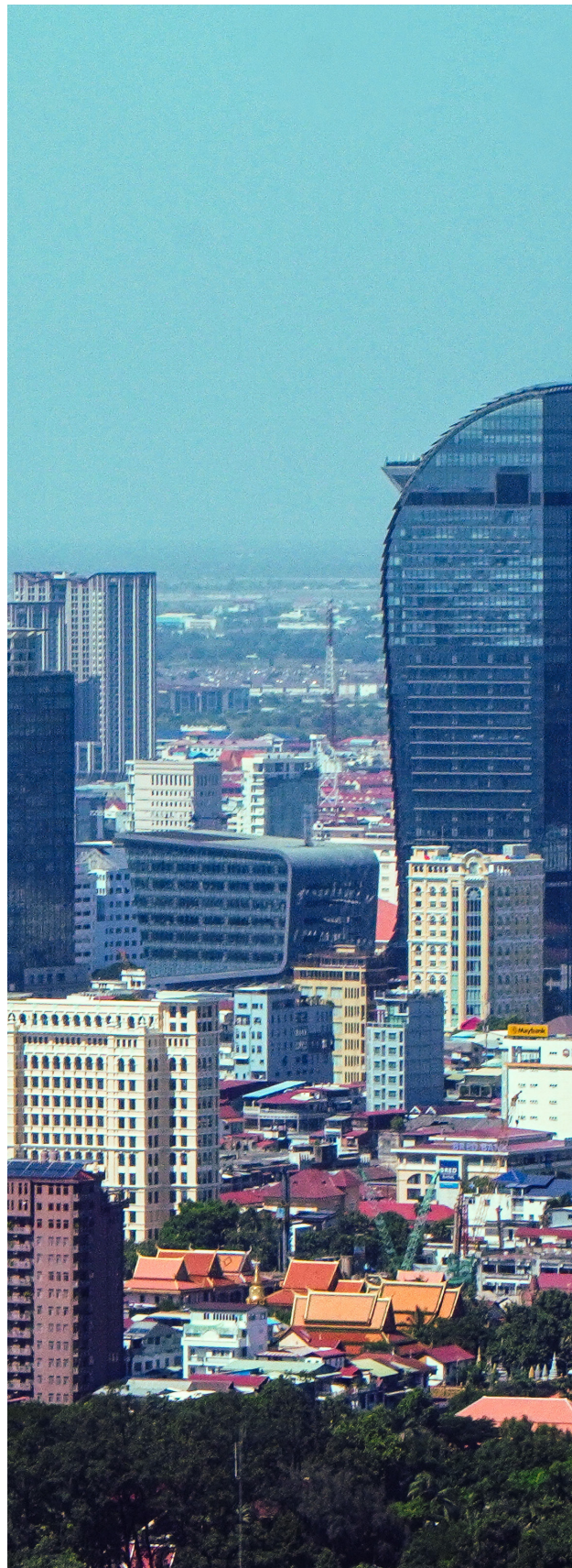
Customer due diligence measures must be carried out before establishing business relationships. This includes identifying the ultimate beneficial owner (AML Law, Article 8). Under Cambodian law, there is a 20% threshold for ownership of shares or voting rights in a company to establish direct or indirect control. The AML Law outlines record keeping practices and places an obligation on reporting entities, including real estate agents, to report cash or suspicious transactions to the FIU (AML Law 2020, Article 11-12).

However, Cambodia's legal framework in relation to commercial activities, including registering a company or business, means that it is very difficult for real estate agents to carry out thorough customer due diligence measures. Only basic information is currently publicly available online. Moreover, Cambodian trustee companies buy and sell land on behalf of foreign investors looking to subvert restrictions on foreign ownership on land, to secure property and land titles.

***“ Ultimate Beneficial Owner” shall mean 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 - AML Law Article 3(i)] ”***

## ***International Best Practice***





The Financial Action Task Force (FATF) is an inter-government body that operates as the global money laundering and terrorist financing watchdog. It sets the international standards to prevent illegal financial activities such as money laundering. By virtue of its membership to the Asia/Pacific Group on Money Laundering (APG), Cambodia is subjected to monitoring by the FATF and its international standards for tackling money laundering. These standards consist of forty recommendations.

Recommendations 24 and 25 relate to transparency, beneficial ownership, and the misuse of legal persons and other legal arrangements for money laundering or terrorist financing. In February 2023, Cambodia was no longer subjected to increased monitoring and was removed from FATF's 'grey list'.

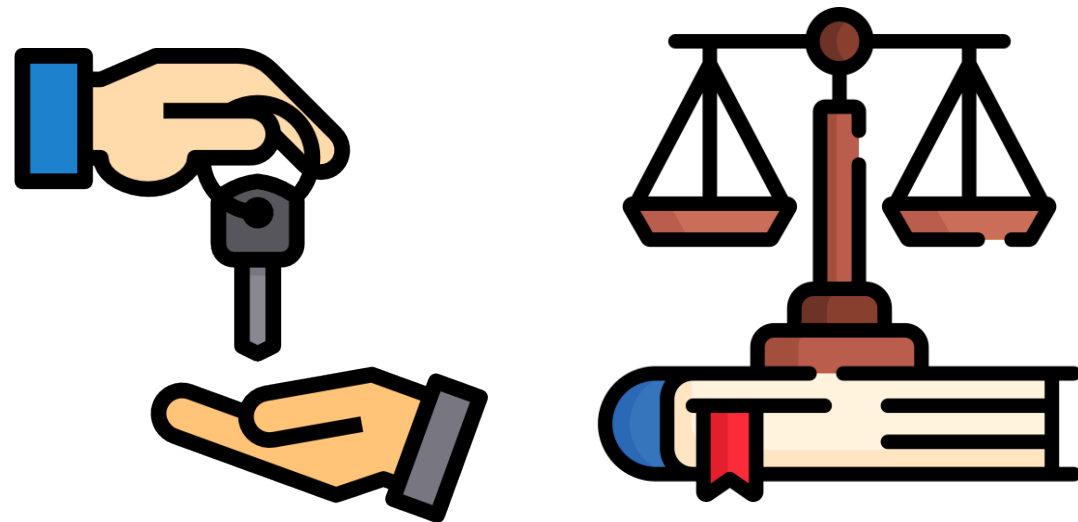
The Royal Government of Cambodia can draw upon good practices and experience from around the world when strengthening beneficial ownership transparency, including the United Kingdom. The United Kingdom is a member of the Beneficial Ownership Leadership Group. The group was originally formed in 2019 to drive the global policy towards free beneficial ownership data. Signatories to the group commit to publishing beneficial ownership data that is "freely downloadable, searchable, and reusable but the public..." The Beneficial Ownership Leadership Group currently comprises nine government and is open to all governments who are making efforts to improve their beneficial ownership data.

## *Suspicious transactions reporting (STR) framework*



Real estate agents must take reasonable measures to understand the nature of business, ownership, and control structure of the customer before establishing a business relationship (AML Article 8(5)). They are required to determine if beneficial owners are conducting a suspicious transaction. This includes any link to a political person, their family or close associates.

Reporting obligations are outlined in the AML Law. A reporting entity must submit an STR to the FIU. The report must contain: (i) the identity and identifying particulars of the reporting entity, including the name and contact details of the reporting officer; (ii) the identity and identifying particulars of the customer and of the beneficiary involved in the transaction; (iii) the type and details of transaction such as amount, currency, date, parties involved in the transaction that is reported as suspicious, including the account number and identifying particulars of the account holder; and (iv) a short description of the circumstances and reasons that justify the suspicion (AML Law Art 13).



## *Enforcement and sanctions in Cambodia*





The AML Law also sets out the processes and options available to the FIU to impose sanctions and penalties on any reporting entity that does not comply with the laws. This includes disciplinary sanctions for reporting entities that do not comply with sections of the AML Law, such as a warning, prohibition or limitation to carry out transactions, fine or in serious violations, a formal complaint to the courts (AML Law, Article 28). Sanctions for offences that involve a failure to provide information to the authorities, failure to report suspicious transactions, failure to report knowing of unlawful information and so on include fines up to 5,000,000 Riels (approx. US\$1,200) and/or a prison sentence of up to one year. (AML Law Article 29). The FIU also has the power to freeze or confiscate property in the event of the proceedings being the result of a violation of money laundering or financing terrorism (AML Law Article 30). Further penalties are available under Article 405-409 for money laundering under the Cambodian Criminal Code (2009).



*Photo by: Sonita IEA*

## *Recommendations*



## Recommendations

Gaps in the land and property sector should be addressed to combat corruption. The following outlines some practical steps and recommendations to combat corruption in the land and property sector.

### 1. Building capacity of real estate agents

Utilise the Cambodian Valuers and Estate Agents Association, the land and property sector to strengthen licencing governance and training opportunities for real estate agents.

Real estate agents are a key component to preventing corruption in the land and property sector. However, there are limited opportunities for them to learn about their obligations under the law. To set up a real estate business requires registering a business, registering for tax purposes and obtaining a real estate licence. There is no prerequisite to undertake any training or demonstrate any familiarity with the obligations imposed under the law.



### 2. Simplify the customer due diligence layers

Simplify the customer due diligence layers would support compliance with obligations for real estate agents, banks and lawyers. Simplification would come from a searchable database on land title and company information that is publicly available or at a minimum, available for a fee. A single-portal registration system that is up to date can include identification of the ultimate beneficial owner or person with substantial control, and improved transparency on shareholder information. At a minimum, public authorities or those with a beneficial ownership obligation under the AML Law, must be able to access beneficial ownership information freely and easily.



### 3. Strengthening legal framework

The beneficial ownership definition within the Law on Anti-Corruption should be brought into line with the FATF standards. Additional strengthening is also needed to report conflict of interests for public officials, including those that involve the family members of public officials and assets in their names.



### 4. Strengthen the capacity for enforcement

The law needs to be updated to ensure adequate enforcement and sanctions provisions for non-compliance with reporting beneficial ownership information. This includes the enforcement of real estate agents to carry out their obligations under the law. Changes should be made to increase the monetary penalties to ensure they are substantial enough to act as a deterrent. Enforcement agencies also need to increase their capacity and apply the laws to real estate agents for any failure to meet their obligations.



(1) **Queensland, Australia:** a real estate agent is required to complete a series of trainings and courses before they are granted a licence. Training includes developing and understanding the legislative framework, structure and impact of legislation for people working in real estate. This ensures that people with a licence to trade land and property understand their obligations under the law.

(2) **United Kingdom:** Companies House requires all business and companies to publicly name “persons with significant control.” People with significant control that must be recorded include people with shares and voting rights over 25% . Companies House must be notified of any changes to this information within 14 days. This information is publicly available free of charge.

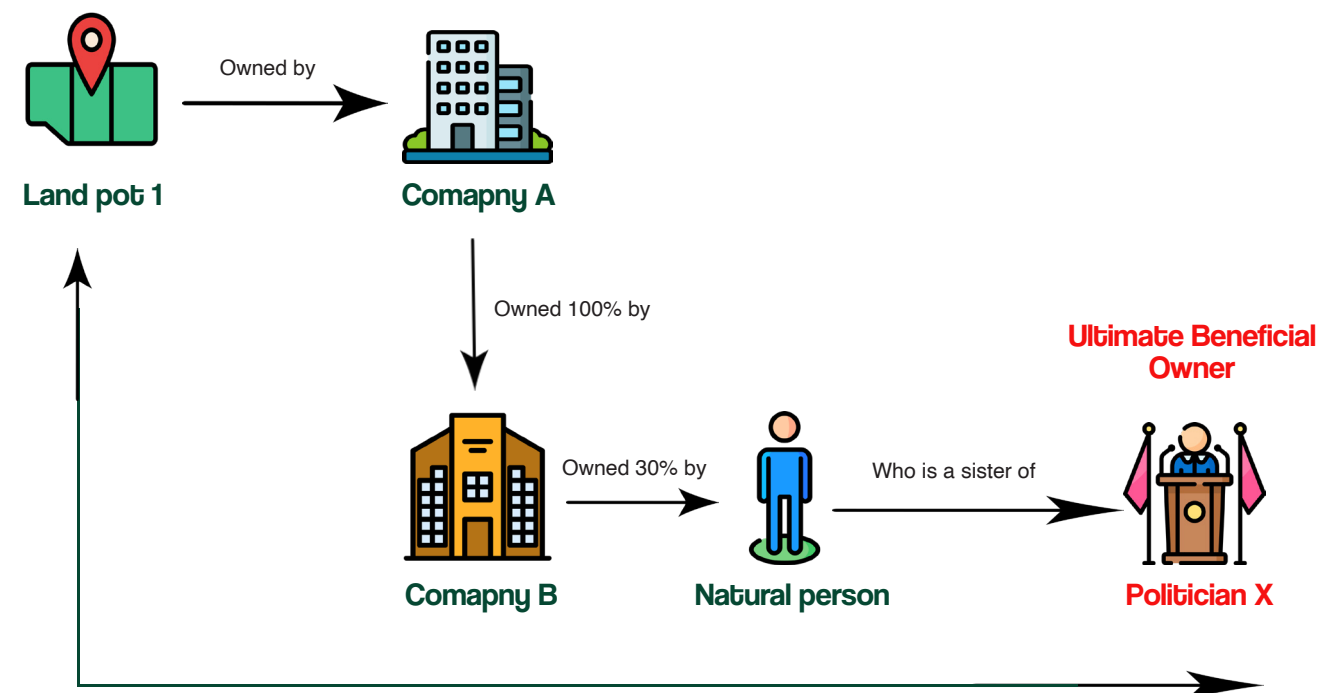
(3) **New South Wales, Australia:** the Land Registry Service maintains land title records. It is free for basic information however confirming the current owners and registered interest of a given property is done for a fee. To confirm information that sits behind a corporate or business structure, a second search much be done through the Australian Securities & Investments Commission. Comprehensive information can be obtained for a fee, however it may not be possible to determine the person with significant control. Beneficial owners who sit behind opaque structure, such as a trust structure or under offshore ownership, cannot be determined through searches.

(4) **FATF definition:** “Beneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those natural persons who exercise ultimate effective control over a legal person or arrangement. Only a natural person can be an ultimate beneficial owner, and more than one natural person can be the ultimate beneficial owner of a given legal person or arrangement.”

(5) **Singapore:** A real estate agent was fined US\$12,000 for failing to report a suspicious transaction. It was found that the real estate agent had disregarded his legal obligations to file an STR.

**Understanding Chain of Ownership and Ultimate Effective Control**

Land Plot 1 is legally owned by Company A, which is owned in whole (100%) by Company B, then the beneficial owner would be the Natural Person, who owns or controls Company B, e.g., by holding 30% of Company B’s voting shares. However, if the Natural Person owns or controls Company B on behalf of Politician X, e.g., through a familial relationship, then Politician X would be one of the beneficial owners. Politician X ultimately and effectively exercises control over the property through Companies B and A and his familial relationship with the Natural Person.



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