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TRANSPARENCY
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Cambodia



Cambodia's Mineral Exploration Licensing Process: Governance Risk Assessment

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Revised Edition

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© Cover photo: Cambodians for Resource Revenue Transparency (CRRT),
January 2015, Ratanakiri.

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About TI Cambodia

Transparency International Cambodia (TI Cambodia) is the fully-accredited National 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.



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Foreword

Mineral endowments have been a developmental blessing for many countries the world over. At the same time, an estimated 680 million people in resource-rich countries still live on less than USD 2 per day. For them, their countries' wealth has failed to deliver what it promised: sustainable economic and social development that benefits the many, not only a few. Effective governance and corruption control systems in mining are critical to enhancing the contribution of mining to sustainable human development by increasing transparency, accountability and effective regulation of the mining sector.

Transparency International's Mining for Sustainable Development Programme (M4SD) addresses where and how corruption can get a foothold in the mining approvals process – we are diagnosing and combatting corruption throughout the mining value chain: when mining permits and licenses are granted, and contracts are negotiated. Working with 20 Transparency International national chapters from across the globe, the programme is building foundations for accountable and transparent mining that benefits communities, and supports social and economic development. We, as a global movement against corruption, believe that transparent and accountable mining can contribute to sustainable development – this begins with corruption-free approval processes. M4SD seeks to enable governments to create the space for improved sustainability of their country's economic, social and environmental development, create a level playing field for business through better governance and corruption control systems, support companies in enhancing relations with their stakeholders and beneficiaries for improved social investment and strengthen engagement of civil society and community organisations to demand people's rights and improved development outcomes.

Mining in Cambodia is still at its infancy and the contribution to the National Gross Domestic Product (GDP) is relatively small while petroleum and mining products are accounted for only 0.1% of Cambodia exports in 2016. Having said that, the mining industry has significant potential to grow. The study on geology indicated that Cambodia has great mineral potential such as gold, iron, bauxite, manganese, silica sand, kaolin, limestone, phosphate, sapphires, rubies, coal, construction material, and other minerals. To support the Royal Government of Cambodia on developing an effective governance system in mining industry, Transparency International Cambodia in partnership with the Ministry of Mines and Energy (MME) and the Extractive Industry Governance Forum (EIGF) conducted this study to identify the systemic, regulatory and institutional vulnerabilities to malpractice in awarding mining and mining-related licenses, permits and contracts and to assess the specific governance risks created by these vulnerabilities. The study is in line with MME's efforts to improve the governance system in mining sector and their recently adopted initiative to enhance effectiveness of the Mineral Exploration Licensing Process. The findings and recommendations of this study will help the government to develop and implement a more stringent mechanism and oversight on the award process of licenses in mining exploration in Cambodia. I am very pleased to learn that 14 risks out of 28 risks, which were identified by this study, have been eliminated as a result of the Government's recent reform in the mineral exploration licensing process as well as the continued commitment of MME to reduce the remaining 14 risks. I sincerely hope that the recommendations and the follow-up actions will help to enhance an effective and transparent governance in mining sector, and contribute to mining for sustainable development in Cambodia.

On behalf of the Board of Directors and staff of TI Cambodia, I would like to express my sincere thanks and appreciation to all members of the Research Advisory Group from the government, mining companies and civil society organisations for their active engagement, strategic guidance, advice and validations of the report's findings and recommendations. I would like to also thank the research consultant, Mr. Minea Kim, from the Emerging Market Consulting (EMC) for leading the study and applying the research tools effectively in the context of Cambodia. My appreciation also goes to Mr. Pisey Pech, the Senior Director of Programmes of TI Cambodia, for his strategic direction and excellent coordination with TI Australia and TI-Secretariat and for ensuring an effective delivery of expected results of this project. Further appreciation also goes to Mr. Raksa Pen, the Programme Manager for Goal 1&2, and his entire team for their hard work and enormous supports to the project and excellent coordination with stakeholders. Last but not least, I would like to thank our donors, the Department of Foreign Affairs and Trade (DFAT) of the Australian Government, the Swedish International Development Cooperation Agency (SIDA) and the European Union (EU) for their generous financial supports to this project.



Kol PREAP
Executive Director
Transparency International Cambodia

Executive summary

Cambodia's Mineral Exploration Licensing Process: Governance Risk Assessment aims to identify and analyse governance risks associated with the process for granting mineral exploration license in Cambodia.

This assessment is conducted by Emerging Markets Consulting (EMC) with support from Transparency International Cambodia (TI-Cambodia). The assessment adapted the Corruption Risk Assessment (MACRA) tool provided by Transparency International to reflect the local circumstances. To minimize the scoring subjectivity between "Likelihood" and "Impact", we introduced sub-indicators and weightage system for a more balanced assessment.

The literature review served as the baseline. This research is primarily based on semi-structured interviews with 21 representatives from key stakeholders from government ministries, local authorities, civil society organizations, mining industry association, and mining companies. This assessment also went through 3 rounds of consultation and validation with stakeholders from the mining sector in Cambodia. Validation was conducted to ensure that the assessment fits within the local context and reflects the actual situation in Cambodia's mining sector.

The risk assessment identified that the new MME process for granting mineral exploration license eliminated 14 pre-existing risks from the previous process. However, 14 governance risks remain covering 1 contextual (CF) risk, 8 process-design (PD) risks, 3 process-practice (PP) risks, and 2 response-accountability (RA) risks. These risks relate to the understanding of surface rights, sharing of information, timeline of process, application evaluation process, public consultation, beneficial ownership, and approval from other line ministries.

The risks identified are primarily process related. This reflects the early stage of the MME's implementation of the reform agenda and provides a great opportunity for stakeholders to contribute to the governance of mineral exploration license process. The formation of EIGF provides an excellent working platform to progress this development, which will require support and commitment from all relevant stakeholders.

To mitigate these risks, this research recommends the development of a more robust regulatory framework with support for more stringent enforcement of the intent of Sub-Decree No.72. The research also recommends the setting-up of standard operating procedure (SOP) or guideline for application evaluation, public consultation, and improved access to public information through formal websites (MME and EIGF).

The risks and recommendations were presented to key stakeholders in the validation workshop on 9th June 2017 and accepted by Ministry of Mines and Energy. Summary of the remaining risks and recommendations are as follow:

Summary of Risks and Recommendations

Remaining Identified Risks	Recommendation
CF3: What is the risk that surface rights on mining area will be manipulated?	Improved enforcement of the law.
PD17: What is the risk that information of mining concession area will be selectively distributed with company?	Improved enforcement of the law.
PD28: What is the risk that duration for application submission will be adjusted to favour a particular company?	Application period of 60 days recommended.
PD4: What is the risk that criteria for selecting applicant will not be public knowable?	1) Evaluation panel members to declare that they are not related to or have potential conflict of interests with any applicant. 2) Involvement of External expert to be considered by MME. 3) Clearer evaluation guideline/SOP including the requirement for Initial Environmental and Social Impact Assessment (IESIA) to be developed. 4) The report supporting the application award to be available to the public for greater accountability and transparency of evaluation panel.
PD13: What is risk that assessment panel will not be independent or will be influenced by company?	
PP10: What is the risk that there will be no do due-diligence on applicant's claim technical and financial capacities?	More robust framework incorporating due diligence to raise the quality and integrity of applicants for mineral exploration license.
PP11: What is the risk that there will be no do due-diligence on applicant's past lawful compliance?	

Remaining Identified Risks	Recommendation
PD9: What is the risk that details of shareholder or beneficial owner of selected company will not be publicly knowable?	1) Adopt the legal framework on declaration of beneficial ownership of applicants and inclusion in the application criteria. 2) Due diligence to cover beneficial ownership and integrity of the company.
PP7: What is the risk that affected community will be misrepresented in public consultation?	1) SOP/guideline to ensure proper representation of stakeholders. 2) Official record of consultation discussions and agreements to be made available.
PD16: What is the risk that negotiation or agreement with landholder or community will not be conducted appropriately?	3) Enforcement of the public consultation agreement by MME. 4) The composition of environmental compliance panel should be discussed at the EIGF and incorporated into the SOP/guideline.
PD3: What is the risk that requirement for environmental compliance will be unclear?	Implementation of the IESIA requirement as per Sub-Decree No.72.
RA13: What is the risk that details of Additional Agreements will not be publicly knowable?	1) Development of licensing database system. Basic information related to licenses should be publicly displayed. Non-confidential information should be available on requested. 2) MME to be recognized as official source of licensing information. 3) The designated concession area should be visibly marked out by poles.
PD36: What is the risk that the details of licenses that have been awarded will not be publicly known?	
RA2: What is the risk that information about a particular license that has been granted will not be legally available?	

This research team would like to express strong appreciation to senior government officials, public officials, TI-Cambodia colleagues, representatives of CSO and community, and representatives of private sector for their frank and open views related to this very important development for Cambodia.

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List of Abbreviations

• CAMEC	Cambodian Association for Mining and Exploration Companies
• CDC	Cambodia Development Council
• CF Risk	Contextual Risk
• CNRP	Cambodia National Rescue Party
• CPP	Cambodian People's Party
• DMEM	Department of Mineral Exploration Management
• EIA	Environmental Impact Assessment
• EIGF	Extractive Industry Governance Forum
• EMC	Emerging Markets Consulting
• GDMR	General Department of Mineral Resource
• IESIA	Initial Environmental and Social Impact Assessment
• METS	Mining Equipment, Tool, and Services
• MEF	Ministry of Economy and Finance
• MIME	The Ministry of Industry, Mines, and Energy
• MME	Ministry of Mines and Energy
• MoC	Ministry of Commerce
• MoE	Ministry of Environment
• OWO	One-Window Office
• PEST	Political/Legal, Economic, Social, Technological
• PD Risk	Process Design Risk
• PP Risk	Process Practice Risk
• RGC	Royal Government of Cambodia
• RA Risk	Response Accountability Risk
• TI	Transparency International
• TI Cambodia	Transparency International Cambodia
• WTO	World Trade Organization

Transparency International's Mining for Sustainable Development (M4SD) Programme

Transparency International Cambodia (TI-Cambodia) is one of 20 national chapters participating in Transparency International's global Mining for Sustainable Development (M4SD) Programme. The Programme is coordinated by Transparency International Australia (TI-Australia). The M4SD Programme complements existing efforts to improve transparency and accountability in the extractive industries by focussing specifically on the start of the mining decision chain: the point at which governments grant and award mining permits and licences, negotiate contracts and make agreements.

Phase 1 of the Programme (2016-2017) is about understanding the problem by identifying and assessing the governance risks in the process and practice of awarding mining licences, permits and contracts. This report presents the main findings from the governance risk assessment in Cambodia.

With an understanding of the nature and causes of governance risk, the national chapters will develop and implement solutions to tackle priority governance risks in Phase 2 (2018-2020). They will work with key stakeholders from government, the mining industry, civil society and affected communities to improve transparency, accountability and integrity in the decisions about approving mining projects.

The participation of TI Cambodia in Phase 1 of the Programme is supported by the Australian Department of Foreign Affairs and Trade (DFAT). Globally, the M4SD Programme is also funded by the BHP Billiton Foundation.

1. Introduction

1. Introduction

This Governance Risk Assessment was conducted as part of Transparency International's Mining for Sustainable Development (M4SD) Programme. The aim of this study is to identify the systemic, regulatory and institutional vulnerabilities to malpractice in awarding mining and mining-related licences, permits and contracts. And to assess the specific governance risks created by these vulnerabilities. This report presents the main findings from the study and the results of the governance risk assessment.

In Cambodia, this assessment was conducted by Mr. Minea Kim from Emerging Markets Consulting (EMC) and coordinated via Transparency International Cambodia (TI-Cambodia). The assessment adapted the Corruption Risk Assessment tool¹ developed by an independent expert for Transparency International to reflect the local circumstances. In addition to desk reviews, the research team, with support from TI – Cambodia, conducted consultations with 21 representatives from ministries, local government representatives, civil society organizations, mining industry association and mining companies to validate and support the study findings. In addition to one-on-one meetings with key informants, this assessment went through 3 rounds of consultations and validation with relevant stakeholders from the mining sector in Cambodia. Validation was conducted to ensure that the assessment fits within the local context and reflects the actual situation in Cambodia's mining sector. The launch of this Governance Risk Assessment report is scheduled for 16th August 2017 and will be outside the scope of this report.

This assessment report consists of 9 sections, commencing with this introduction.

- Section 2: Cambodia Mining Sector, provides the overview of Cambodia's economy, mineral potential, investments in the mining sector, and the current legal and policy framework.
- Section 3: Research Methodology, explains the MACRA Risk Assessment tool, research process, semi-structured interview with key informants, validation process, and limitation of the research. The section also covers the adaptation of a weightage system, to provide deeper granularity in the sub-indicator assessments.
- Section 4: Scope of Research, outlines the scope of this assessment and the rationale for selecting the "Mineral Exploration License" element.
- Section 5: Contextual Analysis, analyses the political/legal, economic, social, and technological factors of Cambodia's mining sector. This section also provides an overview of the new licensing process relating to mining sector governance in Cambodia.
- Section 6: Mineral Exploration License Process, maps out the detailed procedures for the granting of mineral exploration license in Cambodia. For comparison, this section briefly outlines the previous license process and then elaborates all steps for new licensing process. It also analyses the risks inherent in previous licensing process, and then provides an assessment as to whether these identified risks have been mitigated in the reformed licensing process.
- Section 7: Results, analyses the "Likelihood" and "Impact" of the risks, which still exist in the new license process. A total of 14 remaining risks were identified from the contextual analysis and process assessment relating to the granting of mineral exploration license.
- Section 8: Discussion, covers the trend of potential risks and vulnerabilities in the new license process.
- Section 9: Recommendations, highlights the stakeholder recommendations and way forward to mitigate (and eliminate) the Prioritized Risks exposures.

¹ Nest. M, Mining Awards Corruption Risk Assessment Tool. 2016. Transparency International.

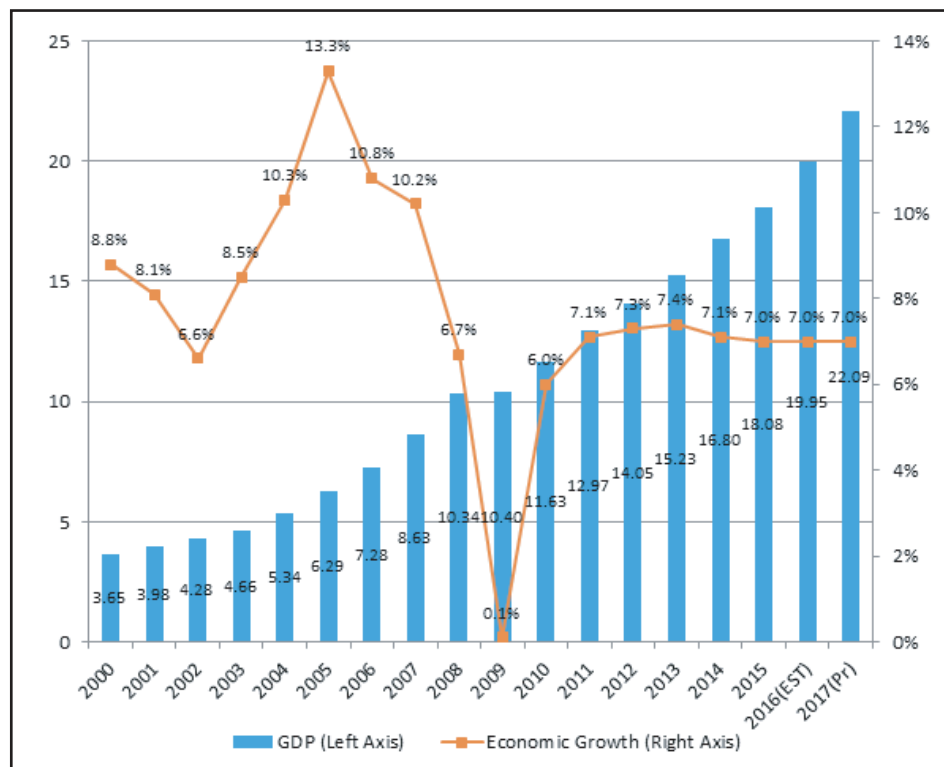
2. Cambodia's Mining Sector

2.1 Economy of Cambodia

Cambodia is located north of the Gulf of Thailand, south of Laos, southeast of Thailand, and southwest of Vietnam. The country is small with a total area of 181,035 square kilometres. Total population was estimated to be 15,578,000 in 2015². Cambodia adopts the multi-party democracy system and free-market economy³.

Cambodia has seen rapid economic progress over the last 2 decades. Ministry of Economy and Finance (MEF) data shows Cambodia has consistently achieved high Gross Domestic Product (GDP) growth rates, averaging 7.7% pa (2000-2016), with per capita Gross National Income (GNI) of US\$1,307⁴.

FIGURE 1: GDP (BILLION US\$) AND GDP GROWTH RATE 2000-2017



Source: Ministry of Economy and Finance, 2017.

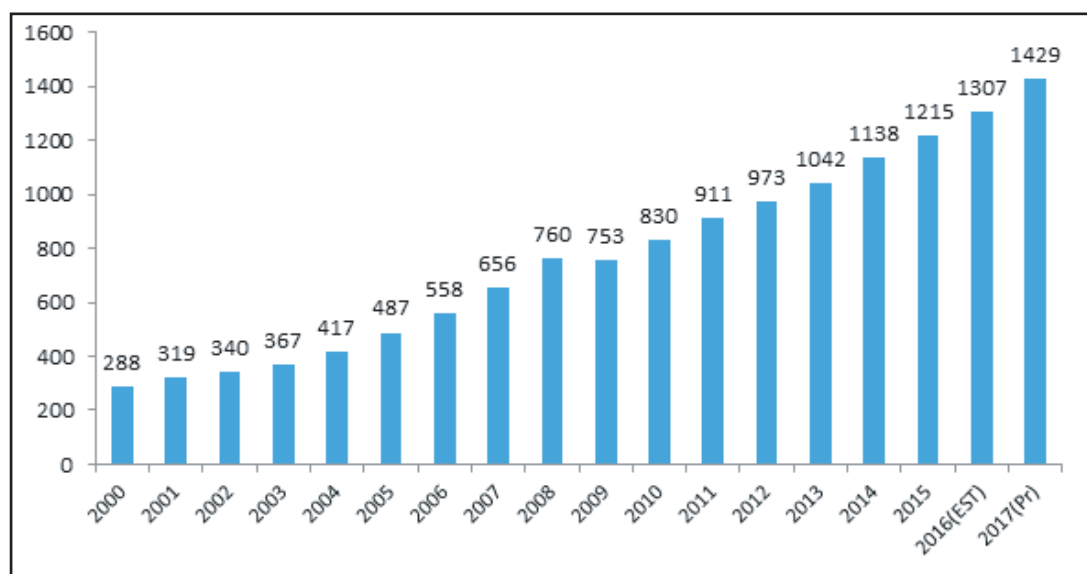
² United Nations, World Population Prospects: The 2015 Revision, Key Findings and Advance, 2015.

³ The Constitution of Cambodia, Article 51, 1993.

⁴ Ministry of Economy and Finance. Accessed on 17 April 2017.

Link: http://www.mef.gov.kh/assets/images/home_GDP_19092016.png

FIGURE 2: GROSS NATIONAL INCOME PER CAPITA (US\$) 2000-2017



Source: Ministry of Economy and Finance, 2017.

Cambodia's two largest industries are garment and tourism, while agricultural activities remain the main source of income for many Cambodians living in rural areas. Share of non-garment manufacturing sector has been increasing in recent years, while the construction sector has been booming, particularly in urban areas like Phnom Penh City, Siem Reap, and Sihanoukville. The service sector is heavily concentrated on trading and catering-related activities⁵. In 2009, the economic growth of Cambodia dropped to 0.1% due to the Global Financial Crisis. This reflects the Cambodian economy's high exposure to global market volatilities.

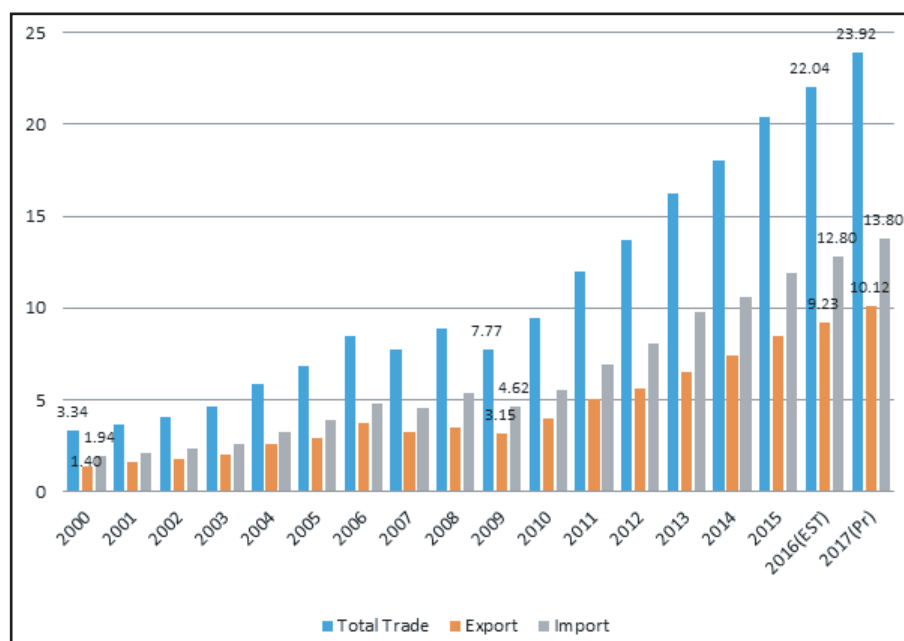
Total international trade in Cambodia was 22.07 billion US dollars in 2016, 6.7 times from the 2000 levels. After the Global Financial Crisis in 2009, Cambodia's international trade increased steadily with the average annual growth rate of 16%. Exports and imports have grown at similar pace.

However, Cambodia remains a trade-deficit economy. According to Ministry of Economy and Finance statistics, exports reached approximately 9.23 billion US dollars in 2016. Cambodia mainly exports garment and footwear products, making up almost 73% of total 2016 export value, with electronics, bicycle, milled rice, and rubber providing the balance. Only 0.1% of Cambodia's export was petroleum and mining products. Cambodia's 2016 imports amounted to 12.8 billion US dollars, resulting in a 3.6 billion US dollars deficit. Fuel and mining products accounted for 1.7% for total imports in 2015 (See Figure 4). The above analysis underscores Cambodia's high trade exposure to the volatile global resources market.

⁵ The World Bank, World Development Indicators. Accessed on 17 April 2017.

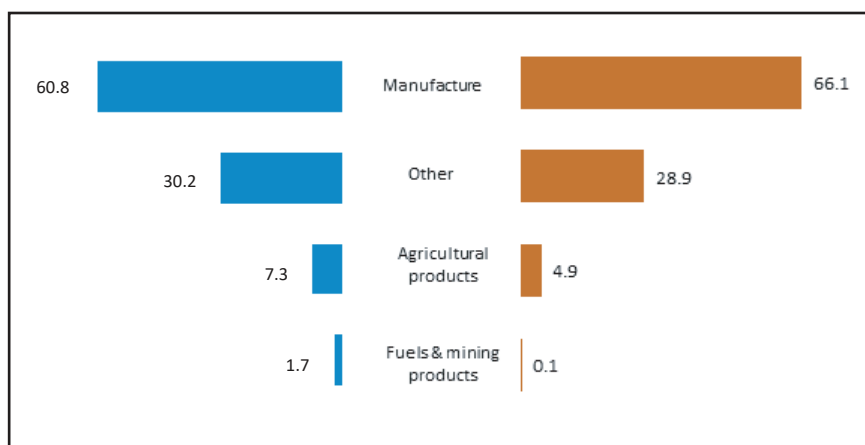
Link: <http://databank.worldbank.org/data/reports.aspx?source=world-development-indicators>

FIGURE 3: CAMBODIA'S INTERNATIONAL TRADE (US\$ BILLION)



Source: Ministry of Economy and Finance, 2017.

FIGURE 4: BREAKDOWN OF IMPORT AND EXPORT BY SECTOR IN 2015

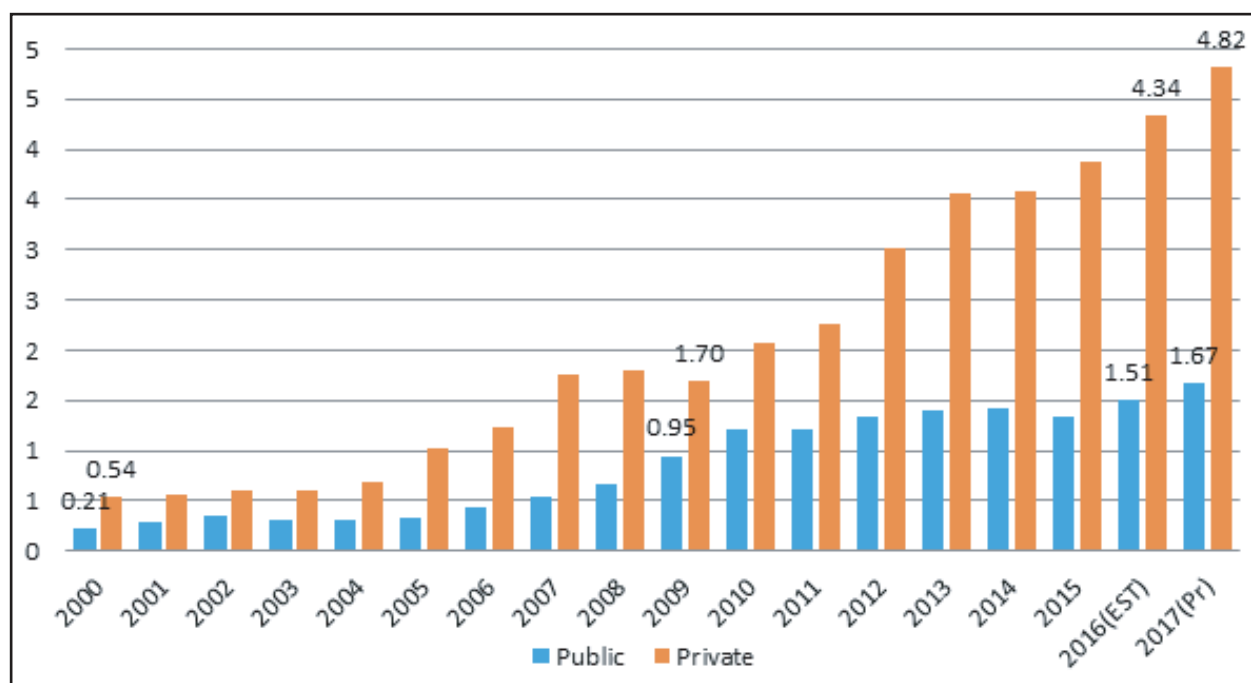


Source: World Trade Organization (2017).⁶

⁶ ACCESSED 23 APRIL 2017 FROM [HTTP://STAT.WTO.ORG/COUNTRYPROFILES/KH_E.HTM](http://stat.wto.org/countryprofiles/kh_e.htm)

Total 2016 investment in Cambodia surged to 5.85 billion US dollars, a 10-fold increase from the 2000 level. Private investments reached 4.34 billion US dollars with local investors accounting for approximately 54%. (See Figure 5), The Chinese are the largest foreign investors and together with other Asian investors, account for almost 90% of total foreign investments ⁷.

FIGURE 5: INVESTMENT IN CAMBODIA (US\$ BILLION)



Source: Ministry of Economy and Finance, 2017.

2.2 Mineral Potential of Cambodia

The mining sector offers great potential to the Cambodian economy. Since the latter half of 19th century, French and Chinese geologists had conducted geological studies and mineral investigations in Cambodia. The results indicated that Cambodia has significant mineral potential such as gold, iron, bauxite, manganese, silica sand, kaolin, limestone, phosphate, sapphires, rubies, coal, construction material, and other minerals ⁸. However, due to decades of civil war, the mining sector in Cambodia is still in its infancy, under-developed and under-invested.

Since the Law on Mineral Resource Management and Exploitation (2001) was promulgated in 2001, the government has issued licenses to a number of local and foreign companies to explore and exploit bauxite, gold, iron, antimony, chromium, coal, lignite, gemstone and some other metallic minerals. Significant deposits of gold and other minerals have recently been discovered in the concession areas. As of December 2016, a total of 23 industrial mining licenses, 61 mineral exploration licenses, and 401 construction mining licenses ⁹ are still active.

⁷ Council for Development of Cambodia, Trade Trend, 2017. Accessed on 17 April 2017.
Link: <http://www.cambodiainvestment.gov.kh/investment-enviroment/trade-trend.html>

⁸ Chrea Vichett, The Current Situation of Mining Industry in Cambodia, 2013.

⁹ Ministry of Mines and Energy, Presentation in EIGF Forum, 31 January 2017.

TABLE 1: MINERAL POTENTIAL IN CAMBODIA

Province	Mineral Potential
Banteay Meanchey	Bauxite, gold, iron, phosphate, rubies, sapphires
Battambang	Bauxite, gold, iron, phosphate, rubies, sapphires
Kampong Cham	Gold
Kampong Chhnang	Limestone
Kampong Speu	Copper, copper-lead-zinc alloy, marble, phosphate, tin, and tungsten
Kampong Thom	Amethyst, gold
Kampot	Graphite, gold, iron, lignite, limestone, phosphate
Kandal	Molybdenum
Koh Kong	Jet, sapphire, silica
Kratie	Copper, lignite
Monduliri	Bauxite, copper-lead-zinc alloy, gold
Pailin	Rubies, sapphires
Preah Vihear	Copper-lead-zinc alloy, gold, jet, lignite, manganese, molybdenum, iron, sapphire, zircon gems
Prey Veng	Fluorite
Pusat	Antimony, chromium
Rattanakiri	Copper, copper-lead-zinc alloy, gold, zirconium, dioxide
Siem Reap	Gold, iron
Steung Treng	Amethyst, coal, copper, dolomite, gold, iron, marble
Sihanoukville	Lignite, silica
Takeo	Molybdenum, tin

Source: UK Trade & Investment, 2009.

2.3 Mining Sector's Legal and Policy Framework

The Law on Mineral Resource Management and Exploitation was promulgated by the Royal Government of Cambodia (RGC) on July 13, 2001. The Law has the overall goal of setting directions for the management and exploitation of mineral resources, the use of mine sites, and covers all activities related to mining operations in Cambodia ¹⁰.

The Law stipulates that all mineral resources within the sovereignty of Cambodia belong to the State. All raw mineral resources mined in the country are banned from export and only finished products are allowed to be exported. Under this Law, the six categories of license under the jurisdiction of the Ministry of Mines and Energy are summarized below

¹¹.

TABLE 2: TYPE OF MINERAL LICENSE IN CAMBODIA

No.	Type of License	Characteristics
1	Artisan Mining License	This license is issued exclusively to Khmer nationals for the small scale exploration and exploitation of mineral resources by using locally available common instruments and their own labour or with the help of family with no more than seven persons.
2	Pits and Quarries Mining License	This license is issued to qualified parties or legal entities for the purpose of exploration and exploitation of any construction and industrial minerals used for constructions, chemical and secondary industry, and mined from pits and quarries.
3	Gem-Stone Mining License	This license is issued to qualified and competent parties or legal entities for the exploration and mining of precious and semi-precious stones, and ornament stones including diamonds, rubies, sapphires, smaragdites, and all other similar gem-stone quality minerals.
4	Mineral Transforming License	This license is issued to qualified parties or legal entities for the purpose of transforming precious or semi-precious stones or ornament stones.
5	Exploration License	This license is issued to qualified and competent parties or legal entities for the exploration of mineral potential.
6	Industrial Mining License	This license is issued only to the holder of an exploration license for the purpose of conducting exploration and mining of economically viable mineral deposits established within the boundaries of the exploration license.

Source: Law on the Mineral Resource Management and Exploitation, 2001

The legal environment for business in the mining sector improved in recent years. The adoption of Sub-Decree No. 72 on Administration of Mineral Exploration and Industrial Mining Licenses in 2016, modelled on the Western Australian Mining Codes and Regulations sets the regulatory regime for the sector. Current list of key legal and policy frameworks governing the mining sector and their effective dates are listed as follows:

¹⁰ Law on Mineral Resource Management and Exploitation, 2001.

¹¹ Ibid.

¹² Meng Saktheara, Secretary of State, Ministry of Mines and Energy, 6 May 2016. Interviewed on 15 March 2017.

Link: <https://ickhmer.wordpress.com/2016/05/06/new-regulations-for-mining-sub-Decree-on-management-of-mineral-exploration-and-industrial-mining-licenses/>

TABLE 3: RELEVANT LEGAL FRAMEWORK OF MINING SECTOR IN CAMBODIA

Regulatory Framework	Date
Royal Kram No. NS/RKM/0701/09 Promulgation of Law on the Mineral Resource Management and Exploitation	13th September 2001
MIME, Circular 001 on Suspension and Cancel of Mineral Licenses	25th May 2004
MIME, Prakas No. 340 on The Registration and Conditions of Renewal and Authorization of Mineral License	25th May 2004
Sub-Decree No. 08 on Determining the Investment Principles of All Types of Mineral Resources	31st January 2005
Royal Kram No. NS/RKM/1213/017 on Ministry of Mines and Energy	06th December 2013
Sub-Decree No. 576 on Creation of Ministry of Mines and Energy	23rd December 2013
MME, Mining and Petroleum Sectors' Strategic Framework 2014-2018	06th November 2014
MME, Prakas No. 0013 on Creation of Departments under General Department of Mineral Resource	28th January 2014
MME, Decision No.0153 on Creation of Working Group for Monitoring and Auditing Exploration, Operation, and Constriction Mineral Activities.	02nd April 2015
MME-MEF, Inter-Ministry Prakas No.516 on Budget for Promoting and Strengthening Mineral Revenue Collection Mechanism.	05th May 2015
MME-MEF, Inter-Ministry Prakas No.1452 on Provision of Incentive for MME and MEF.	03rd November 2015
Sub-Decree No. 72 on Administration of Mineral Exploration and Industrial Mining License	05th May 2016
MME-MEF, Inter-Ministry Prakas No.665 on Surface Rental Fee for Mineral License.	08th June 2016
MME, Circular No. 360 on Guideline for Granting Mineral Exploration License	07th October 2016
Sub-Decree No. 194 on Administration of Mineral Export	22nd September 2016

Source: Author's Consolidation of Official Legal Documents

3. Research Methodology

3.1 MACRA Risk Assessment Tool

The analysis in this report uses the research method contained in the Mining Awards Corruption Risk Assessment (MACRA) Tool ¹³. The MACRA Tool was created by an independent expert engaged by Transparency International to provide a consistent, clear and robust methodology for identifying and assessing corruption risks in the twenty countries participating in the M4SD Programme.

The first part of the risk assessment involves data collection and analysis. The MACRA Tool guides users to create a map of the awards process as set out in law, official guidelines and policy. It also directs users to collect information about the practices in implementing the process and about relevant contextual factors. Users then analyse these three aspects of mining awards - the process, practice and context - to identify vulnerabilities to corruption. Vulnerabilities are systemic, regulatory, institutional or other weaknesses that create risks of corruption, that is they create opportunities for corrupt conduct to occur or to pass undetected and thereby undermine the lawful, compliant and ethical awarding of licences, permits and contracts. The second part of the tool instructs users to identify and assess the specific corruption risks created by these vulnerabilities. The tool contains a list of 89 common risks relating to five different risk factor categories – corruption risks originating in: 1. the process design, 2. process practice, 3. contextual factors, 4. accountability mechanisms, and 5. the legal and judicial responses to corruption.

Users can adopt or modify the common risks, or create a new risk that better fits their circumstances. Users then assess each corruption risk by analysing evidence of the likelihood of it occurring and of its potential impact. The final stage is risk prioritisation. The chapter's priority risks are those corruption risks the chapter will seek to mitigate or manage. The results of the risk assessment are the primary input into this determination, but other matters such as the national chapter's capacity to take action, the resources required and potential for stakeholder collaboration are also important considerations.

The MACRA Tool builds on Transparency International's experience with corruption risk assessment in other fields such as National Integrity Systems and other mining and extractive sector instruments, indices and resources. Experts from multilateral institutions, major international non-governmental organisations and industry bodies provided valuable feedback in the development of the MACRA Tool.



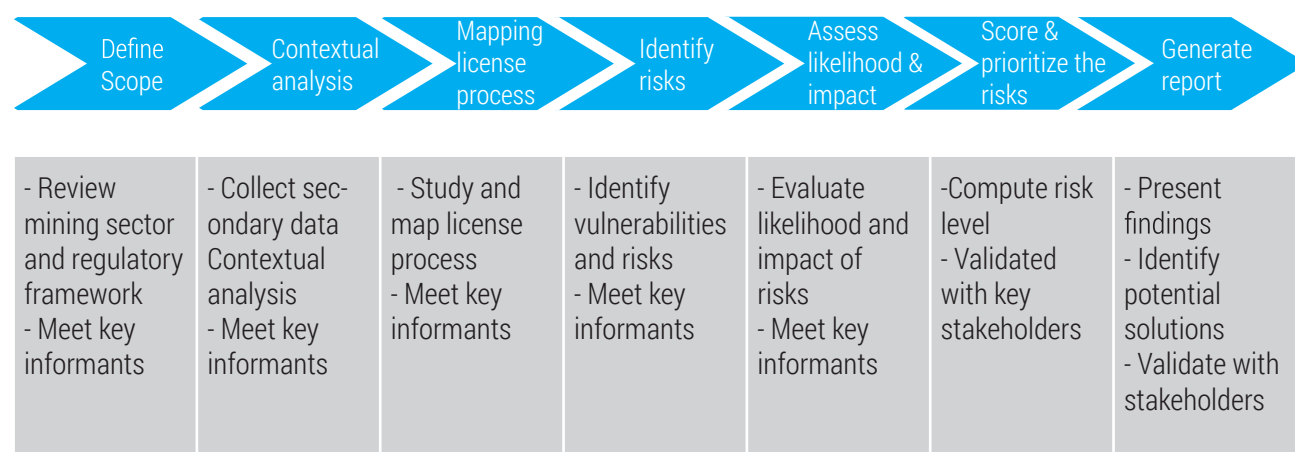
Photo credit: Reproduced with permission from Angkor Gold Corp., Ratanakiri

¹³ Nest. M, Mining Awards Corruption Risk Assessment Tool. 2016. Transparency International.

3.2 Research Process

The research process of this assessment consists of seven steps as illustrated in Figure 6 below:

FIGURE 6: RESEARCH PROCESS FOR RISK ASSESSMENT



The framework begins with defining scope. Scoping of the risk assessment involved the review on the mining sector and regulatory frameworks in order to determine the type of mining awards process that this assessment should focus. Consultation with key stakeholders of mining sector was also conducted to validate the research team's scope selection.

After the scoping step was completed, a number of analyses were conducted, covering contextual analysis, mapping license process, and risk identification. In the contextual analysis, we analysed the mining sector at a macro level using political/legal, economic, social, technological analysis tool. Much of the information was collected from secondary data sources through desk review.

For the process risk identification stage, we mapped the license process. Mapping of license process was drawn based on reviews of current regulatory framework, inputs from key informants and experiences of our interviewees. Based on the licensing process map, we identified the situations/circumstances where the vulnerabilities have occurred or could potentially occur.

Based on the identified vulnerabilities in the contextual analysis and mapping of license process, we matched vulnerabilities with the corruption risks provided in MACRA tools with adjustments for selected scope and local content. Then, each risk was assessed on likelihood and impact.

TABLE 4: LIKELIHOOD SCALE

Likelihood Score	1	2	3	4	5
Meaning	Most unlikely	Unlikely	Neutral	Likely	Most Likely

Source: MACRA Tool

For likelihood, “1” is categorised as most unlikely and “5” is categorised as most likely that governance risk occurs (Table 4). To minimise subjectivity in scoring, research team developed three sub-indicators under Likelihood. Weighting of score for the three sub-indicators were proposed as a function of Likelihood composing of 40% of Opportunity plus 40% of Accountability and 20% of Integrity. All sub-indicators score in scale 1-5 (Table 5). Formula for calculating likelihood:

$$[\text{LIKELIHOOD} = 0.4 \times \text{OPPORTUNITY} + 0.4 \times \text{ACCOUNTABILITY} + 0.2 \times \text{INTEGRITY}]$$

TABLE 5: SCALE FOR SUB-INDICATORS OF LIKELIHOOD

Sub-indicator Score	1	2	3	4	5
Opportunity	Very low	Low	Medium	High	Very high
Accountability	Very low	Low	Medium	High	Very high
Integrity	Very low	Low	Medium	High	Very high

Source: Research team’s development

- Opportunity refers to the set of legal process that allows discretionary or monopoly power on decision making, or circumstances when misconduct will not be detected or punished;
- Accountability refers to the administrative, social, or legal structures that monitor actions and behaviours of people in influencing or decision making roles;
- Integrity refers to ethics and values adhered to in respect of their interactions with people they deal with generally or professionally.

TABLE 6: IMPACT SCALE

Impact Score	1	2	3	4	5
Meaning	Insignificant	Minor	Moderate	Major	Catastrophic

Source: MACRA Tool

For impact, it is measured on a scale of “1” being insignificant and “5” having catastrophic consequences on the Cambodian socio-economic and environment (Table 6). Similar to Likelihood, the research team developed three sub-indicators under Impact. Weighting of score for three components under Impact is a function of Impact composing of 20% of Scale plus 40% of Consequence and 40% of Duration. All sub-indicators score in scale 1-5 (Table 7). Formula for calculating impact:

$$[\text{IMPACT} = 0.2 \times \text{SCALE} + 0.4 \times \text{CONSEQUENCE} + 0.4 \times \text{DURATION}]$$

TABLE 7: SCALE OF SUB-INDICATORS FOR IMPACT

Sub-indicator Score	1	2	3	4	5
Scale	Very small	Small	Medium	Large	Very Large
Consequence	Very small	Small	Medium	Large	Very Large
Duration	Very small	Short	Medium	Long	Very Long

Source: Research team's development

- Scale refers to possible size of malpractice resulting from the risk, whether it is at individual or institutional level and/or systemic versus a random once off occurrence;
- Consequence refers to result or effect on fiscal revenue, economic, social, and environment;
- Duration refers to the period of time that the impact will have negative socio-economic consequences including post-license period.

The risk will be computed in with this formula:

$$[\text{RISK} = \text{LIKELIHOOD} * \text{IMPACT}]$$

FIGURE 7: RISK MATRIX

Likelihood	5 Most likely	5	10	15	20	25
	4 Likely	4	8	12	16	20
	3 Neutral	3	6	9	12	15
	2 Unlikely	2	4	6	8	10
	1 Most Unlikely	1	2	3	4	5
		1 Insignificant	2 Minor	3 Moderate	4 Major	5 Catastrophic
	Impact					

Source: Adapted from MACRA Tool

3.3 Semi-Structured Interview

The assessment was primarily qualitatively-based and consisted of three phases: conducting an extensive literature review, fieldwork, and engaging with stakeholders.

The literature review served as the baseline work in this risk assessment project. The objectives were firstly, to get an overview of the mining sector and secondly to understand the process of licensing. The review was conducted on law policies, official circulars, announcements on government webpages, cases from media and reports.

TABLE 8: NUMBER OF KEY INFORMANTS

Type of sample		Number
Public Sector	Ministries' senior management	2
	Director of department	1
	Government officials	2
Private Sector	Senior executive of multinational company	2
	Industry representative	1
	Staff of multinational company	2
Civil Society Sector	Executive director of civil society organisation	3
	Staff of civil society organisation	3
	Representative of community	5
Total Sample:		21

After literature review was completed, fieldwork was conducted from January to April with 21 key informants, comprising representatives of mining companies, public institutions, civil society organisations, and communities (see Table 8). The research team conducted in-depth interviews with business directors and managers, as well as with mining associations. Interviews were conducted with the aid of a semi-structured discussion format.

3.4 Research Validation

In addition to one-on-one meetings with key informants, this assessment undertook 3 rounds of validation with stakeholders of the mining sector in Cambodia. Validations were conducted to ensure that the assessments are consistent with the local context and reflect the actual situation of Cambodia's mining sector.

TABLE 9: LIST OF VALIDATION WITH STAKEHOLDERS

N	Purpose	Participant	Date
1	Define Scope	Research Team 1 Senior management of MME 3 Executive Directors of Civil Society Organisations	04th January 2017
2	Validate Preliminary Findings	Research Team 1 Senior management of MME 1 Representative of Industry 3 Executive Directors of Civil Society Organisations	28th April 2017
3	Validate Draft Findings	Research Team EIGF (Please refer to Phnom Penh Post report ¹⁴)	09th June 2017



Extractive Industry Governance Forum, 09 June 2017, Phnom Penh

¹⁴ Yesenia Amaro, Gaps in framework open mines to graft. Phnom Penh Post: 12 June 2017.
Link: <http://www.phnompenhpost.com/national/gaps-framework-open-mines-graft>

3.5 Research Limitation

The study also experienced some challenges as follows:

Firstly, the assessment relates to a highly sensitive topic, particularly around the timing of the June 2017 communal elections. Previously, the government and mining companies in Cambodia have received a lot of criticisms from the civil society and community stakeholders. The private sector in particular was not very opened to participate and/or respond, thus causing great difficulties in getting broad perspectives. The research team was not able to get feedback of local and Asian companies. The EIGF provides the best possible working platform for all stakeholder to identify common interests to steer the mining industry forward in a transparent, constructive and consensus manner, consistent with the Government's industry reform agenda.

Secondly, the mining industry is young and new with low public understanding of mining sector issues and challenges. Many people, particularly the civil society and villagers, have limited appreciation of the distinctions between the exploration and mining activities in the Mineral Mining Value Chain. Information pertaining to the sector is not publicly available, so accessing to information requires extra effort. This is particularly challenging as the Governance topic is not well-understood and remains highly sensitive.

Thirdly, the mining sector is undergoing reform and the new licensing process is Work-in-Progress. A number of regulations and enforcement mechanisms have been adopted to improve the governance of this sector. Mineral Exploration License, for instance, was recently reformed with the introduction of a new process in June 2016. The detailed documents of license process are still in the development stage. While the process is new and has not been fully implemented, experiences and practices of the mining companies, civil society organisations, and villagers are still referenced along the previous process. The change is coming but not here yet!



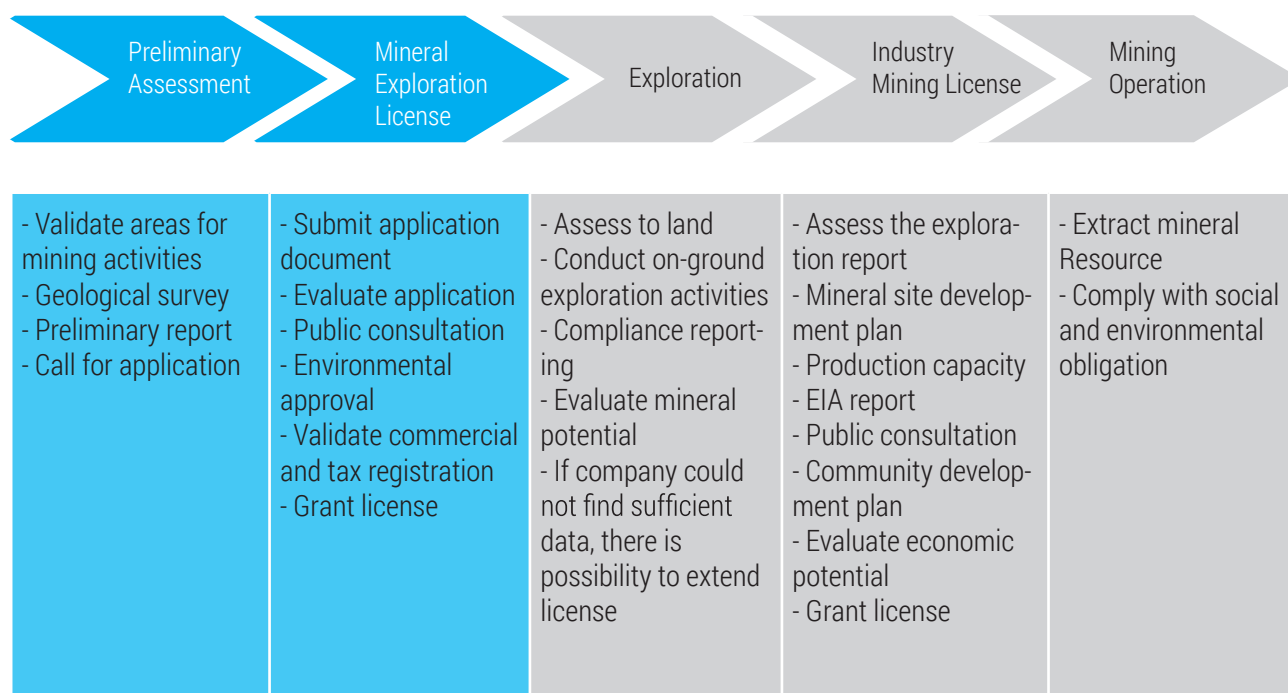
Photo credit: Cambodians for Resource Revenue Transparency (CRRT), Ratanakiri, January 2015

4. Scope of Assessment

4.1 Scope of this study

This study focuses on the Governance Risk Assessment relating to the process of granting mineral exploration license. This scope covers the preliminary assessment and Exploration License application process only (See Figure 8).

FIGURE 8: MINERAL EXPLORATION AND INDUSTRIAL MINING LICENSE STAGES IN CAMBODIA



4.2 What is not within scope of this study

- Exploration stage, industrial mining license application stage, and mining operation stage.
- Artisan mining, pits and quarries mining, gem-stone mining, and mineral transforming.
- Oil and Gas sector.

Activities relating to exploration licensing stage are highlighted in Figure 8 and discussed in greater detail in Section 6.

4.3 Why mineral exploration license is selected as scope of this study

THIS STUDY FOCUSSES ON THE MINERAL EXPLORATION LICENSE, UPON CONSULTATION WITH KEY STAKEHOLDERS. FIRSTLY, THERE HAS BEEN A SIGNIFICANT LEVEL OF EXPLORATION ACTIVITIES IN CAMBODIA, WITH 61 ACTIVE LICENSES. INTEREST IN NEW LICENSES REMAIN BUOYANT WITH MANY COMPANIES EXPRESSING INTEREST TO APPLY FOR MINERAL EXPLORATION LICENSE IN CAMBODIA (SEE TABLE 10)

TABLE 10: NUMBER OF LICENSE AND SIZE OF EXPLORATION AS OF 31 DECEMBER 2016

Location	Approved license	Size (Km2)
Banteay Meanchey	2	234.75
Battambang	1	44.62
Kampong Chhnang	1	49.2
Kampong Speu	2	340
Kampot	1	144
Kratie	7	1103.5
Mondulkiri	15	2861.18
Oddar Meanchey	4	647
Preah Vihear	12	1255.75
Pursat	1	10
Rattanakiri	7	1157.6
Siem Reap	2	486.3
Sihanouk Vile	1	15
Steung Treng	5	540.4
Total	61	8889.3

Source: Reproduced from MME's List of Mineral Exploration Licenses (MME, 2017)

Secondly, the government, MME specifically, is in the process of upgrading the process for the granting of mineral exploration licenses. The new process was recently introduced and MME is currently testing the implementation. This study will support MME to improve the mineral exploration license approval process.

Thirdly, addressing the Governance issues at the mineral exploration license stage will generate transparency and positive procedural benefits to the subsequent stages in the Minerals Mining Value Chain. The Mineral Exploration License phase is a critical stage to initiate a business interest in industrial mining. By law, a legal person/party is required to hold a mineral exploration license first before he/she could apply for an industrial mining license ¹⁵. Strengthening the process for granting the mineral exploration license will enable MME to select capable and ethical mining companies as industry partners. This will improve the likelihood for regulatory compliance and upholding their social-environmental responsibilities during the exploration process.



Photo credit: Reproduced with permission from Angkor Gold Corp., Ratanakiri

¹⁵ Sub-Decree No. 72 on Administration of Mineral Exploration and Industrial Mining License, 05 May 2016.

5. Contextual Analysis

5.1 Political and Legal Factors

A. Political System and Political Will

Cambodia adopts a liberal multi-party democracy system, which allows multiple parties to compete in the National Assembly Election ¹⁶. Since 1993, Cambodian people have elected their representatives every 5 years in a universally free and fair general election from political parties for the 123 seats in the National Assembly. The winning party with an absolute majority of all National Assembly members will then form the government ¹⁷.

At the previous 5th general election, held on 28th July 2013, the Cambodian People's Party (CPP) won 68 of the 123 seats to form the government led by Prime Minister Hun Sen. The main opposition party, Cambodia National Rescue Party (CNRP), won the remaining 55 seats. The other parties did not win sufficient votes to secure any seats in the National Assembly ¹⁸.

Compared to the 2008 General Elections, the CPP lost 22 seats and CNRP gained 26 seats ¹⁹. This reflected the increased level of political competition between 2 main political parties, with the challenge for the ruling CPP, to speed up its reform agenda. As a result, most government ministries, including the MME, have progressively reformed its institutions and related sectors in the 5th Mandate. Cambodia's ranking in the Institution Indicator in Global Competitiveness Report improved from 119th in 2013 ²⁰ to 104th in 2015 ²¹.

Table 11 shows that 14 of Cambodia's institutional sub-indicators improved between 2013 and 2015. Cambodia's Corruption Perceptions Index ranking has also improved slightly from 160th in 2013²² to 156th in 2016 . Although, Cambodia has achieved improvements on its institutional indicator and corruption perceptions index, there is still room for further improvement.

The latest Global Economic Competitiveness 2016-2017 illustrates that corruption remains the most problematic factor for doing business in Cambodia based on its Executive Opinion Survey in 2016 ²⁴. All rankings for sub-indicators Global Economic Competitiveness' institution indicator are not very positive.



Photo credit: Reproduced with permission from Angkor Gold Corp., Ratanakiri

¹⁶ The Constitution of Kingdom of Cambodia. Article 51. 1993.

¹⁷ Ibid. Article 4 (New). 2004.

¹⁸ National Election Committee. Official Result of 2013 National Assembly Election. 21 September 2013.

¹⁹ Ibid.

²⁰ World Economic Forum. World Competitiveness Report 2014-2015. 2014.

²¹ World Economic Forum. World Competitiveness Report 2016-2017. 2016

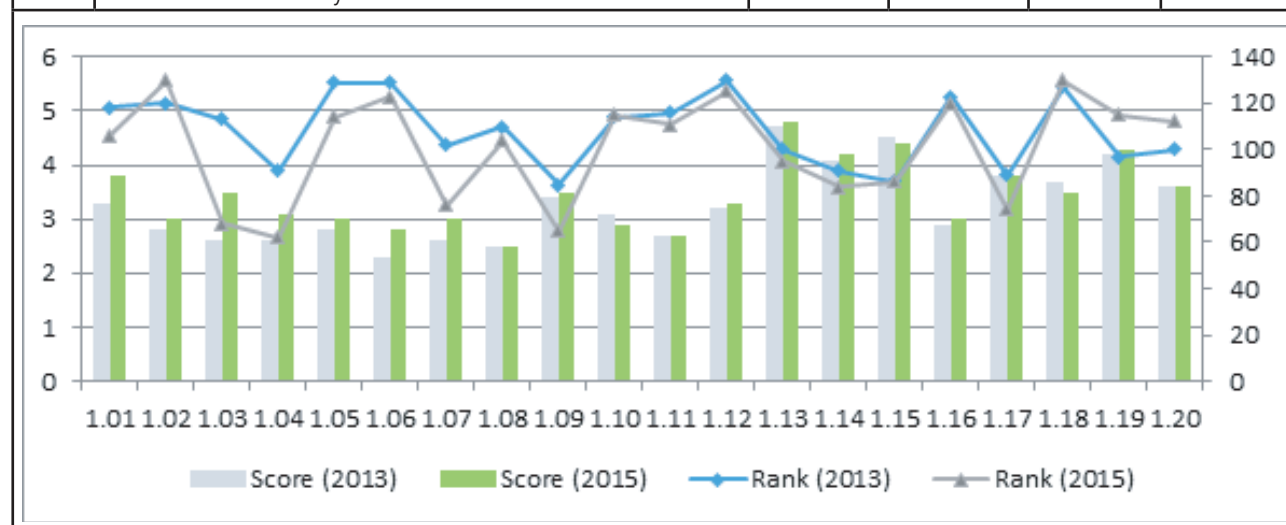
²² Transparency International. Corruption Perceptions Index. 2013.

²³ Transparency International. Corruption Perceptions Index. 2016.

²⁴ World Economic Forum. World Competitiveness Report 2016-2017. 2016

TABLE 11: SUB-INDICATORS OF INSTITUTION INDICATOR IN GLOBAL COMPETITIVENESS REPORT

No	Sub-Indicators	2013		2015	
		Rank	Score	Rank	Score
	Institution	119	3.2	104	3.5
1	Property rights	118	3.3	106	3.8
2	Intellectual property protection	120	2.8	130	3.0
3	Diversion of public funds	113	2.6	68	3.5
4	Public trust in politicians	91	2.6	62	3.1
5	Irregular payments and bribes	129	2.8	114	3.0
6	Judicial independence	129	2.3	123	2.8
7	Favouritism in decisions of government officials	102	2.6	76	3.0
8	Wastefulness of government spending	110	2.5	104	2.5
9	Burden of government regulation	85	3.4	65	3.5
10	Efficiency of legal framework in settling disputes	114	3.1	115	2.9
11	Efficiency of legal framework in challenging regulations	116	2.7	111	2.7
12	Transparency of government policymaking	130	3.2	125	3.3
13	Business costs of terrorism	100	4.7	95	4.8
14	Business costs of crime and violence	91	4.1	84	4.2
15	Organized crime	86	4.5	86	4.4
16	Reliability of police services	123	2.9	120	3.0
17	Ethical behaviour of firms	89	3.8	74	3.8
18	Strength of auditing and reporting standards	127	3.7	130	3.5
19	Efficacy of corporate boards	97	4.2	115	4.3
20	Protection of minority shareholders' interests	100	3.6	112	3.6



Source: World Economic Forum, Global Competitiveness Report 2016-2017

B. New Institutional Arrangement for Mining Sector

Since 2013, the mining and energy sectors have received greater focus from the government. The Royal Government of Cambodia divided the former Ministry of Industry, Mines, and Energy into 2 ministries namely: Ministry of Industry and Handicraft (MIH) and Ministry of Mines and Energy (MME).

The MME jurisdiction was approved by National Assembly on 12th November 2013 and promulgated by Royal Decree on 06th December 2013²⁵. MME is the institutional body of RGC to lead and administer the mining and energy sectors including petroleum, gas, and electricity in the country. This ministry has the mission to prepare, administer and implement all the policies and regulatory frameworks to transform the mining and petroleum sections of Cambodia²⁶.

Soon after it was officially created, MME arranged an improved and explicit institutional body for the administration of mineral resource. The Official document outlining the new re-structuring of 5 Departments under the General Department of Mineral Resource was issued on 28th January 2014. These departments are:

- 1) Department of Geology,
- 2) Department of Mineral Resource Promotion and Development,
- 3) Department of Mineral Exploration Management,
- 4) Department of Construction Mineral,
- 5) Department of Industrial Mining²⁷.

The Department of Mineral Exploration Management (DMEM) has been entrusted to:

- 1) Develop and evaluate the process to issue, extend, transfer, postpone, and cancel exploration license,
- 2) Monitor and evaluate the implementation and result of company's exploration activities,
- 3) Develop regulations, rules, and standards related to mineral exploration license²⁸.

In addition, the MME introduced a more explicit line of responsibility to the senior management level. Although MME has 43 departments, each with its own senior management structures, the Secretary of State and Under-Secretary of State, are taking cross-departmental reporting accountabilities to mitigate overlapping of responsibilities²⁹.

C. New Mineral Exploration License Process

MME developed the Mining and Petroleum Sectors' Strategic Framework (2014-2018) to provide directions and responsible interventions to transform this sector for the socio-economic development of Cambodia. The framework outlines the Ministry's sector vision "**Wealth for All**" in engaging business activities from natural resources development and conservation to human development in Cambodia, encompassing the four key strategic objectives: **fiscal, economic, social and environment**³⁰.

²⁵ Law on Ministry of Mines and Energy. 06 December 2013

²⁶ Ministry of Mines and Energy. Mission and Vision. Access on 23 April 2017. Link: <http://mme.gov.kh/kh/article/73/.html>

²⁷ Ministry of Mines and Energy. Prakas No.0013 on Arrangement and Creation of Departments under General Department of Mineral Resource. 28 January 2014

²⁸ Ibid.

²⁹ Ministry of Mines and Energy. Senior Management. Access on 23 April 2017. Link: <http://mme.gov.kh/kh/article/78/.html>

³⁰ Ministry of Mines and Energy. Mining and Petroleum Sectors' Strategic Framework 2014-2018

MME developed a number of regulations, guidelines, and policies to complement the existing frameworks. The RGC adopted Sub-Decree No.72 on Administration of Mineral Exploration and Industrial Mining Licenses on 5th May 2016³¹, and MME adopted Circular No.360 on Granting Mineral Exploration License 07th October 2016³². The adoptions of these new regulatory components set a new regulatory regime to promote sustainable mining practices to achieve the policy vision of "Wealth for All".

MME has been developing the relevant documents for this new process³³ and implementation roll-out is being planned. MME recently opened up 4 prospect sites and have called for mining companies to apply for mineral exploration licenses. This is the first time that MME has issued a public call for interested parties to apply for mineral exploration licenses³⁴.

MME also strengthened the compliance process to grant licenses to mining companies. On 2nd April 2015, MME created 3 working groups to monitor and audit the exploration and mining activities³⁵ with the support of 612 military police personnel to improve enforcement³⁶. Between 2014 and 2016, only 6 new exploration licenses were issued to mining companies³⁷. In 2016, MME cancelled 45 exploration licenses as the companies did not comply with License's Terms and Conditions³⁸.

Representatives of mining companies told the research team that MME effectively implemented the application process for mineral license; the only problem is the long duration of the application process³⁹.

D. New governance platform: Extractive Industry Governance Forum (EIGF)

MME has committed to effect major positive changes in the mining sector. Previously, there were criticisms by civil society and media about problems in mining sectors such as illegal mining, bribery, connection with high-profile officials etc. Civil society and media feedback indicate that the situation has improved significantly.

Under the Mining and Petroleum Strategic Framework (2014-2018), MME initiated a multi-stakeholder initiative called the Extractive Industry Governance Forum (EIGF) to promote multi-stakeholders approach in the governance of the Cambodian extractive industry. This approach builds on critical partnership and balanced interests among key participating players: industry, government, community, and civil society organisations. The concept is an adaptation of the governance model widely used by the EITI initiative and promoted by many other sector development partners. However, it is relatively new and very challenging under Cambodia's governance and political context. The EIGF stakeholders' meeting was held on 31 January 2017. TI-Cambodia organised 9 June 2017 workshop to validate the draft findings of this report with EIGF stakeholders with participations from MME, private sector, and key CSO/NGO representatives⁴⁰.

³¹ Sub-Decree No.72 on Management of Mineral Exploration and Industrial Mining Licenses. 05 May 2016

³² Ministry of Mines and Energy. Circular No.360 on Guideline for Granting Mineral Exploration License. 2016

³³ Interview with MME officials.

³⁴ Kan Vicheka. Voice of America: MME announces to invite company to apply for mineral license. 08 May 2017. Accessed on 09 May 2017. Link: <http://khmer.voanews.com/a/mines-ministry-announced-mining-companies-to-compete-for-exploration-and-extract/3841543.html>

³⁵ Ministry of Mines and Energy. Decision 0152 on the Creation of Working Groups to Monitor and Audit Exploration, Mining, and Construction Mineral Activities. 2015

³⁶ Taing Vida. The Phnom Penh Post: Military police to join in mining crackdown. 05 March 2017. Accessed on 03 April 2017 Link: <http://www.phnompenhpost.com/military-police-join-mining-crackdown>

³⁷ Ministry of Mines and Energy. List of Mineral Exploration License. 31 December 2016.

³⁸ Ministry of Mines and Energy. Presentation in EIGF Forum. 31 January 2017.

³⁹ Interviews with representatives of mining companies. 2017

⁴⁰ Yesenia Amaro, Gaps in framework open mines to graft. Phnom Penh Post: 12 June 2017. Link: <http://www.phnompenhpost.com/national/gaps-framework-open-mines-graft>

5.2 Economic Factors

A. Economic System and Mineral Investment

Cambodia adopts a market-driven economy system. The mining sector is not an exception and the RGC opens this sector fairly to local and foreign investments. There have been increased foreign investment interests, particularly from Australia and Canada. MME is keen to improve the mining business environment to attract more exploration and mining companies to Cambodia.

Prior to 2014, Cambodia mining sector was not attractive to investors. The Fraser Institute's Survey of Mining Companies scored Cambodia 45 out of 100 for Investment Attractiveness. However, with its strategic framework (2014-2018), MME has improved its transparency and developed new regulations to attract investments. Representatives of private sector and civil society have acknowledged the positive results of MME's transparency initiatives in the new mandate as reported by The Phnom Penh Post ⁴¹.

Private businesses have also worked together to improve the mining sector. A number of mining companies have collectively formed an industry body, "Cambodian Association for Mining and Exploration Companies (CAMEC)" with the objective to support the development of an active exploration and mining sector, operating to international standards, which recognises and respects all stakeholders' interests. Its principal role is to represent the concerns and issues facing the mining industry, advise ways to address these issues and to advocate for beneficial changes to both existing and newly proposed legislation.

B. Economic and Fiscal Objectives of Mining Strategy

The transformation of mining and petroleum sector will be integrated within the overall economy of the country. The Mining and Petroleum Sector's Strategic Framework (2014-2018) outlines requirements to increase local content and the development of local mining equipment, tool, and service sectors (METS) in Cambodia. By 2018, the government plans to assess the composition of METS and its significant contributions to the country's overall GDP. The strategy proposes to adopt market-based approach in the mineral exporting policy, to optimise the benefits of local industry development and domestic supplies ⁴².

The Mining and Petroleum Strategy (2014-2018) aims to triple the fiscal revenue from this sector by 2018. Key strategic interventions to achieve this objective include:

- 1) Increasing foreign direct investments in exploration and discoveries of new resources;
- 2) Fast tracking all development projects and productions;
- 3) Rolling out a sound and effective revenue collection and management system. MME announced that it collected \$20.3 million in non-tax revenue in 2016, a 20 percent increase over the previous year ⁴³. The increase in revenue collection reflects improvement of MME's operational efficiency.

⁴¹ Kali, Kotoski and Cheng, Sokhorn. The Phnom Penh Post: Gov't scoops up more mining revenue. 07 October 2016. Accessed on 03 April 2017.
Link: <http://www.phnompenhpost.com/business/govt-scoops-more-mining-revenue>

⁴² Ministry of Mines and Energy. Mining and Petroleum Sectors' Strategic Framework 2014-2018. 2014 2016

⁴³ Hor Kimsay. The Phnompenh Post: Mining revenue rises on improved collection. 24 February 2017. Accessed on 04 April 2017.
Link: <http://www.phnompenhpost.com/business/mining-revenue-rises-improved-collection>

C. Understanding of Rights and Authorities of Mining License

There is a lack of understanding about the rights and authorities that the mining license legally provides to the holder. In some cases, the mining license are used as instruments to get forced access or even illegal land grabbing with detrimental consequences to the local communities ⁴⁴.

This adverse practice is primarily due to the lack of public understanding relating to the rights and authorities granted under the Mineral Licenses. Under Cambodian mining law and regulation, mineral resources remain state property and to be controlled by the state. Thus, mineral licenses are merely instruments providing the license holder with the concessional rights to explore and extract minerals under the state control. **Mineral licenses are not land titles, nor legal instruments, to allocate or control land or properties** ⁴⁵.

Holders of Mineral Exploration License do not have automatic rights to progress directly from exploration license to mining license. The exploration company has to provide evidential proof that the mineral license in the explored area will provide net benefit to Cambodia and that the industry mining license approval has to follow due process ⁴⁶. **Reflecting MME's enforcement policy, MME has cancelled 45 exploration licenses as the companies did not comply with License Terms and Conditions** ⁴⁷.

TABLE 12: VULNERABILITIES AND RISK AROUND SURFACE RIGHTS

Vulnerabilities	Result in Corruption Risks	Exist?
There is lack of public understanding relating to the rights and authorities granted under the mineral licenses ⁴⁸ . In some cases, the mining license are used as instruments to get forced access or even illegal land grabbing with detrimental consequences to the local communities ⁴⁹ . In other cases, villagers prevent mining companies to explore concession areas. Therefore, it creates opportunity for corruption, as the mining company could bribe authority to resolve or overlook issues and problems related to surface rights conflict between mining company and landowners.	CF3: What is the risk that surface rights on mining area will be manipulated?	Yes

⁴⁴ Meng Sakthea, What rights and authority given in a mineral license?, 02 November. Accessed on: 25 February 2017. Link: <https://ickhmer.wordpress.com/2016/11/02/what-rights-and-authorities-given-in-a-mineral-license/> ⁴² Ministry of Mines and Energy. Mining and Petroleum Sectors' Strategic Framework 2014-2018. 2014 2016

⁴⁵ Ibid.

⁴⁶ Meng Sakthea, Secretary of State, Ministry of Mines and Energy.

⁴⁷ Ministry of Mines and Energy. Presentation in EIGF Forum. 31 January 2017.

⁴⁸ Meng Sakthea, What rights and authority given in a mineral license?, 02 November 2016, Accessed on: 25 February 2017. Link: <https://ickhmer.wordpress.com/2016/11/02/what-rights-and-authorities-given-in-a-mineral-license/>.

⁴⁹ Ibid.

5.3 Social Factors

A. MME's Social Objective of Mining Strategy

The Mining and Petroleum Strategy (2014-2018) highlights the priority of allocating first benefits of mining and petroleum operations to local community. The strategy requires all mining operations to be eco-friendly and socially responsible. The key strategic interventions to achieve this objective include:

- Enhancing Corporate Social Responsibility of mining (and petroleum companies) with requirements of local community development programs in all mining (and petroleum) operations;
- Building local community capacity and empowering community participation and consultation at all stages of mining (and petroleum projects);
- Promoting smart and complementary land-use planning and local development strategic plan;
- Enforcing performance standards for environmental and social safeguards; and
- Formalising informal and illegal artisanal mining activities.

B. Active Civil Society Participation

Cambodia has active civil society organisations. A number of civil society and international organizations such as Cambodians for Resource Revenue Transparency (CRRT), Democracy Resource Centre for National Development (DRCND), Highlander Association, OXFAM in Cambodia, Pact, Worldwide Fund for Nature (WWF), Development and Partnership in Action (DPA), Ponlok Khmer, Village Support Group (VSG), Non-Timber Forest Products (NTFP), Coalition for Integrity and Social Accountability (CISA), TI Cambodia, NGO Forum on Cambodia, Save Cambodia's Wildlife (SCW), and other community organisations are very active stakeholders in the Cambodian mining (and petroleum) sector ⁵⁰. Their presence provides the appropriate checks and balances towards better governance of the mining (and petroleum) industry.

C. Active Media Participation

Media participation is very active in Cambodia, with strong local and international media coverage about development issues and challenges in Cambodia. Reporter Without Border currently ranks Cambodia 132nd for press freedom, falling from ranking 128th in 2016. However, Cambodia remains one of the top 4 in ASEAN for most press freedom, slightly after Indonesia (124th), The Philippines (127th), and Myanmar (131st).

RGC allows full social media access in Cambodia. Since 2016, number of active internet users in Cambodia has increased by 2.1million. Active social media users and active social mobile users have risen 1.5million each, to 4.9million and 4.4million respectively ⁵¹.

⁵⁰ Ministry of Mines and Energy. Extractive Industry Governance Forum: Resource Guide. June 2016.

⁵¹ Soh Joseph. 2017 Cambodia Digital Statistics. 09 February 2017. Accessed on 04 April 2017.

Link: <http://geeksincambodia.com/cambodias-2017-social-media-digital-statistics/>

D. Public Understanding of Mining Sector

The Cambodian public's understanding of the mining sector remains low, primarily because the sector is relatively new. The public's perception of social-and-environmental impacts associated with the mineral exploration activities, are sometimes overestimated and the impacts of mineral exploration activities, are often associated with mining operation or illegal mining.

Many Cambodian people, especially poor families, currently rely on informal/illegal mining for income. In some areas, these informal/illegal mining activities take place alongside large-scale formal mining. The practice of illegal mining has adversely affected the mining communities, often with no benefits at all during or after mining, especially on worker safety. Workplace safety concerns include the lack of training, poor ventilation, lack of safety equipment, improper use of chemicals, and obsolete equipment ⁵².

Local communities are also impacted by environmental degradation. Illegal mining can pollute waterways through mercury use, dam construction, silt deposit build-up, poor sanitation, and effluents-dumping into rivers and water sources. Improper mine closures/ remediation and lack of reclamation protocols can also result in acid rock drainage. Monitoring and enforcement of environmental regulations are hampered by the lack of a formal environmental legislation, the remoteness of mine operations, and the lack of adequate resources ⁵³.



Photo credit: Reproduced with permission from Angkor Gold Corp., Ratanakiri

⁵² Interview with MME officials.

⁵³ Ibid.

5.4 Technological Factors

A. Capacity of Governance

MME acknowledges the weakness in its institutional capacity. In its strategic framework, MME has prioritised staff capacity building to improve the governance of this sector along with the regulatory framework ⁵⁴. The result of MME's capacity building activities has yet to be formally evaluated. However, representatives of mining companies and mining industry informed us that MME has been working on capacity building of its staffs. Its senior and experienced staffs, who have strong expertise, are in the process of transferring knowledge and skills to new and young staffs ⁵⁵.

B. Capacity of Private Sector

Majority of mining companies are new and young companies. Although the information about mineral potential is limited, Cambodia has attracted established companies, prepared to take the risk and to invest in strong technology to explore or operate responsible mining in Cambodia. A number of mining companies have collectively formed CAMEC to work together to improve the sector and participated strongly through EIGF.

C. Education on Mining Sector

Education of human resource for mining sector is very limited as well. Our research team could not find evidence of higher education institutes other than the Institute of Technology of Cambodia, which offers programmes relevant to the mining sector ⁵⁶. **This remains a critical challenge for the sustainable development of Cambodia's mining sector.**



Photo credit: Reproduced with permission from Angkor Gold Corp., Ratanakiri

⁵⁴ Ministry of Mines and Energy. Mining and Petroleum Sectors' Strategic Framework 2014-2018. 2014

⁵⁵ Interview with representatives of mining companies. 2017

⁵⁶ Institute of Technology of Cambodia. Accessed on 04 April 2017. Link: <http://www.itc.edu.kh/index.php/home/departments.html>

6. Mineral Exploration License Process

6.1 Previous Process

Before the adoption of Sub-Decree No.72 on Administration of Mineral Exploration and Industrial Mining Licences on 05th May 2016 ⁵⁷, the process for granting mineral exploration license was based on the Law on Mineral Resource Management and Exploitation (2001). A general procedure for all types of license is outlined from Article 12 to Article 20 ⁵⁸.

Annex 1 shows the detailed information related to previous process for the granting of mineral exploration license.

The previous process for granting mineral exploration license was very simple. The company can submit the application at Ministry of Industry, Mines, and Energy (MIME) for exploration on the potential site (Article 15). 9 Documents to be submitted for mineral exploration license were:

- Application form,
- Copy of commercial registration,
- Information of proposed area and location,
- Certified annual financial balance statement for last 3 years,
- Plan for mineral exploration and budget,
- Evidences of financial capacity, technical experience, labour, equipment, and machinery,
- Report on environmental impact assessment,
- Plan for recruitment of Cambodians,
- Plan for procurement of goods and services in Cambodia ⁵⁹.

The MIME senior management and staff(s) evaluate the application and provide a decision within 45 days = (Article 16) ⁶⁰. The duration of license was 2 years and can be extended twice for 2 years each (2+2+2 years max) ⁶¹.

The successful company will be granted mineral exploration license and rights. If the explored site was found to have significant mineral potential endowment, MIME would then require a supplementary mineral investment agreement with the company before issuing an industrial mining license (Article 12) ⁶². Figure 9 shows previous process for granting mineral exploration license and industrial mining license for site with unknown size of mineral endowment.

⁵⁷ Sub-Decree No.72 on Administration of Mineral Exploration and Industrial Mining Licences, Phnom Penh: 05 May 2016.

⁵⁸ Law on Mineral Resource Management and Exploitation, 2001.

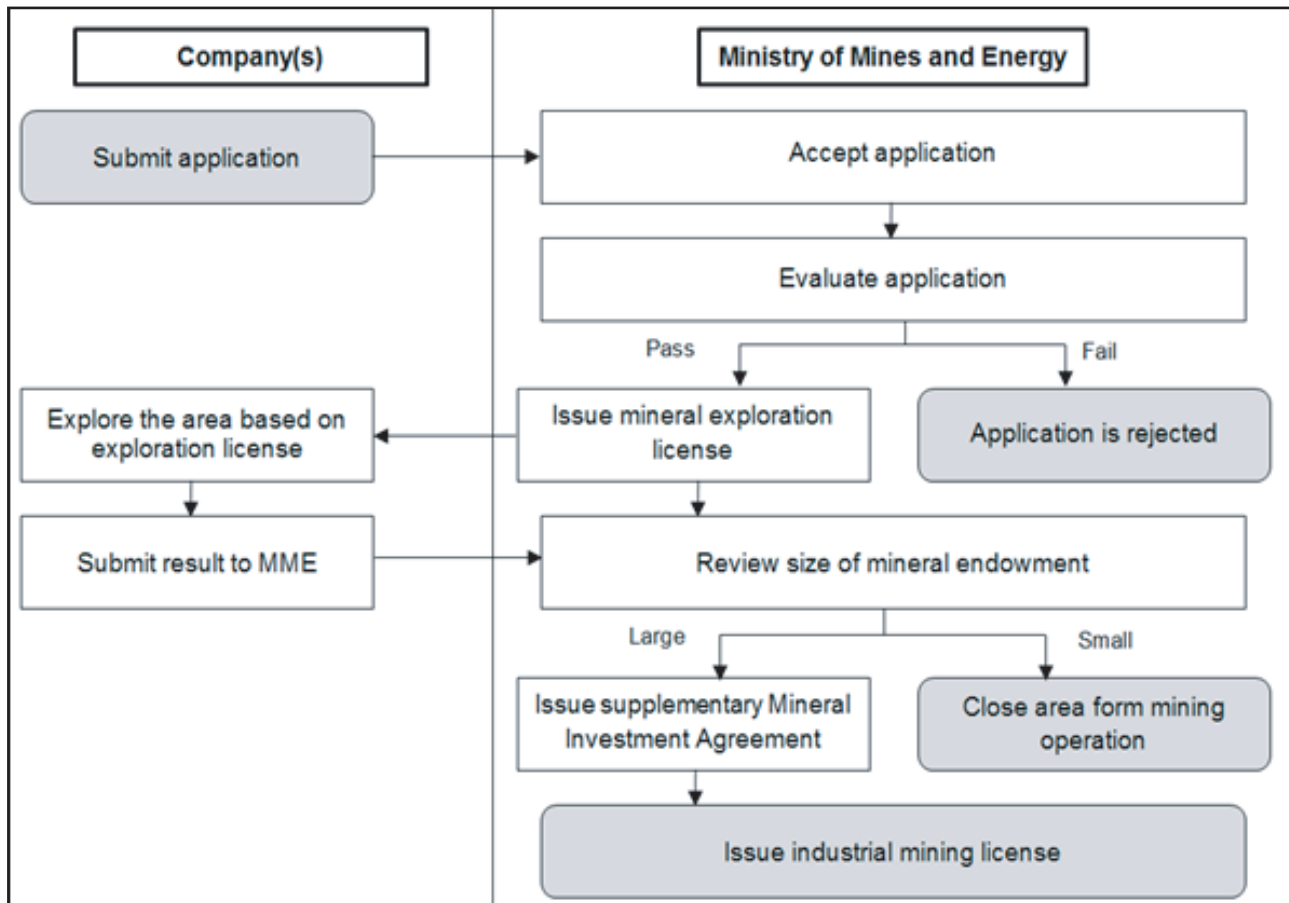
⁵⁹ Chrea Vichett, The Current Situation of Mining Industry in Cambodia, 2013.

⁶⁰ Law on Mineral Resource Management and Exploitation, 2001.

⁶¹ Chrea Vichett, The Current Situation of Mining Industry in Cambodia, 2013.

⁶² Ibid.

FIGURE 9: FORMER PROCESS FOR GRANTING MINERAL EXPLORATION LICENSE



Source: Author's mapping based on Law on Mineral Resource Management and Exploitation (2001) and Interview with MME officials.

6.2 Previous Process

Improving the mineral license process was one of MME's key reform activities. After the Royal Government of Cambodia approved Sub-Decree No.72 on Administration of Mineral Exploration and Industrial Mining License, MME issued a Circular No.360 on Guidelines for Application of Mineral Exploration License⁶³. The key changes are as follows:

- Preliminary assessment of the prospect site;
- More detailed and comprehensive evaluation process, including first-come-first-serve prioritisation of application;
- There is official procedure flow-chart of the new license process;
- Introduction of public consultation covering socio-economic and environment issues as part of the exploration licensing process;

⁶³ Meng Saktheara. New Procedures for Granting Mineral Exploration License. 18 October 2016. Accessed on 20 March 2017. Link: <https://ickhmer.wordpress.com/2016/10/28/new-procedures-for-granting-mineral-exploration-license/>

- Online access to MME's website for information and opening of application process;
- Defined timelines for selected license steps such as application assessment period, public consultation, and issue of license.
- "Additional Agreement" on license's terms and conditions is required before issue of exploration license;
- License period is changed to 3+2+2 years from the previous 2+2+2 years;
- There is published fee schedule for application fee, license fee, and surface rental fee (No evidence sighted of previous fee structure for previous license);
- There is greater focus on enforcement of license's terms and conditions.

MME's Department of Mineral Exploration Management (DMEM) has been developing detailed documents relevant to this process. Based on our meeting with MME's officials in March, DMEM staff(s) had completed the draft "Additional Agreement" to implement this step, which should be the final component for this new process.

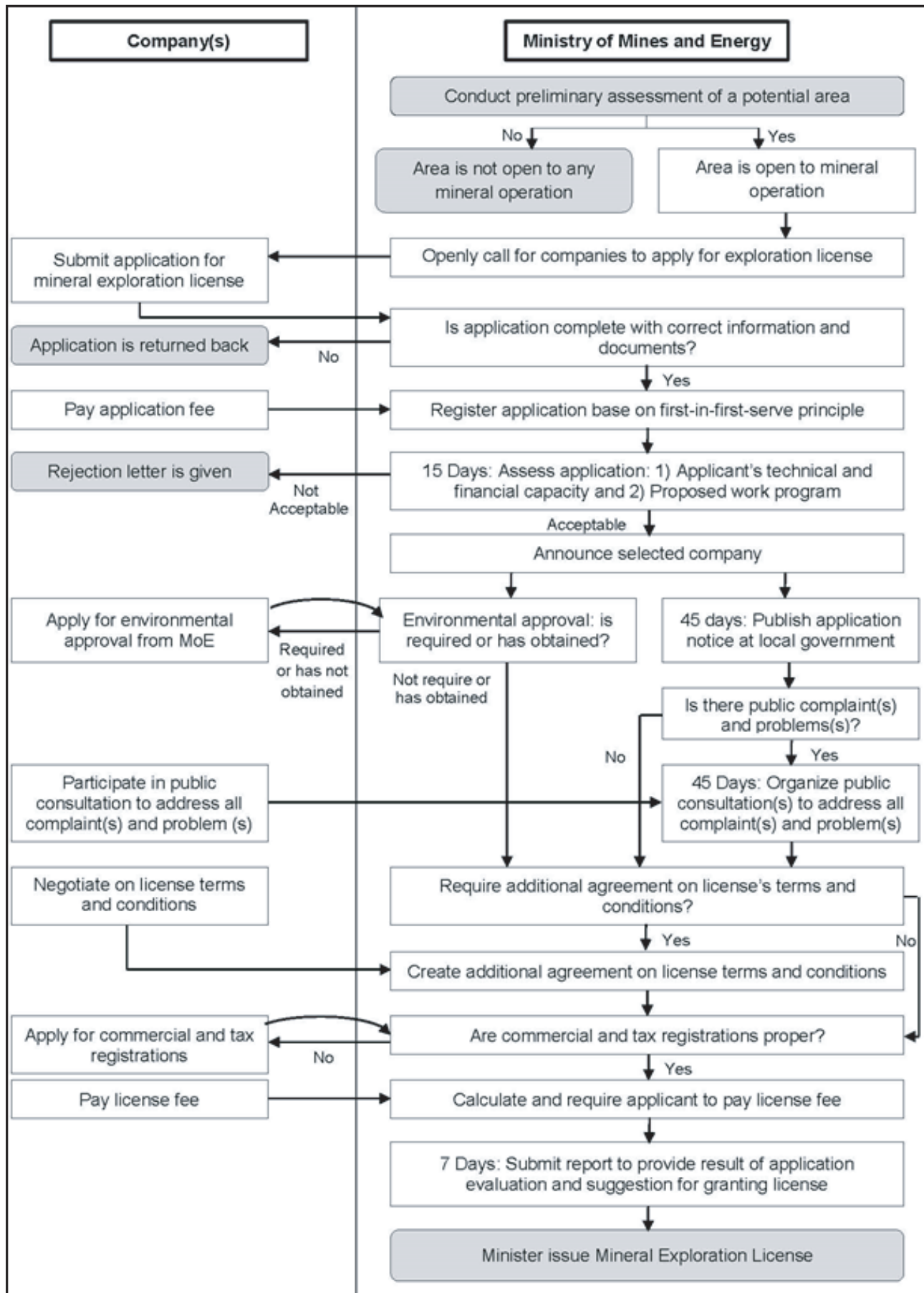
To test the process, MME recently opened for application for mineral exploration license with this new process.

TABLE 13: DIFFERENCES BETWEEN PREVIOUS AND NEW LICENSE PROCESS

Previous License Process	New License Process
<ul style="list-style-type: none"> • No preliminary assessment 	<ul style="list-style-type: none"> • Preliminary assessment introduced
<ul style="list-style-type: none"> • Simple process with no first-come-first-serve of application 	<ul style="list-style-type: none"> • More detailed and comprehensive evaluation process, including first-come-first-serve prioritization of application
<ul style="list-style-type: none"> • No official procedure flowchart 	<ul style="list-style-type: none"> • Official procedure flowchart
<ul style="list-style-type: none"> • No consultation with affected community 	<ul style="list-style-type: none"> • Compulsory consultation with affected community
<ul style="list-style-type: none"> • No announcement of license area 	<ul style="list-style-type: none"> • Online access and invitation for application
<ul style="list-style-type: none"> • Only timeline for approval of license (45days) 	<ul style="list-style-type: none"> • Defined timelines for most of license steps
<ul style="list-style-type: none"> • "Additional Agreement" on license's terms and conditions is required after issue of exploration license 	<ul style="list-style-type: none"> • "Additional Agreement" on license's terms and conditions is required before issue of exploration license
<ul style="list-style-type: none"> • License period 2+2+2 years 	<ul style="list-style-type: none"> • License period 3+2+2 years
<ul style="list-style-type: none"> • No evidence sighted of previous fee structure 	<ul style="list-style-type: none"> • Published fee schedule for application fee, license fee, and surface rental fee
<ul style="list-style-type: none"> • Possible enforcement gaps 	<ul style="list-style-type: none"> • Stronger enforcement of license's terms and conditions

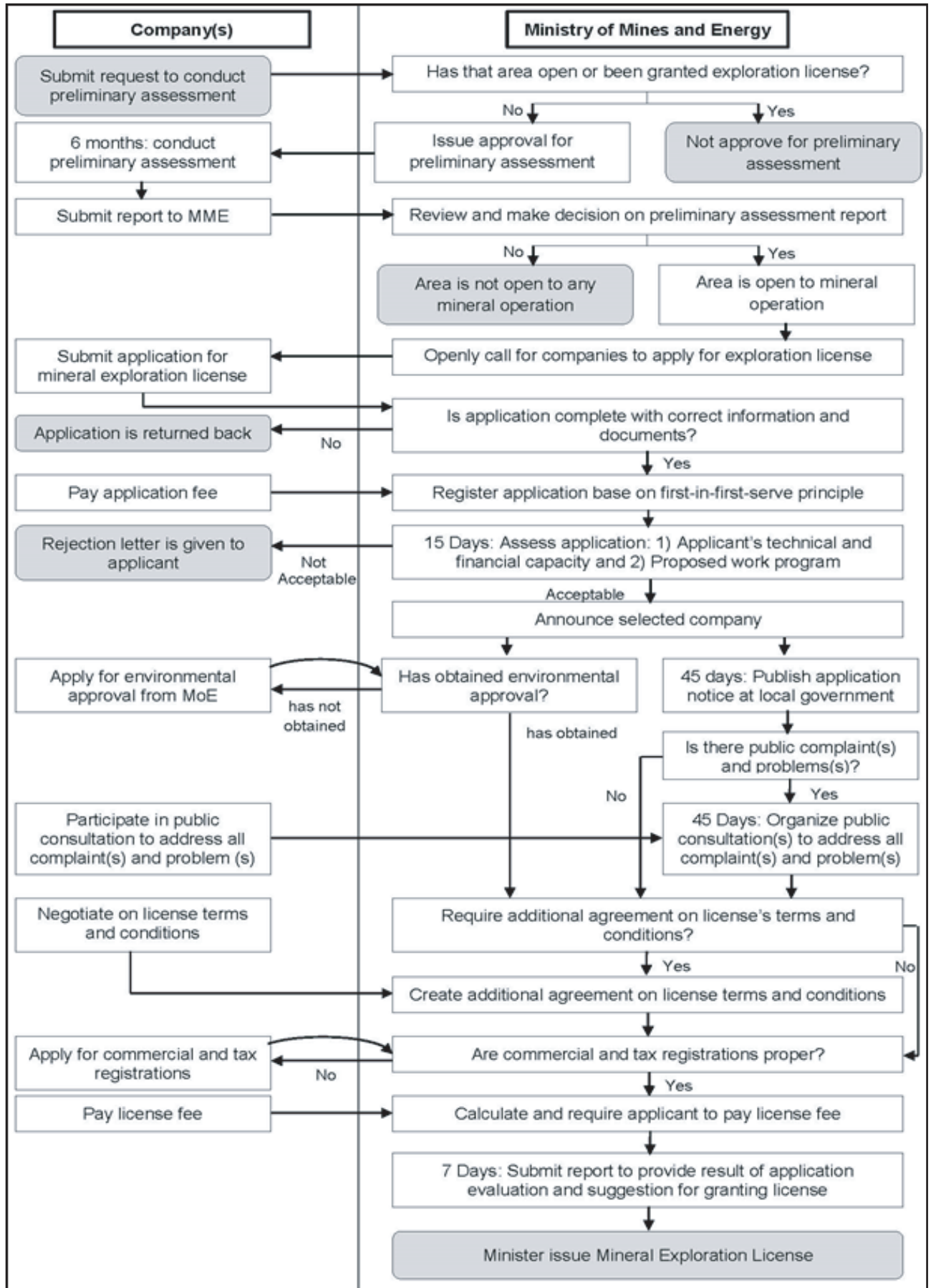
Source: Author's Consolidation of Previous and New License Processes

FIGURE 10: MINERAL EXPLORATION LICENSE PROCESS (EXISTING AREA)



Source: Sub-Decree No.72 and Circular No.360

FIGURE 11: MINERAL EXPLORATION LICENSE PROCESS (NEW AREA)



SOURCE: SUB-DECREE NO.72 AND CIRCULAR NO.360

TABLE 14: VULNERABILITIES AND RISKS OF LICENSE PROCESS

Vulnerabilities	Result in Corruption Risks	Exist?
<p>Public interest was not properly included in the previous process, because it did not include social and environmental factors in the process. The license was given after evaluation of application, particularly on technical factors. For example, free-prior-informed public consultation and environmental assessment were not part of the process for granting mineral exploration license. Therefore, there was very high risk that the license was issued without acceptable consideration of public interest.</p> <p>The new license process will mitigate this risk. Both Sub-Decree No.72 and Circular No.360 require, satisfactory public consultation and environmental approval to be included in the process before the Exploration license is granted. If appropriately implemented, these new steps will provide the governance safeguards for public and environmental interests.</p>	<p>PD1: What is the risk that license process was designed or structured without acceptable consideration of public interest?</p>	<p>No.</p> <p>However, the new process is currently being trialled. And possible risk may arise upon implementation.</p>
<p>The previous process for granting exploration license and other mineral license to company was based on 7 specific articles in the 2001 Mining Law ⁶⁴. There were no official flowcharts or step-by-step procedural information of how the company could apply for mineral exploration license. Representatives of company also expressed that the difficulty in accessing this information ⁶⁵.</p> <p>The current regulatory framework and MME's implementation procedure for mineral exploration license will potentially eliminate this risk. The Sub-Decree No.72 has 7 chapters and 96 articles, which provides very detailed information about mineral exploration and industrial mining license. Information about exploration license is dedicated in chapter 3 from Article 23 to Article 51 ⁶⁶.</p> <p>In addition to the Sub-Decree, MME issued Circular No.360 to provide very detailed information of the steps in mineral exploration license process. Map of license process is also attached at the end of the Circular No.360. The Sub-Decree No.72 and Circular No.360 can be accessed on MME's website or other online sources. In addition to the online information, company can make inquiries to DMEM staff(s) for additional information about application process. Representatives of company validated that the new process is an improvement of the previous license process ⁶⁷.</p>	<p>PD3: What is the risk that the procedural application steps for the mineral exploration license will not be publicly transparent and fully accessible to interested parties, to support a level playing field?</p>	<p>No.</p> <p>However, the new process is currently being trialled. And possible risk may arise upon implementation.</p>

⁶⁴ Law on Mineral Resource Management and Exploitation, 2001.

⁶⁵ Interview with representative of mining companies.

⁶⁶ Sub-Decree No. 72 on Administration of Mineral Exploration and Industrial Mining License, 05 May 2016.

⁶⁷ Interview with representative of mining companies.

Step 1: Preliminary Assessment

The objective of preliminary assessment is to collect data and information regarding geological condition, land ownerships, and economic-social-environmental impacts ⁶⁸.

TABLE 15: HOW AN AREA IS OPENED FOR MINERAL OPERATION

Area	Duration	Open or Not Open
Existing site in protected area	Less than 7 years of exploration	Open for exploration. (MME will consult with MoE on relevant caveats if MME decides to open the protected area for mineral exploration)
	More than 7 years of exploration	Not open for exploration to any company
Existing site not in protected area	-	MME conducts preliminary assessment

Source: Interview with MME officials.

In the previous process, there was no preliminary assessment on the prospective mining location. Exploration licenses were issued based on the information derived from the historical mineral potential studies, conducted in the 19th century, by the French and Chinese geologists. In some cases, Mining licenses were improperly issued with over-lapping coverage in conflict to existing villages and community property rights. For example, a community representative in Preah Vihear provided 2010 photo evidence about an exploration company drilling exploration wells in local farmland and causing crop damage ⁶⁹. In other cases, villagers reportedly blocked company access to “licensed” exploration sites around their community or forest because they were concerned with the negative impacts of mining activities ⁷⁰.

Preliminary assessment will reduce conflicts between the company and community stakeholders. Preliminary assessment allows MME to identify the areas that could be adversely affected by the exploration work, and to ring-fence these sites out of mineral exploration license to avoid conflicts between the company and community.

Preliminary assessments can be conducted by MME, independent parties or the interested company. If the existing area is in a gazetted protected area and yielded no exploration evidence of mineral resource, for more than 7 years, MME will cancel the license and deem closed to future exploration activities.

If the Exploration license in the protected area is less than 7 years, MME will consult with the Ministry of Environment (MoE) of how the protected sites should be managed for exploration of mineral resource for the balance of the license period ⁷¹.

For the existing mining area(s), MME will instruct its Department of Mineral Exploration (DMEM) to conduct a preliminary assessment to determine the social impact. DMEM will work with local authorities to define the area designated for exploration and formally advise MME senior management for the official decision on opening the site for mineral exploration activities ⁷².

⁶⁸ Sub-Decree No. 72 on Administration of Mineral Exploration and Industrial Mining License, 05 May 2016.

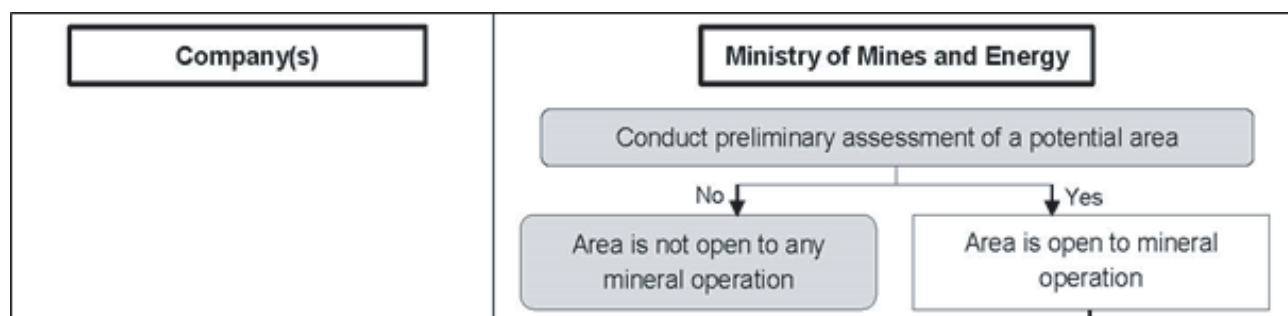
⁶⁹ Community representatives reported about an exploration company in Preah Vihear.

⁷⁰ Interview with representatives of mining company, 2017.

⁷¹ Interview with Director of Department of Mineral Exploration, 2017.

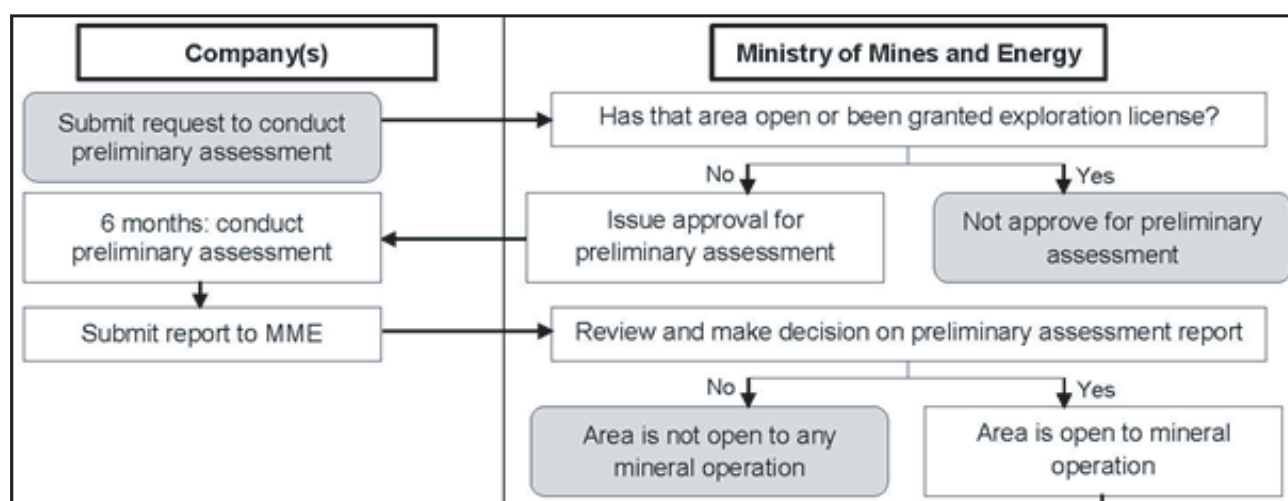
⁷² Ibid.

FIGURE 12: PRELIMINARY ASSESSMENT STEP (MME)



For the new area, MME may allow the company(s) to make a formal request to conduct a preliminary assessment if the proposed site is not in a designated protected area. The approval does not provide the Company with exclusive rights to study the site, as other similar requests may be accepted. Other company(s) can also request to study that area ⁷³.

FIGURE 13: PRELIMINARY ASSESSMENT STEP (COMPANY)



The approval for preliminary assessment is valid for 6 months with a further 2-months extension. No further extensions will be allowed to the same company for the same site. The official MME fee for preliminary assessment approval is 4,000,000 KHR (USD1,000) ⁷⁴.

The Company can collect sample up to 25 tons for preliminary assessment. Sample sizes in excess of this limit will require further approval from Minister of Mines and Energy ⁷⁵. This new step has yet to be implemented; as no company has been approved to conduct preliminary assessment since the procedure was introduced ⁷⁶.

After company completes the preliminary assessment, they need to submit report to MME with the assessment results. MME staff will review the preliminary assessment report and submit to MME senior management for their official decision whether to open the area for further mineral exploration activities ⁷⁷.

⁷³ Sub-Decree No. 72 on Administration of Mineral Exploration and Industrial Mining License, 05 May 2016.

⁷⁴ MME-MEF, Inter-ministry Prakas No.1451 on Ministry of Mines and Energy's Public Service and Penalty Fee, 3 November 2017.

⁷⁵ Sub-Decree No. 72 on Administration of Mineral Exploration and Industrial Mining License, 05 May 2016.

⁷⁶ Interview with Director of Department of Mineral Exploration, 2017.

⁷⁷ Interview with Director of Department of Mineral Exploration, 2017.

TABLE 16: POTENTIAL RISKS IN PRELIMINARY ASSESSMENT STEP

Vulnerabilities	Result in Corruption Risks	Exist?
<p>This risk was not relevant with the previous process because preliminary assessment was not included in the process.</p> <p>For the new process, information of preliminary assessment approval fee is clear in law and available publicly. The Inter-ministry Prakas No.1451 stipulates clearly the amount of preliminary assessment approval fee is 4,000,000 KHR ⁷⁸. This document is available on the MME's website.</p>	<p>PD12: What is the risk that preliminary assessment approval fee will be manipulated?</p>	<p>No.</p>
<p>This risk was not with the previous process because preliminary assessment was not included in the process.</p> <p>For the new process, this risk could exist because we could not find evidence on how the confidential information from the preliminary assessment is managed, in line with the requirements of the current mining regulatory framework, particularly Sub-Decree No.72 and Circular No.360. However, the MME official interviewed mentioned that MME does not share preliminary assessment with mining companies ⁷⁹. The lack of regulation to manage confidential information within MME will create opportunities for MME staff(s) to collude with company, in return for private benefit.</p> <p>Official may favour certain companies and therefore limit what information competitors are able to obtain. Mining companies may also influence officials to engage in the biased distribution of information ⁸⁰.</p>	<p>PD17: What is the risk that information of mining concession area will be selectively distributed with company?</p>	<p>Yes.</p> <p>There is possibility of secondary distribution of confidential information from preliminary assessment.</p>

⁷⁸ MME-MEF, Inter-ministry Prakas No.1451 on Ministry of Mines and Energy's Public Service and Penalty Fee, 3 November 2017.

⁷⁹ Interview with Director of Department of Mineral Exploration, 2017.

⁸⁰ MACRA Tool

Step 2: Announcement for Mineral Exploration License Application

If the decision is to open the site for mineral exploration, MME will openly call for interested mining companies to apply for mineral exploration license. The announcement is published on MME's information board, website, and social media ⁸¹.

FIGURE 14: OPEN FOR APPLICATION STEP

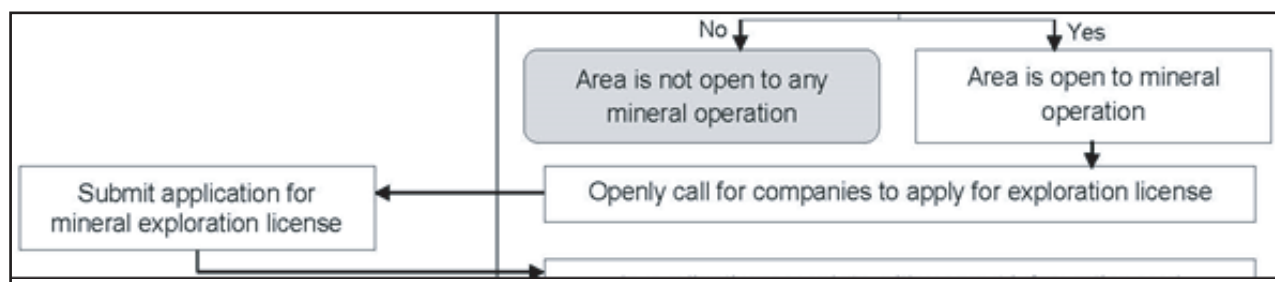


TABLE 17: POTENTIAL RISKS IN OPEN FOR APPLICATION STEP

Vulnerabilities	Result in Corruption Risks	Exist?
<p>In the previous process, no public announcement was made to call exploration companies to apply for mineral exploration license ⁸². We assessed sector reports and media articles, but we could not find information about MME's announcement for mineral exploration license application. Previously, exploration companies with investment interest in mineral exploration in Cambodia contact MME directly on potential exploration location and application process. There was the risk that the MME official shared information for potential exploration area to company, in return for private benefit.</p> <p>Now, MME will make public announcement to open areas for mineral exploration license application, including postings on its Facebook page. The announcement includes the GPS location and map of the 4 areas, requirements, contact, and timeline ⁸³. Exploration companies are able to determine where the areas are based on map and the GPS coordinates provided in MME's announcement. This shows that MME is transparent in announcing the open areas.</p>	<p>PD17: What is the risk that announcement of open area will be selectively informed to company?</p>	<p>No. Free public access to MME's website.</p>

⁸¹ Ibid.

⁸² Kan Vicheka. Voice of America: MME announces to invite company to apply for mineral license. 08 May 2017. Accessed on 09 May 2017. Link: <http://khmer.voanews.com/a/mines-ministry-announced-mining-companies-to-compete-for-exploration-and-extract/3841543.html>

⁸³ MME. Announcement 003 on Open of Mining Area for Mineral Exploration. 18 April 2017.

<p>In the previous process, we could not find any report about application period for mineral exploration license in law and in practice.</p> <p>In the new process, there is risk that MME official(s) will adjust application time to favour a particularly company, as there is no information that defines duration for open application in current regulatory framework. No definitive process timelines and dates are included in the public announcement.</p> <p>Based on MME's Announcement 003, the MME application was opened for approximately 6 weeks from 18th April 2017 to 30th May 2017. Although the announcement was signed by the Minister on 18 April 2017, it was only posted publicly on 7th May 2017, more than 2 weeks later.</p> <p>The lack of implementation regulation to clarify the duration for application submission will create conflict opportunities and compromise the accountability of MME official(s) towards a timing bias for a particular applicant.</p>	<p>PD28: What is the risk that duration for application submission will be adjusted to favour a particular company?</p>	<p>Yes. Possible implementation risk may arise.</p>
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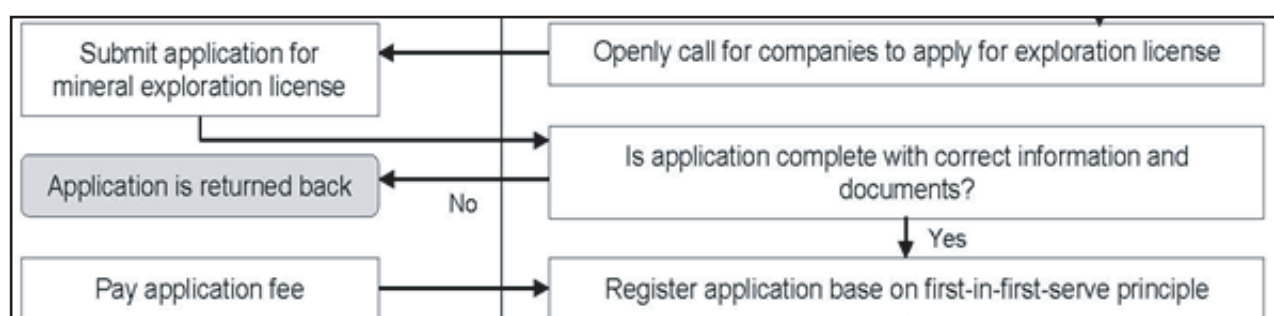
Step 3: Submission and registration of application

Parties interested in the open sites can obtain the relevant application forms from DMEM. The completed application for the Mineral Exploration License with supporting documents, have to be submitted to MME's one-window office (OWO) in closed envelope. MME-OWO will require the application to pay application fee⁸⁴ of 500,000 KHR (USD125)⁸⁵. MME-OWO will then register application, issue receipt of application immediately, and publish the application on the MME website⁸⁶.

The Government's Sub-Decree No.72 stipulates the requirement for the Initial Environmental and Social Impact Assessment (IESIA) report to be submitted during initial application. However, Circular No.360 (October 2016) shows that environmental obligation (e.g. IESIA report) will only be required at a later stage, after the evaluation of application form.

Based on the latest sample application that we received from MME in early May 2017, environmental approval or IESIA report was not required⁸⁷. Our research team validated with MME official(s) and mining companies that environmental approval and IESIA report, officially, is not required at the time of submission. This implementation discretion is a variance to the intent of Sub-Decree No.72.

FIGURE 15: APPLICATION SUBMISSION STEP



⁸⁴ MME, Circular No. 360 on Guideline for Granting Mineral Exploration License, 7 October 2016.

⁸⁵ MME-MEF, Inter-ministry Prakas No.1451 on Ministry of Mines and Energy's Public Service and Penalty Fee, 3 November 2017.

⁸⁶ Sub-Decree No. 72 on Administration of Mineral Exploration and Industrial Mining License, 05 May 2016.

⁸⁷ MME's Sample Application Form

TABLE 18: POTENTIAL RISKS IN APPLICATION SUBMISSION STEP

Vulnerabilities	Result in Corruption Risks	Exist?
<p>In the previous process, the required supporting documents were listed in MIME's Model Agreement ⁸⁸. However, this list of required documents was not freely accessible to the interested public/ applicants. The Research team uncovered this requirement list from a working paper published by the General Department of Mineral Resource in March 2013 ⁸⁹. Information pre-dating this timeline were not available. The opportunity to manipulate this document requirement was a risk.</p> <p>This risk does not exist in new process. MME's Announcement No.003 stipulates detailed requirement of supporting documents in the application form with both Khmer and English languages ⁹⁰. Company will be able to determine the documentation requirements as part of their application for the Mineral Exploration License. Therefore, the risk of administrative manipulation of the documentation requirements is eliminated.</p> <p>Although there is different requirements for the IESIA report in 2 regulatory document (Sub-Decree No.72 and Circular No.360), mining companies are well aware that IESIA report is not required at the time of submission ⁹¹.</p>	PD15: What is the risk that requirements of the license application and process will be manipulated?	No. There is minor confusion between Sub-Decree No. 72 and Circular No. 360.
<p>Research team could not find official records or documentary evidence on the application and administrative fees under the previous process. The GDMR working paper did not publish a schedule of application/administrative charges relating to the License application process.</p> <p>In the new process, the MME-MEF's Inter-ministry Prakas No.1451 clearly stipulates the amount of application fee at 500,000 KHR (US\$1250) ⁹². This information can be found on ministry's website. Public access to this information is a positive development.</p>	PD12: What is the risk that application fee will be manipulated?	No
<p>In the previous process, information of all mining competition for license was not publicly known ⁹³. MIME did not publish information of company competing for license, as there was not requirement from the law. Non-disclosure of all applicants applying for license could not discourage companies owned and controlled by politicians or mining official to involve in the project.</p> <p>The new process mitigates this risk. Sub-Decree No.72 requires MME to post the name of company on its website after application is registered ⁹⁴. This regulatory requirement reduces this risk. It will also discourage companies owned or controlled by politicians or mining official to involve in the project.</p>	PD23: What is the risk that all mining companies competing for a license will be not be published?	No. Possible implementation risk may arise.

⁸⁸ Chrea Vichett, The Current Situation of Mining Industry in Cambodia, 2013.

⁸⁹ Ibid.

⁹⁰ MME's Sample of Application Form for Mineral Exploration License.

⁹¹ Interview with representative of mining companies.

⁹² MME-MEF, Inter-ministry Prakas No.1451 on Ministry of Mines and Energy's Public Service and Penalty Fee, 3 November 2017.

⁹³ Law on Mineral Resource Management and Exploitation, 2001.

⁹⁴ Sub-Decree No. 72 on Administration of Mineral Exploration and Industrial Mining License, 05 May 2016.

Step 4: Processing application and selecting applicant

MME-OWO will direct the applications with supporting documents to DMEM for processing. DMEM will evaluate the work program, the technical and financial capacities of applicant within 15 working days after registration. Application with correct information and documents will be evaluated on a first-come-first-serve basis. If several suitably qualified applicants submit at the similar time, MME will organise a public ballot to decide priority for providing mineral exploration license ⁹⁵.

If DMEM finds that the work program is not acceptable or the applicant does not have sufficient capacities, DMEM will recommend MME senior management to issue a rejection letter to applicant immediately. If DMEM finds that applicant has sufficient capacities and acceptable work program, DMEM will select the applicant for consideration of a Mineral Exploration License. The decision will be publicly announced 15 days after the application submission deadline by MME ⁹⁶.

FIGURE 16: APPLICATION EVALUATION STEP

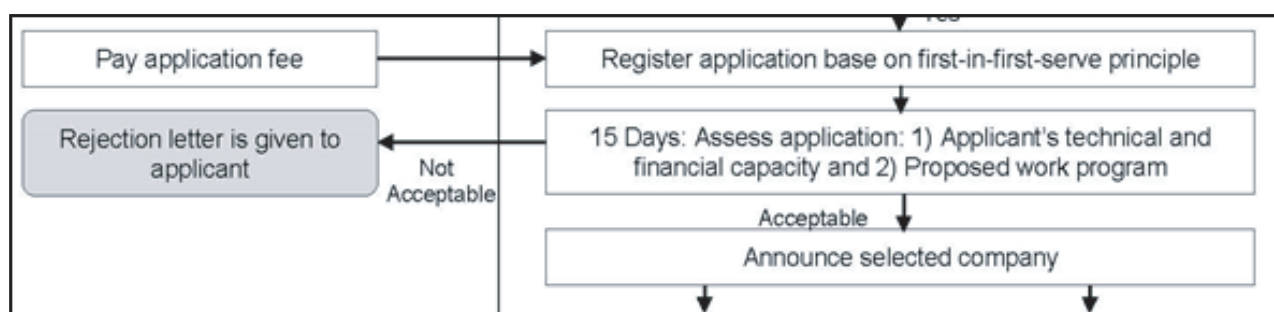


TABLE 19: POTENTIAL RISKS FOR APPLICATION EVALUATION STEP

Vulnerabilities	Result in Corruption Risks	Exist?
<p>The previous process did not have guideline for the “1st come 1st serve” submission. We could not find evidence on how mining officials prioritized the application submissions in the event of competing applications.</p> <p>Sub-Decree No.72's Article 33 mentions that first applicant with the correct information and document will receive priority for evaluation ⁹⁷. Application is registered with date and receipt. The date of application acceptance and registration reduces the potential for bias to influence the priority of application ⁹⁸. The company with the 1st priority will still have to be selected based on the evaluation of their technical capacity, financial resources, and work programs. This will mitigate the incentive to bribe to secure priority in this step ⁹⁹.</p>	<p>PP13: What is the risk that first applicant with correct information and documents will not get 1st priority for evaluation?</p>	<p>No.</p>

⁹⁵ Ibid.

⁹⁶ MME. Announcement 003 on Open of Mining Area for Mineral Exploration. 18 April 2017.

⁹⁷ Sub-Decree No. 72 on Administration of Mineral Exploration and Industrial Mining License, 05 May 2016.

⁹⁸ MME, Circular No. 360 on Guideline for Granting Mineral Exploration License, 7 October 2016.

⁹⁹ Interview with Director of Department of Mineral Exploration, 2017.

<p>The previous process did not have this risk, because the mining law stipulated the decision for granting license would be made within 45 days by senior management ¹⁰⁰.</p> <p>Sub-Decree No.72 ¹⁰¹ and MME's announcement No. 003 ¹⁰² clearly stipulates the evaluation duration. MME will publicly announce the successful applicant, 15 days after the submission deadline. Therefore, the risk is eliminated.</p>	<p>PD28: What is the risk that duration for evaluation time will manipulate?</p>	<p>No</p>
<p>In the previous process, we could not find any evidence of an assessment panel for application evaluations. The then selection process was not transparent.</p> <p>This same risk remains in the new process. Based on Circular No.360, DMEM evaluates applicant's technical capacity, financial capacity, and proposed work program ¹⁰³, but there is no mention of the selection process and the composition of the evaluation panel</p> <p>It is good practice to have independent experts in assessment panels, to reduce the possibility of bias or interference in decisions ¹⁰⁴. However, the lack of mining sector expertise in Cambodia is a consideration.</p>	<p>PD13: What is risk that assessment panel will not be independent or will be influenced by company?</p>	<p>Yes</p>
<p>In the previous process, we could not find any evidence of the evaluation criteria. This is a major risk.</p> <p>This risk still remains in the new process. The selection criteria, framework, or guidelines to evaluate the applicant's technical and financial capacities and work program have not been incorporated in the current regulatory framework ¹⁰⁵.</p> <p>It creates opportunities for manipulation and interference in the evaluation process ¹⁰⁶. This remains a major risk.</p>	<p>PD4: What is the risk that criteria for selecting applicant will not be public knowable?</p>	<p>Yes</p>
<p>We could not find the information of evaluation process and the participants contributing to the evaluation. In 2014, Ministry's Strategic framework highlighted the capacity shortfall.</p> <p>In support of the new process, MME has re-structured its organisational set-up to strengthen the capacity involved in the evaluation of license applications ¹⁰⁷. Representatives from applicant company and CSO commented that MME senior and middle management now have the technical expertise in mining field ¹⁰⁸. Therefore, this risk is mitigated by the arrangement of multi-level MME senior management and staffs oversight in the license evaluation process.</p>	<p>PP2: What is the risk that MME staff will not have sufficient skill to evaluate the application?</p>	<p>No</p>

¹⁰⁰ Law on Mineral Resource Management and Exploitation, 2001

¹⁰¹ Sub-Decree No. 72 on Administration of Mineral Exploration and Industrial Mining License, 05 May 2016.

¹⁰² MME. Announcement 003 on Open of Mining Area for Mineral Exploration. 18 April 2017.

¹⁰³ Author's assessment of relevant legal framework.

¹⁰⁴ MACRA Tool.

¹⁰⁵ Author's assessment of relevant legal framework.

¹⁰⁶ MACRA Tool.

¹⁰⁷ Interview with MME's senior management.

¹⁰⁸ Interviews with representatives of mining companies.

<p>Due-diligence on the applicant's capacities and past lawful conduct, were not required in MIME's previous process. This is a major risk.</p> <p>This risk still exists in the new process. There is still no requirement to conduct a due-diligence on the applicant's capacities and background checks on past lawful compliance ¹⁰⁹.</p> <p>If company's proof of capacity and financial resources are not verified, the opportunity to falsify details or to bribe officials is real. Moreover, absence of background checks on integrity creates the opportunity for criminal intents/ interests or past illegal behaviour to be overlooked. This will allow high risked applicants to engage in corrupt and illegal activities into the mining sector ¹¹⁰. This remains a major risk.</p>	<p>PP10: What is the risk that there will be no due-diligence on applicant's claim technical and financial capacities?</p> <p>PP11: What is the risk that there will be no due-diligence on applicant's past lawful compliance?</p>	Yes
<p>In previous process, there were no public announcements of the successful applicant for the Mineral Exploration license ¹¹¹. This lack of transparency was a governance risk.</p> <p>The new process has eliminated this risk. MME states clearly in its public announcement that MME will announce the selected applicant 15 days after the submission deadline ¹¹². The competing companies and the public will know the company, selected for that specific mineral exploration license.</p>	<p>PD28: What is the risk that all firms or partners selected for license will not be publicly announced?</p>	No
<p>In the previous process, details of beneficial owner of selected company were not required ¹¹³. The documents that company submitted to MIME did not contain information of beneficial ownership. This risk existed in the former process.</p> <p>Similar to previous process, the new process also carries this risk. The new regulations relevant to granting mineral exploration licenses do not require documentary evidence of beneficial ownerships to be included in the application ¹¹⁴. Although Circular No. 360 states that application form and supporting documents are public documents, which available for public review ¹¹⁵, beneficial ownership information is only available at the Ministry of Commerce. The study is unsure if MoC will share this type of information to the public.</p> <p>Undeclared beneficial ownership creates the possibility of unmanageable conflicts of interest, favouritism, and entry of unscrupulous or inexperienced players and potentially illegal flow of funds into the sector ¹¹⁶. This remains a high risk.</p>	<p>PD9: What is the risk that details of shareholders or beneficial owner of selected company will not be publicly knowable?</p>	Yes

¹⁰⁹ Author's assessment of relevant legal framework

¹¹⁰ MACRA Tool.

¹¹¹ Law on Mineral Resource Management and Exploitation, 2001

¹¹² MME. Announcement 003 on Open of Mining Area for Mineral Exploration. 18 April 2017.

¹¹³ Law on Mineral Resource Management and Exploitation, 2001

¹¹⁴ Author's assessment of relevant legal framework.

¹¹⁵ MME, Circular No. 360 on Guideline for Granting Mineral Exploration License, 7 October 2016.

¹¹⁶ MACRA Tool.

Step 5: Public Consultation and Environmental Approval

• Public Consultation

DMEM will organise public consultation with community stakeholders in the affected areas. First, the sub-national government will publish MME's notice regarding application for mineral exploration license in the affected area. Stakeholder objections and complaint submissions will be directed to MME's provincial department or through relevant commune-sangkat, within 45 days of the notice being published in the relevant commune/sangkat ¹¹⁷.

If there are no complaints, DMEM can proceed to the next step. However, if there is a complaint, DMEM will arrange public consultation in order to consult and respond to issues raised by community(s) or relevant stakeholders ¹¹⁸. After the public consultation is completed, DMEM will submit a report with recommendations to the MME minister for reviewing the final decision within 45 days. The applicant will be responsible for the cost of the public consultation ¹¹⁹.

FIGURE 17: PUBLIC CONSULTATION STEP

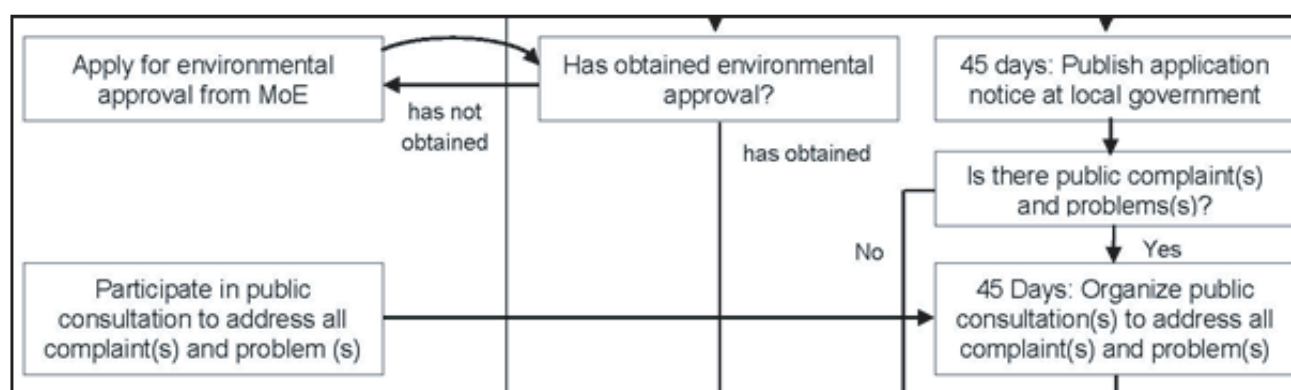


TABLE 20: POTENTIAL RISKS IN PUBLIC CONSULTATION STEP

Vulnerabilities	Result in Corruption Risks	Exist?
In the previous process, public consultation was not part of the license process ¹²⁰ . Licences were given without free-prior-informed public consultation with affected community. Many consultations were organized after the licenses had been issued and after community expressed their complaints on the impact of mining activities. In one media report, villagers in Veal Leng Village advised that the exploration company did not consult with them before the exploration. The Director General Department of Mineral Resource acknowledged that his ministry had not conducted sufficient public consultation with the community ¹²¹ . Without the opportunity for Community engagement to raise their concerns, company and authority did not receive the cooperation from community. A representative of Angkor Gold told us that the community in one of their exploration site in Ratanakiri refused to let them explore the licensed site, although the company and authority have explained and tried to negotiate with them ¹²² .	PP6: What is the risk that free-prior-informed public consultation will be ignored due to corruption?	No. Possible implementation risk may arise

¹¹⁷ Sub-Decree No. 72 on Administration of Mineral Exploration and Industrial Mining License, 05 May 2016.

¹¹⁸ MME, Circular No. 360 on Guideline for Granting Mineral Exploration License, 7 October 2016.

¹¹⁹ Ibid.

¹²⁰ Law on Mineral Resource Management and Exploitation, 2001

¹²¹ Radio Free Asia, Gold Mining Investment in Cambodia (Part 2), 31 March 2017. Accessed on 17 April 2017. Link: <http://www.rfa.org/khmer/news/environment/Gold-Mining-Industry-03142017062516.html>

¹²² Interview with Representative of Angkor Gold, 2017.

<p>The new process requires up-front public consultations with the affected community before the license is issued to exploration company. Notice of application will be posted for 45 days to affected people to file their complaints. MME will organize public consultation to address the issue within 45 days ¹²³. This will mitigate the risk of the public consultation step.</p>		
<p>Previously, affected community were misrepresented in the public consultation stage. Based on the experience of previous public consultation, 2 Representatives from Koh Sror Lav Community told us that the local authority only invited people, who supported the project, to the public consultation. Affected people were not invited to participate in the consultation process. In another example, they said that local authority came to inform affected people in at 10am in the morning, when the consultation would be conducted at 2pm at the same day ¹²⁴. Therefore, some affected people could not attend the consultation or did not sufficient time to understand about the project and prepare for the consultation. Thus, the consultation could be biased towards the company agenda.</p> <p>This risk remains in the new process because there are not formal SOP or guideline to inform who should be invited to join the official public consultation ¹²⁵. There should be regulation to manage good representation of stakeholders in public consultation, so there is less opportunity for authority and exploration company to manipulate the representation in the public consultation.</p> <p>If the legal framework for consultation cannot be accurately defined and understood, the opportunities for poor governance to circumvent consent process presents a real risk ¹²⁶.</p>	<p>PP7: What is the risk that affected community will be misrepresented in public consultation?</p>	<p>Yes</p>
<p>The new process does not eliminate this risk, because there are no official guidelines or governance mechanism to provide free-prior-informed public consultation current regulatory framework ¹²⁷. There should be process SOP/ guidelines on how agreement should be reached and officially recorded. Without SOP or guideline for public consultation, potential conflicts between stakeholders (communities, CSOs, exploration company and the authority) will continue to undermine the transparency and credibility of the public consultation process.</p> <p>Having the laws that guarantee and standardize terms and conditions for conducting negotiations reduces the risk of corrupt behaviour, such as marginalization of certain landholders, unauthorized contact in breach of terms, or giving of bribes, gifts, and benefits ¹²⁸.</p>	<p>PD16: What is the risk that negotiation or agreement with landholder or community will not be conducted appropriately?</p>	<p>Yes</p>

¹²³ Sub-Decree No. 72 on Administration of Mineral Exploration and Industrial Mining License, 05 May 2016.

¹²⁴ Interview with community representatives.

¹²⁵ Sub-Decree No. 72 on Administration of Mineral Exploration and Industrial Mining License, 05 May 2016.

¹²⁶ MACRA Tool

¹²⁷ Author's assessment of relevant legal framework.

¹²⁸ MACRA Tool

• Public Consultation

Based on RGC's Sub-Decree No.72 dated 5th May 2016, initial environmental assessment is required at the time of submitting the application, together with the other supporting documents .

To promote investment in exploration, Circular No. 360 allows DMEM to request for principle approval on applicant's capacities and work program with condition that company will follow requirement of environmental regulation .

The IESIA report is officially not required to be attached with application at the time of submission.

After MME selects the company based on their capacities and work program, the applicant will be required to request for an environmental approval from MoE. If applicant receives the Ministry of Environment's approval, MME will proceed to next step of the license process. The applicant can then engage a registered EIA consulting company to conduct IESIA, while they are conducting exploration .

FIGURE 18: ENVIRONMENTAL APPROVAL STEP

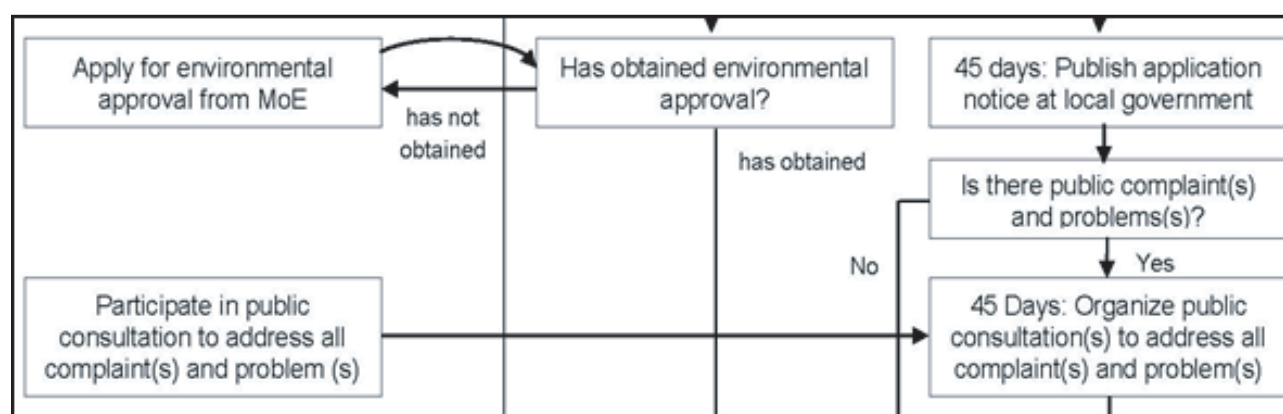


TABLE 21: POTENTIAL RISKS IN ENVIRONMENTAL APPROVAL STEP

Vulnerabilities	Result in Corruption Risks	Exist?
<p>For the previous process, there was no requirement to comply with environmental regulations before the license was given to exploration company.</p> <p>In the new process, there is confusion or unclear requirements of IESIA, as required by law and what is accepted in practice. For construction mineral license and small-scale mining license, there is MME-MoE Inter-Ministry Prakas No.191 covering environmental compliance ¹³³. For Industrial Mining License, the law is clear that applicant needs to conduct full-scale environmental impact assessment ¹³⁴.</p> <p>However, there are not legal guidelines regarding environmental compliance for issuing mineral exploration license. Due to this lack of clarity on the IESIA requirement, the work program will not be comprehensive enough to prevent environmental non-compliance.</p>	<p>PD3: What is the risk that requirement for environmental compliance will be unclear?</p>	<p>Yes</p>

¹²⁹ Sub-Decree No. 72 on Administration of Mineral Exploration and Industrial Mining License, 05 May 2016.

¹³⁰ MME, Circular No. 360 on Guideline for Granting Mineral Exploration License, 7 October 2016.

¹³¹ MME, Announcement 003 on Open of Mining Area for Mineral Exploration. 18 April 2017.

¹³² Interviews with MME's official and staff of EIA consulting company.

¹³³ MME-MoE, Inter-Ministry Prakas No.191 on Grading of Environmental Impact Assessment for Construction Mineral Operation or Other Small-Scale Mineral Operation, 26 April 2016.

¹³⁴ Sub-Decree No.72 on Process for Environmental Impact Assessment, 11 August 1999

Step 6: Additional Agreement

Circular No.360 stipulates that DMEM will review if there is a requirement for additional licensing terms and conditions ¹³⁵. If there are no additional requirements, DMEM will double check if applicant have proper commercial, tax, and patent registrations. Additional requirements will be incorporated into the terms and conditions of the Mineral Exploration License. (For example, company may be required to contribute to community development or protect environment of exploration area).

FIGURE 19: ADDITIONAL AGREEMENT AND OTHER DOCUMENTS

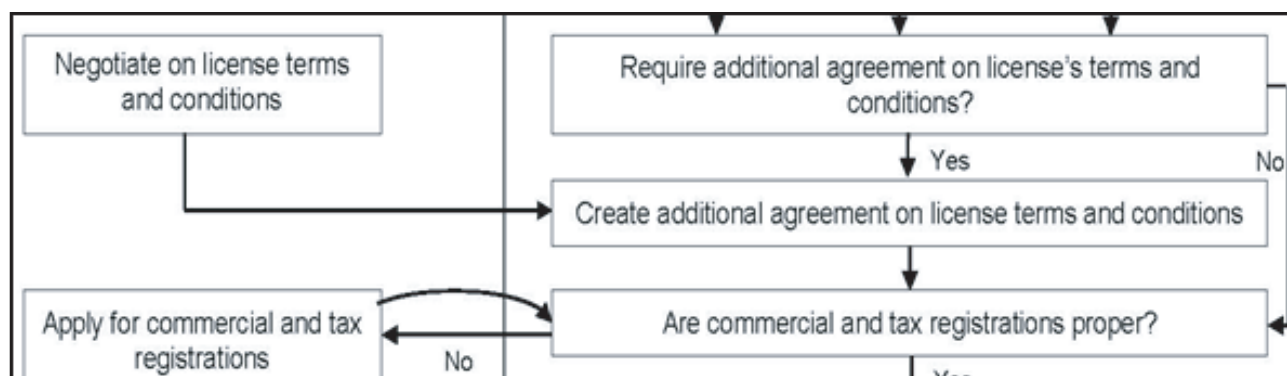


TABLE 22: VULNERABILITIES AND RISKS IN ADDITIONAL AGREEMENT STEP

Vulnerabilities	Result in Corruption Risks	Exist?
<p>In the current legal framework, there is no evidence suggesting that Additional Agreement over License's Terms and Conditions will be available and accessible for public's request.</p> <p>Secrecy around agreement reduces the ability for stakeholders to make governments and mining companies accountable, and create opportunities for corruption because no one except those directly involved will know about the obligations agreed between the company and the government ¹³⁶.</p>	RA13: What is the risk that details of additional will not be publicly knowable?	Yes

Step 7: Issue of License

Applicant will be required to pay a license fee of 2,000,000 KHR (US\$500). MME will issue the license for the successful applicant within 45 days ¹³⁷. Within 7 working days, DMEM will lodge a formal report to the MME minister for review and decision on the Mineral Exploration License ¹³⁸.

MME can issue mineral exploration license for sites less than 200 Km². MME will need further approvals from the Royal Government of Cambodia for sites greater than 200 Km² ¹³⁹. The Mineral Exploration license is valid for 3 years, with the possibility of 2 extensions of 2 years each. Total duration of license can be up to 7 years (3+2+2) ¹⁴⁰.

¹³⁵ MME, Circular No. 360 on Guideline for Granting Mineral Exploration License, 7 October 2016.

¹³⁶ MACRA Tool.

¹³⁷ MME-MEF, Inter-ministry Prakas No.1451 on Ministry of Mines and Energy's Public Service and Penalty Fee, 3 November 2017.

¹³⁹ MME, Circular No. 360 on Guideline for Granting Mineral Exploration License, 7 October 2016.

¹³⁹ Sub-Decree No. 72 on Administration of Mineral Exploration and Industrial Mining License, 05 May 2016.

¹⁴⁰ Ibid.

FIGURE 20: ISSUE OF LICENSE

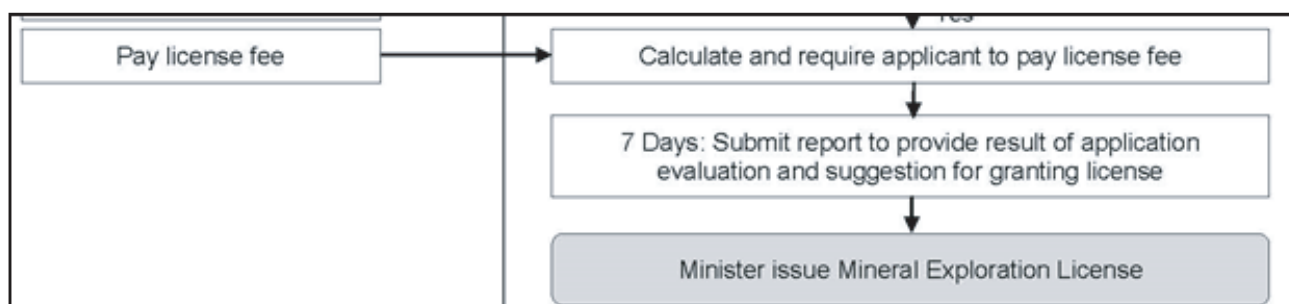


TABLE 23: POTENTIAL RISKS IN ISSUE LICENSE STEP

Vulnerabilities	Result in Corruption Risks	Exist?
License fee of 2,000,000 KHR ¹⁴¹ is public information published in the MME-MEF Inter-ministry Prakas No.1451. Therefore, the risk is eliminated.	PD12: What is the risk that license fee will be overcharged?	No.
The duration for the Mining Exploration license is clearly defined in both the previous and new processes. The successful applicant will receive the license within 45 days after paying license fee ^{142 143} . Therefore, the risk is eliminated.	PD28: What is the risk that the duration and timing to issue license will be delayed?	No
<p>This risk remains in the new process as current regulatory framework does not require license information to be available or published for public's access ¹⁴⁴. Lack of transparency around license details (e.g. GPS coordinates of license area, date of award, duration of license, social and environmental obligations, work program, or the commodity being produced) creates opportunities for illegal mining (e.g. mine outside the license area, beyond the license period, and to exploit of non-approved minerals), and potentially allows companies to bribe officials to ignore these activities.</p> <p>Freedom of information law is being drafted by the government but has not been approved ¹⁴⁵. Freedom of information laws, and proper implementation of these laws, can improve transparency in decision-making thereby improving oversight accountability over public officials ¹⁴⁶.</p>	<p>PD36: What is the risk that the details of licenses that have been awarded will not be publicly known?</p> <p>RA2: What is the risk that information about a particular license that has been granted will not be legally available?</p>	Yes

During the validation workshop on 9th June 2017, the Under-Secretary of State, H.E Peng Navuth, presented “Good Governance in Mining Sector” with focus on steps taken by MME to ensure transparency and accountability in the process for granting mineral exploration license. The presentation covered preliminary assessment, pre-awarding, awarding, and post awarding stages. The presentation was consistent with process outlined above.

¹⁴¹ MME-MEF, Inter-ministry Prakas No.1451 on Ministry of Mines and Energy's Public Service and Penalty Fee, 3 November 2017.

¹⁴² Law on Mineral Resource Management and Exploitation, 2001

¹⁴³ Ibid.

¹⁴⁴ Author's assessment of regulatory framework

¹⁴⁵ Ministry of Information. Link: www.a2i.info.gov.kh

¹⁴⁶ MACRA Tool



Photo credit: Reproduced with permission from Angkor Gold Corp., Ratanakiri

7. Result

Risk 1: CF3

<p>What is the risk that surface rights on mining area will be manipulated?</p> <p>Uncertainty or poor understanding of surface rights creates incentives and opportunities for poor governance, leading to potential issues of forced access and illegal land-grabbing.</p> <p>Possible malpractice scenario is that the holder of mineral exploration license colludes with authority to claim exclusive rights over the licensed site, although the Mineral Exploration License covers a maximum duration of 7 years. Thus, the exploration license could be used as instruments to get forced access or even illegal land grabbing or timber logging.</p>	<p>CF3</p>
<p>Likelihood: 2.6</p>	<p>Reason(s)</p>
<p>Opportunity: 3</p>	<p>Opportunity is medium because there is lack of understanding relating to the rights and authorities granted under the mineral licenses. The mining license were previously as seen as instruments to get forced access or even illegal land grabbing with detrimental consequences to the local communities ¹⁴⁷.</p> <p>However, MME has enforced the monitoring of exploration company activities by creating working groups led by its senior management to monitor exploration company activities ¹⁴⁸. As a result, MME cancelled 45 exploration licenses that did not comply with license's terms and conditions and Additional Agreements in 2016 ¹⁴⁹. The active enforcement of MME will reduce the opportunity for malpractice and abuse of license rights.</p>
<p>Accountability: 2</p>	<p>Accountability is high because it is clear that under Cambodian mining law and regulation, mineral resources remain state property and to be controlled by the state. Thus, mineral licenses are merely instruments providing the license holder with the concessional rights to explore and extract mineral from earth under the state control. Mineral licenses are not land titles, nor legal instruments, to allocate or control land or properties ¹⁵⁰. Law on Mining and Sub-Decree No. 72 illustrate that the abuse of rights and authorities of license will carry the penalty of suspension of license, or cancellation of license.</p> <p>The active participation of environmental NGOs and community ¹⁵¹, which will provide adequate checks and balances for license holders to have high accountability of their actions.</p>

¹⁴⁷ Meng Saktheara, What rights and authority given in a mineral license?, 02 November. Accessed on: 25 February 2017.

Link: <https://ickhmer.wordpress.com/2016/11/02/what-rights-and-authorities-given-in-a-mineral-license/>

¹⁴⁸ MME, Decision No.0153 on Creation of Working Group for Monitoring and Auditing Exploration, Operation, and Constriction Mineral Activities. 02 April 2015.

¹⁴⁹ Ministry of Mines and Energy. Presentation in EIGF Forum. 31 January 2017.

¹⁵⁰ Meng Saktheara, What rights and authority given in a mineral license?, 02 November. Accessed on: 25 February 2017.

Link: <https://ickhmer.wordpress.com/2016/11/02/what-rights-and-authorities-given-in-a-mineral-license/>

¹⁵¹ See Contextual Analysis

Integrity: 3	<p>Integrity of MME and DMEM staff(s) is medium because MME provides additional financial incentive for MME staff(s) from their public service revenues ¹⁵². So MME staff(s) has additional official incentive income in addition to their basic salary. Better income reduces motivation for MME staff(s) to accept bribe. Aside from this, representatives of mining companies said that the application process is undertaken seriously by MME staff(s) seriously and they did not experience being asked for bribe ¹⁵³. No corruption cases of DMEM staff involved in licensing approval have been reported ¹⁵⁴.</p> <p>However, solving conflict between license holders and land holders involve local authority. Previously, villagers reported in media that local authority officials have been involved in unscrupulous land transactions ¹⁵⁵. There is possibility of malpractice by local authority.</p>
Impact Score: 3.2	Reason(s)
Scale: 4	Scale of malpractice is large because the abused of surface rights could generate significant illegal of benefits from land grabbing or timber logging. The malpractice could be systemic and widespread.
Consequence: 4	Consequence is large because abuse of surface rights for land grabbing or timber lodging could create severe consequences on people's livelihood, environment degradation, and wild habitat protection.
Duration: 2	Duration is short. MME has arranged 3 teams to monitor and audit exploration companies led by its senior management. MME was able to audit and cancel 45 licenses within 2016. Therefore, they will be able to mitigate the abuse of surface rights and its consequences on time.
<p>Assessment</p> <p>Likelihood x Impact = 2.6 x 3.2</p> <p>Total score: 8</p>	

Risk 2: PD17

<p>What is the risk that information of mining concession area will be selectively shared with company?</p> <p>A possible malpractice scenario relates to the preliminary assessment done by MME official. The company could influence DMEM staff(s) to release insider information or result of preliminary assessment, so they have a comparative time advantage to prepare for mineral exploration application. This risk compromises the level playing field, impacting fairness and competitiveness in application process.</p>	PD17
Likelihood: 3.8	Reason(s)

¹⁵² Ministry of Mines and Energy and Ministry of Economy and Finance, Inter-ministry Prakas No.1452 on providing incentive for MME and MEF, 03/11/2015.

¹⁵³ Senior management of multinational company.

¹⁵⁴ Author's assessment of media and report about previous corruption of DMEM.

¹⁵⁵ Radio Free Asia, Gold Mining Investment in Cambodia (Part 2), 31 March 2017. Accessed on 17 April 2017. Link: <http://www.rfa.org/khmer/news/environment/Gold-Mining-Industry-03142017062516.html>

Opportunity: 3	<p>Opportunity is medium because there are no guidelines and operational protocols to ensure information of preliminary assessment remain confidential under the current mining regulatory framework ¹⁵⁶. However, in meeting with research team, MME official mentioned that MME does not share preliminary assessment with mining companies ¹⁵⁷. The lack of system to manage confidential information within MME will create opportunity for MME staff(s) to collude with company, in return for private benefit.</p>
Accountability: 5	<p>Accountability is very low because MME will have to face the challenge in identifying person, who is accountable for leaking information. Any MME staff(s), who is involved and has access to preliminary assessment report, can share this information to the company.</p> <p>Civil-society, community, or mining companies will not be able to know, which company has the information advantage. Therefore, it is difficult for them to challenge MME.</p> <p>The lack of accountability or consequence management will create incentive for MME staff(s) to on-sell</p>
Integrity: 3	<p>Integrity of MME and DMEM staff(s) is medium because MME provides additional financial incentive for MME staff(s) from their public service revenues ¹⁵⁸. So MME staff(s) has additional official incentive income in addition to their basic salary. Better income reduces motivation for MME staff(s) to take bribes.</p> <p>Representatives of mining companies said that the application process is taken by MME staff(s) seriously and did not experience being asked for bribe ¹⁵⁹. No corruption case of DMEM staff(s) is reported with this step previously ¹⁶⁰.</p>
Impact Score: 1.6	Reason(s)
Scale: 2	<p>Scale of malpractice is small because it is unlikely to be systemic or institutional. Information can be shared by one of DMEM staff(s) involves and has access to preliminary assessment report to the company. Company will not need to influence the entire MME to get access to this information.</p>
Consequence: 2	<p>Consequence is small because there will be some economic consequence such as unfairness or unequal competition due to information asymmetry among applicants.</p> <p>This risk also will create rent-seeking behaviour among companies; so some companies do not have incentive to invest in preliminary assessment in new areas.</p>
Duration: 1	<p>Duration is very short because having information advantage will only help the company only during preparation of application ¹⁶¹.</p>
<p>Assessment Likelihood x Impact = 3.8 x 1.6</p> <p style="text-align: right;">Total score: 6</p>	

¹⁵⁶ Author's assessment of regulatory framework.

¹⁵⁷ Interview with MME's official.

¹⁵⁸ Ministry of Mines and Energy and Ministry of Economy and Finance, Inter-ministry Prakas No.1452 on providing incentive for MME and MEF, 03/11/2015.

¹⁵⁹ Senior management of multinational company.

¹⁶⁰ Author's assessment of media and report about previous corruption of DMEM.

¹⁶¹ MME's announcement 003

Risk 3: PD28

<p>What is the risk that duration for application submission will be adjusted to favour a particular company?</p> <p>Possible malpractice scenario is that company with information advantage could influence MME senior management or staff(s) to reduce duration of application. So other mining companies will not have sufficient time to prepare application to compete with them. This leads to unfair competition during preparation of application.</p>		PD28
Likelihood: 4.2	Reason(s)	
Opportunity: 5	<p>Opportunity is very high because no regulation or rule on duration of application time is found in the mining law, Sub-Decree No.72, Circular No.360, and relevant regulatory frameworks. The relevant regulations do not stipulate that announcement for application time should be published within a specified timeline after Ministerial approval ¹⁶². Without having clear timelines defined by regulation will create opportunities for officials to manipulate application time in favour of a particular applicant, in return for private benefit.</p> <p>The lack of regulation to clarify application process timeline will create malpractice opportunities for MME staff(s) to adjust the opening time in favour of particular applicant.</p>	
Accountability: 4	<p>Accountability is low. MME staff(s) must be accountable to implement decision of Minister and senior management. Based on MME Announcement 003, MME opened application for approximately 6 weeks from 18 April 2017 to 30 May 2017. Although the Minister signed the Announcement No.003 on 18 April 2017, it was posted publicly on MME's Facebook Page on 7 May 2017 ¹⁶³, which was more than 2 weeks later. The announcement was only made in local language. This reflect implementation risk of this step.</p>	
Integrity: 3	Integrity of MME and DMEM staff(s) is medium. (See Risk 2: PD17)	
Impact Score: 3.0	Reason(s)	
Scale: 3	<p>Scale of malpractice is medium because the change of application timeline could be either institutional mistake or individual mistake. To get timeline advantage, company could influence MME's senior management and staff(s) to reduce application timeline. Alternatively, this malpractice could also be a result of late posting by MME staff(s) on its media platform.</p>	

¹⁶² Mining regulatory framework includes mining law (2001), Sub-Decree No.72 (2016), Circular No.360 (2016).

¹⁶³ <https://www.facebook.com/MMECambodia/posts/720343014815284>

Consequence: 4	<p>Consequence is large reflecting the lack of implementation experience for the new process. The consequence could be significant as it involves MME's credibility to develop transparency reform. Cambodia's mining sector may not be attractive to the responsible mining investors.</p> <p>The inconsistency of MME's application timeline surrounding the 4 recent prospect areas raises concern about MME's implementation of the new process.</p>
Duration: 2	<p>Duration is short because having information advantage will only help the company during preparation of application ¹⁶⁴. Proper application assessment, in latter step, will reduce the consequence of weakness in this step.</p>
<p>Assessment Likelihood x Impact = 4.2 x 3.0</p> <p style="text-align: right;">Total score: 13</p>	

Risk 4: PD4

<p>What is the risk that criteria for selecting applicant will not be public knowable?</p> <p>If the evaluation criteria, including technical and financial credentials, for selecting applicant are not clear, it creates opportunities for manipulation and interference in the evaluation process ¹⁶⁵.</p>		PD4
Likelihood: 3.8	Reason(s)	
Opportunity: 5	<p>Opportunity is very high because no evaluation criteria for evaluation company's capacities and work program is evident in the current regulatory framework ¹⁶⁶. Based on interview with the MME official, MME's evaluation panel have their internal techniques to evaluate the application. However, no official evaluation guideline have been developed ¹⁶⁷. The recent need to cancel 45 exploration licenses for non-compliance of license's terms and conditions reflect the shortfall of previous application assessment.</p>	
Accountability: 3	<p>Accountability is medium because the MME panel rely on internal evaluation techniques and have no guidelines to support transparent evaluations, particularly when there is a shortage of mining expertise in Cambodia.</p> <p>Based on Circular No.360 and Prakas 0013, DMEM and GDMR are responsible for evaluation of applicant's technical capacity, financial capacity, and proposed work program. MME decision marker(s) monitors the process carefully, because MME has arranged each of its secretary of state to be in charged for every department, including DMEM. This administrative accountability reduces incentive for MME's senior management or staff(s) to manipulate the evaluation.</p> <p>After MME selects successful applicant, the result will be published ¹⁶⁸. The announcement of result increases accountability of evaluation for their decision because inappropriate decision could be criticized by other applicant, civil society, and media.</p>	

¹⁶⁴ MME's announcement 003

¹⁶⁵ MACRA Tool.

¹⁶⁶ Author's assessment of relevant legal framework.

¹⁶⁷ Interview with MME official.

¹⁶⁸ MME's Announcement No.003

Integrity: 3	Integrity of MME and DMEM staff(s) is medium. (See Risk 2: PD:17)
Impact Score: 4.4	Reason(s)
Scale: 4	Scale of malpractice is large because it is likely to be institutional or systemic. Without standard criteria, the malpractice will occur multiple times.
Consequence: 5	<p>Consequence is very large because over-reliance on internal evaluation process and non-availability of evaluation criteria will compromise the transparency of the process.</p> <p>The consequence on future government's fiscal revenue from mining sector is significant. Allowing a weak candidate to explore will reduce the potential to optimize the mineral endowment in Cambodia. It will take longer time before government can get revenue from that project.</p> <p>There are economic consequence. Company with poor technical-financial capacities or proposed work program will not maximize job creation or capacity development for local people. Cambodia's mining sector will not get the best technically appropriate candidate. To date, Cambodia's exploration data has been significantly on 19th century geological studies and has not been updated using the latest industry exploration practices.</p> <p>There are social and environment consequence. Companies with poor technical capacity and proposed work program will affect people's livelihood (e.g. health, job) and environment (e.g. water pollution, or deforestation) due to their improper exploration techniques.</p>
Duration: 4	Duration of impact is long because maximum duration of license could be up to 7 years ¹⁶⁹ . MME will monitor the activities of mineral exploration license holder based on the information provided application and terms and conditions. If company follows the license term and conditions, there will be no cause for a cancellation.
<p>Assessment</p> <p>Likelihood x Impact = 3.8 x 4.4</p> <p>Total score: 17</p>	

¹⁶⁹ Royal Government of Cambodia, Sub-Decree No.72 on mineral exploration and industry mining license, No.72, 05/05/2016.

Risk 5: PD13

<p>What is risk that the assessment panel will not be independent and instead be influenced by company?</p> <p>Possible malpractice scenario is that evaluation panel will be influenced by a particular applicant to be biased and overestimate the benefit of prospect sites for the mineral exploration license.</p>		PD13
Likelihood: 3.4	Reason(s)	
Opportunity: 4	<p>Opportunity is high because of the lack of access to latest industry practice.</p> <p>DMEM evaluates the applicant’s technical capacity, financial capacity, and proposed work program ¹⁷⁰. There is no legal framework to determine the composition of the evaluation panel. External expert are not involved in the evaluation process to provide an independent perspective. Mining is a very technical field; public or civil society representatives may not have the similar technical capacity to provide a strong contribution to the panel decisions.</p> <p>10-member evaluation committee is composed of only ministry officials who currently do not have to declare any conflict of interests with companies being evaluated ¹⁷⁰.</p>	
Accountability: 3	Accountability is medium (See Risk 4: PD4)	
Integrity: 3	Integrity of MME and DMEM staff(s) is medium. (See Risk 2: PD17)	
Impact Score: 4.4	Reason(s)	
Scale: 4	Size of impact is large (See Risk 4: PD4).	
Consequence: 5	Consequence is very large (See Risk 4: PD4).	
Duration: 4	Duration of impact is long (See Risk 4: PD4).	
<p>Assessment</p> <p>Likelihood x Impact = 3.4 x 4.4</p> <p>Total score: 15</p>		

¹⁶⁹ Author's assessment of relevant legal framework.

¹⁷⁰ Yesenia Amaro, Gaps in framework open mines to graft. Phnom Penh Post: 12 June 2017.
Link: <http://www.phnompenhpost.com/national/gaps-framework-open-mines-graft>

Risk 6: PP10 and Risk 7: PP11

What is the risk that there will be no due-diligence on their technical-and-financial capacities and past lawful compliance?		PP10 And PP11
Likelihood Score: 4.6	Reason(s)	
Opportunity: 5	<p>Opportunity is very high because there are no requirements or process to conduct due-diligence on the applicant's technical capacity, financial resource and records of lawful compliance ¹⁷². This creates the opportunity to falsify details or to bribe officials to accept their declarations at face value.</p> <p>Based on the interview with MME officials, MME will check the company profile and employee detail based on its internal data base. No due diligence with external information are conducted ¹⁷³.</p>	
Accountability: 5	<p>Accountability is very low because:</p> <p>There is no administrative accountability as there is no requirement from regulatory framework. The evaluation panel will not be willing to carry out the due diligence checks on the applicant.</p> <p>There is no evidence of social accountability as civil society and media are not involved in this process.</p>	
Integrity: 3	Integrity of MME and DMEM staff(s) is medium. (See Risk 2: PD17)	
Impact Score: 3.6	Reason(s)	
Scale: 4	Scale of malpractice is large because evaluation panel will have to rely on their own judgment to validate the technical and financial capacities without the support of the due diligence process. The issue will occur multiple times in the future.	
Consequence: 5	Consequence of impact is very large because company that provided false information will be unlikely to comply with requirements on their expenditure, social, and environment obligations. If this type of company is granted license, there will be severe consequences on fiscal, economic, social, and environment.	
Duration: 2	Duration of impact is short because this type of company will create problem at the beginning of license period. The impact will be mitigated upon MME reviews of their activities and license. Their license will be cancelled if they do not comply with license's terms and conditions.	
Assessment Likelihood x Impact = 4.6 x 3.6		Total score: 17

¹⁷² Author's assessment of regulatory framework.

¹⁷³ Interview with Director of DMEM

Risk 8: PD9

<p>What is the risk that details of shareholders or beneficial owner of selected company will be not declared?</p> <p>Undeclared beneficial ownership creates the possibility of unmanageable conflict of interest, illicit funds flow and favouritism. Companies with powerful beneficial owners will influence relevant government agencies to conceal detailed information of their shareholdings and beneficial ownership.</p>		PD9
Likelihood: 3.8	Reason(s)	
Opportunity: 4	<p>Opportunity is high because the current mining regulatory framework does not require declaration of company's beneficial ownership. MME announces the name of selected company to grant mineral exploration license. Circular No. 360 states that the application form and supporting documents are public documents, which could be given to public to review. It is unsure if MME will have that information and announce details of shareholder or beneficial ownership ¹⁷⁴.</p> <p>During the 9th June 2017 validation workshop, MME mentioned that information of beneficial ownership is cross-referenced against the blacklist provided by Ministry of Economy and Finance. In the event that there is conflict, the applicant will be requested to revise its beneficial ownership structure.</p>	
Accountability: 4	Accountability is low. The government is currently drafting a law on information accessibility, but it is unlikely to cover issue of beneficial ownership.	
Integrity: 3	Integrity of MME and DMEM staff(s) is medium. (See Risk 2: PD17)	
Impact Score: 4.4	Reason(s)	
Scale: 4	Scale of malpractice is large because the issue is systemic. Without the published shareholders or beneficial ownership details, the possibility of major conflict of interest involving politicians or high-profile officials will be a major risk.	
Consequence: 4	Consequence is large because company with powerful beneficial owners may opt to ignore their licensing commitments as well as their social or environmental compliances. The consequence is significant.	
Duration: 5	Duration is very long because the company with powerful beneficial ownership will likely seek to influence MME's work in later process during exploration, application for industrial mineral license, and mining operation.	
Assessment		
Likelihood x Impact = 3.8 x 4.4		Total score: 17

¹⁷⁴ MME's announcement No.003

Risk 9: PP7

<p>What is the risk that affected community will be misrepresented in public consultation?</p> <p>Affected community will be misrepresented if public consultation is conducted without their presence. There can be possible collusion between local authority and company to precede public consultation without participation of affected community or without representation by civil society. A good public consultation should have comprehensive representation of all stakeholders including company, authority, community, and civil society.</p>		PP7
Likelihood Score: 3.8	Reason(s)	
Opportunity: 5	<p>Opportunity is very high because there are no official guidelines or legal frameworks to determine who should be invited to join the public consultation ¹⁷⁵. There should be regulations to manage good and fair representation of stakeholders in public consultation, so there is less opportunity for authority and exploration company to manipulate the biased representation in public consultation.</p> <p>Public consultation process is joint responsibility of the ministry and applicant company working through the local authorities to arrange the consultation event. MME commented in certain cases that the community participants were invited by the local authorities for "convenience of the meeting", and did not truly reflect the affected interest groups ¹⁷⁶.</p> <p>The issue of payment for holding consultation meeting (participation and venue) was highlighted by CSO participant during the June workshop. In response, MME commented that it may be appropriate to award token allowance for participants of public consultation. This issue can be part of the public consultation guideline ¹⁷⁷.</p> <p>The objective of public consultation process is not fully understood. Some stakeholders think that objective of public consultation is to reach full consensus on decision. However, MME's Secretary State clarified that objective of public consultation is to provide information sharing with affected stakeholders. Clarity of public consultation's objective needs to be included in the guideline/SOP ¹⁷⁸.</p>	
Accountability: 3	<p>Accountability is medium because affected people will report to the media or CSO about this issue if they are not invited for public consultation. Due to the active participation from media and civil society, local authority and MME staff(s) will recognize participation of affected community. Therefore, they will run public consultation with some accountability. The formation of the EIGF is a positive development towards greater accountability. Additionally, MME has "Hot-Line" for public complaints to be registered.</p>	
Integrity: 3	Integrity is medium. (Refer to Risk1: CF3)	
Impact Score: 3.8	Reason(s)	

¹⁷⁵ Author's assessment of regulatory framework.

¹⁷⁶ Comments during validation workshop on 9th June 2017.

¹⁷⁷ Ibid.

¹⁷⁸ Ibid.

Scale: 3	Scale of malpractice is medium because misrepresentation of affected community is possible, in which company attempts to influence local authority to ignore the affected community's participation in public consultation.
Consequence: 4	Consequence is large because marginalization of impacted community during the public consultation will adversely compromise the community's livelihood. The community may be deprived of their due compensation or benefit from the project of exploration company. There will be significant economic consequence, if the conflicts escalates to business disruptions and also creates a negative image of the Cambodia mining sector. Investors could find Cambodia not attractive for mining investment.
Duration: 4	Duration of impact is long because unresolved conflict resulting from improper public consultation will affect community and company throughout the entire license period.
Assessment Likelihood x Impact = 3.8 x 3.8 Total score: 14	

Risk 10: PD16

<p>What is the risk that negotiation or agreement with landholder or community will be manipulated?</p> <p>The possibility of collusion between local authority and company to conduct public consultation without the affected community or without witness by civil society representation cannot be discounted. A good public consultation should have comprehensive representation of all stakeholders including the company, authority, community, and civil society.</p>		PD16
Likelihood: 3.8	Reason(s)	
Opportunity: 5	Opportunity is very high because there are no official guidelines or legal frameworks for negotiation with the community for multi-party agreement. Additionally, people living in rural area have limited education and understanding of the mining sector issue. The opportunity to manipulate agreement with the community exists.	
Accountability: 3	Accountability is medium (See Risk PP7).	
Integrity: 3	Integrity is medium. (Refer to Risk1: CF3)	
Impact Score: 3.8	Reason(s)	
Scale: 3	Scale of malpractice is medium. (See Risk 9: PP7).	
Consequence: 4	Consequence is large (See Risk 9: PP7).	
Duration: 4	Duration of impact is long (See Risk 9: PP7).	
Assessment		
Likelihood x Impact = 3.8 x 3.8		Total score: 14

Risk 11: PD3

<p>What is the risk that the requirement for environmental compliance will be manipulated?</p> <p>A possible malpractice scenario is that company will influence MME officials to ignore the environmental compliance step. For example, if they pay an inducement, MME official(s) will not require them to get environmental approval from MoE.</p> <p>Another possible malpractice scenario is that company will bribe MoE officials to issue an approval without the requirement for an initial environmental and social impact assessment.</p>		PD3
Likelihood Score: 3.4	Reason(s)	
Opportunity: 4	<p>Opportunity is high because there is confusion or unclear requirements of IESIA, as required by law and what is accepted in practice. For construction mineral license and small-scale mining license, there is MME-MoE Inter-Ministry Prakas No.191 covering environmental compliance ¹⁷⁹. For Industrial Mining License, the law is clear that applicant needs to conduct full-scale environmental impact assessment ¹⁸⁰.</p> <p>However, there are no legal guidelines regarding environmental compliance for issuing mineral exploration license. Due to this lack of clarity on the IESIA requirement, the work program will not be comprehensive enough to prevent environmental non-compliance.</p>	
Accountability: 3	Accountability is medium because the civil society organization is only involved in the decision in the review of full environmental impact assessment report ¹⁸¹ .	
Integrity: 3	Integrity of both MME and MoE is medium. Similar to MME, civil society have praised the reform commitment of MoE.	
Impact Score: 4.4	Reason(s)	
Scale: 4	Scale of impact could be significant because the EISIA requirement is currently being waived. Therefore, the work program is unlikely to be comprehensive during application assessment.	
Consequence: 4	Consequence of impact is significant. If the site is in an environmentally sensitive area, the MoE approval will have significant consequences on environment or community.	
Duration: 5	<p>Consequence of impact is significant. If the site is in an environmentally sensitive area, the MoE approval will have significant consequences on environment or community.</p> <p>Duration of impact could be very long because the environmental impact could extend beyond the duration of license.</p>	
Assessment Likelihood x Impact = 3.4 x 4.4		
Total score: 15		

¹⁷⁹ MME-MoE, Inter-Ministry Prakas No.191 on Grading of Environmental Impact Assessment for Construction Mineral Operation or Other Small-Scale Mineral Operation, 26 April 2016.

¹⁸¹ Sub-Decree No.72 on Process for Environmental Impact Assessment, 11 August 1999

¹⁸² Interview with MoE Officials

Risk 12: RA13

What is the risk that details of Additional Agreement will not be publicly declared? Secrecy around the agreement reduces the ability of stakeholders to ensure that the government, local authorities and mining companies are held accountable to the licensing terms and conditions. This lack of transparency will create possible opportunities for malpractice because no one except those directly involved will know what the agreed obligations between the company and the government ¹⁸² .		RA13
Likelihood: 3.4	Reason(s)	
Opportunity: 4	Opportunity is high because under the current mining legal framework, there is no evidence to suggest that the “Additional Agreement” over License’s Terms and Conditions will be accessible to public ¹⁸³ . Therefore, there is high opportunity that this information will be not published.	
Accountability: 4	Accountability is low because MME official will not have obligation to share information of “Additional Agreement” with public because the Freedom of Information Law is not available yet in Cambodia. This law is currently being drafted by the government ¹⁸⁴ . Therefore, MME or authority currently do not have obligation to provide the public with access to this information.	
Integrity: 3	Integrity of MME and DMEM staff(s) is medium. (See Risk 2: PD17)	
Impact Score: 2.8	Reason(s)	
Scale: 4	Scale of malpractice could be large because it covers the mining company’s additional obligation in addition to the standard Terms and Conditions. This could cover issues of remediation, CSR accountability or capital funding requirement. This issue could occur multiple times in the future.	
Consequence: 3	Consequence is medium because when activities of license holders are different from “Additional Agreement”, it will be very difficult for stakeholders to investigate alleged illegal behaviour. However, MME has been strengthening the monitoring and auditing activities of exploration company (See Contextual Analysis). There are financial penalties should the exploration company abusive the “Additional Agreement”. In serious cases, exploration license could be suspended or cancelled.	
Duration: 2	Duration of impact is short because: When activities of license holders are different from “Additional Agreement”, other stakeholders will not be able to inform MME on time due to the lack of information about “Additional Agreement”. However, MME has arranged 3 teams to monitor and audit exploration company led by its senior management. MME was able to audit and cancel 45 licenses in 2016 alone. Therefore, non-publication of the “Additional Agreement” will not prevent MME to enforce the law on exploration company abusing “Additional Agreement” on time.	
Assessment Likelihood x Impact = 3.8 x 2.8		
Total score: 11		

¹⁸² MACRA Tool.

¹⁸³ Author's assessment of regulatory framework.

¹⁸⁴ Ministry of Information. <http://www.a2i.info.gov.kh/>.

Risk 13: PD36 and Risk 14: RA2

<p>PD36: What is the risk that the details of license that have been awarded will not be publicly known?</p> <p>Lack of transparency around the license details (e.g., GPS coordinates of license area, date of award, duration of license, social and environmental obligations, work program, or the commodity being produced) creates opportunities for illegal mining (e.g., mine outside the license area, beyond the license period, and to exploit of non-approved minerals), and therefore allow companies to bribe officials to ignore these activities.</p> <p>RA2: What is the risk that information about a particular license that has been awarded is not legally available?</p> <p>Freedom of information laws, and implementation of these laws, can improve transparency over past decision-making thereby improving accountability over public officials ¹⁸⁵.</p>		PD36 and RA2
Likelihood Score: 3.4	Reason(s)	
Opportunity: 4	Opportunity is high because there is no evidence suggesting that details of license will be available and accessible for public request ¹⁸⁶ . Information relating to the successful applicant and related license details are not publicly available.	
Accountability: 4	Accountability is low because MME official will not have obligation to share information of license with public because the Freedom of Information Law is not available yet in Cambodia. This law is currently being drafted by the government ¹⁸⁷ . Therefore, MME or authority currently do not have accountability to provide the public with access to this information.	
Integrity: 3	Integrity of MME and DMEM staff(s) is medium. (See Risk 2: PD17)	
Impact Score: 2.8	Reason(s)	
Scale: 4	Scale of malpractice could be large. (Refer to Risk 12: RA13)	
Consequence: 3	Consequence is medium. (Refer to Risk 12: RA13)	
Duration: 2	Duration of impact is short. (Refer to Risk 12: RA13)	
Assessment		
Likelihood x Impact = 3.8 x 2.8		Total score: 11

¹⁸⁵ MACRA Tool

¹⁸⁶ Author's assessment of regulatory framework.

¹⁸⁷ Ministry of Information. <http://www.a2i.info.gov.kh/>.



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8. Discussion

8. Discussion

The risk assessment identified that the new process for granting mineral exploration license has 14 governance risks covering 1 contextual (CF) risk, 8 process-design (PD) risks, 3 process-practice (PP) risks, and 2 response-accountability (RA) risks. Additionally, 14 risks identified with previous license process have been eliminated or mitigated to manageable levels due to introduction of new regulation and license process, particularly Sub-Decree No.72.

The risks identified are primarily process related. This reflects the early stage of the MME's implementation of the reform process and provides a great opportunity for stakeholders to contribute to the governance of mineral exploration license. The formation of EIGF provides an excellent working platform to progress this development, which will require support and commitment from all relevant stakeholders.

Figure 21 and Table 24 show the governance risks existing in new license process.

FIGURE 21: GOVERNANCE RISK MATRIX

Likelihood	5 Most Likely	5	10	15	20 PP10, PP11	25
	4 Likely	4	8 PD17	12 PD28, RA13, PD36, RA2	16 PD4, PD9, PP7, PD16, PD13, PD3	20
	3 Neutral	3	6	CF3 9	12	15
	2 Unlikely	2	4	6	8	10
	1 Most Likely	1	2	3	4	5
		1 Insignificant	2 Minor	3 Moderate	4 Major	5 Catastrophic
	Impact					

TABLE 24: IDENTIFIED RISKS

N	Identified Risks	Likelihood	Impact	Score
1	CF3: What is the risk that surface rights on mining area will be manipulated?	2.60	3.20	8
2	PD17: What is the risk that information of potential mining area will be selectively distributed with company?	3.80	1.60	6
3	PD28: What is the risk that duration for application submission will be adjusted to favour a particular company?	4.20	3.0	13
4	PD4: What is the risk that criteria for selecting applicant will not be public knowable?	3.80	4.40	17
5	PD13: What is risk that assessment panel will not be independent or will be influenced by company?	3.40	4.40	15
6	PP10: What is the risk that there will be no due-diligence on applicant's claim technical and financial capacities?	4.60	3.60	17
7	PP11: What is the risk that there will be no due-diligence on applicant's past lawful compliance?	4.60	3.60	17
8	PD9: What is the risk that details of shareholders or beneficial owner of selected company will not be publicly knowable?	3.80	4.40	17
9	PP7: What is the risk that affected community will be misrepresented in public consultation?	3.80	3.80	14
10	PD16: What is the risk that negotiation or agreement with landholder or community will not be conducted appropriately?	3.80	3.80	14
11	PD3: What is the risk that requirement for environmental compliance will be unclear?	3.40	4.40	15
12	RA13: What is the risk that details of "Additional Agreement" will not be publicly knowable?	3.40	2.80	11
13	PD36: What is the risk that the details of licenses that have been awarded will not be publicly known?	3.40	2.80	11
14	RA2: What is the risk that information about a particular license that has been granted will not be legally available?	3.40	2.80	11

8.1 Very-High Risks

The very-high risks identified related primarily to the application evaluation process, public consultation, and beneficial ownership challenges.

4 Risks (PP10, PP11, PD4, and PD13), identified in application evaluation, exist due to the lack of a legal and governance framework to define the criteria for evaluation, composition of the evaluation panel (including an independent external expert), and the requirement for a due-diligence on applicant's technical capacities, financial resource, and past lawful compliance.

Under the public consultation category, the 2 identified risks (PP7 and PD16) relate to good stakeholder representation and need for proper public consultation guideline under the legal frameworks.

The beneficial ownership concern (PD9) relates to the lack of transparency in the governance system and involve inter-ministry jurisdiction (MME and MoC). This highlights the potential loss of accountability leading to the possibility of unscrupulous activities being introduced into the mining sector.

1 risk (PD3) relates to clarity of environmental compliance guideline, which will attract more responsible investors to participate in the license process.

8.2 Significant Risks

The significant risks were identified relating to the issues of limited access to public information and the need for better clarity of guidelines.

3 risks (RA13, PD36, and RA2) relate to limited access to public information. To mitigate these risks, there is a strong case for development of a credible and accessible database system to support MME's reform agenda for greater transparency.

1 risk (PD28) relates to the need for defined timeline of application duration to ensure that MME provides a level playing field for all applicants.

8.3 Moderate Risks

The 2 moderate risks (CF3 and PD17) are essentially implementation risks. With stronger enforcement from MME's senior management, we believe that these risks are deemed manageable.

9. Recommendations

This research focus on the prioritized recommendations to mitigate the “Significant” and “Very-High” Risks. 2 other moderate risks (CF3 and PD17) were identified and we believe can be mitigated through better MMEs enforcement.

Risk PP10 and PP11: Relate to the non-existence of due-diligence

Colour + Score	Impact Score + Context	Stakeholder Interest + Resources				Is the risk a PRIORITY for action?
<p>PP10 and PP11: What is the risk that there will be no due-diligence on their technical-and-financial capacities and past lawful compliance?</p> <p>Likelihood = 4.6</p> <p>Impact = 3.6</p> <p>Total score = 17</p> <p>Colour is red</p> <p>(Score + colour suggests risk level is very high)</p>	<p>Impact score is 3.6/5, addressing this risk will have major impact.</p>	<p>Stakeholders: MME and applicants</p>	<p>Cost:</p> <p>The cost should be viewed as an investment to ensure MME attracts high-quality applicant.</p> <p>Cost recovery can be incorporated into application fee.</p>	<p>Time required:</p> <p>It could take 6 to 12 months as part of the MMEs reform agenda.</p>	<p>Yes.</p> <p>This research recommends a more robust framework incorporating due diligence to raise the quality of applicants for mineral exploration license. This can be funded from increasing the application fee.</p> <p>This recommendation was endorsed by participants of validation workshop on 9th June 2017.</p>	

Risk PD4 and PD13: Relate to evaluation of application

Colour + Score	Impact Score + Context	Stakeholder Interest + Resources			Is the risk a PRIORITY for action?
<p>PD4: What is the risk that criteria for selecting applicant will not be public knowable?</p> <p>Likelihood = 3.8</p> <p>Impact = 4.4</p> <p>Total score = 17</p> <p>PD13: What is risk that assessment panel will not be independent or will be influenced by company?</p> <p>Likelihood = 3.4</p> <p>Impact = 4.4</p> <p>Total score = 15</p> <p>Colour is red (Score + colour suggests risk level is significant)</p>	<p>Impact score is 4.4/5, addressing this risk will have major impact.</p> <p>Contextual factors: 45 exploration licenses have been cancelled due to non-compliance. This reinforces the case for more robust and stringent evaluation process to ensure the improved quality of selected candidate.</p>	<p>Stakeholders: MME, CSO, and applicant.</p>	<p>Cost:</p> <p>Cost recovery for external expert can be incorporated into application fee.</p> <p>Cost for development of evaluation SOP/ guideline can be discussed by EIGF members.</p>	<p>Time required: it could probably take 12 months for to develop the evaluation criteria and framework.</p> <p>- 6 months: development of evaluation guideline.</p> <p>- 6 months: training.</p>	<p>Yes.</p> <p>The research recommends:</p> <p>1) Evaluation panel members to declare that they are not related to or have potential conflict of interests with applicant. This weakness has been acknowledged.</p> <p>2) Involvement of external expert was extensively discussed at the workshop to mitigate the risks.</p> <p>3) Clearer evaluation guideline/ SOP including the requirement for IESIA to provide more comprehensive work program and compliance with Sub-Decree No. 72.</p> <p>4) Additional recommendation derived from the validation workshop on 9 June 2017 is to make the decision report of application evaluation available to the public for greater accountability and transparency.</p>

Risk PP7 and PD16: Relate to public consultation

Colour + Score	Impact Score + Context	Stakeholder Interest + Resources			Is the risk a PRIORITY for action?
<p>PP7: What is the risk that affected community will be misrepresented in public consultation?</p> <p>Likelihood = 3.8</p> <p>Impact = 3.8</p> <p>Total score = 14</p> <p>PD16: What is the risk that negotiation or agreement with landholder or community will be manipulated?</p> <p>Likelihood = 3.8</p> <p>Impact = 3.8</p> <p>Total score = 14</p> <p>Colour is red (Score + colour suggests risk level is very high)</p>	<p>Impact score is 3.8/5, addressing this risk will have major impact.</p> <p>Contextual factors: The public consultation must be a real platform for the affected community and CSO to voice their concern on the prospect exploration site. If properly implemented by MME and local authority, the partnership between affected community and exploration company will be positive and ensure mutual benefit.</p>	<p>Stakeholders: MME, local authority, applicant, CSO, and community.</p>	<p>Cost: Cost for development of public consultation guideline can be discussed by EIGF members</p> <p>The workshop also discussed about the allowance compensation to participants from community in consultation.</p>	<p>Time required: Probably 24 months to develop and approve public consultation guideline/framework.</p> <p>- 12 months: development and consultation. - 12 months: training. (The recent 4 prospect licenses provide great opportunity for formal public consultation to be included into license process).</p>	<p>Yes. This research recommends:</p> <p>1) SOP/guideline to ensure proper representation of stakeholders. Guideline should have published schedule of allowances. Details to be developed.</p> <p>2) Official record of consultation discussion and agreement. Official record to be shared with relevant stakeholders.</p> <p>3) Enforcement of the public consultation agreement by MME.</p> <p>4) The composition of environmental compliance panel to be discussed at the EIGF and incorporated into the guideline.</p>

Risk PD9: Relates to beneficial ownership

Colour + Score	Impact Score + Context	Stakeholder Interest + Resources			Is the risk a PRIORITY for action?
<p>PD9: What is the risk that detail of shareholders or beneficial owner of selected company will not be declared?</p> <p>Likelihood = 3.8</p> <p>Impact = 4.4</p> <p>Total score = 16</p> <p>Colour is red</p> <p>(Score + colour suggests risk level is very high)</p>	<p>Impact score is 4.4/5, addressing this risk will have major impact.</p> <p>Contextual factors: The governance system and involves inter-ministry jurisdiction (MME and MoC). This highlights the potential loss of accountability to prevent unscrupulous activities being introduced into the mining sector.</p>	<p>Stakeholders: MME, MoC, and applicant</p>	<p>Cost: Cost to collect this information is minor, as it is available with MoC's database</p>	<p>Time required: Depends on political will and commercial sensitivity of information.</p>	<p>Watch-list. This research recommends:</p> <p>1) Adopt the legal framework on declaration of beneficial ownership of applicants.</p> <p>2) Declaration of beneficial ownership as application's criteria.</p> <p>3) Due diligence to cover beneficial ownership and integrity of the company.</p>

Risk PD3: Relates to environmental compliance

Colour + Score	Impact Score + Context	Stakeholder Interest + Resources			Is the risk a PRIORITY for action?
<p>: What is the risk that the requirement for environmental compliance will be manipulated?</p> <p>Likelihood = 3.4 Impact = 4.4 Total score = 15</p> <p>Colour is red (Score + colour suggests risk level is significant)</p>	<p>Impact score is 4.5/5, addressing this risk will have major impact.</p> <p>Contextual factors: The Government's Sub-Decree No.72 stipulates the requirement for the Initial Environmental and Social Impact Assessment (IESIA) report to be submitted during initial application.</p>	<p>Stakeholders: MME, MoE, CSO, and applicant.</p>	<p>Cost: Cost is minor because it is internal MME and MoE's cooperation.</p>	<p>Time required: Depend on political will.</p>	<p>Watch-list. This research recommends:</p> <p>1) The research supports the requirement under Sub-Decree No.72 because it will lead to a more comprehensive work program.</p> <p>MME has strengthened the requirement for IESIA in the latest announcement about 4 prospect licenses ¹⁸⁸. https://ickmer.wordpress.com/2017/06/25/four-companies-are-selected-to-complete-processes-for-granting-licenses/</p> <p>2) This is the requirement for an initial assessment, not a full-scale EIA.</p>

¹⁸⁸ Meng Saktheara. Four Companies Are Selected to Complete Processes For Granting Licenses. 25th June 2017
Link: <https://ickmer.wordpress.com/2017/06/25/four-companies-are-selected-to-complete-processes-for-granting-licenses/>

Risk RA13, PD36, and RA2: Relate to disclosure of information

Colour + Score	Impact Score + Context	Stakeholder Interest + Resources			Is the risk a PRIORITY for action?
<p>RA13: What is the risk that details of Additional Agreement will not be publicly declared?</p> <p>Likelihood = 3.8</p> <p>Impact = 2.8</p> <p>Total score = 11</p> <p>PD36: What is the risk that the details of license that have been awarded will not be publicly known?</p> <p>Likelihood = 3.8</p> <p>Impact = 2.8</p> <p>Total score = 11</p> <p>RA2: What is the risk that information about a particular license that has been awarded is not legally available?</p> <p>Likelihood = 3.8</p> <p>Impact = 2.8</p> <p>Total score = 11</p> <p>Colour is amber (Score + colour suggests risk level is significant)</p>	<p>Impact score is 2.8/5, addressing this risk will have moderate impact.</p> <p>Contextual factors: The current regulatory framework provides limited access to public information. To mitigate these risks, there is a strong case for development a credible and accessible database system to support MME's reform agenda for greater transparency.</p>	<p>Stakeholders: MME, applicant, CSO, and community.</p>	<p>Cost: Cost for development of database system can be discussed by EIGF members. TI-Cambodia's initiative on EIGF website.</p>	<p>Time required: Probably 24 months to develop and approve public consultation guideline/framework. - 18 months: development and consultation. - 6 months: training.</p>	<p>Watch-list. This research recommends:</p> <ol style="list-style-type: none"> 1) Support development of database system. 2) Non-confidential information should be available on request. 3) MME should be recognized as the official source of license information. Information should be updated regularly. 4) Additional recommendation derived from the validation workshop on 9 June 2017 is to display the basic information related to licenses should be publicly, so local people can be informed and request for further information. Information can be made available on EIGF's website. 5) The designated concession area should be visibly marked out.

Risk PD28: Relate to timeline of application period

Colour + Score	Impact Score + Context	Stakeholder Interest + Resources			Is the risk a PRIORITY for action?
<p>PD28: What is the risk that duration for application submission will be adjusted to favour a particular company?</p> <p>Likelihood = 4.2</p> <p>Impact = 3.0</p> <p>Total score = 13</p> <p>Colour is amber</p> <p>(Score + colour suggests risk level is significant)</p>	<p>Impact score is 3/5, addressing this risk will have moderate impact.</p> <p>Contextual factors:</p> <p>The current process does not have defined timeline of application duration to ensure that MME provides a level playing field for all applicants. It also carries implementation risk when MME staff(s) does not promptly execute the approval timeline reflecting Minister's approval and senior management's decision.</p>	<p>Stakeholders:</p> <p>MME and applicant</p>	<p>Cost:</p> <p>Cost is minor because it is internal MME's process.</p>	<p>Time required:</p> <p>Depends on MME's internal process.</p>	<p>Watch-list.</p> <p>This research recommends:</p> <p>1) Timeline for each step of application to be defined clearly. Introduce mechanism for application status feedback. MME will take into consideration the adequate timeline of application period.</p> <p>2) Stronger enforcement of the announcement.</p> <p>3) At the 9th June 2017 validation workshop, the private sector's representative recommended company should be given a 60-day period to prepare their application for mineral exploration license. MME responded that they will take this recommendation into consideration.</p>

10. Conclusion

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The study recognizes the reform program carried out by Royal Government of Cambodia in addressing the governance risks in the mining sector in Cambodia. Led by the Ministry of Mines and Energy, a new license process for granting mineral exploration license was initiated and the process had eliminated 14 identified risks. However, 14 remaining risks were identified in the new process.

These remaining risks reflected the gaps in the area of evaluation process, pre-award and post award information disclosure, and area of public consultation. This study highlighted the prioritised needs to establish standard operation procedure (SOP) or guideline for public consultation, application evaluation, and information disclosure to mitigate the remaining risks.

During the preparation of this final report, 4 mineral concession areas were opened for mineral exploration license applications. MME demonstrated greater transparency in the implementation of new process for granting mineral exploration license through its first-ever public call inviting for application and the public declaration of successful applicants. Since the validation workshop on 9th June 2017, MME has strengthened the requirement for initial environmental and social impact assessment as part of the license process. Furthermore, MME has committed to address the remaining risks and recommendations, identified in this report, by the end of 2018.

Extractive Industry Governance Forum (EIGF) is the multi-stakeholders platform to promote transparency, accountability, and level-playing field for future good governance and responsible business investment in Cambodia's mining sector. The EIGF relies on the critical partnership and balanced interests among key participating players: industry, government, community, and civil society organisations. This research study relied strongly on the feedbacks, comments, and views of EIGF's members. Strong collaboration of EIGF's members will enhance the successful implementation of the recommendations identified in this report.

The mining industry is young and new, which currently contributes less than 1% of Cambodia's GDP. This industry has the potential to be the game changer for Cambodia's socio-economic development in line with MME's sector vision "Wealth for All". Implementation of these changes will require commitments of stakeholders' participation including financial and technical supports.

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ANNEX

Annex 1: Articles Related to Process for Granting Mineral Exploration License

Article 12:

Where the Minister in charge of mineral resource determines that an exploration or mining license application to indicate a large scale project of special national significance, he shall enter into negotiations with the applicant reaches a supplementary Mineral Investment Agreement to be appended to the license.

Article 13:

For certain unlicensed areas of known mineral potential, the Minister in charge of mineral resource may, by public notice, declare as an area reserved for bidding by preparing a formal negotiation and evaluation to issue an appropriate mineral license and, where required, negotiation of a supplementary mineral investment agreement as described in Article 12.

Chapter IV: Mineral Resource License Procedures

Article 14:

Khmer citizen may submit in person the application for an artisan mining license to the specialized office of the Ministry in charge of minerals, located in provinces/ municipalities in where the artisan mining license area is situated.

Article 15:

Natural persons or legal entities shall submit applications for all other licenses issued under the authority of this law to the Minister in charge of mineral resources.

Article 16:

The Minister in charge of mineral resources sector shall provide a response as to his approval or rejection of an application within forty five (45) days at the latest following the date of receiving a complete and technical compliance application.

Article 17:

Except for the artisan mining license, the holder of all other licenses issued under the authority of this law may request to renew, modify, return, mortgage, assign or inherit it with a written approval from the Minister in charge of minerals.

Article 18:

A license issued under the authority of this law may be suspended or cancelled for any holder who breaches this law. Procedures of suspension or revocation of a license shall be determined by Sub-Decree.

Article 19:

The holder of a license issued under the authority of the law shall submit to the Minister in charge of mineral resources the application forms, reports, plans and notices at the prescribed date and maintain records and documents.

Article 20:

The confidentiality of all documents and information as provided in Article 19 of this law shall be maintained until the termination of such license or subsequent to the receipt of an approval from the holder to allow public disclosure of such information:

- Provided that information related to environmental and social issues may be released to the public upon notice to the holder of such action by the Minister in charge of minerals; And provided that the Ministry in charge of minerals may compile and publish statistics quoted from the holder's documents and information as it relates to national mineral sector analysis

Annex 2: Supporting Documents for Application

Support documents to be attached with application for mineral exploration license based on sample application form

- 1) A letter and commercial registration certification issued by Ministry of Commerce: 1 Copy
- 2) Memorandum and articles of association: 1 Copy
- 3) A Copy of patent for 2017: 1 Copy
- 4) Value-added tax registration certification issued by General Department of Taxation: 1 Copy
- 5) Identification card or passport for foreign applicant: 1 Copy
- 6) Letter certifying applicant's address with a photo 4x6 and letter certifying's address by local authorities: 1 Copy
- 7) Company's organization, director/representative and CV of each person involved with indication of their experiences: 1 Copy
- 8) Evidence showing its financial and technical capability or agreement on cooperation with its partners: 1 Copy
- 9) Detailed work programme and budget for the first 3 years: 1 Copy
- 10) Commitment to provide budget for the following requirement for: 1) Inspection, 2) Training, 3) Restoration of exploration sites and environment, 4) Community development
- 11) Project/program for training and employment for Cambodian workers to work for company during mineral exploration: 1 Copy
- 12) Report on the company's commitments to protect environment and society and participate in development of communities: 1 Copy

Annex 3: Summary of vulnerabilities and risks

Vulnerabilities	Result in Corruption Risks
<p>There is lack of public understanding relating to the rights and authorities granted under the mineral licenses ¹⁸⁹. In some cases, the mining license are used as instruments to get forced access or even illegal land grabbing with detrimental consequences to the local communities ¹⁹⁰. In other cases, villagers prevent mining companies to explore concession areas. Therefore, it creates opportunity for corruption, as the mining company could bribe authority to resolve or overlook issues and problems related to surface rights conflict between mining company and landowners.</p>	<p>CF3: What is the risk that surface rights on mining area will be manipulated?</p>
<p>This risk was not with the previous process because preliminary assessment was not included in the process.</p> <p>For the new process, this risk could exist because we could not find evidence on how the confidential information from the preliminary assessment is managed, in line with the requirements of the current mining regulatory framework, particularly Sub-Decree No.72 and Circular No.360. However, the MME official interviewed mentioned that MME does not share preliminary assessment with mining companies ¹⁹¹. The lack of regulation to manage confidential information within MME will create opportunities for MME staff(s) to collude with company, in return for private benefit.</p> <p>Official may favour certain companies and therefore limit what information competitors are able to obtain. Mining companies may also influence officials to engage in the biased distribution of information ¹⁹².</p>	<p>PD17: What is the risk that information of mining concession area will be selectively distributed with company?</p>
<p>In the previous process, we could not find any report about application period for mineral exploration license in law and in practice.</p> <p>In the new process, there is risk that MME official(s) will adjust application time to favour a particularly company, as there is no information that defines duration for open application in current regulatory framework. No definitive process timelines and dates are included in the public announcement.</p> <p>Based on MME's Announcement 003, the MME application was opened for approximately 6 weeks from 18 April 2017 to 30 May 2017. Although the announcement was signed by the Minister on 18 April 2017, it was only posted publicly on 7 May 2017, more than 2 weeks later.</p> <p>The lack of implementation regulation to clarify the duration for application submission will create conflict opportunities and compromise the accountability of MME official(s) towards a timing bias for a particular applicant.</p>	<p>PD28: What is the risk that duration for application submission will be adjusted to favour a particular company?</p>

¹⁸⁹ Meng Sakthea, What rights and authority given in a mineral license?, 02 November 2016, Accessed on: 25 February 2017. Link: <https://ickhmer.wordpress.com/2016/11/02/what-rights-and-authorities-given-in-a-mineral-license/>.

¹⁹⁰ Ibid.

¹⁹¹ Interview with Director of Department of Mineral Exploration, 2017.

¹⁹² MACRA Tool

<p>In the previous process, we could not find any evidence of an assessment panel for application evaluations. The then selection process was not transparent.</p> <p>This same risk remains in the new process. Based on Circular No.360, DMEM evaluates applicant's technical capacity, financial capacity, and proposed work program ¹⁹³, but there is no mention of the selection process and the composition of the evaluation panel</p> <p>It is good practice to have independent experts in assessment panels, to reduce the possibility of bias or interference in decisions ¹⁹⁴. However, the lack of mining sector expertise in Cambodia is a consideration.</p>	<p>PD13: What is risk that assessment panel will not be independent or will be influenced by company?</p>
<p>In the previous process, we could not find any evidence of the evaluation criteria. This is a major risk.</p> <p>This risk still remains in the new process. The selection criteria, framework, or guidelines to evaluate the applicant's technical and financial capacities and work program have not been incorporated in the current regulatory framework ¹⁹⁵.</p> <p>It creates opportunities for manipulation and interference in the evaluation process ¹⁹⁶. This remains a major risk.</p>	<p>PD4: What is the risk that criteria for selecting applicant will not be public knowable?</p>
<p>Due-diligence on the applicant's capacities and past lawful conduct, were not required in MIME's previous process. This is a major risk.</p> <p>This risk still exists in the new process. There is still no requirement to conduct a due-diligence on the applicant's capacities and background checks on past lawful compliance. ¹⁹⁷.</p> <p>If company's proof of capacity and financial resources are not verified, the opportunity to falsify details or to bribe officials is real. Moreover, absence of background checks on integrity creates the opportunity for criminal intents/ interests or past illegal behaviour to be overlooked. This will allow high risked applicants to engage in corrupt and illegal activities into the mining sector ¹⁹⁸. This remains a major risk.</p>	<p>PP10: What is the risk that there will be no due-diligence on applicant's claim technical and financial capacities?</p> <p>lawful compliance?</p>
	<p>PP11: What is the risk that there will be no due-diligence on applicant's past lawful compliance?</p>
<p>In the previous process, details of beneficial owner of selected company were not required. ¹⁹⁹. The documents that company submitted to MIME did not contain information of beneficial ownership. This risk existed in the former process.</p> <p>Similar to previous process, the new process also carries this risk. The new regulations relevant to granting mineral exploration licenses do not require documentary evidence of beneficial ownerships to be included in the application ²⁰⁰. Although Circular No. 360 states that application form and supporting documents are public documents, which available for public review ²⁰¹, beneficial ownership information is only available at the Ministry of Commerce. The study is unsure if MoC will share this type of information to the public.</p> <p>Undeclared beneficial ownership creates the possibility of unmanageable conflicts of interest, favouritism, and entry of unscrupulous or inexperienced players and potentially illegal flow of funds into the sector ²⁰². This remains a high risk.</p>	<p>PD9: What is the risk that details of shareholders or beneficial owner of selected company will not be publicly knowable?</p>

¹⁹³ Author's assessment of relevant legal framework.

¹⁹⁴ MACRA Tool.

¹⁹⁵ Author's assessment of relevant legal framework.

¹⁹⁶ MACRA Tool.

¹⁹⁷ Author's assessment of relevant legal framework.

¹⁹⁸ MACRA Tool.

¹⁹⁹ Law on Mineral Resource Management and Exploitation, 2001

²⁰⁰ Author's assessment of relevant legal framework.

²⁰¹ MME, Circular No. 360 on Guideline for Granting Mineral Exploration License, 7 October 2016.

²⁰² MACRA Tool.

<p>Previously, affected community were misrepresented in the public consultation stage. Based on the experience of previous public consultation, 2 Representatives from Koh Sror Lav Community told us that the local authority only invited people, who supported the project, to the public consultation. Affected people were not invited to participate in the consultation process. In another example, they said that local authority came to inform affected people in at 10am in the morning, when the consultation would be conducted at 2pm at the same day ²⁰³. Therefore, some affected people could not attend the consultation or did not sufficient time to understand about the project and prepare for the consultation. Thus, the consultation could be biased towards the company agenda.</p> <p>This risk remains in the new process because there are not formal SOP or guideline to inform who should be invited to join the official public consultation ²⁰⁴. There should be regulation to manage good representation of stakeholders in public consultation, so there is less opportunity for authority and exploration company to manipulate the representation in the public consultation.</p> <p>If the legal framework for consultation cannot be accurately defined and understood, the opportunities for poor governance to circumvent consent process presents a real risk ²⁰⁵.</p>	<p>PP7: What is the risk that affected community will be misrepresented in public consultation?</p>
<p>The new process does not eliminate this risk, because there are no official guidelines or governance mechanism to provide free-prior-informed public consultation current regulatory framework ²⁰⁶. There should be process SOP/ guidelines on how agreement should be reached and officially recorded. Without SOP or guideline for public consultation, potential conflicts between stakeholders (communities, CSOs, exploration company and the authority) will continue to undermine the transparency and credibility of the public consultation process.</p> <p>Having the laws that guarantee and standardize terms and conditions for conducting negotiations reduces the risk of corrupt behaviour, such as marginalization of certain landholders, unauthorized contact in breach of terms, or giving of bribes, gifts, and benefits ²⁰⁷.</p>	<p>PD16: What is the risk that negotiation or agreement with landholder or community will not be conducted appropriately?</p>
<p>For the previous process, there was no requirement to comply with environmental regulations before the license was given to exploration company.</p> <p>In the new process, there is confusion or unclear requirements of IESIA, as required by law and what is accepted in practice. For construction mineral license and small-scale mining license, there is MME-MoE Inter-Ministry Prakas No.191 covering environmental compliance ²⁰⁸. For Industrial Mining License, the law is clear that applicant needs to conduct full-scale environmental impact assessment ²⁰⁹.</p> <p>However, there are not legal guidelines regarding environmental compliance for issuing mineral exploration license. Due to this lack of clarity on the IESIA requirement, the work program will not be comprehensive enough to prevent environmental non-compliance.</p>	<p>PD3: What is the risk that requirement for environmental compliance will be unclear?</p>

²⁰³ Interview with community representatives.

²⁰⁴ Sub-Decree No. 72 on Administration of Mineral Exploration and Industrial Mining License, 05 May 2016.

²⁰⁵ MACRA Tool Author's assessment of relevant legal framework.

²⁰⁶ MACRA Tool

²⁰⁷ MME-MoE, Inter-Ministry Prakas No.191 on Grading of Environmental Impact Assessment for Construction

²⁰⁸ Mineral Operation or Other Small-Scale Mineral Operation, 26 April 2016.

²⁰⁹ Sub-Decree No.72 on Process for Environmental Impact Assessment, 11 August 1999

<p>In the current legal framework, there is no evidence suggesting that Additional Agreement over License's Terms and Conditions will be available and accessible for public's request.</p> <p>Secrecy around agreement reduces the ability for stakeholders to make governments and mining companies accountable, and create opportunities for corruption because no one except those directly involved will know about the obligations agreed between the company and the government ²¹⁰.</p>	<p>RA13: What is the risk that details of additional will not be publicly knowable?</p>
<p>This risk remains in the new process as current regulatory framework does not require license information to be available or published for public's access ²¹¹. Lack of transparency around license details (e.g., coordinates of license area, date of award, duration of license, social and environmental obligations, work program, or the commodity being produced) creates opportunities for illegal mining (e.g., mine outside the license area, beyond the license period, and to exploit of non-approved minerals), and potentially allows companies to bribe officials to ignore these activities.</p> <p>Freedom of information law is being drafted by the government but has not been approved ²¹². Freedom of information laws, and proper implementation of these laws, can improve transparency in decision-making thereby improving oversight accountability over public officials ²¹³.</p>	<p>PD36: What is the risk that the details of licenses that have been awarded will not be publicly known?</p> <p>RA2: What is the risk that information about a particular license that has been granted will not be legally available?</p>

²¹⁰ MACRA Tool.

²¹¹ Author's assessment of regulatory framework

²¹² Ministry of Information. Link: www.a2i.info.gov.kh

²¹³ MACRA Tool

Annex 4: Gaps in framework open mines to graft

Mon, 12 June 2017, Yesenia Amaro

The Ministry of Mines and Energy's mineral exploration licensing process is vulnerable to corruption, an independent study has found, identifying 14 potential openings for graft.

The preliminary findings were presented Friday during an Extractive Industry Governance Forum, which brings together key stakeholders – ministry officials, NGOs and private companies – in the extractive sector to foster better governance.

Researchers found that 14 risks have been mitigated through recent ministry reforms. However, another 14 risks for potential corruption remain in the current licensing regulatory framework, said Kim Minea, senior analyst at Emerging Markets Consulting, which was hired by Transparency International Cambodia to carry out the study.

The researchers polled 21 "key informants" from the public, private and civil society sectors.

"Corruption or malpractice will probably occur," said Minea, the lead researcher. "There are opportunities available in the framework."

Of the 14 risks that remain, one was weakness in background checks of companies. Only the company's technical capabilities, finances and work plan were studied, leaving a blind spot for any previous violations of the law.

"We want to know the integrity of the company," Minea said. "We want to know that the company has a clean record. There is a loophole if we have companies that don't respect the law."

What the ministry currently does when it comes to application assessment is "not enough", Meng Saktheara, spokesman for the ministry, acknowledged.

Another risk is that the 10-member evaluation committee is composed of only ministry officials who currently don't have to declare any conflict of interests with companies being evaluated.

"There is no one involved from outside the ministry," Minea said. "We don't want ... people who have influence to be involved in the evaluation process."

During the public consultation stage, the study found, the affected communities are often not properly represented. A lack of proper guidelines leaves room for companies to pay bribes to local people or authorities or for people to miss consultation meetings because they were not properly informed.

Saktheara agreed that there are still risks for corruption, and the ministry will work to mitigate them. "It's up to us now to eliminate them [the risks] within this year," he said. "Civil society will keep watching, and they will ask for more public disclosure."

Pech Pisey, director of programs at Transparency International Cambodia, called the oversight important as minerals are a "treasure" for the country.

"These treasures need to be managed properly," he said.

The finalised study will be made public in July or August, he added.

Link: <http://www.phnompenhpost.com/national/gaps-framework-open-mines-graft>

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