Cambodia: Cambodian Anti-Corruption Law

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The History of the Legal System

- **Before 1863**: Traditional Law
- **1863-1953**: French Law with Traditional Law
- **1953-1975**: Cambodia is independent but using the French system
  - Judges and lawyers still trained in France.
- **1975-1979**: Khmer Rouge Period no effective legal system.
- **1979-1989**: Vietnamese and Soviet influences
  - Lawyers and judges trained in the Soviet Union.
- **1989-1991**: Transition away from socialist system
- **1994-present**: Some Common Law influences in drafting laws.
Civil Law vs Common Law Tradition

- Cambodia is a civil law tradition country and has been since the French Period.
- Indicators within the Judicial System
  1. Separation of Courts in theory and in court practice but there is not a separate criminal or civil court.
  2. Judges cannot make law through case law and they have little discretion.
  3. Judges have no contempt power in civil cases.
  4. Judges are civil servants.
Legislative Source of Law

- The Constitution adopted in 1993
- Laws or Royal Kram: most laws originate in the competent Ministries.
- The Laws are then debated at Council of Ministers and then passed by the National Assembly, then ratified by the Senate, and signed into law by the King.
- Sub Decrees implement the laws and are signed by the Prime Minister.
- Prakas or regulations also implement the law and are from the individual Ministries.
Anti-Corruption Law “ACL”

Promulgated on April 17, 2010

Only certain provisions came into effect; the Criminal provisions did not come into effect immediately.

- Anti-Corruption Unit was established in the next few months.
- Amendment to the ACL was promulgated on August 1, 2011 making the ACL effective immediately. All criminal provisions are now law.
Anti-Corruption Law "ACL"

- Strict Liability for legal entities: meaning that companies are responsible for the actions of their employees and agents.
- Must be read in conjunction with the criminal code.
- Chapter Six of ACL outlines all crimes listed in the Penal code.
Crimes

- **CHAPTER 6: CORRUPTION OFFENCES AND PUNISHMENT**
- **Article 32:** Corruption offences stipulated in the criminal code
  - In addition to the offences stipulated in this law, the offences are as follow:
  - **Article 278:** (bribe taking by employees)
  - **Article 279:** (bribe offered to employees)
  - **Article 280:** (bribe taking by governor)
  - **Article 283:** (Criminal responsibility by legal entity)
  - **Article 387:** (Improper bidding)
  - **Article 404:** (Definition of money laundering)
  - **Article 405:** (Sentence to be served)
  - **Article 406:** (Aggravating circumstance)
  - **Article 409:** (Criminal responsibility by legal entity)
  - **Article 517:** (Bribe taking by judges)
  - **Article 518:** (Bribe offered to judges)
  - **Article 519:** (Criminal responsibility by legal entity)
  - **Article 547:** (Bribe taking by witnesses for false testimony)
  - **Article 548:** (Bribe offered to witnesses)
  - **Article 553:** (Bribe taking by interpreter)
  - **Article 554:** (Bribe offered to interpreter)
  - **Article 555:** (Bribe taking by experts)
Crimes

- Article 556: (Bribe offered to experts)
- Article 559: (Criminal responsibility by legal entity)
- Article 592: (Definition of misappropriation)
- Article 593: (Sentence to be served)
- Article 594: (Bribe taking)
- Article 595: (Definition of passive business influence)
- Article 597: (Definition of embezzlement)
- Article 598: (Sentence to be served)
- Article 599: (Definition of favoritism)
- Article 600: (Sentence to be served)
- Article 601: (Intentional destruction and dishonest embezzlement)
- Article 605: (Bribe offering)
- Article 606: (Active business influence)
- Article 607: (Extortion)
- Article 608: (Destruction and embezzlement)
- Article 625: (Criminal responsibility by legal entity)
- Article 637: (Bribe offered to person who has competence to issue false certificate)
- Article 639: (Bribe taking by member of professional board of medicine to issue false certificate)
- Article 640: (Bribe offered to member of professional board of medicine to issue false certificate)
- Article 641: (Execution of misdemeanor of article 639 and 640 for all medical professions)
- Article 644: (Criminal responsibility by legal entity)
- Of the criminal code are corruption offenses to be implemented as part of this law.
The New ACL

Penal Code

Article 605 of the Penal Code: Offering of Bribes

Unlawfully proffering, directly or indirectly, any gift, offer, promise or benefit/interest, in order to induce a public official or holder of publically elected office:

1. to perform an act pertaining to, or facilitated by, his or her function;
2. to refrain from performing an act pertaining to, or facilitated by, his or her function;
Anti-Corruption Law

Important Definitions in the ACL

Public official - persons who work in the legislature, executive or judicial institution who are appointed by legal instrument. Other persons who work in an institution that has a public function, including public agencies or public enterprises and other public institutions that are stated in the laws in the Kingdom of Cambodia. Citizens who are entrusted with a public mandate through elections, senators, members of the National Assembly, communes councils and other citizens that are elected with a public mandate. Does not include relatives.
Anti-corruption Law

**Benefit:**

a) Any gift, loan, fee, reward or commission, which is not legally permitted, in cash or any valuable objects or other property of any description.

b) Any job, position, function or any agreement or any contract;

c) Any payment, exemption, discharge, or liquidation of any loan, obligation or liability, whether in whole or in part;

d) Any other service or favor, including protecting against any penalty of any action or proceeding of a civil or criminal punishment though the punishment already defined or not.

e) The exercise or forbearance from the exercise of any right, any power or duty; and;

f) Any offer or promise of any advantage, whether conditional or unconditional, as defined within the spirit of the preceding paragraphs a, b, c, d and e.
Facilitation Fees

- On a strict interpretation of the ACL facilitation fees are no longer lawful under the law of Cambodia and therefore may no longer provide a defense under other anti-bribery legislation such as the FCPA.
Facilitation fees

Examples of typical facilitation fees would be:

- Lodgment of monthly tax returns (Income tax, VAT, Withholding taxes, salary taxes etc)
- Lodgment of Annual tax returns
- Registrations with the Tax Office and MoC;
- Customs clearance
- Annual quota application for expat staff
- Annual work permits
- Change of directors, shareholders and address
- Change of company name
- Renewal of incorporation certificates
- Registration of NGOs
Judicial Powers of the Anti-Corruption Unit

In the case where there is a clear suspicion of a corruption offence, the ACU can:

a) Check and put under observation the bank accounts or other accounts which are described to be the same as bank accounts.

b) Check and order the production of copies or authentic documents or individual documents, or all bank, financial and commercial documents.

c) Monitor, oversee, eavesdrop, record sound and take photos, and engage in wire tapping.

d) Check documents and documents stored in the electronic system.

e) Conduct operations aimed at collecting real evidence.
Punishments

For individuals and legal entities.
1. Shall be punishable by imprisonment from five to ten years.

Additional punishments for foreign individuals and legal entities.

a. A foreign individual may be disbarred from a profession.

b. Convicted foreigner may be barred from entering Cambodia and may be deported from Cambodia, either permanently or for a period not exceeding five (5) years.

c. Confiscation of assets, capital or other property which has been derived from the offence.

d. Closure of the business which was being used to organize or commit offences either permanently or for a period not exceeding five (5) years.

e. Expulsion from public procurement process.

f. Advertisement of the conviction in print media.
Defenses to the ACL

- NONE
- All crimes in Cambodia require an intent to commit a crime and intent must be proved.
Compliance

- **Companies need a compliance program in Cambodia because:**
  - Cambodia is considered a high risk country
  - Cambodia has a culture of corruption

- **Companies must complete a thorough due diligence process when they set up or acquire new partners or companies.**
  - It is not uncommon for relatives to be shareholders and directors of companies (wives names are not the same as their husbands).
  - It is not illegal in Cambodia for relatives to be shareholders and directors of companies under the ACL but this may be illegal under other bribery laws as it will be construed as “for the purpose of obtaining or retaining a business advantage in the conduct of business”
Thank you for your attention!

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