

Kingdom of Cambodia

**DETAILED ASSESSMENT REPORT
ANTI-MONEY LAUNDERING AND COMBATING THE
FINANCING OF TERRORISM**

**As Adopted by the APG Plenary
25 July 2007**

WORLD BANK

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ABBREVIATIONS

AML	- Anti-Money Laundering
AML Prakas	- Prakas on standardized procedures for identifying money laundering at banks and financial institutions, 20 October 2002
APG	- Asia Pacific Group on Money laundering
ASEAN	- Association of South East Asian Nations
BL	- Banking Law (law on banking and financial institutions, 1999)
BCBS	- Basel Committee on Banking Supervision
BCP	- Basel Core Principles for effective banking supervision
CC	- Criminal Code
CDC	- Council for the Development of Cambodia
CDD	- Customer Due Diligence
CFT	- Combating the Financing of Terrorism
CNP	- Cambodia National Police
CPC	- Criminal Procedure Code
CSP	- Company Service Provider
DNFBP	- Designated Non-Financial Businesses and Professions
FATF	- Financial Action Task Force
FI	- Financial institution
FIU	- Financial Intelligence Unit
FSAP	- Financial Sector Assessment Program
FSRB	- FATF-style Regional Body
TF	- Terrorism Financing
GDP	- Gross Domestic Product
IAIS	- International Association of Insurance Supervisors
IAS	- International Accounting Standards
ID	- Identity
IMF	- International Monetary Fund
ISA	- International Standard on Auditing
IT	- Information technology
KICPAA	- Kampuchea Institute of Certified Public Accountants and Auditors
KR	- Cambodian Riel
KYC	- Know your customer/client
LTTE	- Liberation Tigers of Tamil Elam
MVT	- Money and Value Transfer
NBC law	- Law on the organization and functioning of the NBC, 1996
ME	- Mutual Evaluation
MEF	- Ministry of Economy and Finance
MFA	- Ministry of Foreign Affairs
MFI	- Micro Finance Institution
MOU	- Memorandum of Understanding
ML	- Money laundering
MLA	- Mutual legal assistance
NAC	- National Accounting Council
NBC	- National Bank of Cambodia
NCC	- National Coordination Committee
NCCT	- Non Cooperative Countries and Territories
NGO	- Non Governmental Organization
NPO	- Non Profit Organization

PEP	- Politically Exposed person
QIP	- Qualified Investment Project
ROSC	- Report on Observance of Standards and Codes
SRO	- Self-Regulatory Organization
STR	- Suspicious Transaction Report
TCSP	- Trust and Company Service Provider
UN	- United Nations Organization
UNSCR	- United Nations Security Council Resolution
UNTAC	- United Nations Transitional Authority of Cambodia
USD	- United States Dollar
WB	- World Bank
WTO	- World Trade Organization
YE	- Year End

PREFACE

This assessment of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of the Kingdom of Cambodia is based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT assessment Methodology 2004, as updated in 2006. The assessment team considered all the materials supplied by the authorities, the information obtained on site during their mission from 26 February 2007 to 14 March 2007, and other verifiable information subsequently provided by the authorities. During the mission, the assessment team met with officials and representatives of all relevant government agencies and the private sector. A list of the bodies met is set out in Annex 1 to the detailed assessment report.

The assessment was conducted by a team of assessors from the World Bank (WB). The evaluation team consisted of Cédric Mousset (financial expert and team leader), Emile van der Does de Willebois (legal expert) and Andrew Clayton (law enforcement expert). Mr. Lindsay Chan from the APG Secretariat participated as an observer during the assessment visit. The assessors reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter and punish money laundering (ML) and the financing of terrorism (TF) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBP). The assessors also examined the capacity, implementation, and effectiveness of all these systems.

This report provides a summary of the AML/CFT measures in place in the Kingdom of Cambodia at the time of the mission or shortly thereafter (i.e. before 15 May 2007). It describes and analyzes those measures, sets out the Kingdom of Cambodia levels of compliance with the FATF 40+9 Recommendations (see Table 1) and provides recommendations on how certain aspects of the system could be strengthened (see Table 2). The report was produced by the World Bank. It was also presented to the APG and endorsed at its annual plenary meeting in Perth, Australia from 23 to 26 July 2007.

EXECUTIVE SUMMARY

Key Findings

1. **Cambodia faces the legacy of more than two decades of internal conflicts which started in the 1970s and not only depleted the country's reserves of human talent, but also disrupted the continuity of social institutions and formal and informal rules.** The legal and judicial systems are still marred by structural shortcomings despite efforts of public authorities undertaken since the second half of the 1990s. Revised civil and criminal laws are expected to be enacted before the end of 2007. Draft laws on counter terrorism and anti-corruption are actively being prepared. Corruption is widely perceived as widespread. Since the 1990s, the country has moved toward a market-based economy and restrictions to foreign exchange transactions have been lifted.
2. **A very high degree of informality characterizes the Cambodian economy which often makes it difficult to know on whose behalf activities and transactions are undertaken.** US dollar banknotes are the most common means of payment, even for large amount transactions. Worth noting is the existence of informal financial service providers whose activities are difficult to gauge and the lack of a comprehensive framework for real estate transactions. Real estate prices in large cities are booming and can reach hundreds of thousands of US dollars for houses which are commonly settled in cash directly from the seller to the buyer.
3. **Although no estimates of ML and TF occurring in Cambodia are available, the mission was informed that criminal proceeds are deemed to come primarily from human exploitation and trafficking, corruption and drug trafficking,** Besides, the mission was informed that the most common ML techniques are supposed to involve real estate investments, banking transactions and casino gambling. Both Cambodians and foreigners are considered to be involved in ML and TF, with foreigners deemed to have to rely more heavily on formal frameworks.
4. **The AML framework undertook a major change following the on-site mission with the enactment of an AML law.** Implementing regulations still need to be taken and the capacity of the authorities to have the AML law implemented demonstrated.

Legal Systems and Related Institutional Measures

5. **The AML law defines ML predicate offenses as encompassing all felonies and misdemeanors but does not criminalize them.** Only the draft criminal code would criminalize them. Similarly, only the draft counter terrorism law would criminalize TF. Only drug related offences are already criminalized by the law on drug control.
6. **Cambodia does not have a Financial Intelligence Unit (FIU).** The AML law contains provisions related to the setting up of a full-fledged FIU within the NBC. Apart from a few banking supervisors earmarked as pre-FIU staff, very little preparatory work has been completed. The size, structure, operation, funding and IT requirements of the FIU have not been decided. The absence of any detailed plans leads to concerns as to the ability of the authorities to implement in due time the

provisions of the AML law once it is enacted. The supervisory responsibilities of the FIU and its cooperation with other sector supervisors also need to be clarified.

7. **Moreover, proper mechanisms need to be designed (and then implemented) to ensure the operational independence of the FIU and the confidentiality of its work.** These issues have not yet been fully addressed (role of the FIU Board made up of senior public officials, dissemination of STRs, integrity standards for the FIU staff etc.). These mechanisms are critical both to ensure an efficient working process within the FIU and to get buy in and cooperation from the different public and private actors of the framework.

Preventive Measures – Financial Institutions

8. **The AML law broadens and clarifies CDD requirements for FIs and makes possible a significant improvement of the AML /CFT framework in Cambodia.** It largely supersedes the law on drug control (1997) and a Prakas (implementing regulation) issued by the NBC (2002) which set only partial and sometimes confusing requirements banks had to fulfill. The priority should now be to implement the AML law. Shortcomings in the regulatory framework also will have to be addressed. They are in particular related to the definition of beneficial owners, the requirements on PEPs, the definition of high risk categories and of the associated enhanced due diligence requirements as well as to CDD measures for correspondent banking relationships.

9. **Two parallel requirements to report suspicious transactions existed at the time of the mission, but no report has ever been filed.** The AML law creates a new reporting regime for cash and suspicious transaction, which still needs to be implemented. Moreover, it is necessary to clarify if the AML law abolished the reporting frameworks set by the law and drug control and the AML Prakas.

10. **The NBC started implementing supervising banks' compliance with existing AML requirements.** However, the lack of proper CDD requirements prior to the AML law strongly altered such efforts. The supervisor will have to actively supervise banks' compliance with the new AML requirements. Moreover, internal control requirements for FIs are limited and fit and proper requirements needs to be implemented more forcefully for banks owned by foreigners (especially where they are natural and non bank legal persons).

11. **Other FIs will have to be brought in the AML /CFT regime (i.e. designation of a supervisory authority and issuance of specific regulations implementing the AML law) as soon as they start their operations and efforts will have to be pursued to rein in informal financial services providers.**

Preventive Measures – Designated Non-Financial Businesses and Professions (DNFBPs)

12. **The AML law imposes customer due diligence, record keeping, and reporting obligations, both suspicion and threshold based, on all DNFBPs covered by the FATF recommendations.** It also includes in the scope of preventive measures some NGOs and foundations and provide the FIU with the discretion to include other businesses and professions.

13. **There is no effective framework for supervising or monitoring DNFBPs in place.** Whilst there has been a legal requirement since 1997 under the Law on Drug Control for casinos to identify

clients and record transactions over a designated threshold, the authorities have never set the threshold. This requirement is not enforced and no suspicious transaction report has ever been filed by a casino.

14. **No plans appear to have been made to implement the provisions of the AML law.** This encompasses such issues as the definition of thresholds above which CDD and record keeping requirements would apply to DNFBPs and the designation of the authority(ies) that would receive cash transaction reports and those that would be in charge of supervising DNFBPs (and cooperation arrangements where there are many supervisors).

Legal Persons and Arrangements & Non-Profit Organizations

15. **Although information on domestic beneficial ownership may be relatively easily accessible, most Cambodian companies have foreign beneficial ownerships and reliable information on the latter are not available.** NPOs are widely present in Cambodia. Depending on whether they are domestic or foreign they have to be registered either with the Ministry of Interior or the Ministry of Foreign Affairs, without the AML /CFT risk being specifically addressed.

National and International Co-operation

16. **International cooperation is mostly rendered on an ad hoc basis where requests from foreign authorities are received by the Cambodian authorities.** Although no comprehensive statistics are available, different cases indicate that these mechanisms are effective. Domestic cooperation is permitted but still appears limited as public authorities are not used to working together and sharing information.

Other Issues

17. **In the very short term, the authorities should concentrate their action on criminalizing ML and TF predicate offenses, setting up the FIU and starting implementing the provisions of the AML law.** The latter will in particular require that supervisors be identified for each covered institution, that they be provided with adequate powers and resources, that sector specific implementing regulations be prepared (starting with those setting thresholds when necessary) and that proper coordination be effectively organized to foster a consistent implementation of the AML /CFT framework in Cambodia.

18. **It is further recommended that a senior public official be entrusted with the responsibility of monitoring progress made by public authorities in implementing AML /CFT relevant laws once they are enacted and of taking proper action where necessary.** This would (i) help mobilize different authorities, (ii) overcome difficulties identified in the process for implementing existing AML relevant laws and regulations (e.g. lack of implementing regulations, of enforcement, limited cooperation and information sharing between public authorities), (iii) set a comprehensive strategy taking into account Cambodia's vulnerabilities where implementing international AML /CFT recommendations, (iv) build domestic capacities. This should be designed with a view not to alter the operational independence of the FIU and the confidentiality of its work.

An AML/CTF National Coordination Committee (NCC) should also be established to facilitate a whole-of-government approach to AML/CTF Implementation and further coordination

efforts the AML law call for. The National Mutual Evaluation Coordination Group established for the ME process could be further developed or evolved into an NCC. This should be established as soon as possible and would be critical to set a proper AML /CFT framework and ensure proper coordination and cooperation among the different stakeholders.

DETAILED ASSESSMENT REPORT

GENERAL**General Information on the Kingdom of Cambodia**

19. **Cambodia is a small (181,035 sq kilometers), predominantly rural country with a population of about 14 million people.** The GDP per capita was estimated to be 454 USD in 2005¹ and 35 to 40 percent of the population is estimated to remain below the poverty line. It has 2,572 km of borders with Vietnam (1,228 km), Thailand (803 km), Laos (541 km) and a coastline on the Gulf of Thailand (443 km)

20. **Cambodia still faces the legacy of more than two decades of internal conflicts that not only depleted the country's reserves of human talent, but also disrupted the continuity of social institutions and formal and informal rules.** Following the signature of the Paris Peace Accord in 1991 in October 1991, the United Nations Transitional Authority of Cambodia (UNTAC) was established in February 1992 with a mandate that included the organization and conduct of elections, civil administration, maintenance of law and order and repatriation and resettlement of refugees and displaced persons. UNTAC ceased operation in September 1993.

21. **The decade from the first elections in 1993 has been spent consolidating peace and taking important steps toward a market-based economy,** including dismantling much of the central planning and state-trading infrastructure, selling state-owned enterprises, establishing macroeconomic stability, liberalizing trade, freeing prices, and passing basic laws that enable private investment. Cambodia joined the ASEAN in 1999.

22. **Cambodia is a multi-party democracy under a constitutional monarchy.** The Prime Minister is the head of government, while the King is the head of state. The Prime Minister is appointed by the King, on the advice and with the approval of the National Assembly. The Prime Minister and his Ministers have the executive power. They hold regular meetings within the Council of Ministers. Legislative power is vested in the National Assembly (lower house) and the Senate (higher house). Draft laws are first reviewed by the National assembly and then by the Senate. The power to initiate legislation rests jointly with members of the National Assembly, the Senate, and the Prime Minister. Members of the National Assembly are directly elected by Khmer citizens while members of the Senate are primarily elected by members of the National assembly and of commune councils. Both elections run concurrently and members of both houses are elected for five years.

Legal hierarchy in Cambodia

- 1) The constitution: the Supreme law of the kingdom of Cambodia
- 2) Treaties and conventions" according to article 26 of the Constitution, the King shall sign and ratify international treaties and conventions, following the approval of the National assembly. After such

¹ IMF, Cambodia, 2006 Article IV Consultation, Country report No 06/264, July 2006

ratification, international treaties and conventions shall become one of the basis for judicial decisions

3) Laws (Chhbab): Laws adopted by the Parliament (National assembly and Senate)

4) ; Royal Decree (Reach Kret): to be issued under the name of the King for executing his constitutional powers

5) Sub-decree (Anu-Kret): To be signed by the Prime Minister and countersigned by the Minister(S) in charge after adoption by the Cabinet meeting. The Prime Minister can use this in exercising his own regulatory powers

6) Ministerial Order (Prakas): To be issued by members of the government in exercising their own regulatory powers

7) Decision (Sechdei Samrech): Individual decision of the Prime Minister and Decision (Prakas-Delka) of a Minister or a Governor, which is used in exercising his own regulatory powers

8) Circular (Sarachor): In general, to be issued by the Prime Minister as head of government, and by a minister as an official of the ministry either to explain or clarify certain regulatory measures or to provide instructions

9) Provincial Deka (Arrete): To be issued by a provincial governor within the geographical limits of his province

Source: Council for development of Cambodia (CDC), Cambodia Investment Guidebook, December 2006

23. The Constitution enacted in 1993 guarantees the independence of the judiciary (art. 128).

There are three levels of courts: (i) Military Courts and Provincial/Municipal Courts, (ii) the Appeal Court and (iii) the Supreme Court. In each court, the prosecution department and the court itself are separate. Besides, the Constitutional Council decides on constitutionality of laws and the Supreme Council of the Magistracy (SCM) is entrusted with responsibilities that give it a pivotal role in ensuring the courts' independence and the integrity of the judges and prosecutors.

24. A comprehensive legal and judiciary reform strategy was prepared at the beginning of the 2000s. In 2002, the Council for a legal and judicial reform was established to initiate, encourage and coordinated the reform process. This Council is chaired by the Prime Minister and gathers Ministers. In 2003, a legal and judicial strategy was completed, followed by an action plan adopted by the Council of Ministers in April 2005.

25. The main issues identified in the Judiciary are weak governance and corruption, the need to reform of the Supreme Council of Magistracy, the small number of trained judges and lawyers²,

² “The shortage of lawyers meant that most judges appointed in the immediate aftermath of the Khmer Rouge regime were former teachers. Of the 120 judges who belong to the judiciary, only a handful of them have any proper legal qualifications to speak of. Prosecutors on balance possess even less legal education. Only 22 percent of the prosecutors have had some formal legal education, with only 9 percent holding a full law degree”. Sok Siphana, legal and judicial reform strategy for Cambodia, Steering Committee for Legal and Judicial Reform 2001

and the low salaries of judges and prosecutors. Corruption in courts is widely perceived as a significant issue, as shown in surveys undertaken in 2000 and 2004 by the World Bank³.

26. **The legal system is a mix of civil and common law and still relies heavily on laws enacted at the beginning of the 1990s.** Legal shortcomings include inconsistencies in legislation, limited transparency in legislative processes and still limited capacity to draft laws.

27. **Eight laws have been identified as priorities for the justice system and public administration reform.** Some of them have been under preparation for almost a decade⁴. The four principal codes (civil, civil procedure, criminal and criminal procedure) are expected to be promulgated before the end of 2007. The draft anti-corruption law is expected to be examined by the National Assembly only after the Criminal code has been enacted.

Law	Status as of February 2007
Civil code	Draft sent to the National Assembly on 12 January 2007
Civil procedure code	Promulgated on 6 July 2006
Criminal code	Draft expected to be sent to the Council of Ministers during the first half of 2007
Criminal procedure code	Draft sent to the National Assembly ⁵
Organization and functioning of the courts	Draft prepared (not yet sent to the Council of Ministers)
Statute of judges and prosecutors	Draft prepared (not yet sent to the Council of Ministers)
Supreme council of magistracy	Draft prepared (not yet sent to the Council of Ministers)
Anti-corruption	Draft prepared (not yet sent to the Council of Ministers)

28. **Weak institutions and limited mechanisms of accountability, which are legacies of Cambodia's history, contribute to a perception of high levels of corruption.** Although difficult to quantify, the evidence suggests that corruption seriously constrains economic growth, private sector

³ World bank, Cambodia governance and corruption diagnosis, evidence from citizen, enterprise and public official survey, 2000 & World bank, seizing the global opportunity, investment climate assessment and reform strategy for Cambodia, 2004

⁴ "Relating to progression of the legal reform process as a whole, the achievement made is generally marked by a relative tardiness and leaves some critical actions to repeatedly remain with the reform agenda if compared to what has been scheduled. The reasons for the tardiness are various and divers. It is particularly noted that there was a delay due to the recent political deadlock and a lack of political will, technical competency and financial assistance, the consultation within and between ministries takes a relatively longer time and each individual ministry tends to protect its own interests. Some failures to adopt the legal texts on time derives from the underestimation of timeframe on account of their complexity and important dimension and the necessity of making them all coherent, especially while the drafting of these codes were originally entrusted to different foreign legal experts". Economic Institute of Cambodia, Cambodia Economic Watch, April 2006

⁵ The mission was informed by the Cambodian authorities on 10 June 2007 that the criminal procedure code has been adopted by National Assembly on 7 June 2007.

development, and poverty reduction⁶. The Transparency International Corruption Perceptions Index shows that corruption levels in Cambodia are perceived to be high⁷.

29. **The Cambodian GDP amounted to 6.2 billion USD in 2005**, with agriculture contributing for about 35%, services for 35% and industry and manufacturing for 30%. The GDP growth rate reached 13.4% in 2005, supported by the garment and tourism sectors. Over the previous ten years, the growth rate averaged 6 to 7%. Exports and imports amounted to 70.9% and 80.5% of GDP respectively in 2005. Exports were primarily directed to the USA (59%) and Germany (10%) while imports mostly came from Thailand (26%), China (15%), Hong Kong (14%) and Vietnam.

30. **The economy is largely cash-based and US dollar-based.:** dollarization emerged in Cambodia because public confidence in the local currency eroded following a series of shocks from the Khmer rouge regime to the mismanagement of the economy by subsequent regimes. “The lack of public confidence in institutions and in the banking system remains high and dollarization is still in progress, in spite of recent improvements in macroeconomic stability and measures taken by the authorities to restore confidence⁸”. The amount of US dollar and other foreign currencies denominated bills circulating in Cambodia is unknown. Thai Baht and Vietnamese Dong banknotes are also widely used in some Cambodian provinces neighboring Thailand and Vietnam respectively.

31. **The structure of Cambodia’s private sector is characterized by a high degree of informality⁹.** Private firms are generally family owned; with no separation between management and ownership. The private sector is dominated by the informal sector, which is estimated to account for 80% of non-public sector GDP. Much of it is concentrated in agriculture while the informal industrial sector is estimated to account for almost half of total industrial output and supplies. 90% of private enterprises are estimated to operate in the informal sector while some 7,000 private enterprises which registered with the Ministry of Commerce constitute the formal private sector. The formal private sector has been narrowly focused on garments and tourism.

32. **Foreign direct investments (FDI), which play an important role in developing the formal sector, are mainly concentrated in two sectors (garment and tourism).** 6.2 billion USD of FDIs were approved by the CDC from 1995 to 2004 mainly from East Asian investors (primarily Malaysia, 31%, and Singapore, 26%). A member of the World Trade Organization since 2003, Cambodia will only implement all WTO requirements in 2008 and still benefit from preferences from developed countries.

33. **The exploitation of recently discovered large offshore oil reserves is likely to boost the economy significantly, though mainly in the longer run.** “Much uncertainty remains as to the scale and fiscal return of these projects but oil companies’ initial estimates suggest that the oil could start flowing

⁶ World bank, seizing the global opportunity, investment climate assessment and reform strategy for Cambodia, 2004

⁷ The 2006 Transparency International Corruption Perceptions Index ranked Cambodia at 151st, compared to the lowest index of 163rd. For detail see Transparency International Corruption Perception Index 2006. .

⁸ Tal Nay Inn and Michel Dabadie, Dollarization in Cambodia, National bank of Cambodia Review, No 19, 1st quarter 2007

⁹ Cambodia: Seizing the Global Opportunity: Investment Climate Assessment and Reform Strategy for Cambodia, World Bank, 2004.

from 2010. Additional revenues annually accruing to the government within a few years could significantly exceed fiscal revenue collected in 2005¹⁰.

General Situation of Money Laundering (ML) and Terrorism Financing (TF)

Sources of Illicit Funds

34. The mission largely had to rely on anecdotal evidence gathered during meetings, a few crime statistics and open source information to evaluate the major sources of illicit funds in Cambodia for lack of an official assessment of the latter. At the time of the mission, comprehensive statistics for the major crime categories were not available. It is recommended that an authority (probably the NCC if it is to be set up) be entrusted with the responsibility of regularly producing a structured assessment of the sources of illicit funds in Cambodia. Such an assessment, which need not be purely quantitative, would be helpful in setting clear priorities for the country AML /CFT strategy.

35. The major crimes reported by the Cambodian authorities are human trafficking and exploitation, drug trafficking, kidnapping (for ransom) and corruption. Moreover, tax evasion and smuggling of commodities such as vehicles, fuel¹¹, soft drinks and cigarettes are widespread, which explain the very low tax revenues Cambodian authorities collect (7.7% of GDP in 2005). Fraud (including intellectual property) is also a significant issue¹².

36. Human trafficking, both from and to Cambodia, as well human exploitation appear to be widespread¹³. There is no estimate of the proceeds of such criminality. According to the Cambodian authorities, women and under-aged girls (under 18) have been trafficked to both neighboring countries such as Thailand and Malaysia and internally to illegal establishments for instance on the outskirts of

¹⁰ IMF, Cambodia, 2006 Article IV Consultation, Country report No 06/264, July 2006

¹¹ For example, in its November-December 2003 Competitiveness Watch, the Economic Institute of Cambodia (EIC) indicated that: "assuming that the 2002 official number of cars of 90,000 is accurate and the 1994 ratio between the gasoline import and the number of vehicles remains more or less constant in all these years, the official figures for gasoline import in 2002 should have been about 700,000 tons, not 84,000 tons as officially recorded. If the record of 84,000 tons for 2002 were valid and reliable, then the smuggled gasoline could be as much as 616,000 tons in 2002."

¹² There is very weak enforcement of intellectual property rights in Cambodia. This is clearly evident in the sale of pirated DVDs and CDs of recent releases of movies and records. They are sold not only in the local markets but in Phnom Penh's major shopping centre and in other stores throughout the capital.

¹³ (i) According to the website humantrafficking.org (that was created as a result of the Asian Regional Initiative Against Trafficking meeting in Manila, 2000), "Cambodia is a source, destination, and transit country for men, women, and children trafficked for the purposes of sexual exploitation and forced labor. A significant number of Cambodian women and children are trafficked to Thailand and Malaysia for labor and commercial sexual exploitation. Cambodian men are primarily trafficked to Thailand for labor exploitation in the construction and agricultural sectors, particularly the fishing industry. Cambodian children are trafficked to Vietnam and Thailand to work as street beggars. Cambodia is a transit and destination point for women from Vietnam who are trafficked for prostitution. Most adult and child victims were trafficked for the purpose of commercial sexual exploitation. Estimates of the number of trafficking victims in the sex industry ranged from 2,000 to more than 3,000, approximately 80 percent of whom were Vietnamese women and girls. Some Vietnamese women and girls were trafficked through the country for exploitation in the commercial sex trade in other Asian countries."

(ii) Moreover, the UN 2006 report on trafficking in persons identifies Cambodia as one of the country most commonly referred to concerning human trafficking. It is both rated high as a country of origin and destination and very low as a country of transit (on a scale including very high, high, medium, low and very low). The main country of destination is Thailand and that of origin Vietnam. The ratings are based on trafficking cases reported by the authorities (see page 19 of the UN report for the related limitations in the analysis).

Phnom Penh. In addition, there are reports that Vietnamese women including girls as young as 6-10 years of age have been trafficked from Vietnam into Cambodia for sexual servitude purposes.

37. The Cambodian authorities consider that most drug trafficking offences relate to transshipment of drugs through Cambodian territory to other countries in the region and beyond and recognize that there is a growing problem with meta-amphetamines in the country. These characteristics of drug trafficking in Cambodia are confirmed by the analysis prepared in 2001 by the UN International drug control program¹⁴, which main conclusions were confirmed by latter studies. There is no estimate of the proceeds of drug trafficking in Cambodia.

38. There have been numerous kidnapping cases in Cambodia, including a recent high profile case resulting in the arrest of a high ranking police officer on nine separate kidnapping charges.

39. The Cambodian authorities consider that illegal logging considerably subsided in recent years and is no more a significant issue. Some international NGOs claim that illegal logging is still being carried out on a massive scale, with the complicity of corrupt officials¹⁵. More generally, corruption is perceived to be high and a major source of criminal proceeds, although no estimate is available. Cambodia ranks 151st out of 163 in the 2006 Transparency International Corruption Perceptions Index.

40. Due to its history, there are large supplies of armaments in Cambodia and the country is thus vulnerable to arms trafficking¹⁶.

ML and TF risks and vulnerabilities

14 In 2001, a Cambodia country profile was published by the UN International Drug Control Program. This report reads that: "Cambodia is increasingly being used as a trafficking/transit country for illicit drugs and precursor chemicals of two reasons. Firstly, the country lacks adequate law enforcement and criminal justice staff trained to deal with drug trafficking and related crimes such as money laundering, corruption, trafficking and abuse of humans and other organized criminal activities; in addition, it lacks adequate legislation in these important areas. Secondly, with intensified suppression of illicit trafficking in countries of the region, primarily Thailand, China and Vietnam, combined with Cambodia's convenient geographic location south of an equally weak country - Laos, means that Cambodia has become an attractive alternative smuggling route and a safe haven for criminal organizations from which they can manage their field operations in other countries. It is believed that significant quantities of Southeast Asian heroin and, to some extent, ATS produced primarily in the Shan State of Myanmar are today trafficked through Cambodia for illicit markets abroad. In spite of its lack of law enforcement capacity and its very unreliable reporting/statistics, a number of substantial heroin seizures have nevertheless been recorded in Cambodia since 1995 [...] the increasing number of cases also reflects their positive view of Cambodia as a transitting route. The heroin enters Cambodia primarily from Laos, or over the Thai border or by air. Heroin trafficking involving Cambodia has been largely an extension of existing criminal groups already well established in the region. The principal trafficking groups are comprised of (1) ethnic Chinese from Taiwan and the People's Republic of China (PRC) including the Special Administrative Regions of Hong Kong and Macao; (2) Thai, Vietnamese and other groups originating from within the region; and (3) Nigerians, and other Africans. Cambodian involvement has, until now, been primarily on a lower level, mainly as middlemen and, in most cases less well organized. It is understood that the ethnic Chinese groups mainly smuggle heroin out of Cambodia in cargo containers, using regular shipping lines, with the major destinations being Hong Kong, Taiwan and Macao as well as Australia, Canada and the United States of America. The African Groups have primarily used express mail services and couriers (including non-African tourists) who travel by air."

15 In its 2007 report, Cambodia's family trees, Global witness emphasizes that "illegal logging is causing severe damage to Cambodia's remaining forests. The last global forest cover survey by the Food and Agriculture Organization (FAO) found that Cambodia had lost 29% of its primary tropical forest over a five year period. Cambodia's army, military police, police and Forest Administration (FA) are all heavily involved in illegal logging. In many cases illegal logging is taking place under the guise of legally dubious plantation developments and harvesting permits. Many of these plantations and permits are being allocated to a small group of individuals who have close relations with senior politicians."

16 Recently, there has been one documented case of arms shipped from Thailand through Cambodia to the LTTE (Liberation Tigers of Tamil Eelam) in Sri Lanka with the assistance of a Cambodian front company. The individuals involved were arrested Cambodia.

41. Cambodia has not undertaken any comprehensive risk assessment of its money laundering and terrorism financing vulnerabilities. There have been four reported cases of police investigations into money laundering and terrorism financing. All four cases were conducted at the request and in cooperation with U.S. authorities.

42. The lack of proper requirements for banks, casinos, lawyers and other FIs and DNFBPs also make it easier for criminals to use these institutions for money laundering purposes. Banks have not provided suspicious transaction reports to competent authorities based on existing requirements. There are significant risks that casinos¹⁷ could be used to launder money by criminal elements in Cambodia and neighboring jurisdictions.

43. Customs controls over the import and export of currency are weak. There may be significant, unregulated, and unreported informal flows of U.S. currency in and out of Cambodia. Furthermore, the dollarized nature of the economy means that illicit funds could be transported cross border without the need to covert the currency.

44. The cash nature of the economy, where even major transactions are settled in cash and outside of the banking system means that paper trails are minimal. The two major areas reported by the authorities to be particularly vulnerable to money laundering are real estate and casinos.

45. According to Cambodian real estate agents, it is common practice for real estate transactions to be conducted in cash and in U.S. dollars (estimated at 60% of transactions arranged by real estate agents). It is not usual for these cash transactions to be between 0.5 to 1 million USD in Phnom Penh. Up to 70% of transactions are directly between the buyer and seller without the use of a registered real estate agent. Furthermore, Cambodia has no independent property valuation system. The price of property is determined purely by the buyer and seller which can be easily abused for money laundering purposes.

46. Foreign investment in real estate in Cambodia is also increasing, particularly in residential real estate. Whilst foreigners are precluded by Cambodia law to buy real estate (foreigners can lease), this law has been circumvented through the use of Cambodian nominees and other means. The foreigner and nominee would normally sign separate agreements to enable the foreign purchaser to sell the real estate in the future without prior written consent of the Cambodian nominee.

47. There is neither requirement nor capacity to determine the ultimate beneficial owners of companies registered with the Ministry of Commerce. It has been reported that some companies have been established by foreigners as a cover for illegal activities, although the scale of this problem is unknown. But given there is a very high level of foreign involvement in companies registered with the Ministry (possibly up to 75%), the potential for abuse is present.

48. Given the environment, the risk of money laundering should be considered as significant. One of the two documented money laundering investigation cases involved USD four million, four banks in Cambodia and eight other jurisdictions. The second case involved the transfer of funds from the U.S. to a bank in Cambodia. Both cases involved drug related illicit funds transferred through the formal banking system.

¹⁷ There are 21 licensed casinos in Cambodia. All except one (NAGA World) are based outside the capital Phnom Penh and a significant number in the border areas with Thailand and Vietnam. Cambodian nationals are prohibited from entering casinos,

49. Terrorism financing is a real risk as highlighted by two recent cases. The first involved the arrest of four JI operatives in 2003. The four included an Egyptian, two Thais and a Cambodian. They were all working in Cambodia for the local chapter of the Saudi based Um Al-Qura Organization which had established a school in Kandal province in 1996. The school was used as a front to receive funds from overseas to finance JI activities in Cambodia and in Thailand. Funds were transferred via the formal banking system from Saudi Arabia to Cambodia. The second case had connections to more domestic concerns. The Cambodian Freedom Fighters (CFF) was established in the U.S in October 1998 with two Cambodian-Americans in charge. In November 2000 the CFF planned attacks on specific targets in Phnom Penh but were interrupted by local authorities. The funds for these terrorist activities were sent from the U.S to Cambodia through underground money transfer services.

Overview of the Financial Sector

50. The financial system was reestablished at the beginning of the 1990s¹⁸ but remains shallow despite a sharp growth of banking activities in recent years. Since 2001, authorities have implemented a comprehensive long term strategy to promote the development of the financial sector (Financial sector development plan, FSDP, 2001-2010). This strategy was updated in 2006 (FSDP 2006-2015) and key priorities revised accordingly¹⁹.

51. Authorized financial activities in Cambodia are undertaken by commercial and specialized banks, microfinance institutions (MFIs), the National Bank of Cambodia (NBC) and money changers. Life insurance and securities services either do not exist or only on a very limited basis in Cambodia.

Banks and micro-finance institutions

52. The Cambodian banking system which is regulated and supervised by the NBC (see 2.1) includes:

- 15 commercial banks including 12 locally incorporated and 3 foreign bank branches. Among the locally incorporated banks:
 - 6 are owned by foreigners (non bank legal persons or natural persons)
 - 2 are joint venture between Cambodian and foreign banks
 - 4 only have Cambodian owners
- 5 specialized banks (1 state-owned, 3 owned by Cambodian investors and one joint venture between Cambodian and foreign investors)

18 "Cambodia had a mono-banking system when the National Bank of Cambodia (NBC) operated through its provincial branches. Structural reforms were initiated in 1989 through a Government decree to establish a two-tier banking system by separating the function of commercial banks from NBC. This decree allowed the formation of private commercial banks as limited liability companies. In 1990, treasury operations were transferred to the Ministry of Economy and Finance (MEF), and NBC was designated as a ministry and largely used to finance budget deficits. In 1991, the first private commercial bank was established as a joint venture between NBC and the Siam Commercial Bank of Thailand. Commercial banks operated under the framework of a law on the supervision of financial institutions, which was enacted in August 1992, and the sub-decree on the supervision of commercial banks approved in November 1992. In 1996, NBC was established as the central bank as the result of the promulgation of the Law on the Organization and Conduct of the National Bank of Cambodia (the Central Banking Law)." Royal Government of Cambodia, Financial sector blueprint for 2001-2010, December 2001

19 Key priorities include (i) improving enforcement of contracts and mechanisms for resolution of commercial disputes, (ii) improving fiscal, macroeconomic and monetary policy implementation, (iii) developing a safe and efficient payment and settlement system, (iv) improving financial sector supervision to appropriately address risks while at the same time producing incentives for financial development and innovation and (v) supporting human capital development and financial education across the full spectrum of Cambodia's population.

- 40 MFIs (16 licensed MFIs and 24 registered credit operators) and around 60 non-registered NGOs operating in rural areas. Both MFIs and NGOs are to large extent controlled by foreigners

53. The Cambodian banking system is fairly concentrated with about two thirds of deposits collected by the five biggest commercial banks (2006 figures). A significant banking restructuring took place at the end of the 1990s after the required minimum capital for commercial banks was raised to about 12.5 million USD. 17 commercial banks out of 31 had to close down, resulting in losses to depositors in a few cases. The banking system is almost entirely owned by private investors since Canadia Bank took over the control of Foreign Trade Bank when it was privatized in 2005.

54. Despite the sharp deposits' and loans' growth in 2006²⁰ (+45% and +42% respectively), banking assets only represent a tiny share of the Cambodian GDP (7,616 billion KR, or 1.9 billion USD, which is about 29% of the estimated 2006 GDP). Banks are primarily deposit takers with a credit to deposit ratio of 60% (2006 figures). There is only a limited amount of non-resident deposits (about 3% of total deposits at YE 2006). Bank staff totals almost 4,500 with one bank employing 3,000 people and others between 10 and 250 people.

55. Commercial banks mainly offer simple services to retail and corporate customers in the largest Cambodian cities (time and term deposits, savings accounts, plain vanilla loans, domestic and cross-border wire transfers, foreign exchange, letters of credit etc.). More advanced banking services are being introduced such as electronic banking and private banking (e.g. a Cambodian bank recently introduced private banking services for high net worth individuals from the private and public sectors). Commercial banks had about 285,000 depositors as of the end of 2006.

56. Bank operations are primarily undertaken in US dollars (more than 95% of deposits and credits) and on a cash basis. The negotiable instruments and payments system law enacted in 2005 provides for the first time a framework for the development of negotiable instruments and for the regulation of a formal wholesale payment system. The use of negotiable instruments such as cheques is increasing but remains limited.

57. The absence of foreign exchange restriction²¹ in Cambodia facilitates the access of banks to the international banking system. For the first nine months of 2006, inflows amounted to 2.7 billion USD and outflows to 3.5 billion USD according to information transmitted by banks to the NBC. A banking license is required to undertake money transfers and some commercial banks offer such services as agents of Western Union or Moneygram.

58. MFIs' primarily extend small credits to natural persons (373 million KR of outstanding credits, about 93 million USD, and 471,000 borrowers as of YE 2006). Deposits are low (11,922 million KR, about 3 million USD as of YE 2006) as MFIs are only authorized to collect them in strictly defined circumstances. They cannot offer money transfer services. In rural areas, Cambodian people mainly rely on MFIs, cash and informal financial service providers.

²⁰ Commercial and specialized banks.

²¹ For foreign investors, article 11 of the amended law on investment of 2003 also guarantees that they can freely remit abroad foreign currencies, bought through the authorized banks, for the discharge of financial obligations incurred in connection with their investment. These obligations include (i) payment for imports and repayment of principal and interest for international loans, (ii) payment of royalties and management fees, (iv) remittance of profits and (v) repatriation of invested funds in case of dissolution.

Postal services

59. Postal services include remittances (art. 6 of the Postal law) and can be offered by the Post office and private companies licensed by the Ministry of Post and Telecommunications (art. 23 of the Postal law). According to the authorities, the Cambodian Post office is the only entity authorized to provide postal services in Cambodia and so far offer minimal financial services and has no project to develop these services.

Money changers

60. Besides banks, individual and legal persons can undertake foreign exchange provided they register with the NBC (law on foreign exchange, 1997). They are not allowed to undertake any other financial activity. There were 647 registered money changers in December 2006 (53 in Phnom Penh and 594 in provinces). There are no available statistics on the amount of transactions undertaken by money changers.

National Bank of Cambodia (NBC)

61. The missions of the Cambodian central bank, the NBC, defined in the 1996 law on the conduct and functions of the NBC include the conduct of the monetary policy, currency management, Cambodian foreign exchange reserve management and oversight of the payment system (see 2.1 for its supervisory responsibilities). Moreover, it can assist the government in the management of its debt and lend to and borrow from FIs. In 2005, it directly lent to an MFI in riel in order to enable it to grant loans denominated in riel. The total assets of the NBC amounted to 9,062 billion riels (about 2.3 billion USD) as of the end of November 2006.

Informal financial service providers

62. Financial activities are also undertaken by informal financial institutions. No comprehensive assessment of the size of the informal financial sector in Cambodia is available. The Cambodian authorities consider that there are informal money or value transfer operations carried out by money changers, or individuals within Cambodia or cross border. These activities mainly take the form of “swap operations base solely on the absolute confidence on each other among the parties involved”. Besides, money lender, there are different forms of informal money lenders involving pawn shops, friends or families. Efforts are being undertaken to bring informal financial activities under authorized financial institutions by providing a proper regulatory environment and adequate incentives rather through enforcement of existing laws and regulation (definition of banking activities in the BL in particular).

Insurance industry

63. Life insurance can only be provided by companies specifically licensed for that purpose (art. 46 and 47 of the insurance law, 2000). However, no life insurance license has yet been issued. The Ministry of Economy and Finance (MEF) is responsible for insurance supervision. The MEF expects to license a first life insurance companies in 2007 or 2008. In 2005, the total assets of the insurance sector amounted to 25 million USD and the total premiums written during that year to 10.1 million USD. There is no agent or broker operating in Cambodia. The MEF is preparing a sub-decree on life insurance and expects to license a first life insurance undertaking in 2007 or 2008.

Capital markets

64. Articles 4 and 5 of the law on banking and financial institutions (banking law) allows banks and “other specialized financial institutions” to offer securities services (as defined in points 7 c, 7 d, 7e, 8, 9, 10 and 11 of the FATF definition of financial institutions). “Other specialized financial institutions” have

not been defined in laws and regulations and do not exist so far. Banks have none or very limited securities operations (i. e. placement of short-term government securities²²). No securities supervisor has yet been established.

65. There is no capital market in Cambodia but there are plans to establish one in 2008 or 2009. The Government has established a capital market unit in the MEF and is also considering creating an securities supervisor responsible for overseeing the functions of a capital market.

66. The legal framework for issuing securities is being established. A law on government securities was adopted on 30 November 2006 and short term government securities have already been issued. Their placement was jointly organized by the NBC and commercial banks. On 16 February 2007, the Council of Ministers approved a draft law that would allow private companies to sell bonds²³.

Collective portfolio management

67. According to the Cambodian authorities, fund managers, financial advisers or managing funds on behalf of other persons do not exist yet in Cambodia.

Overview of the DNFBP Sector

Casinos

68. Gambling within Cambodia is controlled under the Kram (Law) on the Control of Gambling issued January 1997. It prohibits gambling without the prior authorization of the Cambodian government and Cambodian nationals from entering licensed casinos. There are 21 licensed casinos operating in Cambodia, one in Phnom Penh the remainder in areas adjoining the Thai and Vietnamese borders. According to the US Department of State, the latter uses bank accounts with Thai and Vietnamese banks where their clients can make and receive payments²⁴.

69. Cambodian nationals are not permitted to enter these casinos. There are six lottery companies and one soccer betting company licensed to operate in Cambodia. There are no known Internet casinos operating within Cambodia. There is no supervision of the gambling industry for AML/CFT purposes. There is no statistics on casinos' activities despite a requirement that each casino file financial statement with the MEF.

Real Estate Dealers

²² The law on government securities was adopted on 30 November 2006.

²³ Kay Kimsong and Emily Lodish, Approval of draft law paves way for Stock Market, Cambodia daily, 6 March 2007

²⁴ "There is one large casino in Phnom Penh that has avoided the regulation that all casinos be at least 200 kilometers from the capital city. Casino patrons placing small bets simply hand-carry their money across borders, while others use either bank transfers or junket operators. There is no effective oversight of cash movement into or out of Cambodia. Cambodian casinos have accounts with major Thai or Vietnamese banks and patrons can wire large amounts of money to one of these foreign accounts. After a quick phone call to verify the transfer, the Cambodian casino issues the appropriate amount in chips. Casinos also work with junket operators who, despite their name, only facilitate money transfers and do not serve as travel or tour operators. Players deposit money with a junket operator in Vietnam or Thailand, the casino verifies the deposits and issues chips to the player-typically up to double the amount of the deposit. After the gambling session ends, the junket operator then has 15 days to pay the casino for any losses. Because the junket operator is responsible for collecting from the patrons, casinos see little need to investigate the patron's ability to cover his /her potential debt or the source of his /her wealth." US Department of State, International narcotics control strategy report, 2007

70. The development of a sector of intermediaries in the real estate sector is relatively new for Cambodia. There is no supervision or regulation of the real estate sector for AML/CFT purposes. In February 2007, the MEF issued a Prakas imposing a licensing regime on real estate agents that requires record keeping for financial reporting purposes. The licensing regime was not in effect at the time of the onsite mission.

71. The mission was informed that the majority of real estate transactions were direct cash transactions between the vendor and purchaser. It was estimated that only 25 real estate agents were currently²⁵ operating within Cambodia. Real estate agents were involved in approximately 30% of all transactions in Phnom Penh and around 60% of these transactions were conducted in cash. The remaining 70% of transactions in Phnom Penh are even likelier to be carried out in cash. Foreigners cannot legally own land in Cambodia, however, the mission was advised it was common practice for foreigners to utilize nominee arrangements to purchase property. Agents did not usually handle client funds.

72. The Ministry of Land Management and Urban Planning estimates that less than 15% of land in Cambodia is currently registered with the Ministry of Land Management²⁶. The FSDP stresses that the land and real estate property registration process may not be completed by 2015. This lack of transparency and verification provides opportunity for over and under stating transactions which may be exploited for money laundering purposes.

Dealers in Precious Stones and Precious Metals

73. In accordance with the Prakas on the Management of Precious Stones and Metal Dealing issued by Governor of the National Bank of Cambodia in September 1999, all dealers in precious stones and metals are required to obtain a license from the NBC. The license is renewable on an annual basis. There is no fit and proper, CDD or record keeping requirements imposed on license holders. The regime is essentially a registration scheme that prohibits unlicensed trading. At the end of December 2006, there were 499 registered dealers in Phnom Penh and 3,144 in the provinces. Enforcement action against unregistered dealers is left to the Municipal authorities.

Lawyers

74. Under Cambodian law, lawyers typically offer both court related and advisory services- drafting legal contracts and advising on Cambodian law. Though they might advise on real estate and land law, their involvement is typically limited to the drafting of documentation; they are not involved in effecting real estate transactions, not in the transfer of title, nor, normally, in the receipt or transfer of funds. Lawyers do not hold or manage client funds nor have any investment advisory role. In a small number of cases they do act as escrow agents in real estate deals and are involved directly in the transfer of client funds. They are also involved in the creation of legal entities- predominantly for foreign clients. This involves drafting the memorandum of association and liaising with the Ministry of Commerce to register the entity and ensure its incorporation. Since the creation of a company is a relatively straightforward process lawyers tend to be less involved in the creation of companies for Cambodian

²⁵ Unless otherwise mentioned, "current" refers to the situation at the time of the on-site mission.

Land registration is expanding through a systematic land registration project, with the assistance of a number of international donors. This project is estimated to take at least another 10 years to complete. The land register currently only records the size of the parcels of land and owner. There is no valuation or verification of actual prices paid in registered transactions. The FSDP emphasize that "completing land and real property registration is a long term objective which will take years to complete. At the same time, attention should now focus on areas which are or are likely to experience increasing number of transactions and therefore raise the potential for conflict. Examples are the major urban areas, where registration needs to be completed as an immediate priority, as well as development of appropriate regulatory systems to support real estate transaction services".

nationals who deal with it themselves. The BAR Council supervises BAR members and may impose disciplinary sanctions, the most severe of which is disbarment. So far 13 lawyers have been disbarred for reasons of breach of client confidentiality, cheating clients and advertising. There are currently almost 500 lawyers practicing in Cambodia.

Accountants

75. Accountants in Cambodia can be divided into two categories; Certified Public Accountants who are members of KICPAA (the Kampuchea Institute of Certified Public Accountants and Auditors) and those who undertake in-house accounting services who may or may not be KICPAA members. Only KIPCAA members are permitted to undertake external audits of corporations and NPOs. The National Audit Authority undertakes audits of government ministries. There is no requirement for companies to be externally audited except for banks. External auditors for banks are licensed by the NBC. Most non bank Cambodian firms do not enlist the services of outside auditors. Larger foreign companies and NPOs receiving donor funding tend to hire one of the “big four” to do their auditing while the smaller ones might hire one of the local accounting firms. Public accountant may liaise with the Ministry of Commerce to register a legal entity, but they do not perform any fiduciary duties.

76. KIPCAA has a statutory role, determining amongst other the standards that accountants in Cambodia have to meet. As yet any accounting courses offered by Cambodian institutions are not considered quite satisfactory and as a consequence all accountants currently practicing in Cambodia have foreign qualifications (UK, Australian and others). KIPCAA also jointly administers international accounting examinations in Cambodia such as with the Association of Chartered Certified Accountants to facilitate entry to the Institute. In relation to accounting and auditing standards, the Financial sector development plan (FSDP) 2001-2010 specified first a law and second standards based upon International Accounting Standards (IAS) and International Standards on Auditing (ISA). The law on corporate accounts, their audit and accounting profession has been enacted under the responsibility of the MEF, and the National Accounting Council (NAC) has been established to set accounting and auditing standards. Standards based upon IAS and ISA are being implemented and significant progress is being made in developing qualified accountants and auditors.

Overview of commercial laws and mechanisms governing legal persons and arrangements

77. The Law on Commercial Enterprises provides for different commercial legal entities, the Limited Company: (both private and public) and (general and limited) partnerships. In addition foreign businesses may conduct business in Cambodia through a commercial representative office (which may only conduct a limited number of services) a branch (which also may only conduct a slightly more extensive range of services) or a subsidiary, a Cambodian company with at least 51% of its capital held by the foreign company. The vast majority of businesses in Cambodia are private limited companies. As yet only law firms are established as partnerships. Currently (February 2007) there are 12097 companies registered, 266 representative offices, 124 branch offices and 2992 single member companies. Company formation is a straightforward process, the Ministry of Commerce having produced a template that is relatively easy to complete.

78. Relevant documentation (articles of incorporation, names of shareholders and those who hold a power of attorney, registered address) should be filed with the Commercial Register at the Ministry of Commerce within 15 days prior to commencing operations a company. In the case of a foreign corporate shareholder/company, the Commercial Register will require a copy of the certificate of registration of the foreign parent company and a notarized Power of Attorney to the local representative. Owners/controllers of the foreign company are not registered. Registration is automated and centralized in a database held at the Ministry of Commerce in Phnom Penh. As yet that is the only place that companies can register.

79. Apart from the companies described above, the Law on Investment (promulgated in August 1994 as amended in March 2003) also allows for the creation of so called “Qualified Investment Projects” (QIP). The aim of this law is to facilitate investment into Cambodia, both by Cambodian and foreign natural and legal persons. It offers tax breaks and simplified licensing procedures to investors whose projects qualify. Approval is granted by the Council for the Development of Cambodia (CDC).

80. Involvement of foreign shareholders/directors in companies and particularly QIPs was said to be significant. Without being able to quantify it precisely, authorities estimate that foreigners were involved (either as shareholder or director) in possibly 75% of companies registered. At the end of February 2007 there were 12097 companies and QIPs registered in Cambodia.

81. Cambodian law does not recognize the legal concept of a trust, including trusts created in other countries, nor are there any similar legal arrangements under Cambodian law.

82. There is no legal framework for NPOs in Cambodia at this time. A draft Law on NGOs is under preparation. International NPOs are required to register with the Ministry of Foreign Affairs. They have to submit a Memorandum of Understanding (MoU) before operations start. There are currently almost 370 mostly active in the field of health, education, agriculture, and clearing land mines. Approval to operate involves submitting the certain essential information, after which the MoU can be signed and approval is given for 1 to 3 years depending on the activity. International NPOs are required to submit quarterly reports and to submit an annual financial report. There is no legal basis for the conclusion of the MoU between the Ministry of Foreign Affairs and the international NPOs. However, if they do not register, international NPOs will not receive advantageous tax treatment and will be unable to obtain vehicle registration plates and international staff will not be granted residence visa.

83. Pursuant to a 1994 directive of the Ministry of Interior, local NPOs, are required to register at the Ministry of Interior before starting operations. There are currently 1835 domestic NPOs registered.

84. Other than by way of registration described above, authorities do not in any formal way supervise the NPO sector and verify what information they maintain. The intelligence department in the Central Department of Security in the Ministry of Interior however does collect intelligence on all NGOs (international and domestic) active in Cambodia. Its Bureau of Social Organizations Information, with a staff of 70 police officers, is dedicated exclusively to that purpose. The aim is primarily the detection of subversion or any other terrorist activity (though it has also brought to light embezzlement of donor funds)

Overview of strategy to prevent money laundering and terrorist financing

a. AML/CFT Strategies and Priorities

85. The first priority of the Cambodian authorities has been in the last few years to revise and improve the AML /CFT regulatory framework. At the time of the on-site mission, there were only limited AML /CFT requirements in Cambodia and there implementation was scant. However, Cambodian authorities were actively engaged in preparing a revised framework with the assistance of foreign donors. A first step has been achieved after the on-site visit with the enactment of the AML law which provides a stronger foundation to build an efficient AML /CFT framework. The Cambodian authorities insist that they are committed to implementing it fully.

86. No AML /CFT strategy has been prepared yet and such a work would usefully complement efforts engaged to set a proper AML /CFT regulatory framework in Cambodia.

b. The institutional framework for combating money laundering and terrorist financing

87. There is currently no AML/CTF Coordination Committee (NCC) or mechanism in place, besides the National ME Coordination Group (MECG) recently established for the mutual evaluation and the Working Group on the draft AML law. The National Bank of Cambodia, and within the bank the Pre-FIU Groups, takes the lead role in AML/CTF matters in the absence of a NCC. The AML law sets detailed requirements regarding the coordination that should be established within each relevant authority as well as between the FIU and sector supervisors²⁷. Such arrangements were not yet in place at the time of the on-site mission.

88. The following government agencies have a role in developing and implementing the AML/CTF framework in Cambodia:

National Bank of Cambodia

National Bank of Cambodia is the central bank of the country. It is where the Pre-FIU Group of six NBC staff is located to coordinate all AML/CTF matters in Cambodia. It is expected that the chair of the proposed FIU will be the representative of the NBC. In addition, the NBC has a significant regulatory role in relation to AML/CFT compliance at present and in the future for banks, micro-finance institutions, money changers, precious metals and stone dealers.

Ministry of Interior – Cambodian National Police

89. The Cambodian National Police (CNP) is responsible for money laundering and terrorism financing investigations. The police powers include gathering information and investigating, detaining suspects, seizing assets, interviewing witnesses, preparing cases and submitting them to court.

90. Furthermore, the National Police monitors casinos and NPOs operating in Cambodia. The General Information Department of the CNP is responsible for enforcing adherence to Prakas No. 773P (22 July 1999) on casino operations. Towards this end, police officers are stationed in casinos to monitor criminal activities.

91. The Bureau of Social Organizations in the CNP is responsible for registering local NPOs and monitoring all NPOs (both local and international) operating in the country. There are 1835 local NPOs registered with the police.

Ministry of Justice

²⁷ Article 26 reads: “FIU, law enforcement authorities, supervisory authorities as well as other competent Government agencies entrusted with the prevention or control of money laundering and financing of terrorism shall establish their own permanent and senior-level mechanism for: a) ensuring information exchange and coordination among these authorities and with the relevant private sector associations, b) providing guidance as to the implementation of this Law, and c) formulating policy for various areas falling under its scope. The role and functions of this coordination mechanism shall be regulated by sub- decree

Article 31 reads: “the supervisory authorities shall issue regulations, instructions and guidelines for the implementation of the present Law, particularly regarding: a) the arrangement for information sharing with the FIU to the agreement in imposing disciplinary measures to be taken, or in suing the offenses to the court, b) the mutual coordination among supervisory authorities for the issuance of regulations, instructions, and guidelines for the implementation of the present Law, c) issuing regulations and guidelines to determine the duties and to protect officials and staff who perform their duties with integrity in the FIU, the information confidentiality protection and the information disclosure rules. The supervisory authorities shall cooperate with the Financial Intelligence Unit in guiding the reporting entities to create program for the prevention of the money laundering and the financing of the terrorism in accordance with Article 16 of the present Law, and to issue the report formats according to the nature and character of the reporting entities. Regulations and guidelines issued by the supervisory authorities under the present Law can be modified or amended in an appropriate circumstance or when necessary.”

92. The Ministry of Justice is responsible for drafting laws in Cambodia. It is also responsible for the administrative process involved in the consultation process for any new law up until its final approval by the National Assembly. The Ministry is not involved in Mutual Legal Assistance. However, it has been closely involved in the Working Group established on the draft AML CFT law.

Office of the General Prosecutor

93. This Office would be responsible for money laundering and terrorism financing prosecutions. Under article 55 of the Law on Criminal Procedure (adopted on 28 January 1993), once the perpetration of any crime or any misdemeanor is known, the prosecutor shall proceed immediately to the investigation measures which are provided to him/her by the law and which are necessary to find the truth.

Courts

Cambodia has a three tier judicial system: the trial court, the appeals court and the Supreme Court. The Constitution also mandates a Constitutional Council, which is empowered to review the Constitutionality of laws, and a Supreme Council of Magistracy, which appoints, oversees, and disciplines judges. These institutions have pertinent roles in administering the provisions of the AML /CFT law.

Ministry of Economy and Finance – Casino Management Division

94. The Casino Management Division in the Ministry is responsible for issuing Casino licenses and for collecting annual lump sum taxes from all licensed casinos. It also controls lottery operations and has issued licenses to seven lottery companies.

Ministry of Economy and Finance – Financial Industry Department

95. This department is responsible for licensing and supervising the insurance sector. There are only four insurance companies at present in Cambodia. There are no life insurance companies in Cambodia.

Ministry of Economy and Finance – Real Estate Trading Division

96. This Division is responsible for licensing and supervising property valuation firm and real estate agents, particularly in relation to the Prakas on Professional Certificate and Licensing to valuers, appraisers, and estate agents passed on 13 February 2007.

Ministry of Economy and Finance – Customs and Excise Department

97. Customs is responsible for monitoring the movement of goods, conveyances and people across frontiers. It is responsible for enforcing and collecting all custom declaration forms for physical cross border movements of USD10,000 and more (or equivalent). It collects about 74% of total taxation revenue and 54% of total domestic revenue.

Ministry of Commerce

98. The Ministry is responsible for the registration of all companies in Cambodia – both domestic and foreign owned. This includes obtaining information on the ownership structure of a company. It includes enforcing breeches of the law and delisting companies if necessary.

Ministry of Foreign Affairs

99. The Ministry of Foreign Affairs is responsible for mutual legal assistance and in liaising with international organizations, in particular in relation to various UN Conventions. It also liaises with foreign diplomatic mission based in Cambodia.

100. The Ministry registers international NPOs working in Cambodia. This includes signing an MOU with each international NPO and obtaining regular financial reports from them. Registration grants NPOs certain taxation exemptions and facilitates the issuance of the relevant visa for foreign staff. There are 370 registered with the Ministry.

Office of the Council of Ministers

101. The Office of the Council of Ministers was established through a Royal Kram dated 24 January, 1996. It is headed by the Deputy Prime Minister. Its mandate is to regulate matters relating to all sectors in Cambodia, including in relation to coordination of all individual ministries. It is involved in the review of all proposed draft laws or proposed amendments to existing laws, including the draft AML/CTF law.

c. Approach concerning risk

102. The AML /CFT framework of Cambodia is not based on an analysis of AML /CFT risks in the country.

DETAILED ASSESSMENT

1 LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

1.1 Criminalization of Money Laundering (R.1, 2 & 32)
Description and analysis
<p>103. Legal Framework: Currently money laundering is criminalized only in the Law on Drug control. A more comprehensive definition of money laundering is included in the AML law. The AML law does not criminalize money laundering. The Draft Criminal Code defines and criminalizes money laundering.</p> <p>104. Criminalization and definition of money laundering (c. 1.1): Article 39 of the Law on drug control (Definition) reads:</p> <p>“1- Shall be punished to imprisonment from 10 years to 20 years and with a fine from 10 million to 50 million riel (approx 2,500-12,500 USD):</p> <p>a) Any person who intentionally transfers resources or properties acquired through the commission of [drugs related offences], for the purposes of concealing or diverting the illegal original sources of such resources or properties, or in order to help the offender get away from punishments as a result of his/her own act.</p> <p>b) Any person who helps concealing or diverting (...) the original sources, place, management, movement or real ownership of the resources, properties or rights related to the resources and properties obtained from any offenses stated in subparagraph (a)</p> <p>2- Shall be punished to imprisonment from 20 to 30 years or for life and with a fine from 40 million to 100 million riel (approx 10,000-25,000 USD) [Aggravated circumstances]”</p> <p>The mission was informed that this clause has so far never been used in a judicial investigation.</p> <p>105. Under the Law on Anti-Money Laundering and Combating Financing of Terrorism (the AML law), money laundering is defined as:</p> <p>(i) The conversion or transfer of property, knowing that such property is the proceeds of an offence, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the offence to evade the legal consequences of his or her action;</p> <p>(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of an offence;</p> <p>(iii) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of an offence;</p> <p>(iv) Participation in, and attempts to commit, aiding and forcing somebody to commit any of the acts defined in accordance with Article 3 of the present Law;</p> <p>(b) "Proceeds of an offence" shall mean any property derived from or obtained, directly or indirectly, through the commission of any felony or misdemeanor;</p> <p>(c) "Property" shall mean assets of every kind, whether movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets;</p> <p>(e) "Predicate offence" means any felony or misdemeanor, even if committed abroad, as a result of which proceeds have been generated that may become the subject of money laundering as defined above under Article 3 (a) of the present Law;</p>

The AML law defines, but does not criminalize money laundering. It appears to be included here as a basis for submitting STRs.

106. The Draft Criminal Code, adoption of which is expected before the end of 2007 currently contains the following provisions related to money laundering:

“Laundering is the provision, by any means, of untrue evidence in order to conceal the direct or indirect proceeds of a felony or a misdemeanor. Lending one’s support to an act of investment, concealment or conversion of direct or indirect proceeds of a crime or misdemeanor also constitutes laundering.”

“Laundering is punishable by imprisonment from 2 to 5 years and by a penalty of 4 million to 10 million riels”, in which case it qualifies as a misdemeanor.

“Laundering is punishable by imprisonment from 5 to 10 years [under aggravating circumstances]” in which case it qualifies as a felony.

“Attempt [to commit laundering] is punishable by the same punishments”

107. As currently criminalized in article 39 of the law on control of drugs money laundering relates only to the act of “transferring” (clause a) and “helping to conceal or divert...” (clause b). Though convoluted in structure, the acts listed in sub paragraphs a and b of the definition of money laundering in the Vienna and Palermo conventions (conversion, transfer, concealment disguise) would appear to be covered. The “acquisition or use” as contained in clause c of the definition in the conventions, is not covered under the current law.

108. The definition of money laundering as contained in the AML law clearly contains all the acts referred to in the Vienna and Palermo Conventions. The definition in the Draft Criminal Code (“provision of untrue evidence in order to conceal” and “lending one’s support to an operation”) is more ambiguous and could be construed as more constrictive than the definition in the AML law. Only future court interpretation in concrete cases can resolve this issue though.

109. As noted, the AML law does not contain a provision criminalizing money laundering (although it does use the term “money laundering offence”— i.e. in article 12). Criminalization is only envisaged under the Draft Criminal Code. Therefore, under this extensive definition of money laundering will still not be criminalized.

110. **Proceeds (c. 1.2):** The term “resources and property” in the Law on drug control is not defined, but the authorities indicated that this would include any assets, regardless of nature or value, there not being any provision or clause limiting such interpretation.

111. The definition of proceeds as property and property as “assets of every kind, whether movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets” in the AML law is as wide as the definition of proceeds recommended under R 1.

112. **Predicate offences (c. 1.3, 1.4 and 1.2.1):** At the time of the on-site mission, only drug related offences were predicate offences for money laundering under Cambodian law. Under the AML law and under the money laundering definition of money laundering as contained in the Draft Criminal Code, “any felony or misdemeanor” qualifies as a predicate offence for money laundering (all crimes approach). Most of the designated offences are currently criminalized in the “Provisions relating to the Judiciary and Criminal Law and Procedure applicable in Cambodia during the transitional period” of

1992 (the Provisional Criminal Code). The following offences are not as yet criminalized:

- * The financing of terrorism
- * Piracy
- * Counterfeiting and piracy of products
- * Insider trading and market manipulation²⁸

The criminalization of terrorism is very basic- for a more detailed discussion see below under.

113. There having been no judicial investigations into money laundering, any discussion on the question of whether an investigation/conviction for money laundering would require a conviction for the predicate offence is hypothetical. The Law on drug control is silent on this issue. The authorities indicated that in their view, even in the absence of a conviction for a drugs related predicate offence, provided there was obviously sufficient evidence thereof, a person could be prosecuted for money laundering. Indeed there is nothing in the Law on drug control, the AML law or the draft Criminal Code to preclude such a conclusion.

114. **Foreign predicate offences (c. 1.5):** The Law on drug control does not contain any explicit provision on whether a drug related offence committed abroad could qualify as a predicate offence. Authorities expressed the opinion that as long as the criminal behavior corresponded to any of the crimes listed in the Law on drug control, it would qualify as a predicate offence for drug money laundering irrespective of where the act or acts took place. Again, in the absence of any investigations/prosecutions/convictions it is not possible to confirm this.

115. In its definition of “predicate offence” the AML law specifically states “any felony or misdemeanor, even if committed abroad”. Although that clearly indicates the intention to ensure that foreign predicate offences are covered, the AML law only defines the term “predicate offence” but then does not use it anywhere. Technically speaking one could therefore raise a doubt as to whether offences committed abroad would qualify as predicate offences for money laundering.

116. **Self laundering (c. 1.6):** On the issue of self laundering, the authorities inclined to the view that in principle the perpetrator of the drugs related offence could not be prosecuted for any subsequent money laundering, it being considered (part of) the same offence and hence an infringement of the principle that no one can be prosecuted twice for the same offence (double jeopardy). However if, in time, the money laundering was clearly separated from the drugs related offence such prosecution may be considered possible.

117. Given that money laundering is not criminalized in the AML law it is not sure the above reasoning would apply to that definition since double jeopardy does not apply in that case. The issue is academic though since, even assuming the definition in the AML law was to include self laundering, that would still not make it a money laundering *offence*.

118. **Ancillary offences (c. 1.7):** The scope of ancillary offences in the Law on drug control is determined by articles 42 and 43 which criminalize attempt, conspiracy, facilitation, providing assistance or giving advice and article 39 itself which defines “helping to conceal” as money

²⁸ Since there is as yet no stock market in Cambodia, no recommendation will be made on criminalization of this offence.

laundering.

119. Under the Provisional Criminal Code he who supplies the modalities of an offence, orders it or facilitates its commission shall be punished with the same punishment. This provision would apply to the offence of drug money laundering as defined in the Law on drug control.

120. Under the AML law “participation in, attempting, aiding and forcing somebody else to commit money laundering” are all defined as money laundering.

121. The Draft Criminal Code, finally, provides for the ancillary offences of conspiracy, attempt, instructing someone else to commit, provoking or facilitating a crime, thus covering the widest scope of ancillary offences.

122. **Mental element (c. 2.1):** The money laundering offence under article 39 of the Law on Control of Drugs applies to natural persons that *knowingly* engage in money laundering. The money laundering offence as contained in the Draft Criminal Code, also applies to natural persons that knowingly engage in money laundering. The AML law not criminalizing money laundering, it contains no provision on intent. There is no concept envisaged of negligent money laundering in the Draft Criminal Code.

123. **Inference (c. 2.2):** There is no specific legal provision regarding the type or nature of proof required. In practice, Cambodia being - at least concerning criminal and civil matters²⁹ - a civil law jurisdiction, the courts are free in their appreciation of the facts presented to them and the intentional element of any offence can be inferred from objective factual circumstances. This is confirmed in the Draft Criminal Procedure Code which states (art 513-6) that unless otherwise required by law, any evidence in criminal cases is admissible.

124. **Liability of legal persons (c. 2.3 and 2.4):** The criminal liability for money laundering extends to legal persons. Article 46 of the Law on drug control states that legal entities shall be criminally liable for drug related offences and provides for a very broad range of penalties. Under the Draft Criminal Code criminal liability for money laundering will also extend to legal persons.

125. The Draft Criminal Code further provides that the criminal liability of legal entities does not exclude the liability of individuals for the same facts. Neither the Law on drug control nor the Draft Criminal Code explicitly deals with the possibility of parallel sanctions, but the authorities informed the mission that there was nothing in Cambodian law that would prohibit parallel proceedings

126. **Sanctions (c. 2.5):** As noted under the Law on drug control a natural person may be punished by ten to twenty years imprisonment and 10 to 50 million riels (2,500-12,500 USD). Under the Draft Criminal Code, the offence of laundering is punishable by imprisonment from two to five years and subject to a fine from 4 to 10 million riel (1,000-2,500 USD). Both laws provide for confiscation of the property (see below for more detailed discussion) and more severe sanctions under aggravated circumstances.

²⁹ In the near future the Cambodian National Assembly is expected to enact a Civil Code, a Civil Procedure Code, a Criminal Code and Criminal Procedure Code which all follow the structure of the French legal system.

127. In addition the AML law states that “where a court has decided to penalize the offence of money laundering (...) the property shall be confiscated” (art 30). The first sentence of the article makes it clear that it is referring to prosecutions for money laundering under the existing Penal Code. At the time of the mission, the criminal code did not criminalize ML.

128. For legal persons the Law on drug control provides for the following sanctions:

- A penalty of maximum amount equal to 5 times the maximum punishment term as provided for in this law (i.e. for natural persons).
- Dissolution if the entity was established for the purpose of diverting its objective to commit offenses which are subjected to imprisonment of above 5 years.
- Prohibition from performing any profession or social activity either directly or indirectly, forever or for a period of not more than 5 years.
- Placed under the court supervision for a period of not more than five years.
- Closure for definitively or for a period of not more than 5 years, those establishments or establishments of enterprises which are used for the purpose of committing offenses.
- Forbidden from joining in the public bidding for definitively or for a period of not longer than 5 years.
- Forbidden from making advertisements for the publics to come with their money to open their saving accounts, forever or for a period of not more than 5 years.
- Prohibition from issuing checks apart from those checks for cash box, or from certifying checks or using order of payment, for a period of not over 5 years.
- Confiscation
- Posting decisions of the courts or publicizing these decisions through newspapers or TV.

129. The Draft Criminal Code provides similar sanctions for legal entities.

130. In the absence of any money laundering investigations and hence use of the sanctions described above, gauging their effectiveness is not possible. 10 to 20 years imprisonment seems an excessively high penalty, not just from an international perspective but also from a Cambodian perspective. Comparing it to the penalties as established under the Provisional Criminal Code, it is equal to the punishment for murder and higher than that for rape or participation in a criminal organization. The lower prison sentences provided for in the Draft Criminal Code seem more proportionate. On the other hand, fines appear very low.

131. The pecuniary penalties provided for in the Law on drug control and the Draft Criminal Code would appear too limited.

132. **Effectiveness:** The mission was informed of only one criminal case in which proceeds were taken from the perpetrator (kidnapping). It was confirmed by the authorities that seizure provisions are only used to the extent they secure the gathering of evidence in the case, but that there was no focus on the proceeds of an offence. It was attributed to an attitude focusing exclusively on predicate (drugs related) offences, and proving those offences, without attention being paid to the funds generated in the commission of the offence.

133. In the absence of any case law on the laundering of drug proceeds a discussion on the

effectiveness of the money laundering provision under the Law on drug control, may be dispensed with. Clearly at the moment the range of predicate offences is too limited, certainly given the occurrence of other forms of profit generating crime in Cambodia (notably human trafficking and environmental crime).

Recommendations and comments

134. The limitation of predicate offences for money laundering to drugs related offences only, constitutes a significant shortcoming in the criminalization of money laundering (the AML law provides for a broader definition of predicate offenses but does not criminalize AML). To resolve the vacuum in Cambodia's legal system now it has adopted a money laundering definition but not yet criminalized it, authorities may wish to consider amending the AML law and criminalizing money laundering in it.

135. Moreover, if eventually the Draft Criminal Code is adopted and enters into force, Cambodia will have two different definitions of money laundering, which is unnecessarily confusing. At the same time, the benefits of including a definition of money laundering in the AML law- for obvious reasons, and in the criminal code- because thus all criminal conduct is listed in one Code, are recognized. To resolve the situation it is recommended to adopt the wider and more precise wording of the AML law in its definition of money laundering in the Draft Criminal Code, or to make a reference in the Draft Criminal Code to the relevant article in the AML law

136. In addition Cambodian authorities should ensure the following categories of offences are included as predicate offences for money laundering: The financing of terrorism, counterfeiting products, piracy.

137. In criminalizing money laundering the sanctions and widest range of ancillary offences as currently envisaged under the Draft Criminal Code should be provided for. The sanctions provided for in the law on drug control appear unbalanced- very high for imprisonment and very low for fines. These sanctions could be reviewed. The lower prison sentences provided for in the Draft Criminal Code seem more proportionate. On the other hand, fines appear very low.

138. To ensure that offences committed abroad qualify as predicate offences under the definition of money laundering in the AML law, authorities could consider defining "proceeds of an offence" as "property derived from conduct that had it occurred in Cambodia would constitute a predicate offence in Cambodia".

139. Once authorities have started investigation ML and initiated prosecutions, authorities should ensure adequate statistics are gathered on ML investigations, prosecutions and convictions.

Compliance with FATF Recommendations

	Rating	Summary of factors underlying rating
R.1	NC	The range of predicate offences is limited to drug money laundering only. Not clear that the offense extends to conduct occurring abroad, and to self laundering
R.2	NC	The range of predicate offences is limited to drug money laundering only Inadequate sanction regime for money laundering (too high for imprisonment and too low for fines)
R.32	NC	Criminalization of Money Laundering: No framework to gather statistics (and no convictions for money laundering)

1.2 Criminalization of terrorist financing (SR.II & R. 32)
Description and analysis
<p>140. Legal Framework: As yet terrorist financing is not criminalized under Cambodian law. The law applicable to terrorist crimes is the Law on the Punishment of Acts of Terrorism (1992) which contains a very basic definition of acts of terrorism</p> <p>141. The Draft Counter Terrorism Law was submitted to the Council of Ministers in September 2005, adopted by the Council of Ministers in July 2006 and submitted to the National Assembly on 6 October 2006. It is expected to be adopted in 2007 and contains provisions that criminalize the financing of terrorism. In addition the AML law defines, but doesn't criminalize, the "financing of terrorism".</p> <p>142. Criminalization of Terrorist Financing (TF, c. II.1): Under the Draft Counter Terrorism Law, terrorist financing would be criminalized under art 76 which would provide for the criminalization of intentionally providing or collecting property, intending or knowing that it is to be used in whole or part to carry out a terrorist act and provides for prison terms of 10 to 20 years. The definition of terrorist act would be wide and include an act to compel any person or group of persons to execute or refrain from doing any act.</p> <p>143. Article 77 would criminalize provision of property for the benefit of a terrorist or a terrorist organization and provides for the same penalty.</p> <p>144. Article 3 would define property as assets and economic resources of any kind, tangible or intangible, moveable or immovable, and legal documents and instruments in any form evidencing title to or interest in such assets.</p> <p>145. According to article 76 (2) and article 77 (2) an act would constitute a TF offence even if the property in question was not actually used to commit a terrorist offence.</p> <p>146. Appropriate ancillary offences would be provided for in article 4 (attempt), article 5 (organizing, ordering or inciting) and article 6 (providing assistance) which apply to all specific offences under the Draft Counter Terrorism Law.</p> <p>147. Collecting funds with the intention that they be used by a terrorist or a terrorist organization would not be criminalized under the Draft Counter Terrorism Law. The definition of a terrorist act as any act compelling someone or a group of persons to act or refrain from acting would be very wide, for it does not include any motive. There is nothing in that definition that distinguishes it from say, extortion.</p> <p>148. The AML law defines the financing of terrorism as "the willful provision of financial or other services with the intention that such services be used or in the knowledge that they are or may be used, in full or in part, for the purpose of supporting terrorism, terrorist acts or terrorist organizations". The term "financial or other services" is not defined.</p> <p>149. Predicate Offence to ML (c. II.2): Terrorist financing has not been criminalized and the offence of money laundering currently only relates to the proceeds of drug related offences (see above). Each of those factors separately is a reason why terrorist financing is not a predicate offence to</p>

money laundering.

150. **Place of the Acts (c. II. 3):** Upon adoption of the Draft Counter Terrorism Law the terrorist financing offence under Cambodian law would apply regardless of whether the perpetrator is in the same country as the terrorist or terrorist organization or the place where the act may occur (art 10 and 11). Jurisdiction would be determined by reference to Cambodian territory, the victim or perpetrator being a Cambodian national or the act aiming to compel the Cambodian government or the perpetrator being present in Cambodia and having engaged in conduct in a foreign state which would constitute an offence under the Draft Counter Terrorism Law. The AML law contains no provisions on the place of the terrorist organizations or terrorist acts.

151. **Applicability of criteria 2.2. to 2.5 to TF (II. 4).** *Inference:* There is no specific legal provision regarding the type or nature of proof required. In practice, Cambodia being a civil law jurisdiction, the courts are free in their appreciation of the facts presented to them and the intentional element of any offence can be inferred from objective factual circumstances. *Criminal liability for legal entities:* Under the draft Counter Terrorism Law, criminal liability for terrorist financing would be extended to legal persons. Article 7 (1) of the Draft Counter Terrorism Law states that “this Law applies to a legal entity in the same way as it applies to a natural person.” Making legal persons subject to criminal liability for terrorist financing will not preclude the possibility of parallel criminal, civil or administrative proceedings. *Sanctions:* Natural persons convicted of terrorist financing will be subject to 10 to 20 years imprisonment and property will be confiscated based on civil forfeiture provisions. This may be presumed dissuasive, although a 10 year minimum does appear excessive. Whether it is proportionate will depend on the circumstances.

152. Legal persons would be subject to a whole array of sanctions amongst which are dissolution, judicial supervision, closure of premises and the publication of court’s decisions. As a pecuniary penalty the draft law would provide for 2.0 million riel for every 12 months of imprisonment that the court would impose on the legal entity if the legal entity were a natural person. Given the range from 10 to 20 years that would mean a range of 20 to 40 million riel i.e. approximately 5,000 to 10,000 USD. That would appear low and not dissuasive or proportionate.

153. Obviously in the absence of any cases effectiveness of the sanctions provide for cannot be evaluated.

154. **Analysis of effectiveness:** Since terrorist financing is not criminalized, effectiveness of the terrorist financing provision cannot be determined.

Recommendations and comments

155. The enactment of the Draft Counter Terrorism Law, providing for the criminalization of the collection of property for terrorists and terrorist organizations should be expedited. In addition they may wish to reconsider the pecuniary penalties to be imposed on legal entities and provide for higher penalties.

156. The definition of a terrorist act as “any act compelling someone or a group of persons to act or refrain from acting” is very wide, for it does not include any motive. There is nothing in that definition that would distinguish it from extortion. The authorities should review this definition.

157. A minimum of ten years imprisonment for TF might be considered excessive.

158. To avoid having two different definitions of terrorism financing- it is recommended that authorities consider amending the definition of TF in the AML law to the definition included in the Draft Counter Terrorism Law and criminalizing it bearing in mind the preceding paragraphs. The current definition is clearly inadequate, not defining the meaning of the term “financial or other services”.

Compliance with FATF Recommendations

	Rating	Summary of factors underlying rating
SR.II	NC	Terrorist financing is not criminalized
R.32	NC	No TF cases and demonstrated capacity to maintain statistics

1.3 Confiscation, freezing and seizing of proceeds of crime (R.3, SR.III & 32)

Description and analysis

159. **Legal Framework:** Under the Provisional Criminal Code there is no general provision allowing for confiscation as a punishment. Under the Law on Criminal Procedure (Criminal Procedure Code) (articles 38 and 62) the judicial police/prosecutor may “confiscate” (but given the context “seize” seems the more likely translation) objects as evidence in the case of catching someone in the act of committing a felony or misdemeanor. There are separate provisions under the Law on Control of Drugs and various special laws.

160. In addition the AML law, the Draft Criminal Code and the Draft Counter Terrorism Law contain provisions.

Confiscation of property (c 3.1 and III.11)

161. Under article 52 of the Law on drug control, where a person is found guilty of money laundering, the court shall (i.e. no discretion) order the confiscation of the resources and property that are the subject of the crime and of all benefit and income derived there from. According to article 53, in those cases a court finds the suspects guilty of a drug related offence or the money laundering offence, it shall order the confiscation of the resources and properties of all types which are obtained from the offenses and which “had become heritage of the offender” (i.e. part of his estate) within five years prior to the date of punishment- except if proof is provided that those resources or properties were not obtained directly or indirectly from the offence. Whether properties held by third parties are also subject to confiscation is not clear. Authorities considered it would be open to the court to determine this on a case by case basis. No provision is made for equal value confiscation.

162. Under the law on Suppression of Kidnapping, Trafficking and Exportation of Human Persons all means of transport, materials and properties used in the commission of an offence shall be confiscated as state property and under the Forestry Law all evidence of forestry crimes is confiscated

163. The AML law (article 30) provides for confiscation of the property in cases where someone is found guilty of ML/TF as stipulated in the existing penal code. At the time of the mission, ML and TF were not criminalized in the penal code.

164. The Draft Criminal Code (article 1212-1) would provide for the confiscation of the property or funds that are the subject of, the proceeds from, instrumentalities used and intended for use in commission of the offence. This would be provided for as a complimentary punishment which may be imposed in punishment of cases where this is explicitly so stated. It would be provided for as a

punishment for money laundering (article 3142-6) and for many of the predicate offences. Confiscation would not be ordered if it infringes upon the rights of third parties (1272-12). It is not clear whether this concerns only “good faith” third parties or whether this provision is to be interpreted more rigidly and protects third parties even if they are not of good faith. Equal value confiscation is not provided for. Whether proceeds include “indirect and direct” proceeds is not clear.

165. The Draft Counter Terrorism Law finally, provides for confiscation of “tainted property” which is defined as property that has been or is being used or is intended for use in the commission of a terrorist offence (including terrorism financing) or a corresponding offence under a law of a foreign state, is the subject of such offence or is derived from or obtained directly or indirectly through the commission of such offence. The court may order the forfeiture of that property “if it is satisfied that it is more probable than not that the property is tainted property” (i.e. civil forfeiture). It stipulates that this may take place even in the absence of a conviction.

166. **Freezing and seizing property (c 3.2, 3.3 and III.11):** The Law on drug control (article 50), provides for seizure of property and objects obtained from the offence or suspected of having been used or intended for use in the commission of any of the offenses under that law (including the laundering of drugs proceeds). It also (article 65) provides for immediate seizure of drugs and substances, materials, equipment and other moveable properties used in the drug offences and money and value of moveable properties suspected to have been generated directly or indirectly from the offences and all documents which are likely to help prove evidence of the crime.

167. The AML law (article 30) provides for seizing of the property that is suspected of being related to ML/TF as stipulated in the existing penal code (see c. 1.1).

168. The Draft Criminal Procedure Code provides for the seizure of relevant exhibits in the context of a judicial investigation into a felony or misdemeanor (art 331-3). It does not cover proceeds of crime but only objects that may serve in evidence.

169. The Draft Counter Terrorism Law, finally, mandates the Minister of Justice to order the General Prosecutor of the Court of Appeals to freeze property if the person has been convicted of an offence under that law (article 79). Law enforcement authorities, upon becoming aware of the existence of tainted property (see above), have to seize that property immediately and seek a court order to freeze that property, which order is granted if the court is convinced that it is tainted property.

170. Under both the Law on Control of Drugs and the Draft Counter Terrorism Law seizure can be effected immediately without prior notice to any party.

171. **Identifying and tracing property, (c 3.4 and III.11)**

172. The Law on Control of Drugs (articles 23, 24, 25, 26, 65 and 74) provides powers to allow authorities to identify and trace property, through reporting from credit establishments, financial institutions and other persons, including lawyers and through observation and monitoring and seizure of documents and other properties. At present no such reports are submitted

173. Under the Provisional Criminal Code (currently the only law applicable to most of the predicate offences), tracing and identifying powers are limited to searches (art 20) which may be

ordered by a judge.

174. Under the Criminal Procedure Code, officers of the judicial police have the right (article 46) to collect evidence and to conduct searches, but the right to house-searches is limited to cases in which perpetrators of crimes or misdemeanors are caught *in flagrante delicto*.

175. Under the AML law the FIU has the power to identify and trace property (article 21) collecting information from commercially available databases, from databases held by reporting entities and from databases held by any public agency.

176. Under the Draft Criminal Procedure Code (article 322-3) tracing and identifying powers are also limited to searches by judicial police officers under the authority from the prosecutor. No other powers are available.

177. Under the Draft Counter Terrorism Law, (article 88) the prosecutor or judge may authorize an investigator to examine and put under surveillance bank accounts, inspect legal document and other papers and all banking financial and commercial documents, monitor telephone lines and access computer systems if there are reasonable grounds to suspect that those accounts, telephone lines or computer systems are being, or may be, used by persons under suspicion of committing an offence under this law.

178. **Protection of third party rights (c 3.5):** Under current legislation, no provision is made for the protection of third party rights.

179. Only the Draft Criminal Code makes mention of third party rights. Article 1272-12 states that confiscation cannot be ordered if it undermines third party rights. Whether this concerns only bona-fide third party rights or all third party rights is not made clear though the former interpretation appears the more likely.

180. **Preventing or voiding actions (c 3.6 and III.11):** Under the Law on drug control (article 58) a court may nullify actions which have been taken to frustrate confiscation procedures.

181. Under the Draft Counter Terrorism Law (article 86) a court can render void any dealing or act that was intended to divert property from forfeiture.

182. **Effectiveness:** Only very limited instances of confiscation provisions were provided. Indeed, under legislation currently in force, confiscation provisions are only provided for in a few special laws and not in the generally applicable Provisional Criminal Code. The seizure and confiscation provision provided for in the AML law cannot take effect until such time as money laundering has been criminalized. The mission was informed of only one criminal case in which proceeds were taken from the perpetrator (kidnapping). It was confirmed by the authorities that seizure provisions are only used to the extent they secure the gathering of evidence in the case, but that there was no focus on the proceeds of an offence. It was attributed to an attitude focusing exclusively on predicate (drugs related) offences, and proving those offences, without attention being paid to the funds generated in the commission of the offence.

Recommendations and comments

183. The legal framework and the practice for seizure and confiscation measures are very limited.

To improve the situation the Cambodian authorities should consider adopting the confiscation regime as set out in the Draft Criminal Code, but also allowing for equal value confiscation and ensuring its applicability to ML/TF and all designated predicate offences, and providing for wider law enforcement powers to identify and trace property under the Draft Criminal Procedure Code. To make such an arrangement effective will require widening the scope of seizure provisions in the Draft Criminal Procedure Code to encompass all property that may become subject to confiscation and to provide for steps to prevent or void actions that could prejudice authorities' powers to recover property subject to confiscation. Provision should be made for the protection of the rights of bona-fide third parties to confiscated property.

Compliance with FATF Recommendations

	Rating	Summary of factors underlying rating
R.3	NC	Very limited scope of seizure and confiscation provisions Limited tracing and identification powers Very limited use in practice of seizure and confiscation provisions No protection of third party rights
R.32	NC	No statistics on confiscation, freezing and seizing of proceeds of crime.

1.4 Freezing of funds used for terrorist financing (SR.III & R.32)

Description and analysis

184. **Legislation implementing UNSCR 1267 and 1373 (c III.1 and III.2):** Currently there is no legislation in place providing for immediate freezing of property of persons and entities designated under UNSCR 1267, nor are there any provisions in place that oblige financial institutions to freeze without delay funds or other assets of persons who commit or attempt to commit terrorist acts.

185. Under the draft counter terrorism law (article 79³⁰) the Minister of Justice may order the prosecutor to freeze property of a person if he is listed on the list of persons and entities belonging or associated with the Taliban and Al Qaida issued by the UNSCR 1267 committee or if he is a person who has committed a terrorist offence as defined in the law or a corresponding offence under the law of another state.

186. **Review of foreign country lists (c III.3):** There is currently no provision in place to review foreign lists, nor is such review contemplated in the draft counter terrorism law.

187. **Extent of freezing actions (c III.4):** Under the draft counter terrorism law, "property" in article 79 (see above) includes funds derived or generated from property owned or controlled by the listed person or entity and also property belonging to an entity owned or controlled directly or indirectly by a listed person or entity or belonging to a person or entity acting on behalf of a listed person or entity.

188. **Communication to the financial sector and guidance (c III.5, III.6):** The mission was informed that in practice the NBC does circulate updated UNSCR 1267 lists to banks. There is however no written procedure in place that governs what action banks should take in those cases where there is a match against the list. In practice, banks would be required to inform the NBC who in

³⁰ Article 79.-reads: "The Minister of Justice may order the General Prosecutor of the court of appeals or the Prosecutor of the first-instance court to freeze of property of a person if: (a) the name of the person is included in the list of natural persons and entities belonging to or associated with the Taliban and Al-Qaida organisation maintained by the committee established under Resolution 1267 of the United Nations Security Council; or (b) the person is: (i) a person who has committed an offence under this Law or a corresponding offence under the law of a foreign State; or (ii) an entity owned or controlled, directly or indirectly, by such a person; or (iii) a person or entity acting or behalf of, or at the direction of, such a person."

turn would inform the Ministry of the Interior and request them to ask for a court order to freeze the assets. What legal provision this court order would be based upon is not clear. The Draft Counter Terrorism Law contains no provisions on communications to the financial sector or guidance to be provided.

189. **De-listing/Unfreezing requests and procedures, access to funds (c III.7, III.8, III.9, III.10):** There are currently no procedures for considering de-listing requests and for unfreezing the funds or other assets of de-listed persons or entities.

190. Under article 79 of the Draft Counter Terrorism Law a person whose property has been frozen pursuant to art 79, would be allowed to request the Minister of Justice to unfreeze the property on the ground that: a) the name of the persons was included in error on the 1267 list ,b) the person is not the same person as a name in the list, although the names may be the same, or c) that he has not committed an offence under the law or d) that in fact his name has been removed from the 1267 list. Under article 85 a person will have an opportunity to take action to seek an order to overturn an order under article 80 (freezing of property) or 82 (forfeiture of property). There is no procedure under the Draft Counter Terrorism Law to allow access to funds.

191. The first ground for unfreezing contained in article 79 (name included in error) amounts to a de-facto review of a Security Council decision by the Minister of Justice. Security Council decisions are binding upon UN members and a revision as contemplated in article 79 runs contrary to that.

192. **For c III.11 see the relevant sections under R3**

193. **Rights of third parties (c III.12):** As mentioned above under the Draft Counter Terrorism Law (art 85) a person seeking to overturn a freezing or forfeiture order can do so by filing a request with the court and showing that the property in question is not tainted property.

194. There is no explicit provision in the Draft Counter Terrorism Law protecting the rights of third bona-fide parties.

195. **Monitoring compliance (c III.13):** Since there are no rules as yet, there is currently no monitoring of compliance. According to the NBC, the controls undertaken by banks to check names mentioned in lists circulated by the NBC have been assessed by it during on-site missions and no shortcoming was identified. There are no draft provisions dealing with this matter. The mission was informed that when the Draft Counter Terrorism Law will have been enacted, authorities will develop mechanisms for monitoring compliance with freezing provisions.

Recommendations and comments

196. The Cambodian authorities should consider putting in place a system for freezing of terrorist assets as currently envisaged under the Draft Counter Terrorism Law but with the following additions:

- A mechanism for reviewing terrorist lists of other countries and give effect to those lists if appropriate;
- An effective procedure for disseminating the 1267-list (as well as national lists and, after review, foreign lists-UNSCR 1373) among the financial sector including obligations of the financial sector on what to do and guidance on how to implement
- Clear and publicly known procedures for unfreezing and for allowing access to funds for

basic expenses, but no review by the Minister of Justice of persons listed on the 1267-list <ul style="list-style-type: none"> - Protection of bona fide third party rights - A mechanism for monitoring compliance and imposing sanction in cases of failure to comply 		
Compliance with FATF Recommendations		
	Rating	Summary of factors underlying rating
SR.III	NC	No mechanism in place to give effect to UNSCR 1267 and 1373 No procedure for reviewing foreign countries lists No mechanism for communicating actions to the financial sector
R.32	NC	Freezing of TF funds: No statistics

1.5 The Financial Intelligence Unit and its functions (R.26)

Description and analysis
<p>197. Legal Framework: AML law (2007), law on drug control (1997), prakas on Standardized Procedure for Identification of Money Laundering at Banking and Financial Institutions issued by the Governor of the National Bank of Cambodia (2002). Article 19 of the AML Law contains provisions to create an FIU under the control of the National Bank of Cambodia.</p> <p>198. Establishing an FIU (c. 26.1): Cambodia has not established a Financial Intelligence Unit (“FIU”).</p> <p>199. Financial institutions, credit establishments and “other persons which in the exercise of their professions, have done, controlled or instructed an operation which caused the flow of capitals” have been under an obligation to report suspicious transactions relating to drug activities to the Prosecutor since the adoption of the Law on Drug Control (article 23 and 24) in 1997³¹. The law on drug control (article 25 and 26) adopted in January 1997 authorized the establishment of the Commission of Anti-Money Laundering (AML Commission), to combat drug related money laundering and conduct initial examination of any suspicious transaction reports before referral to the Prosecutor. The AML Commission has never been established.</p> <p>200. At the time of the on-site mission, Cambodia was awaiting the adoption of the AML law before formally establishing an FIU. The AML Law provides for the creation of the FIU as a unit within the National Bank of Cambodia (NBC) and extends the reporting obligations to designated non-financial businesses and professions. The role and responsibilities of the FIU are set out in Article 21</p>

31 The provisions of the law on drug control are a bit confusing as to who should receive suspicious activity reports (i.e. the prosecutor and/or the AML Commission).

Article 24 states that such reports should be sent to the Prosecutor. Article 24 reads: “Credit establishments, financial institutions and other persons as stated in the above article, shall immediately send a report to the prosecutor. The prosecutor shall ask to the Commission which is established under the article 25 to provide him/her sufficient information, in order that he/she will make decision on due charge.”

Article 26 hints that the AML Commission should acknowledge receipt of reports from FIs. Article 26 reads: “The Commission of Anti-Money Laundering shall respond that it has already received the report within a specified period for conducting of banking or financial operation. In this above letter of response, there could be an objection which may require a suspension of the operation within a period of not exceeding 24 hours. If such letter of response does not mention of any denunciation complaint or upon the expiry of the denunciation period, there is no decision which orders to reporter take preventive measures as stated in the following paragraph, such reporter may then to proceed on with the operation. When, within 24 hours period, it is not possible to determine the source of the money, the Chief Judge of the competent court may, upon request of the Prosecutor who received the complaint from the Anti-money Laundering Commission, order to stop the fund, account and checks, except when the investigating judge had already ordered to stop them up. Decision of the court made following the request from the prosecutor shall be implemented immediately.”

of the AML Law, this includes the authority to receive, request additional information as necessary, analyze and disseminate STRs³².

201. In preparation for the establishment of the FIU, a pre-FIU was established within the Banking Supervision Department of the National Bank of Cambodia on 23 June 2005. The pre-FIU is responsible for the necessary preparations prior to the establishment of the FIU. The pre-FIU consists of six members of the Banking Supervision Division, who attend training and facilitate technical assistance on an ad-hoc basis, in addition to their substantive duties within the Banking Supervision Division.

202. In discussion with the pre-FIU staff it was apparent no formal plans are currently in place with respect to the funding of the FIU; the size and structure of the FIU; procedures for the handling and analysis of STRs; information the FIU staff will have access to facilitate their functions; and upon whose authority information would be disseminated to law enforcement.

203. In October 2001, the National Bank issued the Prakas on “Standardized Procedure for Identification of Money Laundering at Banking and Financial Institutions” (AML Prakas) that required all banks and financial institutions to report any suspicious transaction relevant to the violation of any law to the National Bank.

204. At the time of the on-site mission, no reports have been received by either the Prosecutor or National Bank. In discussion with the private sector this lack of reporting could be attributed to a general lack of awareness of the obligations under the Law on Drug Control and a reluctance to follow the National Bank’s Prakas in the absence of any formal system for handling STR and ensuring their confidentiality, a lack of clarity concerning the expectation of the NBC (written or verbal reporting) and a limited number of cases which arose suspicions.

205. Article 32 of the AML law reads that “all provisions not consistent to this Law are hereby repealed”. The provisions of the law on drug control that contemplate the creation of an AML Commission do not literally appear not consistent to the AML law and thus to have been repealed. Similarly, the reporting mechanisms established by the law on drug control and by the AML Prakas do not appear not to be consistent to the AML law and thus to have been repealed. Legally speaking, Cambodia appears to have two FIUs and three different reporting mechanisms. The fact that, from a functional point of view this arrangement does not appear to be efficient does not render it "not

32 Article 21 reads: “the FIU shall: a) receive suspicious/ cash transaction reports made in pursuance of Article 12 of this present Law and information provided to the FIU about suspicions of money laundering or financing of terrorism; b) collect information that the FIU considers relevant to its activities with regard to money laundering or financing of terrorism and that is publicly available, including commercially available databases, as well as other information necessary to carry out its functions, such as information collected maintained and stored in the database by the reporting entity, c) have access on a timely basis to financial, administrative and law enforcement information as authorized by law that is necessary to undertake its functions set forth by this Article, including information collected and maintained by, or stored in the databases of, any public agency, d) analyze and assess all suspicious transaction reports and related information in order to determine whether there are reasonable grounds to believe that a money laundering offense or an offense of financing of terrorism has been committed and in such cases refer the matter to the relevant law enforcement authority for criminal investigation; e) compile statistics and records on suspicious/currency transaction reports received, analyzed and forwarded to the law enforcement authorities and disseminate information to other public agencies on related matters as required; f) provide feedback to reporting entities and other relevant agencies regarding the outcome of suspicious transaction reports or information provided to it under this Law; g) ensure that personal information under its control is protected from unauthorized disclosure; h) act to enhance public awareness and understanding of matters related to money laundering and financing of terrorism.

33 Article 25 reads: “The FIU may, subject to a reciprocal arrangement, exchange information with foreign FIU, provided that they are subject to similar requirements of confidentiality and irrespective of the nature of those units. It may, for that purpose, conclude cooperation agreements with such units. Upon receipt of a request for information or transmission from a counterpart foreign FIU, it shall comply with that request within the scope of the powers conferred upon it by this Law.”

consistent to this Law".

206. **Guidance (c. 26.2)** The National Bank issued a Prakas in October 2002 on "Standardized Procedure for Identification of Money Laundering at Banking and Financial Institutions" and a circular on "Suspicious Transactions and Know Your Customer Policies" in October 2003. This circular provides financial institutions with basic guidance on how to identify suspicious transactions. The guidelines given or prepared are only based on international recommendation and typology exercises

207. The National Bank has prepared a Draft revised AML Prakas on "Anti-Money Laundering and Terrorist Financing" ("the Draft AML Prakas"), to be issued once the AML Law has been adopted. The Draft revised AML Prakas requires that STRs be filed in writing by mail or fax to the Banking Supervision Department of the National Bank, a provision that will need to be reviewed to be consistent with that of the AML law.

208. To date, the National Bank and pre-FIU have conducted very limited outreach to the reporting institutions in relation to current or future reporting obligations.

209. **Access to Information (c. 26.3-4)** The AML Law (article 21(1)(c)) states the FIU should have access to financial, administrative, and law enforcement information on a timely basis. In discussion with the pre-FIU it was apparent no plans had been formulated as to the types of information required, and the mechanisms and procedures for requesting such information.

210. **Authority to Disseminate (c. 26.5)** The AML Law provides the FIU with the authority to disseminate any information received. However, in discussions, the pre-FIU was unable to provide details of the proposed protocols for information dissemination and upon whose specific authority information would be disseminated.

211. **Operational Independence and Autonomy (c. 26.6)** Article 20 of the AML Law states the FIU shall have a permanent secretariat, headed by a senior official appointed by the Prime Minister upon the recommendation of the National Bank. The permanent secretariat will work under the authority of a board of directors drawn from senior representatives of the Council of Ministers; the Ministry of Justice; the Ministry of the Interior; the Ministry of the Economy and Finance; and the National Bank. The head of the board will be appointed by the Prime Minister upon the recommendation of the National Bank and selected from representatives of the above agencies with a period of tenure of two years. The first head of the board will be a representative of the National Bank (art. 20-2).

212. Article 19 of the AML Law provides that the FIU shall have adequate financial resources. During discussion, it was disclosed that the FIU would be funded by NBC. It would not have its own devolved budget.

213. These issues raise concerns as to the capacity, independence and autonomy of the proposed FIU.

214. **Information Security (c. 26.7)** Article 24 of the AML Law authorizes the FIU to operate a database to retain information related to STRs. The mission was advised the FIU would be housed within the NBC complex and access to the FIU would be restricted to FIU staff only. Plans have not been formalized as to the physical security of the unit or the proposed database and the necessary information technology (IT) systems.

215. **Periodic Reports (c. 26.8)** Article 21 of the AML Law obliges the FIU to compile statistics,

disseminate reports, feedback and conduct outreach.

216. **Egmont Group (c. 26.9-10):** The AML Law was drafted in such a manner to incorporate the Egmont Group's Statement of Purpose and its principles for "information exchange between financial intelligence units for money laundering cases". Article 25 of the AML Law allows the FIU to enter into reciprocal agreements with other FIUs to facilitate the exchange of information³³.

217. **Structure, funding, staff, technical and other resources for FIU (c. 30.1):** At the time of the on-site mission, there was no FIU in operation. The pre-FIU is responsible for pre-establishment activities. In discussions, it became apparent that no firm decisions had been made as to the size, structure and resources of the proposed FIU.

218. Article 21(1)(a) of the AML Law entitles authorities the FIU to receive both STR and cash transaction reports ("CTRs") from reporting entities above a certain threshold. No decision has been made as to the CTR threshold to be imposed.

219. In March 2007, the mission was advised it was likely the FIU would be staffed by officers seconded from the Banking Supervision Department of the National Bank, Prosecutors and law enforcements officers from various agencies. The authorities were then awaiting the adoption of the AML law before making any firm decisions as to structure and resources. No assessment as to the adequacy of the proposed FIU's structure and resources could be made.

220. The pre-FIU had not prepared any detailed work plan for the establishment of the FIU or strategic direction papers at the time of the onsite mission.

221. No details were provided as to the proposed technical resources of the FIU, although a number of international donors had reportedly agreed to assist concerning the information technology aspects.

222. **Integrity and Professional Standards (c.30.2):** All National Bank staff is required to provide a certificate of no criminal conviction upon initial application for employment. The National Bank's Internal Audit Office is responsible for the maintenance of professional standards in accordance with the National Bank's code of conduct. The pre-FIU acknowledged the need to draw up a separate code of conduct and set of regulations for the staff of the FIU.

223. **Training (c. 30.3):** The six members of the pre-FIU have undergone significant AML/CFT training within the past two years, including the APG Mutual Evaluator's Assessor's Training Course in Hong Kong. Several donor agencies including the IMF, the German FIU and AUSTRAC have conducted onsite AML/CFT training for pre-FIU members.

224. **Review of Effectiveness of AML/CFT Systems (c. 32.1):** The FIU has not been established.

225. **Statistics created by the FIU (c.32.2):** The FIU has not been established.

226. The Ministry of Justice and National Bank confirmed since the adoption of the Law on Drugs Control in 1997 and the Prakas on "Standardized Procedure for Identification of Money Laundering at Banking and Financial Institutions" in October 2002, no STR have been received by either authority. The current requirement to file STRs with two agencies also causes confusion.

227. Article 21 of the AML Law lists the compilation of AML/CFT statistics as a core function of the FIU. As the FIU is not yet established there are no systems in place to capture the required information.

228.	Analysis of Effectiveness: In the absence of any formal plans as to the resources, structure and proposed operation of the FIU, no analysis could be conducted.
229.	Comments & Recommendations
230.	The AML Law creates the framework for an FIU, which provided it is adequately resourced and its mandated functions are conducted, will be substantially in line with the FATF Recommendations. It should be clarified that this FIU replaces the AML Commission contemplated by the law on drug control (1997), which was never established.
231.	The pre-FIU consists of six members of the Banking Supervision Division, who attend training and facilitate technical assistance on an ad-hoc basis, in addition to their substantive duties within the Banking Supervision Division. Very little preparatory had been completed at the time of the on-site mission. The size, structure, operation, funding and information technology requirements of the FIU have not been decided. The absence of any detailed plans leads to concerns as to the adequacy of current preparation and planning. The FIU should be established as soon as possible and great attention should be given to protecting its operational independence and the confidentiality of its work.
232.	<p>The authorities should consider to:</p> <ul style="list-style-type: none"> - Set strategic directions for the FIU - Formulate clear plans as to the resources, structure and information technology requirements of the FIU. - Organize the collection and analysis of relevant statistics - Clearly define the precise role and responsibilities of the FIU board to ensure no interference with the day-to-day operation and autonomy of the unit, and ensure dissemination of information is at the sole discretion of the head of the FIU (on the basis of technical criteria) - Draw up a code of conduct and set of regulations for the staff of the FIU - Increase outreach to the private sector on the Cambodian AML /CFT framework and issue appropriate guidance
Compliance with FATF Recommendations	

	Rating	Summary of factors relevant to section 1.5 underlying overall rating
R.26	NC	No FIU in place
R.30	NC	No FIU in place The Authorities have not decided upon the resources and structure of the FIU to be established
R.32	NC	FIU: No demonstrated capacity to maintain statistics. This rating is an aggregate rating of R.32 across the various parts of the report.

1.6 Law enforcement, prosecution and other competent authorities—the framework for the investigation and prosecution of offences, and for confiscation and freezing (R.27, 28, 30 & 32)
Description and analysis
<p>233. Legal Framework: Criminal Law and Procedure (10 September 1992 and hereafter referred to as the “UNTAC Law”); Law of Criminal Procedure (8 March 1993); Law of Drug Control (24 January 1997).</p>
<p>234. Designated Law Enforcement Authorities (c. 27.1) The Cambodian National Police (CNP) has a current strength of 50,800 officers and is the primary agency responsible for to investigating ML and TF offences. The Office of the General Prosecutor conducts prosecutions.</p>
<p>235. Currently only drug related money laundering is criminalized in Cambodia under the 1997 Law on Drug Control and the Anti-Drug Department is responsible for money laundering. To date, there has been no drug related money laundering investigations or prosecutions in Cambodia.</p>
<p>236. Terrorist related offences are investigated by the Counter Terrorism Department of the CNP under the general provisions of the UNTAC Law and the Law of Criminal Procedure. There is currently no specific terrorist financing provisions under Cambodian law.</p>
<p>237. The Draft Criminal Code criminalizes money laundering for all types of predicate offences and the Draft Law on Counter Terrorism criminalizes terrorist financing activities. Both laws have yet to be adopted.</p>
<p>238. Under the Law of Criminal Procedure, CNP officers designated as Judicial Police officers are authorized to investigate crimes and gather evidence, under the guidance and coordination of the Prosecutor in the process and procedure of investigation in order to ensure effective prosecution and under the supervision of the Prosecutor General of the Appeals Court.</p>
<p>239. Ability to Postpone or Waive Arrest to Facilitate Evidence Gathering (c. 27.2) Whilst there are no specific provisions in Cambodian law to postpone or waive arrest to facilitate evidence gathering, this activity is permissible with the approval of the Prosecutor.</p>
<p>240. <i>Additional Elements</i></p>
<p>241. Use of Special Investigative Techniques (c. 27.3-4): Articles 71 to 73 of the Law on Drug Control allow the Authorities to conduct controlled delivery operations for the purposes of evidence gathering or identification of suspects upon the authority of the Prosecutor or investigating Judge. In 2006, the Anti-Drug Department conducted a successful controlled delivery operation in cooperation with the US Drug Enforcement Administration resulting in the seizure of 20,000 MDMA tablets that originated in the Netherlands and the arrest of one expatriate who was subsequently sentenced to 15 years imprisonment.</p>
<p>242. The use of special investigative techniques such as the interception of telecommunications and controlled deliveries are permitted under Articles 71 to 74 of the Law on Control of Drugs. Despite these provisions are only contained within the drug law, these techniques appear to have been utilized in other cases, not involving drug related charges. Undercover operations utilizing covert video</p>

recording devices have been conducted on numerous occasions in the investigation of a wide range of criminal offences, including child prostitution and protection of minors.

243. **Mechanisms for Cooperative / Multi-Agency Investigation Teams (c. 27.5)** There are no mechanisms for domestic multi-agency investigations. Despite the lack of specific legal provisions in relation to money launderings and terrorist financing, the CNP has been active in providing assistance to overseas law enforcement agencies in relation to both money laundering and terrorist financing investigation. A number of examples on ongoing investigations were provided during the mission's meetings with the CNP.

244. **Powers to Compel Production of, Search, and Seizure and Obtain Financial Records (c. 28.1)** Article 74 of the Law on Drug Control provides the authorities with the powers to compel the production of, search, seizure and obtain financial records in drug related investigations.

245. The CNP also uses general provisions under the Law of Criminal Procedure to compel information in respect of non-drug related investigations.

246. **Taking of Witness Statements (c. 28.2)** CNP officers designated as Judicial Police Officers under the Law of Criminal Procedure are empowered to record witness statements and have the right to investigate criminal offences.

247. **Structure, funding, staff, technical and other resources (c. 30.1):** Currently only drug related money laundering is criminalized in Cambodia and the Anti-Drug Department of the CNP is responsible for drug related money laundering investigations. To date, there has been no drug related money laundering investigations or prosecutions in Cambodia.

248. Terrorist related offences are investigated by the Counter Terrorism Department of the CNP under the general provisions of the UNTAC Law and the Law of Criminal Procedure. There is currently no specific terrorist financing provisions under Cambodian law.

249. The Draft Criminal Code criminalizes money laundering for all types of predicate offences. The CNP indicated to the mission that once the Draft Criminal Code had been adopted, it was likely the units responsible for the particular predicate crime would assume responsibility for money laundering investigations. The CNP's Criminal Investigation Department and Anti-Economic Crime Department would therefore assume a significant role in future in relation to general ML investigations.

250. The Criminal Investigation Department consists of 527 officers in 9 offices around the country and is primarily responsible for the investigation of serious offences such as robbery, murder and kidnapping. The Anti-Economic Crime Department consists of 367 officers based in 8 offices around the country is responsible for illegal logging, counterfeit goods and intellectual property violations, car smuggling and other types of economic crime.

251. The Anti-Drug Department currently only seizes items which are evidence of the offence or used in connection with the offences. They currently have not been able to identify any significant assets of persons prosecuted. The CNP has very limited expertise and technical resources in this field. Only a small number of officers have received money laundering training overseas, and these are mainly at the more senior echelons. There is currently no specialist internal anti-money laundering

training within the CNP.

252. Given the current lack of technical resources and expertise in the CNP, it is unlikely the CNP will be able to make significant use of the general money laundering provisions contained in the Draft Criminal Code in the short term. This is exacerbated by Cambodia's cash based economy, which makes asset tracing more difficult.

253. **Integrity and Professional Standards (c.30.2):** All government employees are required to adhere to the Civil Service Code of Conduct. There are a variety of sanctions available for breaches of the Code of Conduct including dismissal. The General Inspection Department of the CNP, under the Office of the General Commissariat, is responsible for by professional standards.

254. **Training (c. 30.3):** A small number of officers have received money laundering training overseas, and these are mainly at the more senior echelons. There is currently no specialist internal anti-money laundering training within the CNP or mechanisms to pass on training gained overseas.

255. Officers from the CNP have attended training concerning the investigation and prosecution of ML and TF investigations. This training has been provided by a number of external agencies including ILEA (Bangkok). CNP officers and Prosecutors attended joint the joint UNODC/World Bank financial investigation course in Phnom Penh in 2006.

256. **Review of Effectiveness of AML/CFT Systems (c. 32.1)** No reviews for the purposes of determining the effectiveness of the AML/CFT regime within CNP have been conducted.

257. **Statistics – Investigations, Prosecutions and Convictions (c.32.2)** There has been no ML or TF investigations and prosecutions to-date.

258. No figures were available concerning the number of production orders issued, number of restraining and confiscation orders obtained. The mission was advised the confiscation only related to evidence and items seized at the scene of the arrest or used in connection with the primary offence, such as vehicles and boat used to convey drugs, etc.

259. Adequate systematic generation or collection of statistics was not evidenced.

260. **Analysis of Effectiveness** – Whilst the legal framework for the investigation, prosecution, restraint and confiscation exists for drug related money laundering. Its use was not evidenced.

261. Once general money laundering is criminalized, it is unlikely from what has been evidenced, the CNP will have the capacity in terms of resources (human and equipment) and technical skills to conduct actual investigations.

Recommendations and comments

262. Whilst the legal framework for the investigation, prosecution, restraint and confiscation exists for drug related money laundering. Its use was not evidenced.		
263. Once general money laundering is criminalized, it is unlikely from what has been evidenced, the CNP will have the capacity in terms of resources (human and equipment) and technical skills to conduct actual investigations. Whilst awaiting the adoption of the Draft Criminal Code, which will criminalize general money laundering, it is suggested the authorities consider conducting a detailed independent review of the resources available to investigate and prosecute ML and TF cases.		
Measures then need to be adopted to ensure the CNP has adequate capacity to investigate ML and TF offences once the Draft Criminal Code and Law on Counter Terrorism are adopted (in particular mechanisms for Multi-Agency Investigation Teams, elaboration of appropriate structure, funding, staff, technical and other resources and training arrangements)		
Compliance with FATF Recommendations		
	Rating	Summary of factors relevant to section 1.6 underlying overall rating
R.27	NC	Specific provisions only exist in relation to drug related money laundering investigations (CNP is not responsible for investigating other ML and TF predicate offenses as defined by the FATF)
R.28	PC	Specific provisions only exist in relation to drug related money laundering (CNP is not responsible for investigating other ML and TF predicate offenses as defined by the FATF) No evidence to demonstrate the effective implementation and use of the powers under the Law on Drug Control.
R.30	NC	Investigating and prosecuting authorities have received some relevant but limited training which alter their capacity (resources and ability) to actually conduct ML and TF investigations.
R.32	NC	Law enforcement: no ML or TF investigation or prosecution and no demonstrated capacity to maintain statistics. This rating is an aggregate rating of R.32 across the various parts of the report.

Cross Border Declaration or Disclosure (SR.IX)

1.7 Cross Border Declaration or Disclosure (SR.IX & R.32)
Description and analysis
<p>Legal Framework: Law on Foreign Exchange (1997).</p> <p>264. Article 13(1) of the Law of Foreign Exchange requires the import of export of any means of payment equal to or exceeding USD10,000 or equivalent to be reported to the Customs authorities at the border crossing point and Customs should transmit this information on a monthly basis to the National Bank of Cambodia. “Means of payment” is defined in Article 2 of the law and includes payment instruments or securities in foreign currencies, raw precious metals and uncut precious stones. Under Article 22 of Law of Foreign Exchange, any person who contravenes the declaration obligation shall be for a fine of 10% of the amount involved.</p> <p>265. Article 13(2) requires the export of cash in excess of a threshold set to be subject to the prior examination of the NBC. The mission has not been provided with information indicating that such threshold has been set. Under Article 24, any person who contravenes this requirement and exports</p>

cash in excess of the threshold without prior the approval of the National Bank is subject to a fine of one million riels to ten million riels (USD 250 to 2,500) and forfeiture of the amount involved. No information was provided by the Authorities on the enforcement of these provisions.

266. **Declaration/ Disclosure of Cross Border Transportation of Currency and Bearer Negotiable Instruments (c. IX.1)** Article 13 of the Law of Foreign Exchange requires any traveler to disclose whether he is carrying cash or instruments equal to or exceeding USD10,000. Cambodia requires all arriving travelers to fill in the inbound customs declaration form, which contains identification data and requires persons to report if they are carrying cash in excess of USD10,000 or equivalent in foreign currency.

267. Outbound travelers are in practice not required to fill in a declaration form concerning the amount of currency or negotiable instruments they are carrying.

268. **Authority to Obtain Further Information on Origin and Intended Use (c. IX.2).** There is no explicit power to request further information as to the origin and intended use of transported funds and negotiable instruments.

269. **Power to Stop or Restrain (c. IX.3):** There is no explicit power to stop or restrain transported funds and negotiable instruments in order to ascertain whether evidence of money laundering or terrorist financing exists.

270. **Recordkeeping (c. IX. 4)** The information contained in all positive declarations (i.e. currency or instruments of or above USD10,000) are retained on a database maintained by the Customs authorities. This information should be transmitted to the National Bank on a monthly basis. The mission was informed that this information was not being referred as required.

271. **FIU (c. IX.5)** Since the FIU has yet to be established, there is no guideline on the reporting of suspicious cross-border transportation incidents or information on declarations.

272. **Coordination (c. IX.6)** Under Article 13(3) of the Law of Foreign Exchange, the Customs authorities should transmit copies of positive declarations on a monthly basis to the National Bank. This information is not being referred and there is no coordination between the authorities.

273. **International Cooperation (c. IX.7)** Cambodia has signed bilateral arrangements with the Thai and Vietnamese Customs authorities. Cambodia is also a contracting party of the International Convention on Customs Mutual Administration Assistance. These arrangements provide for the sharing of information on customs related matters including the information pertaining to the transportation of currency and other items.

274. **Sanctions (c. IX.8-9):** In accordance with Article 22 of Law of Foreign Exchange, breaches or misrepresentations in relation to the declaration obligation are subject to a fine of 10% of the amount involved. Under Article 24, cash exports over the designated threshold without the prior approval of the National Bank are subject to a fine of between one million and ten million riels (USD250-2,500) and confiscation of the amount involved.

275. The Customs authorities provided statistics on illegal cash seizures in Cambodia from 2002 to 2006:

Year	2002	2003	2004	2005	2006	

Total Amount of Cash Seized (USD)	374,800	253,375	0	112,700	821,020	
Total Amount of Cash Seized (NTW)	0	3,200	0	0	0	
Total Amount of Cash Seized (THB)	0	0	0	0	100,000	

The Customs authorities mentioned that they had never undertaken any investigation as “there are no provisions for Customs to investigate the source /origin of currency transported, destination/proposed use of currency imported and other relevant factors”.

276. Confiscation and Provisional Measures (c. IX.9-11) Exports of cash above the designated threshold without the prior authorization of the National Bank are subject to seizure and confiscation under the Article 24 of the Law of Foreign Exchange.

277. At the time of the on-site mission, there were no specific provisions exist to sanction persons involved in cross border cash smuggling for money laundering or terrorist financing purposes or seize the cash or instruments involved. Only the general sanctions contemplated by the law on drug control could be used in such cases.

278. International Cooperation (c. IX.12) The Cambodian authorities have entered into a number of bilateral arrangements and are a signatory of the International Convention on Customs Mutual Administration Assistance. These arrangements provide for the sharing of information on customs related matters, this includes transportation of precious stones and metals.

Analysis of Effectiveness

279. Cambodia’s current regime was adopted to monitor and control foreign exchange flows rather than combat cash smuggling for money laundering or terrorist financing purposes. The regime does not therefore conform to international requirements to combat cash smuggling for money laundering and terrorist financing purposes.

Recommendations and comments

280. The current regime under the Law of Foreign Exchange does not provide effective mechanisms to combat suspicious cross border currency transportation.

281. The authorities should consider to:

- effectively require outbound travelers to fill in a declaration form concerning the amount of currency or negotiable instruments they are carrying
- give explicit power to the customs authority to request further information as to the origin and intended use of transported funds and negotiable instruments
- give explicit power to the customs authority to stop or restrain transported funds and negotiable instruments in order to ascertain whether evidence of money laundering or

terrorist financing exists		
<ul style="list-style-type: none"> - make sure the customs authorities transmit copies of positive declarations on a monthly basis to the NBC and set a proper coordination framework between the two authorities - set the threshold above which the export of cash is subject to the prior examination of the NBC (as contemplated in the law on foreign exchange) 		
Compliance with FATF Recommendations		
	Rating	Summary of factors underlying rating
SR.IX	NC	<p>A declaration system is in place for cross border currency transportation but it does not provide any mechanisms to ascertain the origin or intended use of the currency</p> <p>The system does not allow for temporary restraint to facilitate further investigation as to the origin or purpose</p> <p>No effective requirement for outbound travelers to fill in a declaration form concerning the amount of currency or negotiable instruments they are carrying</p>
R.32	NC	Cross-border cash movement: no meaningful statistics available.

2 PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

Customer Due Diligence & Record Keeping

282. Authorized financial activities in Cambodia are undertaken by commercial and specialized banks, microfinance institutions, the National Bank of Cambodia (NBC), money changers and, to a limited extent, the Post office. Life insurance and securities services either do not exist or only on a very limited basis and are then undertaken by banks (see overview of the financial sector).

283. The banking system is mainly made of fifteen commercial banks. They offer simple services to retail and corporate customers in the largest Cambodian cities (time and term deposits, savings accounts, loans, domestic and cross-border wire transfers, foreign exchange, letters of credit etc.). More advanced banking services are being introduced such as electronic banking and private banking. Bank operations are primarily undertaken in US dollars (more than 95% of deposits and credits) and on a cash basis.

Risk of money laundering or terrorist financing

284. Cambodia has not undertaken any comprehensive risk assessment of its money laundering and terrorism financing vulnerabilities and there has also been no prosecution of money laundering and terrorism financing. However, it is considered that there are significant proceeds of crime that need to be laundered. Banking services are expected to be a primary target for this purpose as there are few investment opportunities in Cambodia (primarily cash, real assets, companies and banking products) and that banking assets are easily transferable, in particular to foreign countries.

285. The Kingdom of Cambodia did not decide not to apply certain AML/CFT requirements, or to reduce or simplify the measures being taken, on the basis that there is low or little risk of money laundering or terrorist financing.

Customer due diligence, including enhanced or reduced measures (R.5 to 8)

2.1 Description and Analysis

286. **Legal Framework:** CDD requirements for FIs are set in three laws (AML law, law on drug control and banking law) and one Prakas (see table below). The AML law was passed by the National assembly on 30 April 2007, is expected to be passed by the Senate on 28 May 2007 and promulgated in the following days [TO BE UPDATED]. It does not cover the NBC which undertake activities covered by FATF recommendations. The on-site mission which took place from 26 February to 14 March 2007 did not assess the implementation of the AML law which had not been enacted then.

287. The scope of the law on drug control is ambiguous as it includes “credit establishments and financial institutions” without defining these two terms (especially that of “credit establishment” which does not appear in the BL).

288. A draft revised AML Prakas for banks and financial institutions, as defined in the banking law (BL), was prepared in 2005. However, it has not been issued. Its provisions have not been updated since 2005 and are not always consistent with the recent AML law.

Existing and contemplated AML /CFT Laws and regulations for the financial sector

Name	Abbreviation	Covered institutions	Date	Status
Law on drug control	Law on drug control	“credit establishments and financial institutions” (art.22-24, 28, 30)	24-Jan-97	Enforceable
Law on banking and financial institutions	Banking law	Banks and specialized financial institutions (art. 1-5)	18-Nov-99	Enforceable
Prakas on standardized procedures for identifying money laundering at banks and financial institutions - NBC	AML Prakas	Banks and financial institutions licensed by the NBC -as defined in the banking law (art.1)	20-Oct-02	Enforceable
Circular on suspicious transactions and know your customer policies - NBC	AML Circular	Banks and financial institutions licensed by the NBC -as defined in the banking law (reference to the Prakas on standardized procedures for identifying money laundering at banks and financial institutions)	4-Oct-03	Recommendations - non enforceable
Law on Anti-Money Laundering and Combating Financing of Terrorism	AML law	a) banks, including branches of foreign banks; b) non-bank financial institutions, including securities brokerage firms and insurance companies; c) micro-finance institutions; d) credit cooperatives; e) leasing companies, investment and pension funds, investment companies and companies for the management of investment funds; f) exchange offices;	24-June-07	Enforceable

		g) money remittance services; h) real estate agents, i) dealers in precious metals, stones and gems; j) post office operating payment transactions; k) lawyers, notaries, accountants, auditors, investment advisors and asset managers when they prepare for or carry out transactions for their clients concerning the activities listed in Article 5 ³⁴ of this present Law; l) casinos and other gambling institutions; m) Non-governmental organizations and foundations engaging in business activities and fund raising; n) Any other institution or profession that is designated by the FIU to fall within the scope of this Law.		
AML Prakas - NBC	Draft AML Prakas	banking and financial institution -as defined in the banking law (art. 1)	Draft	Draft

Customer Due Diligence & Record Keeping

2.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)
Description and analysis
<p>289. Prohibition of Anonymous Accounts (c. 5.1): the AML law prohibits reporting entities³⁵ from (i) opening or keeping anonymous or numbered accounts, or accounts in obviously fictitious names and (ii) issuing, keeping or accepting any other financial products unless the customer due diligence measures (CDD) were properly implemented (art. 7).</p> <p>290. Prior to the AML law, no law or regulation prohibited FIs from keeping accounts under fictitious names or from opening numbered accounts. However, according to the Cambodian authorities, there was no numbered account in the country.</p> <p>291. When is CDD required (c. 5.2): the AML law (art. 8) requires reporting entities to undertake CDD measures (i) prior to establishing business relationships (ii) prior to carrying out occasional or</p>

³⁴ Buying and selling real estate, building and land;

2. Managing of client money, securities or other assets such as:

a- management of banking or securities accounts;

b- organization of contributions for the creation, operation or companies management;

3. Creation, operation or management of legal persons or arrangements, and buying and selling of business entities;
 4. trust or company service providers when they prepare for or carry out transactions for a client concerning the following activities:

- acting as a formation agent of legal persons;

- acting as or arranging for another person to act as a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;

- providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;

- acting as or arranging for another person to act as a trustee of an express trust

- acting as or arranging for another person to act as a nominee shareholder for another person.

³⁵ See definition in the table above.

one-off transactions, including wire-transfers, that involve a sum in excess of an amount defined by the supervisory authority; (iii) if the reporting entity has a suspicion of ML or TF irrespective of the sum involved in the transaction, (iv) if the reporting entity has any doubts about the veracity or adequacy of previously obtained customer identification data. The threshold referred to in (ii) has not yet been established.

292. Prior to the AML law, the law on drug control required “credit establishments and financial institutions” to ask for the identification of customers before proceeding to any business transaction with them (art. 22). However, identification requirements set in this law are limited (see paragraph regarding c. 5.3 below) and there is no additional requirement regarding the timing of business relationships’ identification in existing laws and regulations.

293. For banks and FIs as defined in the BL, the draft revised AML Prakas would require that CDD be undertaken when establishing a business relationship and where carrying out occasional or one off transaction, that involves a sum in excess of 5,000 USD (20 millions KR) or wire-transfer exceeding 3,000 USD (12 million KR). However, the AML law only contemplates one threshold for both types of transactions. Moreover, the contemplated thresholds above which CDD measures need to be undertaken for occasional customers appears very high (especially the 20 millions KR one), without there being a clear case for that in Cambodia.

294. **Identification measures and verification sources (c. 5.3):** the AML law requires reporting entities to identify a customer by obtaining at least its name, birth date, and address for a natural person and its name, articles of incorporation or registration, tax identification number, address, telephone number for a legal person and verifying that customer’s identity using reliable, independent source documents, data or information “by using a national ID card, a passport or any other official photo ID document” (art. 8). No exception is contemplated (e.g. where a company does not have a tax identification number).

295. Prior to the AML law, there were only vague requirements for FIs to identify their customers and verify that identity. Article 22 of the law on drug control indirectly refers to *documenting* customer identification where it requires that records of all documents related to customer identification be kept. The AML Prakas requires that banks and FIs as defined in the BL rely on official documents to identify their customers “unless the customer has been known for years” (art. 3). The AML circular recommends that banks and FIs as defined in the BL use such documents as ID card, proof of address and proof of income for natural persons, previous bank statements where the business relationship had an account, name of the major customers and suppliers, data on the level of

³⁶ As mentioned in the overview of commercial laws and mechanisms governing legal persons and arrangements, one can notice that trust, including those created in other countries, are not recognized in Cambodia.

³⁷ Article 10-1 reads: “a reporting entity shall pay special attention to: (a) any complex, unusual or large amount transactions; (b) any unusual patterns of transactions; that have no apparent or visible economic or lawful purpose, (c) business relations and transactions with institutions or persons in jurisdictions that do not have adequate systems in place to prevent or deter money laundering or financing of terrorism, (d) wire transfers that do not contain complete originator information (e) business relations and transactions with persons with whom the reporting entity has had no face-to-face contact during the identification procedure, (f) business relations and transactions with politically exposed persons and (g) business relations and transactions conducted by means of cross-border correspondent banking or other similar relationships.”

activity for existing companies, project description, level of activity and main customers and suppliers for new companies to verify the identity of their customers.

296. For banks and FIs as defined in the BL, the draft revised AML Prakas would require them to verify their customers' identity using reliable documents. Details on documents that should be collected for individual and corporate persons are mentioned in article 6 and 7 of the draft revised AML Prakas.

297. **Identification of Legal Persons or Other Arrangements³⁶ (c. 5.4):** For customers that are legal persons or legal arrangements, there is no direct requirement for FIs to (i) verify that any person purporting to act on behalf of the customer is so authorized, and identify and verify the identity of that person; and (ii) verify the legal status of the legal person or legal arrangement.

298. When establishing a business relationship "with a corporate customer", the draft revised AML Prakas would require banks and FIs as defined in the BL to see the original and make copies of the memorandum of article, certificate of incorporation or partnership, identification documents of directors, shareholders and partners, Board of directors' or directors' resolution and authorization for any person to represent the company or the business (art. 7).

299. **Identification of Beneficial Owners (c. 5.5; 5.5.1 & 5.5.2):** The AML law requires reporting entities to identify the ultimate beneficial owner, and take reasonable measures to verify his identity such that the FI is satisfied that it knows who the beneficial owner is. However, the definition of a beneficial owner is imprecise as it does not refer to a *natural* person, but only to a person (art 3-i). For legal persons and arrangements, the AML law specifically requires reporting entities to take reasonable measures to understand the ownership and control structure of the customer (art. 8). There is no specific requirement for FIs to determine whether a customer is acting on behalf of another person, and then take reasonable steps to obtain sufficient identification data to verify the identity of that other person.

300. For banks and FIs as defined in the BL, the draft revised AML Prakas would set specific requirements less demanding than the AML law and the FATF recommendations. Its article 8 states that customer due diligence measures as stringent as those imposed on individual customer are required when a FI "suspect a transaction is conducted on behalf of a beneficial owner and not the customer who is conducting such transaction". Besides, the reference to a "suspicion" can be confusing as the same term usually refers to suspicious transaction reporting.

301. **Information on purpose and nature of business relationship (c. 5.6):** The AML law would require reporting entities to obtain information on the purpose and intended nature of the business relationship (art. 8). Prior to it, there was no law or regulation requiring FIs to obtain information on the purpose and intended nature of the business relationship. There was only an indirect recommendation in the AML circular for banks ("banks can only effectively manage and reduce their risk if they have an understanding of normal and reasonable account activities of their customers").

302. **Ongoing due diligence on business relationship (c. 5.7; 5.7.1 & 5.7.2):** The AML law requires reporting entities to conduct ongoing due diligence on the business relationship and scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the reporting entity's knowledge of the customer, their business and risk profile, including, where necessary, the source of funds (art. 5). The AML law does not

include requirements to ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant by undertaking reviews of existing records, particularly for higher risk categories of customers or business relationships.

303. Prior to it, there were only partial and indirect requirements for FIs to carry out ongoing due diligences in existing laws and regulations. Article 22 of the law on drug control requires “credit establishments and financial institutions” to “monitor to see especially if there is any complicated or unusual operation taking place”. The AML circular recommends that banks and FIs as defined in the BL continuously monitor customers’ account activity pattern to ensure they are consistent with customer profiles.

304. **Risk – Enhanced Due Diligence for Higher Risk Customers, Business relationships and transactions (c. 5.8):** the AML law only contains a partial and indirect provision on enhanced due diligence for higher risk customers. Its article 10-1 requires reporting entities to “pay special attention” to a defined list of higher risk transactions, which encompass seven separate higher risk categories of customers, business relationships or transactions³⁷ that are dealt with in specific FATF recommendations (including Rec. 11 on unusual transactions).

305. Moreover, enhanced due diligence requirements are narrowly defined. Article 10-2 requires that the reporting entity seek additional information as to the origin and destination of the money, the purpose of the transaction and the identity of the transacting parties. The objective of such gathering of additional information is not defined. There is no reference to contemplating seeking approval of the senior management before starting a business relationship, having risk management systems to identify higher risk customers or undertaking enhanced ongoing monitoring (on the business relationship and not only on the transaction).

306. Prior to the AML law, there was only an indirect and partial requirement for banks and FIs as defined in the BL to perform enhanced due diligence for higher risk categories of customers, business relationships or transactions. Article 5 of the AML Prakas indeed requires them to test transactions in all areas “with emphasis on high risk areas, products and services”. The AML circular recommends that banks and FIs as defined in the BL develop clear customer acceptance policies including a description of the types of customers who “pose a higher than average risk to the bank”. The latter could take into account such factors as the country of origin, the public or high profile position of a customer, linked accounts and types of activities undertaken.

307. Articles 2 and 3 of the draft revised AML Prakas would clearly require banks and FIs as defined in the BL to set customers’ risk profiles and implement reasonable measures to address different risk profiles. The draft revised AML Prakas would also set specific requirements for different categories of higher risk customers. However, there would not be a requirement to perform enhanced due diligence for higher risk categories of transactions.

308. **Risk – Application of Simplified/Reduced CDD measures when appropriate (c. 5.9 to 5.12):** There is no case where the Kingdom of Cambodia decided that FIs could apply reduced or simplified measures. No such case is contemplated in the draft revised AML Prakas.

309. **Timing of Verification of Identity – general rule (c. 5.13):** The AML law clearly requires reporting entities to verify the identity of the customer and beneficial owner before establishing a business relationship or conducting transactions for occasional customers (art. 8). Prior to it, there were only some imprecise provisions in the law on drug control on this

matter. Article 22 of the law on drug control states that: “Credit establishments and financial institutions shall ask for identification of customers before proceeding to any business transaction with them”. The law (i) refers to identifying the customer and not clearly to verifying it, (ii) refers to proceeding to a business transaction and not to establishing a business relationship (iii) does not set any requirement for beneficial owners. There is no specific provision in the AML Prakas.

310. The draft revised AML Prakas (art. 5) refers to a 5,000 USD threshold for occasional customers in general and 3,000 USD when they want to carry out wire transfers. The threshold for wire transfer that recommended by FATF (1,000 USD) Moreover, both thresholds appear very high in the Cambodian environment, without a clear case for such high thresholds.

311. **Timing of Verification of Identity – treatment of exceptional circumstances (c.5.14 & 5.14.1):** There is no provision permitting FIs to complete the verification of the identity of the customer and beneficial owner following the establishment of the business relationship in specified cases. Such exemption is not contemplated in the draft revised AML Prakas.

312. **Failure to Complete CDD before commencing the Business Relationship (c. 5.15):** where a reporting entity cannot fulfill identification requirements for the customer and the ultimate beneficial owner and obtain information on the purpose and intended nature of the business relationship, the AML law (art. 8) requires the reporting entity (i) not to open an account, commence business relations or perform a transaction unless instructed to the contrary by the FIU and (ii) to consider making a suspicious transactions report in relation to the customer.

313. Prior to the AML law, there was no such provision prohibiting FIs to open an account, commence business relations or perform a transaction where it is unable to comply with customer and beneficial owner identification requirements and requiring it to consider making a suspicious transaction report in such circumstances.

Failure to Complete CDD after commencing the Business Relationship (c. 5.16): where a FI has already commenced a business relationship (e.g. existing customers or situations where the FI has doubts about the veracity or adequacy of previously obtained customer identification data) and is unable to comply with customers’ and beneficial owners’ identification requirements, it has to terminate the business relationship and consider making a suspicious transaction (art. 8-3). There was no such requirement prior to the enactment of the AML law.

314. **Existing Customers –CDD Requirements (c. 5.17):** The AML law requires that reporting entities apply CDD measures to existing customers “on the basis of materiality and risk and conduct due diligences on such existing relationships retrospectively” (art. 8-4). Prior to the AML law, there were very limited requirements on existing customers. Article 3 of the AML Prakas indirectly addresses the issue of existing customers and states that “unless customers have been known for many years, FIs shall base identification of customers on official documents”. There is no other requirement in existing laws and regulations regarding existing customers.

315. The draft revised AML Prakas would require banks and FIs as defined in the BL to collect “evidence of the identity of existing customers” where a significant transaction is to take place, there is a material change in the way the account is operated, the customer’s documentation standards change substantially, the institution is aware that the information held on the customer is insufficient, based on risk assessment in line with the institution’s standards on higher risk customers (art. 21).

316. **Existing Anonymous-account Customers – CDD Requirements (c. 5.18):** Article of the AML law reads that “reporting entities shall not (a) open or keep anonymous or numbered accounts, or accounts in obviously fictitious names, (b) issue, keep or accept any other financial products unless the customer due diligence measures were taken”. There were no such provisions prior to the AML law.

317. **PEPs (c. 6.1, 6.2, 6.3, 6.4, 6.5, 6.6):** The AML law (art. 10) requires reporting entities to pay special attention to business relations and transactions with PEPs and “seek additional information as to the origin and destination of the money, the purpose of the transaction and the identity of the transacting parties”.

318. The definition of PEPs only encompasses individuals who are or have been entrusted with prominent public function in a foreign country. In both cases, neither individuals entrusted with prominent public function in Cambodia nor their family members and close associates would be included in the definition of a PEP and covered by the contemplated requirements. Prior to the AML law, PEPs were dealt with in the AML circular which did not restrict them to foreign nationals. The AML circular recommended that banks and FIs as defined in the BL investigate the source of funds before opening an account to a PEP and that such a decision be made by the senior management.

319. For banks and FIs as defined in the BL, the draft revised AML Prakas would require them to (i) check if current and new customers are PEPs, (ii) to establish the source of wealth and funds of such persons, (iii) to obtain the senior management’s approval to enter into or continue business relationships with these PEPs. The draft revised AML Prakas does not require banks and FIs to conduct enhanced ongoing monitoring on such relationships.

320. **Domestic PEPs - Ratification of the Merida Convention (Additional Element c. 6.6):** The 2003 United Nations Convention against Corruption (Merida convention) has not been signed.

321. **Cross Border Correspondent Accounts and Similar Relationships – introduction.** In addition to the laws and regulations described in the table above (Existing and contemplated AML /CFT Laws and regulations for the financial sector), cross-border financial flows are subject to the 1997 law on foreign exchange. The absence of foreign exchange restriction in Cambodia facilitates the access of banks to the international banking system (for the first nine months of 2006, inflows amounted to 2.7 billion USD and outflows to 3.5 billion USD).

322. **Cross Border Correspondent Accounts and Similar Relationships (c. 7.1, 7.2, 7.3 and 7.4):** Laws and regulations do not require FIs to (i) gather sufficient information about a respondent FI to understand fully the nature of the respondent’s business and to determine from publicly available information the reputation of the FI and the quality of supervision, including whether it has been subject to a money laundering or terrorist financing investigation or regulatory action, (ii) assess the respondent institution’s AML/CFT controls, and ascertain that they are adequate and effective, (iii) obtain approval from senior management before establishing new correspondent relationships, (iv) document the respective AML/CFT responsibilities of each institution, (v) where a correspondent relationship involves the maintenance of “payable-through accounts”, to be satisfied that the respondent FI has performed all the normal CDD obligations on those of its customers that have direct access to the accounts of the correspondent FI; and is able to provide relevant customer identification data upon request to the correspondent FI.

323. For banks and FIs as defined in the BL, the draft revised AML Prakas would require them to

(i) take necessary measures to ensure that they are not exposed to the threat of ML and TF through their accounts in these respondent institutions (ii) gather and assess at least the Board of director and management; business activities and products; subjected legislations, regulation and supervision; AML/CFT measures and control and annual reports, (iii) establish or continue a correspondent banking relationship with the respondent institution only if they are satisfied with the assessment of the information gathered, (iv) document the responsibilities of the respective parties in relation to the correspondent banking relationship, (iv) get approval at the senior management level to establish or continue a correspondent banking relationship, (v) ensure that such correspondent banking relationships do not include respondent institutions that have no physical presence and which are unaffiliated with a regulated financial group (art. 15).

324. **Payable-Through Accounts (c. 7.5):** Where a correspondent relationship involves the maintenance of “payable-through accounts”, existing laws and regulations do not require FIs to be satisfied that the respondent FI has performed all the normal CDD obligations on those of its customers that have direct access to the accounts of the correspondent FI; and is able to provide relevant customer identification data upon request to the correspondent FI.

325. The draft revised AML Prakas would require banks and FIs to undertake enhanced due diligence with respect to respondent banks which allows direct use of the correspondent account by their customers to transact business on their own behalf (i.e. payable-through accounts). In such a case, there is no specific requirement to be satisfied that the respondent FI has performed all the normal CDD obligations on those of its customers that have direct access to the accounts of the correspondent FI; and is able to provide relevant customer identification data upon request to the correspondent FI.

326. **Misuse of New Technology for ML/TF (c. 8.1):** There is no requirement in laws and regulations for FIs to have policies in place or take such measures as may be needed to prevent the misuse of technological developments in ML or TF schemes.

327. **Risk of Non-Face to Face Business Relationships (c. 8.2 & 8.2.1):** The AML law requires FIs to pay special attention to business relations and transactions with persons with whom the reporting entity has had no face-to-face contact during the identification procedure, including seeking additional information as to the origin and destination of the money, the purpose of the transaction and the identity of the transacting parties (art.10). Prior to it, there was no requirement in laws and regulations for FIs to have policies and procedures in place to address any specific risks associated with non-face to face business relationships or transactions when establishing customer relationships and when conducting ongoing due diligence, including specific and effective CDD procedures

328. The draft revised AML Prakas would require banks and FIs as defined in the BL, to conduct non-face-to-face business “provided that they have completed the customer due diligence through face-to-face interaction prior to establishing such business relationship with their customers” (art. 14).

329. **Analysis of effectiveness:** At the time of the on-site mission, CDD requirements in Cambodia were limited and often imprecise. The mission met with four Cambodian commercial banks (three with foreign shareholders and one domestic retail bank). All of them appeared to implement more stringent customer due diligence measures than those set in Cambodian laws and regulations at the time of the on-site mission (i.e. prior to the AML law being passed). Besides, Commercial banks were

well aware of the existence the AML Prakas thanks to regular contacts with the NBC, but not of the law on drug control.

330. Bank internal requirements appeared less stringent than international recommendations and primarily oriented towards collecting customer identification documents and monitoring credit risks. Few indicators or monitoring tools appeared to be in place to identify unusual and suspicious transactions. No bank had undertaken an AML /CFT risk assessment for its Cambodian business. CDD processes seemed largely driven by international experiences (e.g. group policies where relevant and trainings delivered by large banking groups offering correspondent banking services) and varied significantly among banks as well as among activities carried out.

Recommendations and comments

331. At the time of the on-site mission, CDD requirements in Cambodia were limited and often imprecise. The AML law that was passed since constitute a major improvement. However, it does not fully comply with international recommendations and comments made at the end of the on-site mission were not taken on board.

332. More important, the capacity of FIs to implement the AML law and that of the Cambodian authorities to enforce its provisions remain to be demonstrated. As a first step, it will be critical that the contemplated draft revised AML Prakas setting more precise requirements for banks and FIs as defined in the BL be (i) quickly updated so that it be fully consistent with the AML law and international recommendations and (ii) issued. Other sector regulations will need to complement the current framework, especially for life insurance undertakings once they start their business.

333. The authorities should consider to:

- Bring the National Bank of Cambodia within the scope of AML /CFT laws and regulations
- Set a threshold for occasional transactions, including wire transfers, above which CDD measures have to be undertaken. Such a threshold should comply with FATF recommendations, take into account the characteristics of the Cambodian economy and not be excessively high
- require FIs to verify that any person purporting to act on behalf of the customer is so authorized, and identify and verify the identity of that person and verify the legal status of the legal person or legal arrangement
- make clear that beneficial owners refer to *natural* persons
- require FIs to determine whether the customer is acting on behalf of another person, and then take reasonable steps to obtain sufficient identification data to verify the identity of that other person
- broaden requirements to undertake enhanced due diligence for higher risk categories. Enhanced due diligence requirements and higher risk categories are too narrowly defined by the AML law (see description and analysis for criteria 5.8)
- require FIs to ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant by undertaking regular reviews of existing records, particularly for higher risk categories of customers or business relationships
- set more detailed requirements as to when FIs have to apply CDD measures to existing customers, as contemplated in the draft revised AML Prakas

- expand existing requirements pertaining to PEPs to require FIs to (i) put in place appropriate risk management systems to determine whether a potential customer, a customer or the beneficial owner is a politically exposed person (PEP), (ii) obtain senior management approval for establishing business relationships with a PEP, (iii) take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as PEPs and (iv) conduct enhanced ongoing monitoring on such relationships
- review the definition of PEPs to include (i) domestic persons and (ii) PEPs' family members and close associates. Including domestic persons would support efforts undertaken by the Cambodian authorities to fight corruption and be consistent with the AML Prakas (2002) which did not exclude them
- require FIs to (i) gather sufficient information about a respondent FI to understand fully the nature of the respondent's business and to determine from publicly available information the reputation of the FI and the quality of supervision, including whether it has been subject to a money laundering or terrorist financing investigation or regulatory action, (ii) assess the respondent institution's AML/CFT controls, and ascertain that they are adequate and effective, (iii) obtain approval from senior management before establishing new correspondent relationships, (iv) document the respective AML/CFT responsibilities of each institution, (v) where a correspondent relationship involves the maintenance of "payable-through accounts", to be satisfied that the respondent FI has performed all the normal CDD obligations on those of its customers that have direct access to the accounts of the correspondent FI; and is able to provide relevant customer identification data upon request to the correspondent FI
- require FIs to be satisfied that the respondent FI has performed all the normal CDD obligations on those of its customers that have direct access to the accounts of the correspondent FI; and is able to provide relevant customer identification data upon request to the correspondent FI
- require FIs to have policies in place or take such measures as may be needed to prevent the misuse of technological developments in ML or TF schemes
- clarify requirements for non-face-to-face business relationships by demanding that FIs have policies and procedures in place to address any specific risks associated with non-face to face business relationships or transactions when establishing customer relationships and when conducting ongoing due diligence, (and not only "pay special attention" as including specific and effective CDD procedures

Compliance with FATF Recommendations		
	Rating	Summary of factors underlying rating
R.5	NC	<p>NBC out of the scope of AML /CFT laws and regulations</p> <p>No threshold for occasional transactions, including wire transfers, above which CDD measures have to be undertaken</p> <p>No requirement for FIs to verify that any person purporting to act on behalf of the customer is so authorized, and identify and verify the identity of that person and verify the legal status of the legal person or legal arrangement</p> <p>Unclear that beneficial owners refer to <i>natural</i> persons</p> <p>No requirement for FIs to determine whether the customer is acting on behalf of another person, and then take reasonable steps to obtain sufficient identification data to verify the identity of that other person</p>

		<p>Too narrow requirements to undertake enhanced due diligence for higher risk categories</p> <p>No requirement for FIs to ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant by undertaking regular reviews of existing records, particularly for higher risk categories of customers or business relationships</p> <p>No detailed requirements as to when FIs have to apply CDD measures to existing customers</p> <p>Lack of implementation of CDD requirements</p>
R.6	NC	<p>No requirements require FIs to (i) put in place appropriate risk management systems to determine whether a potential customer, a customer or the beneficial owner is a PEP, (ii) obtain senior management approval for establishing business relationships with a PEP, (iii) take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as PEPs and (iv) conduct enhanced ongoing monitoring on such relationships</p> <p>Too narrow definition of PEPs</p>
R.7	NC	<p>No requirement for FIs to (i) gather sufficient information about a respondent FI to understand fully the nature of the respondent's business and to determine from publicly available information the reputation of the FI and the quality of supervision, including whether it has been subject to a money laundering or terrorist financing investigation or regulatory action, (ii) assess the respondent institution's AML/CFT controls, and ascertain that they are adequate and effective, (iii) obtain approval from senior management before establishing new correspondent relationships, (iv) document the respective AML/CFT responsibilities of each institution, (v) where a correspondent relationship involves the maintenance of "payable-through accounts", to be satisfied that the respondent FI has performed all the normal CDD obligations on those of its customers that have direct access to the accounts of the correspondent FI; and is able to provide relevant customer identification data upon request to the correspondent FI</p> <p>No requirement for FIs to be satisfied that the respondent FI has performed all the normal CDD obligations on those of its customers that have direct access to the accounts of the correspondent FI; and is able to provide relevant customer identification data upon request to the correspondent FI</p>
R.8	NC	<p>No specific requirement regarding the misuse of technological development and non face to face business relationships and transactions</p>

Third parties and introduced business (R.9)	
Description and analysis	
<p>334. Introduced Business (c. 9.1-9.5): Cambodian laws and regulations are silent on the issue of introduced business. There is no provision in existing laws and regulations allowing FIs to rely on intermediaries or other third parties to perform some of the elements of the CDD process (Criteria 5.3 to 5.6) or to introduce business. Draft regulations do not contemplate allowing FIs to rely on</p>	

intermediaries or other third parties to perform some of the elements of the CDD process or to introduce business.		
Recommendations and comments		
<p>335. Relying to some extent on third parties and introduced business are common features of the financial industry (e.g. loan syndication, bank offering life insurance and securities services provided by another company, customer banking with different banks for different services, e.g. a domestic bank and its foreign head office etc.). No example of a FI relying on an introducer for business purposes was identified during the on-site mission. However, the expected development of banking services and the introduction of securities and life insurance services in Cambodia make it likely that FIs will increasingly have to rely on introduced business for business purposes.</p> <p>336. Cambodian authorities should consider:</p> <ul style="list-style-type: none"> - either to set a blanket prohibition for FIs to rely on intermediaries or other third parties to perform some of the elements of the CDD process - or to set detailed requirements to be fulfilled in such circumstances. FIs relying upon a third party should then be required to (i) immediately obtain from the third party the necessary information concerning key elements of the CDD process, (ii) to take adequate steps to satisfy themselves that copies of identification data and other relevant documentation relating to CDD requirements will be made available from the third party upon request without delay, (iii) to satisfy themselves that the third party is regulated and supervised and has measures in place to comply with the CDD requirements). In such a case, Cambodian authorities should determine in which countries the third party that meets the conditions can be based, taking into account information available on whether those countries adequately apply the FATF recommendations. 		
Compliance with FATF Recommendations		
	Rating	Summary of factors underlying rating
R.9	NA	
Financial institution secrecy or confidentiality (R.4)		
Description and analysis		
<p>Inhibition of Implementation of FATF Recommendations (c. 4.1): The AML law states that that “banking or professions secrecy” shall not inhibit its implementation and may not be invoked to refuse to provide information to the FIU and supervisory authority, whether for domestic or for international cooperation purposes, or as required in connection with an investigation which relates to ML or TF ordered by, or carried out under the supervision of, a judicial authority (art. 6).</p>		
Recommendations and comments		
<p>337. There has not been any ML or TF investigation. In other areas, the NBC appeared to have access to relevant bank information where appropriate. Prior to the AML law, law enforcement officers generally went through the NBC to obtain relevant bank information (and effectively gained access to them according to the authorities).</p> <p>338. The AML law as appropriately cases where FI secrecy is lifted for AML /CFT purposes.</p>		
Compliance with FATF Recommendations		
	Rating	Summary of factors underlying rating

R.4	PC	Lack of implementation of the provisions of the AML law lifting FI secrecy for AML /CFT purposes
Record keeping and wire transfer rules (R.10 & SR.VII)		
Description and analysis		
<p>339. Record-Keeping (c. 10.1, 10.2 and 10.3): Article 11 of the AML law requires reporting entities to keep records of customer identification and of transactions carried out by the later for at least five years “after the account has been closed or the business relations with the customer have ended”. It also requires reporting entities to ensure that they keep sufficient records to permit the reconstruction of individual transactions so as to be able to provide evidence for the prosecution of offense where appropriate and hold this information available to competent authorities. It is not clearly stated that (i) record keeping requirements also apply to business correspondence and that (ii) records should be maintained so that the information could be made available to the competent authorities <i>on a timely basis</i>. Moreover, the time during which records of individual transactions must be kept appear very long as it does never relate to the completion of a transaction but always to the closing of an account or the termination of a business relationship. There is no clear case for that demanding a requirement.</p> <p>340. Prior to the enactment of the AML law, there were only limited record keeping requirements. Article 22 of the law on drug control requires “credit establishments and financial institutions” to keep record of all customer identification documents, without mentioning a specific number of years during which these documents have to be kept (art. 22). Article 51 of the BL requires banks and FIs as defined in this law to keep all relevant information on customer identification and transactions above a threshold “to be defined by the “supervisory authority” for at least ten years. A threshold has been defined for cash transactions <i>only</i> (40,000,000 KR or equivalent”, which is approximately 10,000 USD –art. 6 of the AML Prakas).</p> <p>341. The draft revised AML Prakas contains provisions would require “banks and micro-institutions” to (i) keep all records, documents and copies of documents involved in all form of transactions, in particular those obtained during customer due diligence procedure, for at least 5 years after the accounts have been closed or the business relations with the customer have ended, (ii) in the situations where the records are subjected to an on-going investigation or suspicious transaction report submitted, they shall be retained beyond the stipulated retention period until it is confirmed by the relevant investigating authorities that such records are no longer needed, (iii) ensure that the retained documents and records are sufficient for the supervisory and enforcement agencies to establish the “history, circumstances and reconstruct each transaction”. The provisions of the draft revised AML Prakas would require that these records include at least “the origin of the funds, the identity of the person undertaking the transaction if not an account holder; the form of transaction i.e. by cash or by check; and the instruction and the destination of fund transfers” and ensure that these documents can be retrieved upon request in an accurate and timely manner and are admissible in court. Collecting and keeping record of the origin of funds for each transaction appears both very demanding and difficult to implement, without any clear advantage attached to this general requirement.</p> <p>342. Wire Transfers rules (SR. VII): The AML law requires reporting entities to (i) implement CDD measures prior to carrying out occasional wire-transfers above a threshold to be set by the supervisory authority (the threshold has not yet been set), (ii) ensure that wire transfers are accompanied by proper identification information (name and address of the originator, and where an account exists, number of that account) (art. 8), (iii) pay special attention to wire transfers that do not</p>		

contain complete originator information (art. 10). There are requirements (i) each intermediary FI in the payment chain to maintain all the required originator information with the accompanying wire transfer and (ii) to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information. Prior to the enactment of the AML law, there was no provision in Cambodian laws and regulations regarding AML requirements for wire transfers, be they domestic or cross-border.

343. For banks and FIs as defined in the BL, the draft revised AML Prakas would require that (i) CDD be undertaken when carrying out occasional wire transfers above 3,000 USD (12 million riels), (ii) outgoing remittance/wire transfer transactions be accompanied by the necessary originators information (name, address, identification number or customer reference number) and the details of the transaction, (iii) where facilitating or acting as intermediary to a remittance/wire transfer transaction, ensure that such originators information is still retained with remittance/wire transfer transaction, (iv) where receiving a remittance/wire transfer transaction with incomplete originators information, conduct enhanced CDD and examine if this need to be considered “as a factor of suspicion”, and (v) for higher risk customers, undertake enhanced CDD taking into account such factors as the name of the beneficiary, the destination and amount of the remittance/wire transfer, the consistency of the remittance/wire transfer transaction with the usual business/activity of the customer (art. 5 and 18). No distinction is contemplated between domestic and cross-border wire transfers and there are no specific requirements where processing non-routine transactions.

344. **Analysis of effectiveness:** At the time of the on-site mission, record keeping requirements were very limited and no regulation dealt with AML requirements for wire transfers. As a consequence, record keeping policies varied a lot among banks and attention was not necessarily given to wire transfers for AML purposes.

Recommendations and comments

345. The AML law sets new requirements regarding record keeping and wire transfers. The authorities will primarily have to ensure that they are properly implemented, which was not the case at the time of the on-site mission as previous requirements did not exist or were far more lenient.

346. The authorities should consider to:

- clarify that FIs have to keep record of business correspondence and have to ensure that relevant information are made available *on a timely basis* to competent authorities
- examine the opportunity of reducing the record keeping requirement to five years after the completion of a transaction, where appropriate
- for wire transfers, require (i) each intermediary FI in the payment chain to maintain all the required originator information with the accompanying wire transfer and (ii) each FI to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information
- establish measures to effectively monitor the compliance of FIs with rules and regulations implementing SR.VII

347. There is no industry standard for wire transfers in Cambodia. The NBC will play a role in setting such standards (as contemplated by the Payment law).

Compliance with FATF Recommendations

	Rating	Summary of factors underlying rating
R.10	NC	Unclear that FIs have to keep record of business correspondence and have to ensure that relevant information are made available <i>on a timely basis</i> to competent authorities Lack of implementation
SR.VII	NC	No requirement for wire transfers that (i) each intermediary FI in the payment chain to maintain all the required originator information with the accompanying wire transfer and (ii) each FI to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information No measures to effectively monitor the compliance of FIs with rules and regulations implementing SR.VII No implementation of wire transfer requirements set in the AML law

Unusual and Suspicious Transactions

Monitoring of transactions and relationships (R.11 & 21)
Description and analysis
<p>348. Special Attention to Complex, Unusual Large Transactions (c. 11.1, 11.2 and 11.3): The AML law requires reporting entities to pay special attention to any complex, unusual or large amount transactions and any unusual patterns of transactions; that have no apparent or visible economic or lawful purpose (art. 10). In such cases, reporting entities should “seek additional information as to the origin and destination of the money, the purpose of the transaction and the identity of the transacting parties”. There is no provision in the AML law that requires reporting entities to set forth findings in writing and keep them available for competent authorities and auditors for at least five years.</p> <p>349. Prior to the enactment of the AML law, there were no requirements in laws and regulations to (i) pay special attention to all complex, unusual large transactions, or unusual patterns of transactions that have no apparent or visible economic or lawful purpose, (ii) examine as far as possible the background and purpose of such transactions and to set forth their findings in writing, (iii) keep such findings available for competent authorities and auditors for at least five years.</p> <p>350. The draft revised AML Prakas contains more limited requirements than the AML law. Its article 25 would only require banks and FIs as defined in the BL to “conduct on-going customer due diligence to clarify the economic background and purpose of any transaction or business relationship that appears unusual, does not have an apparent economic purpose or the legality of such transaction is not clear especially with regards to complex and large transactions or higher risk customers”.</p> <p>351. Transactions with countries not sufficiently applying FATF Recommendations (c. 21.1, 21.2 and 21.3): Article 10-1-c of the AML law requires reporting entities to pay special attention to “business relations and transactions with institutions or persons in jurisdictions that do not have adequate systems in place to prevent or deter money laundering or financing of terrorism”. Article 10-2 states that reporting entities “shall seek additional information as to the origin and destination of the money, the purpose of the transaction and the identity of the transacting parties”. “Seeking additional information” is far less demanding than “examining as far as possible” as recommended by FATF (see paragraph below). There is no requirement to make written findings available to assist competent authorities and auditors.</p>

352. Prior to the enactment of the AML law, there was no requirement in laws and regulations for FIs to (i) give special attention to business relationships and transactions with persons (including legal persons and other financial institutions) from or in countries which do not or insufficiently apply the FATF Recommendations, (ii) examine as far as possible the background and purpose of those transactions that have no apparent economic or visible lawful purpose and make written findings available to assist competent authorities and auditors.

353. There is no law or regulation that would allow the Kingdom of Cambodia to apply appropriate counter-measures where a country continues not to apply or insufficiently applies the FATF Recommendations.

354. “With regards to business relationships and transaction with individuals, business, company and FIs from countries which have insufficiently implemented the internationally accepted AML/CFT measures, such as the Non Cooperative Countries and Territories (NCCTs)”, the draft revised AML Prakas would require banks and MFIs to “make further inquiries, as detailed as possible about their background and purpose, to establish the findings in writing, and to make available to help the competent authorities” (art. 27).

Recommendations and comments

355. The authorities should consider:

- requiring FIs to examine as far as possible the background and purpose of such transactions. The approach to be taken by FIs should be unequivocally mentioned (“examine as far as possible”)
- requiring FIs to set forth their findings in writing and keep those findings available for competent authorities and auditors for at least five years
- requiring FIs to give special attention to examine as far as possible the background and purpose of transactions with persons (including legal persons and other financial institutions) from or in countries which do not or insufficiently apply the FATF Recommendations that have no apparent economic or visible lawful purpose and make written findings available to assist competent authorities and auditors
- set legal or regulatory provisions allowing the Kingdom of Cambodia to apply appropriate counter-measures where a country continues not to apply or insufficiently applies the FATF Recommendations.

Compliance with FATF Recommendations

	Rating	Summary of factors underlying rating
R.11	NC	No requirement for FIs to examine as far as possible all complex, unusual large transactions, or unusual patterns of transactions that have no apparent or visible economic or lawful purpose and keep record of findings No implementation of the provisions of the AML law
R.21	NC	No requirement for FIs to examine as far as possible transactions related to countries which insufficiently apply the FATF Recommendations No law or regulation allowing Cambodia to apply counter-measures where a country does not or insufficiently applies the FATF Recommendations

2.3 Suspicious transaction reports and other reporting (R.13, 14, 19, 25 & SR.IV)
Description and analysis
<p>356. Legal Framework: AML law (2007), law on drug control (1997), AML Prakas (2002) for banks and FIs as defined in the BL</p> <p>357. Reporting of Suspicious Transactions (c. 13.1-4 & VI.1-2): The AML law requires reporting entities to report within 24 hours to the FIU cases where they suspect or have reasonable grounds to suspect that funds are the proceeds of offense, or are related to TF (art. 12). The FIU has not yet been established. Attempted transactions are covered by this reporting requirement. The reporting requirement would apply regardless of whether a transaction is thought, among other things, to involve tax matters, as the latter is a predicate offense of ML.</p> <p>358. Article 23 of the law on drug control states that: “credit establishments and financial institutions” shall report of “the amounts of money which they have suspicion of generated from the commission” of drug trafficking offenses as defined in the law on drug control and indicate of the operations related to such amount of money”. These reports shall be sent to the prosecutor (art. 23) who shall ask to the AML Commission “to provide him/her sufficient information, in order that he/she will make decision on due charge”. The AML Commission has not been set up. No STR was received by the prosecutor office. Banks the mission met with were unaware of reporting requirements set by the law on drug control.</p> <p>359. Besides, article 7 of the AML Prakas requires banks and FIs as defined in the BL to “submit promptly to the NBC for <u>any</u> suspicious transaction relevant to a possible violation of law or regulation”. There is no clear legal basis which would allow the NBC to set such a broad requirement and no provision regarding how such STRs would be managed by the NBC (e.g. confidentiality, transmission to relevant authorities, ability to use such information for prosecution etc.). The NBC never received any STR.</p> <p>360. Article 32 of the AML law reads that “all provisions not consistent with to this Law are hereby repealed”. The provisions of the law on drug control that contemplate the creation of an AML Commission do not literally appear not to be consistent with the AML law and thus to have been repealed. Similarly, the reporting mechanisms established by the law on drug control and by the AML Prakas do not appear not to be consistent with the AML law and thus to have been repealed. Legally speaking, Cambodia appears to have two FIUs and three different reporting mechanisms. The fact that, from a functional point of view this arrangement does not appear to be efficient does not render it "not consistent with this Law".</p> <p>361. The draft revised AML Prakas which was prepared before the draft AML law and has not yet been reviewed for consistency purposes would require banks and FIs as defined in the BL to report suspicious transactions to the NBC. Art 28 mentions that they would have to “promptly submit a suspicious transaction report to the NBC when any of its employees suspects or has reasonable grounds to suspect that the transaction involves proceeds from an unlawful activity or the customer is involved in ML or TF”. This requirement in the draft revised AML Prakas is not consistent with that in the AML law (i.e. reporting to the FIU).</p> <p>362. STRs Related to Terrorism and its Financing (c. 13.2): Under the AML law, the obligation to make a STR also applies to funds where there are reasonable grounds to suspect or they are suspected to be linked or related to, or to be used for terrorism, terrorist acts or by terrorist</p>

organizations or those who finance terrorism.

363. Prior to the enactment of the AML law, the aforementioned obligations to make a STR did not apply to funds where there are reasonable grounds to suspect or they are suspected to be linked or related to, or to be used for terrorism, terrorist acts or by terrorist organizations or those who finance terrorism, both because of (i) the shortcomings of the STR regime mentioned above and of (ii) the very basic definition of acts of terrorism which exists and the fact that TF is not criminalized (see 1.2).

364. **No Reporting Threshold for STRs (c. 13.3):** Cambodian laws and regulations do not set any threshold below which FIs are not required to report suspicious activities. The AML law clearly requires that attempted transactions be reported (a requirement that did not exist in Cambodian laws and regulations prior to its enactment).

365. **Additional Element - Reporting of All Criminal Acts (c. 13.5):** Under the AML law, reporting entities have to report any “transaction that involves funds suspected to be the proceeds of offense, or funds related to the financing of terrorism” and proceeds of offence are broadly defined as “any property derived from or obtained, directly or indirectly, through the commission of any felony or misdemeanor”. FIs therefore are required to report to the FIU when they suspect or have reasonable grounds to suspect that funds are the proceeds of all criminal acts that would constitute a predicate offence for money laundering.

366. The law on drug control only requires “credit establishments and FIs” to report suspicious transactions related to drug trafficking offenses. The AML Prakas sets a very broad requirement (“any suspicious transaction relevant to a possible violation of law or regulation”) but the legal provision that entitle the NBC to issue such a general requirement is uncertain.

367. **Protection from Liability for Filing STRs (c. 14.1):** The AML law contains provisions that protect FIs’ directors, officers and employees from both criminal and civil liability for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, if they report their suspicions in good faith to the FIU (art. 14). However, the reporting entity does not appear to be covered.

368. The law on drug control clearly states that (i) individuals who make STRs in good faith (“individual or leader or persons in charge of inspection of the organization”) cannot be subject to any prosecution for the breach of confidentiality and (ii) that both individual nor legal persons who report suspicious transactions in good faith are exempted from criminal, civil and professional liability (art. 27 and 28). These provisions only apply to STRs made in accordance with the law on drug control and not to those made in accordance with the AML Prakas.

369. **Prohibition against Tipping-Off and confidentiality of Reporting Staff (c. 14.2 and 14.3):** Article 15 of the AML law states that in no circumstance shall persons required to submit STRs, or any other individual having knowledge thereof, communicate such information or reports to any natural or legal persons other than the FIU, except where so authorized by the FIU. The AML law does not contain any provision that would guarantee that the names and personal details of staff of institutions that make a STR are kept confidential.

370. There is no provision prohibiting tipping off in the law on drug control. Article 7 of the AML Prakas which covers banks and FIs as defined in the BL states that “informing customers for the

issuance of a SAR shall be strictly prohibited”. However, it does not define the acronym “SAR”. There is no law or regulation or any other measure to ensure that the names and personal details of staff of financial institutions that make a STR are kept confidential.

371. Article 29 of the draft revised AML Prakas mentions a less stringent requirement (“ensure that the reporting system put in place for the submission of suspicious transaction reports is operated in an environment that upholds confidentiality and most importantly to ensure that the customer reported on, does not become aware of such suspicious transaction report”).

372. **Threshold Reporting (c. 19.1 to 19.3):** Article 12-1 of the AML law states that reporting entities “shall report to the FIU any cash transaction exceeding the amount of the threshold as defined by the supervisory authority, as well as such transactions, which involve several connected cash transactions whose total value exceeds the same amount”. The threshold above which cash transactions have to be reported has not been set. Operational ways to report cash transactions have not been devised.

373. There is no comprehensive framework in place to report currency transactions above a certain threshold. There are two legal provisions that refer to reporting requirements for cash transactions: Article 19 of the 1997 Law on drug control states that all the transfers to or from foreign countries of funds, checks or other valuable objects which amount exceed a threshold to be set by the Minister of Finance in a Prakas shall be reported to the NBC (amount of the transfer, name and address of the sender and receiver). No reporting regime has been implemented so far as the Prakas setting the threshold above which transactions should be reported has not been adopted.

374. **Guidelines for Financial Institutions and DNFBPs (c. 25.1):** The NBC issued a circular on suspicious transactions and know your customer policies (KYC) for banks and FIs as defined in the BL. This guidance only refers to international best practices and not to the Cambodian environment.

375. **Feedback from FIU (c. 25.2):** There is no FIU in place

Recommendations and comments

376. The authorities should consider:

- clarifying which provisions of laws and regulations that existed prior to the enactment of the AML law are repealed by the latter
- taking appropriate measure to ensure that the names and personal details of staff of FIs that make a STR are kept confidential
- revising reporting requirements contemplated in the draft revised AML Prakas to ensure their consistency with the AML law
- providing appropriate protection from liability for filing STRs to reporting entities
- Set the threshold above which cash transactions have to be reported
- Put in place operational ways to report cash transactions
- Organize the ways the FIU will provide feedback to reporting entities (content, periodicity etc.)
- Prepare guidance that fully take into account the Cambodian environment

Compliance with FATF Recommendations		
	Rating	Summary of factors relevant to section 2.7 underlying overall rating
R.13	NC	Partial and confusing reporting requirements No STR ever received
R.14	PC	No protection against civil or criminal liabilities for reporting entities filing STRs
R.19	PC	No implementation of a cash reporting regime
R.25	NC	No feedback provided in the absence both of STRs and of an FIU No framework in place to provide such feedback The rating in this box is an aggregate rating across the various parts of the report
SR.IV	NC	No reporting requirement for TF prior to the AML law (2007) which was not implemented at the time of the on-site mission

Internal controls and other measures

Internal controls, compliance, audit and foreign branches (R.15 & 22)	
Description and analysis	
377.	Legal Framework: similar legal framework as the one for preventive measures for financial institutions (see relevant paragraph)
378.	Establish and Maintain Internal Controls to Prevent ML and TF (c. 15.1, 15.1.1 & 15.1.2): the AML law requires reporting entities to develop programs for the prevention of ML and TF including (i) an internal policy, procedures and controls, (ii) designation of compliance officers at management level, (iii) internal audit function to check compliance with and effectiveness of the measures taken to apply the AML law (art. 16).
379.	The AML Prakas also sets internal control requirements to prevent ML. Banks and FIs are required to have a written AML policy approved by their Board of directors which shall include a system of internal controls designed to ensure ongoing compliance with AML requirements, independent testing of compliance, daily coordination and monitoring of compliance by a designated person, account opening, monitoring, and currency reporting procedures (art. 2 and 4). There is no explicit requirement for FIs to communicate AML policies, procedures and controls to employees (art. 8 of the AML Prakas only requires that appropriate staff be trained on AML policies and procedures). There is no requirement in existing laws and regulations that the AML/CFT compliance officer and other appropriate staff have timely access to customer identification data and other CDD information, transaction records, and other relevant information.
380.	The draft revised AML Prakas would contain further requirements for banks and FIs as defined in the BL. These requirements would include (i) AML /CFT procedures including customer acceptance policy, CDD, record keeping, on-going monitoring, reporting of suspicious transactions “and combating the financing of terrorism” (art. 33), (ii) the appointment by the senior management of a compliance officer at senior management level with the approval of the Board of Directors (art. 35). The detection of unusual and suspicious transactions is not included among the areas procedures must cover. There is no contemplated requirement in the draft revised AML Prakas that the AML/CFT compliance officer and other appropriate staff have timely access to customer identification data and

other CDD information, transaction records, and other relevant information.

381. **Independent Audit of Internal Controls to Prevent ML and TF (c. 15.2):** the AML law requires reporting entities to have (i) a compliance officer responsible for ensuring that “the staff” complies with the provisions of the AML law and the FI’s internal AML policy, procedures and manual of compliance (art. 17) and (ii) an internal audit function to check the compliance and the effectiveness of the measures taken to apply the provisions of the AML law (art. 16). Article 5 of the AML Prakas also requires banks and FIs as defined in the BL to have internal or external auditors which “are able” (i) to attest the overall integrity and effectiveness of management systems and controls and Prakas technical compliance, (ii) to test transactions in all areas with emphasis on high risk areas, products and services and (iii) to assess the adequacy of the institution’s process for identifying suspicious activity. There is no requirement to maintain an *independent* audit function and the requirement that it be adequately resourced is too indirect (“be able” in the AML Prakas). Despite the risks associated with the outsourcing of a critical control function and potential conflicts of interest, no conditions have been defined that would have to be fulfilled before the AML audit can be outsourced to an external auditor.

382. The draft revised AML Prakas would require banks and FIs as defined in the BL to have (i) a compliance officer a senior management level responsible for verifying that AML /CFT policy, procedures and controls are adhered to (art. 35). They would also be required to have an internal audit function made up of one or more internal auditor(s) which roles and responsibilities should at least include (i) testing the effectiveness of the policies, procedures and control for AML/CFT measures; (ii) ensuring the effectiveness of AML/CFT control mechanisms including the appointment of compliance officers, staff training and awareness programs, employee screening mechanisms, AML/CFT internal manual and listing of suspicious transactions; and ensuring that measures put in place are in line with current developments and changes of the relevant AML/CFT requirements. The contemplated requirement that the Board of Director should ensure that the roles and responsibilities of the internal auditor are clearly defined and documented does not in itself fully guarantee its independence. Therefore, there is neither a clear requirement to maintain an independent audit function nor that it be adequately resourced.

383. **Ongoing employee training on AML/CFT matters (c. 15.3):** the AML law requires ongoing training for officials or employees (art. 16) but does specify the content of such training. Article 8 of the AML Prakas requires banks and FIs as defined in the BL to ensure that appropriate personnel including senior management are trained in all aspects of the regulatory requirements of the AML Prakas and internal anti money laundering policies and procedures.

384. For what concerns banks and FIs as defined in the BL, Their Board of Directors and senior management would have to ensure that there are adequate training and education provided for employees with regard to AML/CFT, including “employees’ awareness of their AML/CFT obligations”. Specific training requirements are set for different categories of employees (new employees, front-line employees who deal directly with the customers, employees in charge of opening accounts and dealing with new customers, “supervisors” and managers).

385. **Employee Screening Procedures (c. 15.4):** The AML law requires reporting entities to have appropriate compliance arrangements and adequate screening procedures to ensure high standards when hiring employees (art. 16). Prior to its enactment, there was no requirement in laws and

regulations for FIs to put in place screening procedures to ensure high standards when hiring employees in existing laws and regulations.

386. The draft revised AML Prakas would require banks and FIs as defined in the BL to have an employee assessment system, approved by the Board of Directors, allowing them to adequately screen employees' integrity, both existing and new (art. 34). Such a system should at least allow the institution to examine the personal information including criminal records, employment and financial history of its new employees as part of the recruitment process. Moreover, internal auditors would have to verify that employee screening mechanisms are properly implemented (art. 37).

387. **Additional Element – Independence of Compliance Officer (c. 15.5):** There is no provision in existing laws and regulations that require that the AML/CFT compliance officer be able to act independently and to report to senior management above the compliance officer's next reporting level or the board of directors. Such a requirement is not contemplated in the draft revised AML Prakas.

388. **AML /CFT requirements to be implemented by foreign branches & subsidiaries (c. 22.1, 22.2 and 22.3):** Cambodian banks do not have foreign branches and subsidiaries and there no plans to open branches abroad or create or acquire a subsidiary abroad. Such plans would require a prior approval of the NBC before they can go through (art. 38 of the BL).

389. **Analysis of effectiveness:** At the time of the on-site mission, requirements to have AML policies, procedures and controls referred to domestic requirements regarding CDD, record retention, the detection of unusual and suspicious transactions and the reporting obligation which were far less demanding than international recommendations (see 2.1). Moreover, shortcomings in the design and implementation of AML /CFT compliance framework were identified by the NBC during on-site inspections (e.g. lack of AML /CFT policies and of AML /CFT compliance officer).

Recommendations and comments

390. At the time of the on-site missions, there were only a few requirements regarding internal control, compliance and audit. Moreover, they were not always implemented as observed during on-site inspections.		
391. Concerning the current framework, the authorities should consider requiring FIs:		
<ul style="list-style-type: none"> - to communicate to their employees internal procedures, policies and controls to prevent ML and TF, - that the AML/CFT compliance officer and other appropriate staff have timely access to customer identification data and other CDD information, transaction records, and other relevant information - to maintain an adequately resourced and independent audit function to test compliance (including sample testing) with these procedures, policies and controls. - to establish ongoing employee training to ensure that employees are kept informed of new developments, including information on current ML and TF techniques methods and trends; and that there is a clear explanation of all aspects of AML/CFT laws and obligations, and in particular, requirements concerning CDD and suspicious transaction reporting. 		
392. Should a Cambodian bank open a branch abroad or set up or acquire a subsidiary abroad, Cambodian authorities should require them to observe AML/CFT measures consistent with Cambodian requirements and the FATF Recommendations, to the extent that local (i.e. host country) laws and regulations permit		
Compliance with FATF Recommendations		
	Rating	Summary of factors underlying rating
R.15	NC	No guarantee of the independence of the audit and compliance functions Lack of implementation
R.22	NA	No foreign branches and subsidiaries
Shell banks (R.18)		
Description and analysis		
393. Bank licensing requirements do not allow the establishment or the continued operation of shell banks in Cambodia. However, there is no law or regulation prohibiting FIs to enter into, or continue, correspondent banking relationships with shell banks. Neither are FIs required to satisfy themselves that respondent FIs in a foreign country do not permit their accounts to be used by shell banks.		
394. The draft revised AML Prakas would require banks and FIs as defined in the BL to ensure that correspondent banking relationship do not include any respondent institution that has no physical presence and which is unaffiliated with a regulated financial group.		
Recommendations and comments		
395. The authorities should consider :		
<ul style="list-style-type: none"> - prohibiting FIs to enter into, or continue, correspondent banking relationships with shell banks as contemplated in draft revised AML Prakas - requiring FIs to satisfy themselves that respondent FIs in a foreign country do not permit their accounts to be used by shell banks. 		
Compliance with FATF Recommendations		

	Rating	Summary of factors underlying rating
R.18	PC	No prohibition for FIs to enter into, or continue, correspondent banking relationships with shell banks No requirement for FIs to satisfy themselves that respondent FIs do not permit their accounts to be used by shell banks

Regulation, supervision, guidance, monitoring and sanctions

2.4 The supervisory and oversight system—competent authorities and SROs:
Role, functions, duties and powers (including sanctions) (R.17, 23, 25, 29, 30 & 32)
Description and analysis
<p>396. The NBC is the prudential supervisor for the banking sector. The AML law also gives some supervisory responsibilities to the FIU³⁸ and requires that proper coordination be established between the sector supervisor (the NBC) and the FIU³⁹.</p> <p>397. The NBC is responsible for the regulation and supervision of the banking system (art. 7 of the NBC law). The banking law (art. 2) defines broadly banks as legal entities which carry out one or many of the following activities as their regular business: (i) credit operations (including leasing, guarantees and other off-balance sheet commitments), (ii) collection of non-earmarked deposits from the public and (iii) provision of means of payment to customers and processing of said means of payment.</p> <p>398. Three different categories of banks exist: (i) commercial banks which undertake more than one of the aforementioned activities, (ii) specialized banks which carry out only one of the aforementioned activities and (iii) microfinance institutions (MFIs). A bank shall be incorporated as a public company under commercial law or as a cooperative or a mutual noncommercial society⁴⁰ subject to a special statute (art. 11 of the law on banks and financial institutions) or be a branch of a foreign institution. Licenses have been granted to banks and MFIs incorporated as public companies,</p>

³⁸ Article 22 (Supervision by the FIU) reads: 1) The FIU shall issue guidelines to reporting entities in relation to customer identification, record keeping, reporting of suspicious transactions and other obligations established pursuant to this Law. The FIU shall consult with supervisory agencies in those sectors where such supervision is already in place, 2) The FIU shall be responsible for ensuring compliance of reporting entities with the requirements set forth by this Law through off-site monitoring and by conducting on-site inspections in accordance with the relevant legislation. The FIU shall coordinate its supervision of compliance under this Law with the existing supervisory agencies, 3) If during its supervision of compliance with this Law, the FIU discovers non-compliance with any of its provisions, it may: a) instruct the reporting entity to take remedial action as determined by the FIU to rectify non-compliance, b) inform the other supervisory agencies of such non-compliance and propose that they implement control measures, including the imposition of sanctions or the revocation of license, within their competence, as appropriate; initiate administrative sanctions under this Law.”

³⁹ Article 31 reads: “the supervisory authorities shall issue regulations, instructions and guidelines for the implementation of the present Law, particularly regarding: a) the arrangement for information sharing with the FIU to the agreement in imposing disciplinary measures to be taken, or in suing the offenses to the court, b) the mutual coordination among supervisory authorities for the issuance of regulations, instructions, and guidelines for the implementation of the present Law, c) issuing regulations and guidelines to determine the duties and to protect officials and staff who perform their duties with integrity in the FIU, the information confidentiality protection and the information disclosure rules. The supervisory authorities shall cooperate with the Financial Intelligence Unit in guiding the reporting entities to create program for the prevention of the money laundering and the financing of the terrorism in accordance with Article 16 of the present Law, and to issue the report formats according to the nature and character of the reporting entities. Regulations and guidelines issued by the supervisory authorities under the present Law can be modified or amended in an appropriate circumstance or when necessary.”

⁴⁰ There is only one MFI which has adopted a cooperative legal status.

with one exception related to a cooperative society recently licensed as an MFI.

399. The governance structure of the NBC includes: (i) the Board of Directors made up of 7 people including the Governor and the Deputy Governor. It is responsible for issuing NBC regulations and setting the internal organization of the NBC (art. 12 of the NBC law), (ii) the Governor chairs the Board of Directors and is responsible for conducting NBC's operations. He /she is appointed, replaced or dismissed by a Kret on the recommendation of the Royal Government (art. 12 and 13 of the aforementioned law). Its mandate has no fixed term and there is no requirement to disclose the reasons for dismissing the Governor, where appropriate.

400. The banking supervision department which supervises 15 commercial banks, 5 specialized banks and 40 MFIs has 45 officers. It reports to the General Direction of the NBC, one of its four general directions (General Cashier, General Direction, Internal Audit and General Secretariat). Four divisions report to its Director and two deputies: (i) The off-site supervision division (17 people including 2 trainees), (ii) the administration, research and licensing division (6 people). At the end of February 2007, there was no staff posted in the licensing section⁴¹ (responsible for commercial and specialized banks), (iii) the on-site supervision division (11 people). 6 people from the on-site division are also the members of the pre-FIU team and (iv) the MFI division with specific sections for their licensing, off- and on-site supervision (8 people). 10 people left the banking supervision department and resigned from the NBC in 2006 to join private banks. There is no regulation regarding potential conflicts of interests for banking supervisors. The banking law provides the NBC with adequate powers to access information needed to discharge its duties (art. 40-7) but there is no legal protection from personal or institutional liability for supervisory actions taken in good faith in the course of performing supervisory duties. Such case did not happen so far. A few banking supervisors (primarily those earmarked for the FIU) attended AML /CFT training organized by international donors.

401. The law on the NBC (1996) and the banking law (1999) designate the NBC as the Cambodian

41 While recognizing that there is no staff posted in the licensing section, The Cambodian authorities point out that the Deputy division chief of the administration, research and licensing division is responsible for licensing affairs.

42 These articles deal with the prohibition of anonymous accounts (art. 7), customer due diligence measures (art. 8), identification of customers carrying out transactions below the threshold (art. 9), special monitoring of certain transactions (art. 10), record keeping (art. 11), cash and suspicious transactions reporting (art. 12) and internal controls and compliance at reporting entities (art. 16)

43 Article 30 of the law on drug control reads that "if credit establishments and financial institutions [...] failed to fulfill any obligation which is required to them by the provisions of this Law or by subsequent sub-decrees for application of this Law due to serious fault, negligence or lack of internal procedures, the Disciplinary Authorities may spontaneously/automatically take actions under the conditions stated in the administrative or professional regulations." However, the disciplinary authorities are not defined.

44 Article 29 reads: (i) Any person who denies providing information to the FIU and the supervisory authorities as contrary to the provisions of Article 6 of the present Law will be sentenced to imprisonment from six days to one month and subject to a fine from 100,000 Riels (about 25 USD) up to 1,000,000 Riels (about 250 USD) or any one thereof, (ii) any person who neglects to provide report on cash and suspicious transactions to the FIU as contrary to the provisions of Article 12 of the present Law will be sentenced to imprisonment from one month to one year, and will be subject to a fine from 1,000,000 Riels (about 250 USD) up to 5,000,000 Riels (about 1,250 USD) or any one thereof, (iii) any person required to disclose the information and submit reports referred to in Article 13, or any other individual having knowledge thereof, communicate such information or reports as the contrary to the provisions of prohibition of tipping off in Article 15 of the present Law will be sentenced to imprisonment from one month to one year, and will be subject to a fine from 1,000,000 Riels (about 250 USD) up to 5,000,000 Riels (about 1,250 USD) or any one thereof and (iv) any person who violates the obligations to keep professional secrecy as contrary to Article 23 will be sentenced to imprisonment from one month to one year, and will be subject to a fine from 1,000,000 Riels (about 250 USD) up to 5,000,000 Riels (about 1,250 USD) or any one thereof.

45 Article 32 reads that "all provisions contrary to this law are hereby repealed".

banking supervisor and provide it with related powers. Article 7 of the NBC law entitles the NBC “to license, de-licence, regulate and supervise banks and financial institutions”. Article 40 of the BL empowers it to issue regulations to implement the BL, which covers both prudential and AML related provisions (art. 51 of the BL for the latter). According to article 4 of the NBC law, the NBC is empowered to issue decisions, regulations, circulars, and other instructions in order to accomplish its mission and to implement this law. Article 7 of the NBC law also empowers the NBC to require entities covered by the BL as well as public offices, auditors, and any other individual or legal entity to disclose information considered as useful for its mission. Any person who fails to respond to a formal information request of the NBC is liable before the courts to a one to five years imprisonment and a 1 to 10 million riels fine (about 250 to 2,500 USD).

Fitness and property of shareholders, directors and managers (commercial and specialized banks and MFIs)

Licensing

402. The NBC is responsible for licensing banks (art. 7 of the NBC law). Licensing requirements are set in the banking law (the banking law) and in three Prakas on licensing requirements for banks, rural credit specialized banks and MFIs respectively (issued in 10 and 11 January 2000 and revised on 13 September 2006). The banking law, which covers all banks including MFIs and branches, sets (i) detailed fit and proper criteria for directors and senior managers (art. 18). Directors and managers are defined broadly and detailed property requirements are set (including domestic or foreign convictions for a crime or for money laundering as well as involvement in the management of an entity whose license was withdrawn following a disciplinary action). These criteria must be satisfied on an ongoing basis, (ii) identification requirements for shareholders (chapter 8). Shareholders can be natural persons and, under conditions set by the NBC, legal persons which shareholders must be clearly identified, where they hold directly or indirectly more than 5% of the capital or of the voting rights (art. 20 and 22). Besides, the NBC should “avoid situations where there are chains of shareholding companies” (art. 20). At the licensing stage and on an ongoing basis, prior authorization is required for shareholders acquiring or losing 10, 20, 33 or 50% of the capital or voting rights as well as the power to control the management (art. 24).

403. Detailed fit and proper requirements are set in three Prakas: (i) at least two persons should be “responsible for the effective direction of a bank”. They have to provide the NBC with a copy of their police records. Foreigners who have not resided in Cambodia for at least 3 years have instead to provide “a document issued by the competent home country authorities certifying that the person concerned is not prohibited for managing a financial institution under the terms of that country’s regulations”, (ii) a detailed fit and proper questionnaire needs to be filled in by directors, shareholders and managers “responsible for the effective direction of a bank” (e.g. previous professional, administrative or judicial proceeding resulting in a penalty, dismissal proceeding by a previous employer etc.). Moreover, shareholders that are legal entities need to state the “distribution of the share capital of the parent company and of intermediate holding companies”, list their main managers and describe their activities. The license application should also include a description of the planned internal audit organization. Commercial and specialized banks (other than rural credit specialized banks) also have to provide the NBC with their “planned procedures for ensuring compliance with ethical standards, particularly as regards financial transactions with clients, and for taking part in the

fight against money laundering”.

404. In 2006, one new license was granted to a specialized bank and 13 expired licenses were renewed. Prior to the revised licensing Prakas issued in 2006, bank licenses were indeed only valid for three years. However, the fitness and property of shareholders, directors and senior managers as in practice not included in the information required to renew the license every three years. With prior agreement from the NBC, the mission reviewed documents gathered for four banks during the licensing process. In one case, a large capital increase was paid in cash but no document related to the origin of funds was found. No required document appeared to be missing. However, the controls undertaken by the NBC and its analysis of the documents received were not documented.

Ongoing assessment of the fitness and property

405. Prior information of the NBC is required where a shareholder acquire directly or indirectly more than 5% of a bank (art. 23). Besides, prior authorization is required for shareholders acquiring or losing 10, 20, 33 or 50% of the capital or voting rights as well as the power to control the management (art. 24). If prior authorization is not requested or not obtained, the vote of the concerned shareholders in the general meeting shall automatically be invalidated (art. 24). This provision has not yet been used but was contemplated at the time of the on-site mission (February 2007) in the case of an MFI. Branches have to inform the NBC of any change in the composition of the “influential shareholding” of its parent company. Directors and senior managers have to fulfill fit and proper criteria set in the BL on an ongoing basis (art. 17 of the BL). Compliance with this requirement is assessed during on-site inspections.

406. Six Cambodian banks are owned by non bank foreign legal or natural persons. In such cases, the NBC has limited abilities to identify beneficial owners. It has not set up any methodology for that purpose.

Other relevant regulations

407. Few requirements regarding banks’ internal control frameworks exist in current laws and regulations. The banking law requires a bank to have an internal control system that allows it to verify in the conditions prescribed by the NBC that (i) its operations, its organization and its internal procedures comply with existing laws and regulations, professional and ethical standards and practices as well as the policy of its executive body, (ii) risk limits are adhered to and (iii) accounting and financial information is reliable.

408. The NBC has not yet issued any comprehensive internal control regulation. In practice, it assesses some aspects of banks internal control framework (i) at the licensing stage where information needs to be provided (e.g. for banks, contemplated internal audit organization, methods for setting internal limits, procedures for ensuring staff integrity and implementing AML requirements and composition and duties of the audit committee) and (ii) during on-site inspections. The main shortcomings identified during the latter are (i) the lack of independence of internal auditors, (ii) the lack of internal control policies and (iii) the poor implementation of internal control policies.

409. Banks’ external auditors need to be authorized by the NBC (art. 46 of the banking law). The authorization process mainly pays attention to their qualifications. There are only four external auditors that are authorized to review banks’ accounts, including two affiliated to large international

auditing firms.

Off-site supervision – Commercial and specialized banks

The off-site supervision division relies primarily on the analysis of supervisory returns and does not routinely organize meetings with bank officers. A computerized monitoring tool, COBRA (Cambodia Off-site Bank Reporting Analysis), has been used each quarter since December 2005. This system mainly takes into account quantitative information to assess a bank's risk profile and on-site inspection reports. It does not incorporate any AML component. Besides following-up on-site inspections where appropriate, there is no off-site AML supervision.

On-site supervision - Commercial and specialized banks

410. The on-site supervision division (11 people) undertakes frequent inspections in commercial and specialized banks. An inspection plan is established each year and approved by the Governor of NBC. Additional missions can be decided during a year where appropriate. Risks as reflected in COBRA ratings are taken into account to determine set the frequency of inspections which range from 4 to 24 months in practice. There are both targeted and full scope missions. In 2006, (i) full-scope missions were completed in 9 commercial banks and 2 specialized banks, (ii) target examinations on the implementation of accounting requirements were jointly carried out by the on- and off-site divisions in 7 banks.

411. According to the NBC, on-site supervision has been largely revamped since 2005 to address significant shortcomings which altered its quality. New methodologies were prepared. A draft report is prepared at the end of a mission and discussed with the bank's management. The report is then finalized and a copy sent to the bank which has to return a signed copy to the NBC thereby endorsing its content. A letter of recommendations is then prepared and sent to the bank. The off-site supervision division then ensures the follow-up. A full-scope mission generally involves six people and requires six weeks for a small bank and twelve for a large one.

412. Compliance with AML requirements is to be assessed during all on-site inspections. The on-site team member dedicated to reviewing accounting issues is generally also responsible for reviewing the organization and implementation of the AML framework. The framework of 11 banks was reviewed during full-scope inspections in 2006 and 1 bank was found not to comply with existing requirements (7 inspections and 4 cases of non compliance in 2005 and 12 and 1 respectively in 2004).

413. On-site inspections identified shortcomings related to the lack of AML policies or of an AML officer but there has not been any instance where customer documentation was not found to be comprehensive. The NBC can only enforce requirements set in domestic laws and regulations which at the time of the on-site mission (i) only covered a limited part of international recommendations (see 2.1) and (ii) in some cases were not well-known by banks which rely more on international practices (especially for what regards the law on drug control).

414. **Guidelines issued by the NBC:** in 2003, the NBC issued a circular on suspicious transactions and know your customer policies (KYC) for banks and FIs as defined in the BL. This guideline largely draws on recommendations issued by the Basel Committee on Banking Supervision (BCBS). It includes (i) a description of ML and TF techniques and methods; as well as (ii) measures that they could implement to achieve the objectives of Cambodian AML laws and regulations. The draft revised AML Prakas would also

include guidelines on “examples of suspicious transactions” for banks and FIs as defined in the BL. These guidelines are largely based on international recommendations.

Off and on-site supervision of MFIs: In 2006, the inspection team of the MFI division conducted on-site examinations in 12 licensed MFIs and 2 NGOs that applied for registration as rural credit operators.

Enforcement

415. Disciplinary sanctions: specific disciplinary sanctions are set in the AML law for institutions violating its articles 7 to 12 and 16⁴² (art. 28). Violations of articles 13 and 17 (respectively content of suspicious transaction reports and missions of the compliance officer) are not covered. Article 28 reads that “the supervisory shall cooperate with the FIU to impose disciplinary sanctions” but the content and conditions of such cooperation are not defined (e.g. would the NBC have to consult with the FIU or request its approval?).

416. Disciplinary Sanctions include (i) the warning, (ii) the reprimand, (iii) the prohibition or limitation to conduct any transactions for a period of time as indicated by the supervisory authorities, (iv) the revocation of the business license, (v) the proposal to dismiss relevant officials or directors of the reporting entities, (vi) the fine, (vii) the order to a temporary freezing on means and proceeds of money laundering and financing of terrorism and (viii) the complaint to the court while there is serious violation of the provisions of the present Law and other relevant regulations that leads to the damage of public interest and national security. The last two sanctions do not appear to be disciplinary sanctions. The disclosure or publication of sanctions is not contemplated. Eventually, the conditions under which a disciplinary sanction could be challenged in a court are not defined.

417. The NBC also has the power to impose administrative sanctions to enforce its regulations (art. 52 to 54 of the BL). Although it is imprecise, the law on drug control appears to give it similar powers to enforce its provisions as well as those of its implementing regulations⁴³. Administrative sanctions are immediately enforceable but can be challenged in court (a situation that never happened). The court has to review the decision only the grounds of legal flaw or irregularity (art. 54 of the BL). Administrative sanctions include the caution, reprimand, prohibition of certain operations, temporary suspension and dismissal of one or more executives, provisional administration, license withdrawal and liquidation. In place or in addition to these sanctions, a fine not exceeding the minimum capital required (i.e. 50 billion KR, about 12.5 million USD for a bank) can be imposed. There is no provision allowing the NBC to publish a sanction. Sanctions are decided by the Governor. There is no formal process in place for imposing sanctions (e.g. prior notification of the shortcomings identified, contradictory hearing with the bank being assisted by a lawyer etc.). No sanction for breaching AML laws and regulations has ever been imposed to a Cambodian FI.

418. Penal sanctions: art 29 of the AML law sets penal sanctions where a person does not provide information to the FIU and supervisory authorities, neglects to provide report on cash and suspicious transactions to the FIU, tip off or violate professional secrecy⁴⁴. Imprisonments range from six days to one year and fines from 100,000 KR to 5 million KR (about 25 to 1,250 USD). Fines appear very low, especially when compared to bank profits and it is therefore unlikely that they be deterrent. Moreover, it is likely that disciplinary sanctions would not exceed these penal sanctions. Most penal sanctions that existed in the law on drug control (1997) were repealed by the AML law⁴⁵.

<p>Other issues</p> <p>419. No request for cooperation regarding AML /CFT was received from or sent to foreign supervisors</p>
<p>Recommendations and comments</p> <p>420. At the time of the on-site mission, the NBC was solely responsible for the supervision of banks' compliance with AML /CFT requirements⁴⁶. It is also in charge of assessing the fitness and properness of banks' shareholders, directors and senior managers, an area which still needs to be strengthened. The effectiveness of the supervision of banks' compliance with AML /CFT requirements has suffered from the lack of clear AML /CFT requirements that still prevailed at the time of the on-site mission. The lack of an off-site AML /CFT supervision also constitutes a shortcoming. Eventually, no disciplinary action for breach of AML /CFT laws and regulations has ever been engaged and the penal fines contemplated by the AML law appear too low for the financial sector. The transfer of banking supervisors to the FIU should be carefully handled to not impose too big a drain on the supervisor's resources.</p> <p>421. According to the AML law, both the NBC and the FIU will undertake AML /CFT supervision for the banking sector. As contemplated by this law, it is important that their respective responsibilities be clearly defined and that proper coordination mechanisms be established especially to ensure that they implement consistent approaches and that no institution is unduly left out of the supervisory framework.</p> <p>422. Cambodian authorities should consider:</p> <ul style="list-style-type: none"> - providing legal protection from personal or institutional liability for supervisory actions taken in good faith in the course of performing supervisory duties - clearly document analysis undertaken by the supervisor at the licensing stage - request adequate information as to the origin of the funds used to pay the capital of a bank (especially when a large cash payment occurs) - provide adequate resources to the licensing section - set an internal methodology to be followed by supervisors so that they be able to satisfy themselves that they have identified the main beneficial owners of bank shares⁴⁷, especially where shares are held by non bank foreign legal or natural persons (and possibly additional disclosure requirements where appropriate) - set internal regulations regarding potential conflicts of interests for banking supervisors as well as proper mechanisms to ensure ongoing compliance with integrity standards - issue a comprehensive internal control regulation taking into account recommendations set

⁴⁶ „Cambodia has dealt with many of these through regulations but some gaps remain which will be addressed in the near term most importantly in relation to money laundering and abuse of financial services. Beyond this, the key focus will be upon implementation, especially in the context of improving banks' own internal processes and control systems. The focus will be on improving consistency and quality of NBC monitoring and enforcement, including through development of appropriate supervisory processes and systems⁴⁶”. Source: Royal Government of Cambodia, Financial sector development strategy, 2006-2015, Draft for public consultation, 2006

⁴⁷ Possibly only above thresholds to be defined.

<p>in the BCPs (especially core principle n°17)</p> <ul style="list-style-type: none"> - organize and implement off-site AML /CFT supervision - review guidelines to the financial sector taking into account the Cambodian environment and specific issues that surfaced while supervising the implementation of AML /CFT laws and regulations in Cambodia - clarify the cooperation between the FIU and supervisors when deciding on disciplinary sanctions - contemplate the possibility to publicly disclose sanctions - define the conditions under which disciplinary sanctions taken according to the AML law could be challenged in court - set an internal methodology for the NBC that should be followed when preparing and deciding on sanctions - review the adequacy of the amount of fines imposed in accordance with the penal provisions of the AML law. 		
Compliance with FATF Recommendations		
	Rating	Summary of factors underlying overall rating
R.17	NC	FIs: Insufficient penal fines and lack of implementation of disciplinary and penal sanctions
R.23	NC	AML supervision based only on limited CDD requirements at the time of the on-site mission Insufficient implementation of fit and proper requirements for foreign legal and natural persons Limited requirements on internal control
R.25	NC	Guideline to FIs based on international recommendations without taking into account specific features of the Cambodian environment The rating in this box is an aggregate rating across the various parts of the report
R.29	PC	Too limited scope of on-site inspections reflecting shortcomings in the AML /CFT requirements imposed on banks (at the time of the mission) Lack of off-site AML /CFT supervision
R.30	NC	No internal regulation at the NBC regarding potential conflicts of interests for banking supervisors as well as proper mechanisms to ensure ongoing compliance with integrity standards The rating in this box is an aggregate rating across the various parts of the report
R.32	NC	The rating in this box is an aggregate rating across the various parts of the report

Money or value transfer services (SR.VI)

2.5 Money or value transfer services (SR.VI)
Description and analysis
423. Legal framework: Banking law (1999), law on foreign exchange (1997), law on negotiable instruments and payment transactions (Payment law, 2005), Postal law (11 July 2002), Prakas on the

management of money changers (1998).

424. **Designation of Registration or Licensing Authority (c. VI.1):** Existing laws and regulations only contemplate three categories of money and value transfer (MVT) service providers: (i) banks which according to the BL are the only entities authorized to provide and process means of payment as a regular business, a wording that includes MVT services (art. 7-4 of the BL –bank MVT service operators), (iii) companies authorized to provide postal services⁴⁸ (post MVT operators) and (ii) operators of payment systems and money services, including the transmission of money, the withdrawal of cash, check cashing, money safekeeping, currency exchange, and the issue of payment cards and payment instruments (art. 227 of the Payment law – non bank MVT service operators).

425. According to the NBC, only banks are authorized to provide MVT services so far. The Cambodian Post Office is the only person authorized to offer postal services in Cambodia and does not offer financial services yet. According to the Cambodian authorities, licensing criteria for “private postal businesses” have not been defined by the Ministry of Post and Telecommunications. Besides, no license has yet been granted in accordance with the provisions of the Payment law. A Prakas on the licensing of money service businesses is being prepared by the NBC.

426. Licensed money changers are only allowed to undertake foreign exchange transactions and cannot directly carry out MVT services. Licensing requirements set by the NBC do not include specific criteria pertaining to the integrity of the persons who control and run the business. Where a foreign exchange transaction is not to be settled in cash, money changers have to settle it through their bank accounts. In practice, Cambodian authorities consider that many money changers also offer MVT services without being authorized to do so.

427. **Application of relevant FATF Recommendations and monitoring of MVT operators (c. VI.2 and VI.3):** Banks are subject to a regulatory and supervisory framework described in 2.1. However, no specific requirements for MVT services have yet been set that the banking supervisor could enforce. No specific AML regulatory and supervisory framework has been organized for non bank and post MVT operators.

428. The AML law includes “money remittance services” among the entities that would need to fulfill its requirements. However, “money remittance services” are neither defined in the AML law nor in the Payment law. The AML /CFT regulation and supervision of non bank MVT services operators that would be licensed in accordance with the Payment law remains to be organized. The draft AML law also includes “post office operating payment transactions’ within the list of reporting entities. The AML /CFT regulation and supervision of post MVT services operators remains to be organized.

429. **List of Agents (c. VI.4):** Banks are not authorized to offer MVT services through non bank agents. However, money changers can use their bank accounts to settle foreign exchange transactions. Existing laws and regulations do not require banks to perform enhanced customer due diligence measures in such cases. Such a requirement is contemplated in the draft revised AML Prakas which would require banks and FIs as defined in the BL to ensure that the nature and volume of transactions in the money changers accounts reflect the nature of their business (art. 19). No information has been

⁴⁸ Article 6 of the postal law reads: “postal payment service is the remittance of a client’s money through the national and international postal and telecommunication services in the form of a postal money order or telegraphic money order”.

provided for what regards the Cambodian Post Office.

430. According to the draft MVT Prakas, non bank MVT service operators would be allowed to have agents and would have to provide the NBC with a list of them. The draft MVT Prakas contemplate authorizing the NBC to inspect an MVT service operator or agent only following a 45 day notice, which is likely to significantly alter the relevance of such controls. No prior notice would be required only where the NBC “has reasons to believe” that the considered entity is engaged in an unsafe or unsound practice or has violated provisions of the MVT Prakas or of its implementing regulations.

431. **Sanctions (c. VI.5):** For bank MVT service operator, the NBC has powers to impose sanctions on persons breaching its provisions as well as those of its implementing regulations. For what concerns non bank MVT service operators that would be licensed by the NBC, the Payment law mentions that the NBC shall “have all powers available to it” to sanction breaches of the Payment law and of its implementing regulations. The NBC therefore has similar powers to sanction bank and non bank MVT service operators. Besides, the draft MVT Prakas includes a detailed list of cases where the license of an MVT operator could be suspended or withdrawn. For post MVT service operators, the Postal law defines very limited powers to impose administrative sanctions which the Ministry of Post and telecommunications can implement (art. 50). Sanctions for operating postal services without a license are limited (5,000,000 to 10,000,000 riels, approximately 1,250 to 2,500 USD) and have to be decided by a court (art. 48 of the Postal law)

432. **Additional Element – Applying Best Practices Paper for SR VI (c. VI.6):**

Recommendations and comments

433. Besides recommendations mentioned in 2.1, Cambodian authorities should consider:

- setting appropriate AML regulatory and supervisory frameworks for non bank and post MVT operators (including licensing requirements) before any is authorized to undertake money value transfers,
- define the “money remittance services” which are referred to in the AML law
- authorize the relevant supervisors to undertake on-site missions of the agents of MVT services providers without prior notice
- designate an AML supervisor for postal service businesses and provide it with adequate powers to impose administrative sanctions, where appropriate

434. The informal MVT sector is considered as large. Efforts are being undertaken to bring informal MVT service operators into the formal system, for instance by creating an adequate regulatory framework and providing proper incentives for these businesses to comply with laws and regulations. This indirect approach has so far been given priority over enforcement actions against illegal MVT serviced operators. Enforcement is nonetheless occasionally undertaken by municipal or provincial authorities against money changers that did not register with the NBC and /or illegally provide MVT services. It recommended to step up actions engaged to rein in the informal sector.

Compliance with FATF Recommendations

	Rating	Summary of factors underlying rating
SR.VI	NC	Too limited requirements for banks Large informal money and value transfer sector

3 PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

3.1 Customer due diligence and record-keeping (R.12) (applying R.5, 6, 8 to 11,)
Description and analysis
<p>435. Legal Framework: All DNFBPs: Articles 4, 8, 11, 12 of the AML law. Casinos: Law on Gambling Control (January 1996) (i) prohibits the operations of casinos without Government approval; (ii) prohibits Cambodian nationals from entering casinos.</p>
<p>436. Covered entities, CDD, Recordkeeping, Risk Management and Unusual Transactions Monitoring (c. 12.1-12.2): the AML Law (art. 4) imposes AML /CFT obligations on “reporting entities” defined functionally and broadly to include all DNFBPs as defined by R12 (including lawyers, accountants, notaries, dealers in precious metals and stones and real estate agents⁴⁹). The AML/CFT obligations apply to legal practitioners and accountants when they carry out certain types of transactions that are defined in a manner consistent with the FATF Recommendations⁵⁰. The subject of Trust and Company Service Providers (TCSP) and the services they provide is dealt with in an unnecessarily confusing manner in the AML law. According to the information the mission was provided with, they indeed do not exist as a category in Cambodia and the five services referred to in the glossary of the AML law would always be rendered by independent legal professionals or accountants.</p>
<p>437. CDD and internal control requirements set by the AML law and defined under recommendations 5, 6, 8, 9, 10, 11 and 15 for FIs apply similarly to DNFBPs (see relevant sections of the reports of a detailed analysis and comments). A threshold is only contemplated for CDD requirements related to one-off transactions (art. 8 1 b). Such as trigger for the obligation to conduct CDD requirements would be consistent with international standards provided that the threshold it does not exceed USD 3000 for casinos and USD 15,000 for dealers in precious metals and precious stones. In discussions, it became apparent the authorities have yet to decide on the threshold and whether there will be one uniform threshold for all sectors or different thresholds for different activities⁵¹.</p>

⁴⁹ Article 4 defines reporting entities as (a) banks, including branches of foreign banks, (b) non-bank financial institutions, including securities brokerage firms and insurance companies, (c) micro-finance institutions, (d) credit cooperatives, (e) leasing companies, investment and pension funds, investment companies and companies for the management of investment funds (f) exchange offices (g) money remittance services, (h) real estate agents, (i) dealers in precious metals, stones and gems, (j) post office operating payment transactions, (k) lawyers, notaries, accountants, auditors, investment advisors and asset managers when they prepare for or carry out transactions for their clients concerning the activities listed in Article 5 of this present Law (l) casinos and other gambling institutions, (m) non-governmental organizations and foundations engaging in business activities and fund raising and (n) any other institution or profession that is designated by the FIU to fall within the scope of this Law.

⁵⁰ Concerning lawyers, notaries, accountants, auditors, investment advisors and asset managers, articles 5 of the AML law states that they are considered as “reporting entities and thus covered by the requirement of the law when they prepare for or carry out transactions for their clients related to the following activities “(i) buying and selling real estate, building and land; (ii) Managing of client money, securities or other assets such as management of banking or securities accounts, organization of contributions for the creation, operation or companies management, (iii) creation, operation or management of legal persons or arrangements, and buying and selling of business entities; (iv) trust or company service providers when they prepare for or carry out transactions for a client concerning the following activities: acting as a formation agent of legal persons, acting as or arranging for another person to act as a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons, providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement, acting as or arranging for another person to act as a trustee of an express trust, acting as or arranging for another person to act as a nominee shareholder for another person”.

⁵¹ Article 8 states that reporting entities [...] shall take customer due diligence measures, including the identification of their customers and the verification of their customers' identity [...] prior to carrying out occasional or one-off transactions, including wire-transfers, that involve a sum in excess of amount as defined by the supervisory authority.

438. The AML law goes further than FATF recommendations by requiring that all covered DNFBPs have internal policy procedures and controls, including appropriate compliance arrangements and adequate screening procedures to ensure high standards when hiring employees; designate compliance officers at management level, organize ongoing training for officials or employees; and have internal audit function (art. 16 and 17). This latter provision may prove difficult to implement for small firms that did not have to fulfill such requirements prior to the enactment of the AML law.

439. Article 28 of the AML/CFT Law provides a sanctioning mechanism for reporting entities that fail to comply with CDD and record keeping requirements. Since the AML law has only been enacted very recently, this mechanism has never been tested yet.

440. Prior to the AML law, Article 30 of the Law on drug control provided a sanctioning mechanism for casinos that fail to comply with prescribed CDD and record keeping requirements. As the MEF has not set the prerequisite threshold, this procedure has never been utilized. Prakas No. 773P from the Ministry of Interior (22 July 1999) empowers the General Information Department of the Cambodian National Police (CNP) to take measures against any criminal acts that contradict the law in respect of casinos including money laundering.

441. Article 32 of the AML law reads that “all provisions not consistent with this Law are hereby repealed”. The provisions of the law on drug control that contemplate CDD and record keeping requirements for casinos do not literally appear not to be consistent with the AML law and thus to have been repealed. The fact that, from a functional point of view this arrangement does not appear to be efficient does not render it “not consistent with this Law”.

Analysis of Effectiveness

442. The AML law had not been enacted at the time of the on-site mission. Concerning the provisions law on drug control that refer to casinos, casinos were not identifying customers and recording their transactions in accordance with any obligation imposed by the Cambodian authorities as the MEF had not set a threshold for the CDD and record keeping requirement,. Accordingly, no enforcement mechanisms for his obligation were in place. One casino based in Phnom Penh visited during the on-site mission had implemented their own CDD and record keeping policies in line with international standards, in the absence on any obligation imposed by the authorities. There are, however, currently 23 licensed casino’s operating in various parts of Cambodia, it is unknown what measures, if any by the remaining 22 casinos. At the time of the mission, the MEF did not operate any form of inspection regime. Members of the CNP operated inside each licensed casino. However, their presence was primarily to deter crime and ensure Cambodian nationals are denied access.

Recommendations and comments

443. The authorities should consider to:

- have the various stakeholders conduct appropriate risk assessments to determine the appropriate CDD and record keeping thresholds for the various sectors under the AML Law and ensure obligations imposed are balanced against the nature and size of the DNFBPs operations to ensure they do not overburden the various sectors and do not overwhelm the capacity of the smaller businesses
- designate the AML/CFT supervisory authorities for the different sectors and providing them with appropriate resources
- request the AML/CFT supervisory authorities to prepare sector regulations, guidelines and

to conduct outreach for each sector to assist compliance with the AML Law.

444. The authorities should also clarify the status of the provisions of the law on drug control regarding casinos (i.e. should they be repealed or should implementing regulations be issued) and the validity of the reference to TCSPs in the AML law.

Compliance with FATF Recommendations

	Rating	Summary of factors relevant to section 3.1 underlying overall rating
R.12	PC	DNFBPs' obligations under the AML law are substantially in line with the requirements of Recommendations 5, 6 & 8-11 and are applicable to all categories of DNFBPs. The obligations for one-off transactions are not yet in force. This is contingent on prescribing a minimum threshold for transactions to be covered. The obligations have been imposed upon DNFBPs recently by the AML law and are not yet implemented (no guidance by pre-FIU). The provisions of the law are therefore not yet effective.

3.2 Suspicious transactions reporting (R.16) (applying R.13 to 15 & 21)

Description and analysis

445. **Legal Framework:** AML law, law on drug control, Prakas issued by the Cambodian National Police.

446. **Covered Businesses and Professions, submission of STRs, applicability of Rec. 14, 15 and 21 and sanctions (c. 16.1, 16.2, 16.3)** The recently enacted AML Law requires all DNFBPs to file suspicious transaction reports (STRs). It was not implemented at the time of the on-site mission.

447. Prior to the AML law, those persons “which in the exercise of their profession have executed, controlled or ordered an operation which entailed a transfer of funds” were obliged under the law on drug control (article 23/24) to report to the Prosecutor on funds which they expect are related to the commission of drug offences. Although it is not clear to which category of professions this description refers, it certainly includes lawyers, for their activities in relation to defending someone in court are explicitly exempted from the reporting obligation. Whether it also refers to accountants is unclear. In any case no report has ever been filed pursuant to this clause and neither lawyers nor accountants are aware of this obligation. DNFBPs met with during the on-site mission were unaware of these reporting obligations.

448. The AML Law requires direct reporting to the FIU, but as noted that has not yet been formally established. This reporting obligation is suspicion based, irrespective of the amount involved. The AML Law does not distinguish between the FIs and DNFBPs. No exemption is made for cases in which a legal professional renders services that are subject to legal privilege. The sanctions prescribed under the AML Law for failure to report apply to all reporting entities, which includes all DNFBPs. For a more detailed discussion of the reporting obligation under the AML law reference is made to part 3.7 of this report.

449. The provisions of the AML law related to the Rec. 14, 15 and 21 apply to “reporting

entities” that encompass both FIs and for DNFBPs. Apart from the lack of implementation at the time of the on-site mission⁵², the main shortcomings were the lack (i) of protection against civil or criminal liabilities for reporting entities filing STRs, (ii) of guarantee of the independence of the control functions (e.g. audit and compliance functions) and (iii) of requirement to examine as far as possible transactions related to countries which insufficiently apply the FATF Recommendations (also see detailed comments under Rec. 14, 15 and 21).

Additional Elements

450. **Reporting Suspicion that Funds are the Proceeds of a Predicate Offence (c. 16.6)** The reporting obligation under Article 12 of the AML Law covers the proceeds of all felonies and misdemeanors. This is very broad and encompasses suspicion that a transaction relates to the commission of any offence punishable by a term of imprisonment of more than 6 days.

451. This obligation will be applicable to all reporting entities, which will include DNFBPs once the AML Law is in operation.

452. **Analysis of Effectiveness:** Although the Law on Control of Drugs has been in force and effect for ten years, no report has ever been filed under that law. Since the AML law has only been enacted very recently, its effectiveness cannot be evaluated at this stage. but given the absence of an FIU and the lack of awareness among DNFBPs it may be assumed that the reporting obligation will remain ineffective for some time.

Recommendations and comments

453. The obligation for casinos to file STR with the CNP is not enforced and appears ineffective. The various supervisors should conduct outreach within the sectors as to their new obligations under the AML law and conduct training so the various sectors understanding money laundering typologies and will be able to detect suspicious transactions. Authorities may wish to consider including an exemption for STR obligations for legal professionals in situations that are subject to legal privilege.

454. The authorities should also consider :

- setting a protection against civil or criminal liabilities for reporting entities filing STRs
- taking measures to guarantee the independence of the control functions, where appropriate
- requiring DNFBPs to examine as far as possible transactions related to countries which insufficiently apply the FATF Recommendations (also see detailed comments under Rec. 14, 15 and 21).

Compliance with FATF Recommendations

	Rating	Summary of factors relevant to section 3.2 underlying overall rating
R.16	NC	Lack of implementation of reporting mechanisms and of measures recommended in Rec. 14, 15 and 21 Lack of protection against civil or criminal liabilities for reporting

⁵² Prior to the AML law, there was only one requirement related to Rec. 14, 15 and 21. The law on drug control clearly stated that (i) individuals who make STRs in good faith (“individual or leader or persons in charge of inspection of the organization”) cannot be subject to any prosecution for the breach of confidentiality and (ii) that both individual nor legal persons who report suspicious transactions in good faith are exempted from criminal, civil and professional liability (art. 27 and 28).

		entities filing STRs Lack of guarantee of the independence of the control functions (e.g. audit and compliance functions) Lack of requirement to examine as far as possible transactions related to countries which insufficiently apply the FATF Recommendations
3.3 Regulation, supervision, guidance, monitoring and sanctions (R.17 & 24-25)		
Description and analysis		

455. **Legal Framework:** Article 30 of the Law on Drug Control provides a sanctioning mechanism for casinos that fail to comply with prescribed CDD and record keeping requirements.

456. **Sanctions (R. 17)** Article 21 of the Law on Drug Control obliges casinos to conduct CDD and record keeping for transactions over the threshold prescribed by the MEF. As the MEF has not set the prerequisite threshold, this procedure is not in operation. Likewise the sanctioning mechanism prescribed under Article 30 of the Law on Drug Control has never been utilized.

457. The AML Law prescribes a sanction regime for reporting entities that do not comply with their AML/CFT obligations under the law. The AML Law has only recently been adopted⁵³ and the sanction mechanism has not been used yet. Its provisions are similar for DNFBPs and FIs (see discussion of Rec.17 for FIs for more details).

Supervision and Monitoring (R. 24)

458. **Casinos (c. 24.1)** There are currently 21 licensed casinos operating in Cambodia. The licensing and supervision of casino is the responsibility of the Casino Management Department of Ministry of Economy and Finance (“MEF”). This department currently consists of 10 persons. There is currently no supervision for AML/CFT purposes. The current supervisory regime is very limited and concentrates on financial reporting for taxation purposes.

459. **Other DNFBPs (c. 24.2) Precious Metals and Gem Stone Dealers:** The Prakas on the Management of Precious Metals and Stones Dealing issued by the Governor of the National Bank of Cambodia, dated 10th September 1999, creates a licensing regime for all dealers in precious metals and stones. There are currently 3,849 licensed dealers.

460. **Real Estate Agents:** In February 2007, the MEF issued a Prakas imposing a certification and

53 Article 28 reads: “The Supervisory Authorities shall cooperate with the FIU to impose disciplinary sanctions to any reporting entity, which is not in compliance with the provisions of Articles 7 through 12 and Article 16 of the present Law. Violation as mentioned in above paragraph shall be subject to the following sanctions: the warning, the reprimand, the prohibition or limitation to conduct any transactions for a period of time as indicated by the supervisory authorities, the revocation of the business license, the proposal to a demotion of relevant officials or directors of the reporting entities, the fine, the order to a temporary freezing on means and proceeds of money laundering and financing of terrorism, to complaint to the court while there is serious violation of the provisions of the present Law and other relevant regulations that leads to the damage of public interest and national security.

Article 29 reads: “Without taking into consideration of any offenses in the penal provisions of other law: (i) any person who denies providing information to the FIU and the supervisory authorities as contrary to the provisions of Article 6 of the present Law will be sentenced to imprisonment from six days to one month and subject to a fine from 100,000 Riels up to 1,000,000 Riels or any one thereof, (ii) any person who neglects to provide report on cash and suspicious transactions to the FIU as contrary to the provisions of Article 12 of the present Law will be sentenced to imprisonment from one month to one year, and will be subject to a fine from 1,000,000 Riels up to 5,000,000 Riels or any one thereof, (iii) any person required to disclose the information and submit reports referred to in Article 13, or any other individual having knowledge thereof, communicate such information or reports as the contrary to the provisions of prohibition of tipping off in Article 15 of the present Law will be sentenced to imprisonment from one month to one year, and will be subject to a fine from 1,000,000 Riels up to 5,000,000 Riels or any one thereof, and (iv) any person who violates the obligations to keep professional secrecy as contrary to Article 23 will be sentenced to imprisonment from one month to one year, and will be subject to a fine from 1,000,000 Riels up to 5,000,000 Riels or any one thereof.”

licensing regime on real estate agents and property valuers, which requires record keeping for financial reporting purposes and licensees to have a clear criminal record and possess appropriate qualifications and experience. The licensing regime was not in effect at the time of the onsite mission. The Real Estate Trading Management Division of the MEF will supervise the licensing regime. There are estimated to be only 25 real estate agents currently in operation in Cambodia. The MEF have not decided how they will implement a supervisory regime to ensure compliance with the Draft AML/CFT Law.

461. Lawyers and Accountants are both subject to self regulation by the Cambodian Bar Association and the Kampuchea Institute of Certified Public Accountants and Auditors, KICPAA respectively (see above under 4.1) Lawyers and accountants have only recently been made subject to AML/CFT obligations. The CBA and KICPAA are not expected to assume any supervisory AML/CFT function. As discussed above, the reporting obligation under the law on the Control of Drugs is not currently enforced.

462. Under the AML law, the FIU is responsible for ensuring compliance of reporting entities through off-site monitoring and on-site inspections⁵⁴ (article 22). A range of disciplinary sanctions that can be imposed by the supervisory authorities in cooperation with the FIU is provided for (article 28). Supervisory authority is defined as “any authority having oversight over a reporting authority” (presumably “authority” should read “institution”).

Guidance (c.25.1) No guidance has been issued to DNFBPs with regard to their obligations under the AML/CFT law. Under it (article 22) the FIU is to issue guidelines to reporting entities concerning their AML/CFT obligations and to provide feedback to reporting entities regarding the outcome of suspicious transaction reports (article 21).

Recommendations and comments

463. Although DNFBPs are now subject to AML/CFT obligations, there was neither a system for supervising AML/CFT obligations of DNFBPs at the time of the on-site mission nor for providing guidance or feedback. According to the AML law, both the FIU and sector supervisors will undertake AML /CFT supervision. As soon as a sector supervisor is designated, it is important that its respective responsibilities and that of the FIU be clearly defined and that proper coordination mechanisms be established, as required by the AML law.

464. Authorities should make sure that a wide range of different sanctions is available to them to enforce the obligations. They should (i) clarify the cooperation between the FIU and supervisors when deciding on disciplinary sanctions, (ii) contemplate the possibility to publicly disclose sanctions and (iii) define the conditions under which disciplinary sanctions taken according to the AML law could be challenged in court

465. Authorities should conduct an assessment to determine the level of risk of money laundering and terrorist financing in each sector. Once the assessment has been conducted they should start to formulate plans to implement a supervisory appropriate to each sector and the level of risk in

⁵⁴ Article 22 (Supervision by the FIU) reads: 1) The FIU shall issue guidelines to reporting entities in relation to customer identification, record keeping, reporting of suspicious transactions and other obligations established pursuant to this Law. The FIU shall consult with supervisory agencies in those sectors where such supervision is already in place, 2) The FIU shall be responsible for ensuring compliance of reporting entities with the requirements set forth by this Law through off-site monitoring and by conducting on-site inspections in accordance with the relevant legislation. The FIU shall coordinate its supervision of compliance under this Law with the existing supervisory agencies, 3) If during its supervision of compliance with this Law, the FIU discovers non-compliance with any of its provisions, it may: a) instruct the reporting entity to take remedial action as determined by the FIU to rectify non-compliance, b) inform the other supervisory agencies of such non-compliance and propose that they implement control measures, including the imposition of sanctions or the revocation of license, within their competence, as appropriate; initiate administrative sanctions under this Law.”

accordance with the provisions of the AML law.

466. The proposed licensing regime for the real estate sector and the established licensing regime for both the precious metals and gem stones dealer and the casino sector, form a good basis upon which to start. The authorities need however, to set the threshold for CDD and record keeping in line with the Recommendations and the level of risk relevant to the domestic sector and circumstances determined by the risk assessment.

467. The various supervisors and the Cambodian Bar Association and the KICPAA can then adopt a risk-based approach to ensure compliance with the AML/CFT Law and the development of a robust AML/CFT regime.

Compliance with FATF Recommendations		
	Rating	Summary of factors relevant to section 3.3 underlying overall rating
R. 17	NC	DNFBPs: No sanctioning regime is currently in operation
R.24	NC	No supervisory regime is currently in operation
R.25	NC	No guidance to DNFBPs

3.4 Other non-financial businesses and professions—Modern secure transaction techniques (R.20)		
Description and analysis		
<p>468. Other Non-Financial Businesses and Professions (r 20.1): The AML Law (article 4) extends the preventative measures beyond DNFBPs to include non-governmental organizations and foundations engaging in business activities and fund raising. The AML Law also allows the FIU to designate additional professions as a reporting entity and thereby extend the scope of preventive measures.</p> <p>469. Modern Secure Transactions (c 20.2) – Article 18 of the Law on Drug Control (adopted on 24 January 1997) provides for the prohibition of any settlement of payment in cash above a threshold determined by the competent authorities. The Government has never set that threshold and put this provision into effect. A similar provision exists in Article 27 of the AML Law, which states that “the Government shall adopt appropriate measures to reduce the circulation and use of cash in commercial transactions and encourage the use of non-cash means of payment that facilitate the identification of the participants”. .</p>		
Recommendations and comments		
<p>470. Other DNFBPs - In respect of the implementation of the AML/CFT regime for businesses and professions other than DNFBPs, the authorities should conduct an assessment of the level of ML and TF risk posed by other types of businesses and professions currently not covered by the AML Law.</p> <p>471. Modern Secure Transactions –The Authorities have not given effect to existing measures to limit the use of cash in the economy. Given the circumstances and dollarized nature of its economy, the reduction the reliance of cash in the economy is likely to be a long-term project.</p>		
Compliance with FATF Recommendations		
	Rating	Summary of factors underlying rating
R.20	NC	No assessment of the level of ML and TF risk posed by other DNFBPs not covered by the AML Law

		Non implementation of existing provisions to limit the use of cash in the economy
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4 LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANISATIONS

4.1 Legal Persons – Access to beneficial ownership and control information (R.33)

Legal entities and their registration are dealt with in the Law on Commercial Rules and Register and Law (Commercial Registry Law), the Law on Commercial Enterprises and the Law on Investment.

Adequate transparency (c 33.1)

According to the Law on Commercial Enterprises the following companies/commercial enterprises can be established in Cambodia:

Limited Company:

- Private limited company: a form of limited company with between 2 and 30 shareholders. It may not offer its shares or other securities to the general public
- Single member private limited company: is an enterprise from established by a natural person known as a single proprietor. Such enterprise may also be formed by dissolution of a private limited company in which its entire share has been collected by any one shareholder.
- Public limited company is a form of limited company that is authorized to issue its shares or securities to the general public.

Limited companies are created by the filing of their articles of incorporation with the Director of Companies at the Ministry of Commerce. After accepting the articles and receiving the filing fee, the Director of Companies shall issue a certificate of incorporation. A company comes into existence and acquires legal personality on the date shown on the certificate of incorporation.

Partnership:

- General partnership: a contract between two or more persons, the general partners to combine their property, knowledge or activities to carry on a business. Each member of the general partnership shall be known as a partner/general partner. All general partners are jointly and severally liable for the obligations of the general partnership. A general partnership acquires legal personality when it registers in accordance with the Commercial Registry Law.
- Limited partnership: a contract between one or more general partners who are the sole persons authorized to administer and bind the partnership and one or more limited partners who are bound to contribute to the capital of the partnership. Unlike general partners, limited partners are liable only to the extent of the sum of money or the value of the property they contribute. A limited partnership is formed on the date on which it registers in accordance with the Commercial Registry Law.

In addition foreign businesses may conduct business in Cambodia in the following forms:

- Commercial representative office (which may only conduct a limited number of services)
- Branch (which also may only conduct a slightly more extensive range of services)
- Subsidiary, a Cambodian company with at least 51% of its capital held by the foreign company

Only a subsidiary has legal personality separate from its principals.

472. The vast majority of businesses in Cambodia are either single member of private limited companies. As yet only law firms are established as partnerships. Currently (February 2007) there are 12097 companies registered, 266 representative offices 124 branch offices and 2992 single member

companies. Company formation is a straightforward process, the Ministry of Commerce having produced a template that is relatively easy to complete. It may involve a lawyer, but given the simple nature of the process that is certainly not necessary.

473. Legal persons can serve as company directors, but a Board of Directors cannot be made up exclusively of legal persons. In practice it is rare for a company to have a corporate director.

474. Within 15 days prior to commencing operations a company, foreign branch office or agency needs to register in the Commercial Register at the Ministry of Commerce. Apart from the articles of association, the following information should be provided (article 17):

- Names of shareholders (Copies of ID documents and passports);
- Company name and objectives;
- Company address;
- Names of all those authorized to govern, control, manage and sign for the company and samples of their signatures (Copies of ID documents and passports)

475. Companies are obliged to update the information whenever it changes. According to article 7 of the Law on commercial enterprises companies are obliged to file an annual declaration with the Ministry of Commerce confirming all key information.

476. In the case of a foreign corporate shareholder/company, the Commercial Register will require a copy of the certificate of registration of the foreign parent company and a notarized Power of Attorney to the local representative. Owners/controllers of the foreign company are not registered.

477. Registration is automated and centralized in a database held at the Ministry of Commerce in Phnom Penh. As yet that is the only place that companies can register. There are plans for future decentralization.

478. A company is required to prepare and maintain at its registered office records containing (art 109) the articles of association and by-laws and all amendments thereto, the minutes of meetings and resolutions of shareholders and a securities register.

479. Apart from the companies described above, the Law on Investment (promulgated in August 1994 as amended in March 2003) also allows for the creation of so called “Qualified Investment Projects” (QIP). The aim of this law is to facilitate investment into Cambodia, both by Cambodian and foreign natural and legal persons. It offers tax breaks and simplified licensing procedures to investors whose projects qualify. Approval is granted by the Council for the Development of Cambodia (CDC). Depending on the area of investment, minimum investment requirements vary between 100.000 and 8.000.000 USD. To obtain approval all details of the applicant company (name and address shareholders and member of the BoD) or applicant natural persons must be submitted. Transfer or assignment of the rights or entitlements to a QIP to another person requires approval from the CDC.

480. The mission was informed that in practice the obligation to update information and to submit the annual declaration are not enforced. In 2005 for instance only 10% submitted an annual declaration. After three years of not filing the annual declaration a company is de-registered. In the future, the Ministry of Commerce intends to note a company’s failure to submit an annual declaration

on its website.

481. In addition authorities indicated that they felt there were quite a substantial number of “informal groups”-de facto companies, which never registered.

482. Involvement of foreign shareholders/directors in companies and particularly QIPs was said to be significant. Without being able to quantify it precisely, authorities estimate that foreigners were involved (either as shareholder or director) in possibly 75% of companies registered.

Access to beneficial ownership information (c 33.2)

483. When unable to obtain information from a legal entity directly, the police force frequently consults the Ministry of Commerce to obtain information on shareholders/directors of companies. For access to information to support the investigation, the police or competent authority has to provide an official letter to the legal affaire department of Ministry of Commerce stating the purpose, name, identification, address etc of the suspected beneficial ownership and control of legal persons and the mission was shown a sample of such requests. Cooperation between those two authorities appeared frequent and good. As discussed above, only very recently obligations been imposed upon lawyers and others involved in company formation to conduct CDD measures and record identifying information but these obligations are not yet enforced or supervised.

Bearer shares (c33.3)

484. Article 143 of the Law on Commercial Enterprises states that “Each share shall be in registered form”. Article 166 does however allow for the existence of bearer securities, which are defined as bonds or shares (article 88). Either that means that bearer securities are only bearer *bonds* or bearer shares are possible. Authorities indicated that indeed Public Limited Companies would be able to issue bearer shares, but that since there are no such companies in existence as yet, the possibility has never arisen.

485. Effectiveness

For information on national beneficial owners of Cambodian companies and QIPs, the current system would appear to be reasonable, although the perceived lack of updating the information does mean it is not free from error in that respect. On foreign beneficial ownership however, the system would appear less satisfactory given the lack of registration of foreign companies shareholders/directors.

Comments and Recommendations

486. The limited role of intermediaries in establishing Cambodian companies and the limited resources and capacity of Cambodia’s investigative agencies, justify recommending an up-front disclosure system and opting for the Commercial Registry as the main source for beneficial ownership information.

487. The Ministry of Commerce appears to have developed an efficient fully automated system for registering businesses active in Cambodia. While the information that the Commercial Registry contains on national shareholders/directors may be useful, the increasing foreign interest in Cambodian companies⁵⁵, makes it necessary that it should obtain further information on shareholders/directors of foreign companies that do business in Cambodia. Although verification of such information would be difficult, more information on foreign beneficial ownership could be obtained from the company /person registering. In addition it should consider how to enforce the

⁵⁵ Without being able to quantify it precisely, authorities estimate that foreigners were involved (either as shareholder or director) in possibly 75% of companies registered.

obligation.
488. The requirement for companies to update information mentioned in the Commercial Registry is not enforced and information is often outdated. The Ministry of Commerce's intention to list those companies that have not updated on its website, would be a significant improvement.

R.33	PC	Increasing foreign interest in Cambodian companies and complete lack of information on foreign beneficial owners Outdated information, no enforcement of update obligation
4.2 Legal Arrangements–Access to beneficial ownership and control information (R.34)		
Description and analysis		
489. Cambodian law does not recognize the legal concept of a trust, including trusts created in other countries. Authorities advised that there are no other legal arrangements that are of a similar nature to a trust, or which would otherwise meet the definition of a “legal arrangement” as defined in the FATF Recommendations. Lawyers do not render services to foreign trusts- not as a matter of principle but as a matter of practice.		
Compliance with FATF Recommendations		
R.34	NA	No concept of trust or similar legal arrangement under Cambodian law, nor are any assets in Cambodia held by way of such arrangements or do (legal) service providers provide trust related services
4.3 Nonprofit organizations (SR.VIII)		
Description and analysis		
490. Legal framework: There is no legal framework for NPOs in Cambodia at this time. A draft Law on NGOs is under preparation.		
491. International NPOs: International NPOs are required to register with the Ministry of Foreign Affairs. They have to submit a Memorandum of Understanding (MoU) before operations start. There are currently almost 370 mostly active in the field of health, education, agriculture, and clearing land mines. Approval to operate involves submitting the following information, after which the MoU can be signed and approval is given for 1 to 3 years depending on the activity. The steps are:		
<ul style="list-style-type: none"> • Letter of registration of the organization recognized by the competent authority where the organization was formed • Plan of project and budget approved by the Board of Directors of the organization • Letter from Headquarters of the organization authorizing the local representative of the organization and person to sign MoU • Banking statement in Cambodia (within 1 month of commencing operation) • The list of foreign and local staff • Address of the office in Cambodia (Lease Agreement) 		
492. Information on international staff includes full name, nationality, passport or ID number, staff position, duration of contract, name of accompanying family members, and address in Cambodia. International NPOs are required to submit quarterly reports and to submit an annual financial report. There are a number of conditions that apply to renewal (given that licenses expire after 1 to 3 years).		

They are:

- The submission of quarterly reports
- A project and budget plan for the next 3-5 years
- Supporting letter from the Ministry concerned
- An updated bank statement
- A list of foreign and local staff

493. There is no legal basis for the conclusion of the MoU between the Ministry of Foreign Affairs and the international NPOs. However, if they do not register, international NPOs will not receive advantageous tax treatment and will be unable to obtain vehicle registration plates and international staff will not be granted residence visa. Officials from the Ministry of Foreign Affairs meet with representatives from the international NPOs every six months.

494. **Local NPOs:** Pursuant to a 1994 directive of the Ministry of Interior, local NPOs, are required to register at the Ministry of Interior before starting operations. Registration requires the following information:

- Name of registered organization, its address and its purpose.
- Name of founder, date and place of birth, current address and phone number and e-mail address

495. NPOs are required to attach the organization's structure and founders' Curriculum Vitae with a current photo stating the name, address, general knowledge, previous activities and family's condition. In addition, after the application has been approved, the founders have to make a declaration promising to comply with all relevant law and regulations. There are currently 1835 domestic NPOs registered.

496. **Review of domestic laws, available sources of information, periodic assessments (c VIII.1):** As yet there are no domestic laws that relate to NPOs. Based on the registrations at the Ministry of Foreign Affairs, a lot of information on the sector is readily available for examination/inspection by relevant authorities, although there is no information on the background of the funds nor on the background of foreign controllers. The information on NPOs held by the Ministry of the Interior is less comprehensive and does not include any financial information or information on purpose and activities of the NPO. No periodic assessments of the sector are undertaken, but authorities remain informed of developments by meeting with the sector.

497. **Outreach to NPOs (cVIII.2):** No outreach has been undertaken to raise awareness amongst NPOs of possible TF vulnerabilities and risks.

498. **Supervision (cVIII.3):** Other than the registration described above, authorities do not in any formal way supervise the NPO sector and verify what information they maintain. The only rules applicable (though without a legal basis) concern the information to be submitted for licensing purposes (or extension thereof). No direct sanctioning of failure to register is possible, but organizations can be refused advantageous tax treatment, and their staff visa may not be granted or extended.

499. The intelligence department in the Central Department of Security in the Ministry of Interior, however does collect intelligence on all NGOs (international and domestic) active in Cambodia. Its Bureau of Social Organizations Information, with a staff of 70 police officers, is dedicated exclusively to that purpose. The aim is primarily the detection of subversion or any other terrorist activity (though it has also brought to light embezzlement of donor funds).

500. **Effective information gathering, domestic cooperation (cVIII.4):** The information held by the Ministry of Interior and Ministry of Foreign Affairs is readily available to investigative and other authorities. The limitations in the available information are noted above.

501. **International cooperation (cVIII.5):** Although there is no clear legal basis for such cooperation Cambodian authorities have cooperated with foreign authorities in conducting investigations. In 2003, in cooperation with the US Federal Bureau of Investigation (FBI), Cambodian competent authorities investigated and arrested four members of the terrorist organization, Jemaah Islamiya (JI) who were associated with the activities of Um Al-Qura Organization, a Saudi NPO operational in Cambodia and active in the field of health and education. The four members were all sentenced to lifelong imprisonment in Cambodia. For a further discussion on international cooperation reference is made to the discussion under R40.

502. **Effectiveness:** The current rules on NPO registration appear to be observed and thereby do provide information up-front on national and international NPO activity that is easily disseminated between relevant authorities. The case discussed above demonstrates the capacity to share the information with international authorities. In the absence of a risk assessment however, it is difficult to assess how effective the current system is and whether the right information is available. On the other hand the Bureau of Social Organizations information does provide for a constant monitoring of NPO activity.

Recommendations and comments

503. Apart from adopting a comprehensive legal framework to govern the activities on NPOs in Cambodia as envisaged by the NPO law, Cambodian authorities should consider doing a vulnerability assessment of the NPO sector, establish rules to address those vulnerabilities and raising awareness in the NPO sector of possible abuse for TF purposes

Compliance with FATF Recommendations

	Rating	Summary of factors underlying rating
SR. VIII	PC	No domestic review of rules on NPOs No outreach No formal channels for international cooperation

5 NATIONAL AND INTERNATIONAL CO-OPERATION

5.1 National cooperation and coordination (R.31 & 32) (criteria 32.1 only)

Description and analysis

504. **Legal Framework**

505. In the absence of a comprehensive AML/CFT framework, there are currently no rules in place mandating the cooperation between the different authorities tasked with supervising, enforcing and implementing AML/CFT obligations. A sub-decree to be issued under article 26 of the AML law will deal with cooperation between national authorities.

506. **Effective mechanisms (c31.1)**

507. A multi-agency group (MECG) has been formed to manage and coordinate the Cambodian requirements in relation to the assessment. The authorities expressed their intention that this multi-agency group or a similar group will remain in place after the assessment and after the adoption of the new AML/CFT laws to ensure policy makers, the FIU, law enforcement and supervisors and other competent authorities in Cambodia co-operate, and where appropriate, co-ordinate with each other concerning the development and implementation of policies and activities to combat money laundering and terrorist financing. The assessment has provided a focus on coordination within Cambodia. The FIU Board will also play an important role in cooperation and coordination of the country’s AML/CFT initiatives.

508. At present operational agencies undertake joint cooperative actions on a case by case basis. The coordination mechanisms for AML/CFT will be strengthened after adoption of the current relevant draft laws and will also be enhanced as agency personnel undergo additional training and development regarding their respective roles in fighting money laundering and financing of terrorism.

Effectiveness

509. In the absence of a functioning AML/CFT system there can be no discussion on the effectiveness of operational cooperation. On policy cooperation however, the establishment of the inter-agency group has proved a useful first step to ensuring cooperation/coordination among different domestic AML/CFT stakeholders.

Recommendations and comments

510. At present there is no mechanism for ensuring cooperation on an operational level and only a limited mechanism of policy coordination. The intention to extend the term of the MECG is commendable in order to maintain momentum and ensure cooperation on the policy level. Once the FIU has been established, authorities may wish to consider whether, given its central role in the AML/CFT framework, it could act as the lead agency. This matter would presumably be dealt with in the sub-decree to be promulgated under article 26 of the AML law.

Compliance with FATF Recommendations

	Rating	Summary of factors underlying rating
R.31	PC	No mechanisms in place for operational co-operation Limited mechanism in place for policy co-operation
R.32	NC	

The Conventions and UN Special Resolutions (R.35 & SR.I)		
Description and analysis		
<p>511. Signing and ratification (c35.1 and I.1): Cambodia signed the Palermo Convention on 11 November 2001 and ratified on 12 December 2005 acceded to the Vienna Convention on July 7 2005 and signed the United Nations International Convention for the Suppression of the Financing of Terrorism on 11 November 2001 after which it was adopted by the National Assembly of the Kingdom of Cambodia on 2 September 2005. The Vienna Convention has been implemented under provisions in the <i>Law on Control of Drugs</i> and the <i>Criminal Code</i>.</p> <p>512. Action is being taken to implement the Palermo Convention and the Terrorist Financing Convention.</p> <p>513. Although indeed the Law on Control of Drugs does implement the Vienna Convention, many of its provisions (amongst which is the money laundering offence) have never been used.</p> <p>514. UNSCR Resolutions relating to Terrorist Financing (cI.2): As set out earlier (see under SR III) Cambodia has not yet put in place a system for implementing United Nations Security Council Resolutions 1267 and 1373,</p>		
Recommendations and comments		
<p>515. The authorities should consider:</p> <ul style="list-style-type: none"> - Implementing the Palermo Convention and the Convention of the Suppression of the financing of terrorism - Establish a system to implement UNSCR resolutions 		
Compliance with FATF Recommendations		
	Rating	Summary of factors relevant to section 5.3 underlying overall rating
R.35	NC	No implementation of the Palermo Convention and the Convention of the Suppression of the financing of terrorism
SR.I	NC	No system in place to implement the UNSCR resolutions

5.2 Mutual Legal Assistance (R.32, 36, 37, 38, SR.V)		
Description and analysis		
<p>R.36</p> <p>516. Legal Framework: Cambodia signed the Treaty on Mutual Legal Assistance in Criminal Matters with 7 other members of ASEAN (the ASEAN MLA treaty) on 29 November 2004. Cambodia has not yet ratified the ASEAN MLA treaty. The signatory members are Brunei Darussalam, Indonesia, Lao PDR, Malaysia, the Philippines, Singapore, Vietnam and Cambodia. There are also mutual assistance provisions in the <i>Law on drug control</i>.</p> <p>517. The Draft Law on Counter Terrorism also has provisions for international mutual assistance.</p> <p>518. Range of Mutual Legal Assistance (c36.1 and V.1): Under article 1 of the ASEAN MLA treaty a wide range of assistance is available, including:</p>		

- taking evidence or obtaining voluntary statements from persons;
- making arrangements for persons to give evidence or to assist in criminal matters;
- effecting service of judicial documents;
- executing searches and seizures;
- examining objects and sites;
- providing original or certified copies from relevant documents, records and items of evidence;
- identifying or tracing property derived from the commission of an offence and instrumentalities of crime;
- restraining dealings in property or the freezing of property derived from the commission of an offence that may be recovered, forfeited or confiscated;
- recovery, forfeiture or confiscation of property derived from the commission of an offence;
- locating and identifying witnesses and suspects; and
- provision of such other assistance as may be agreed and which is consistent with the objects of this Treaty and the laws of the Requested Party.

519. Despite the treaty not having been ratified yet, some instances of providing MLA to other ASEAN members were provided to the mission team. Cases were also mentioned which concerned certain assistance being given to non-ASEAN members in an investigation. This assistance was not rendered based upon any specific legal or treaty provision.

520. Under article 108 of the Law on drug control, a similar wide range of assistance is available. That article provides for a Sub-Decree which will determine the conditions for proceeding with a MLA request. This sub-decree was never enacted.

521. After adoption of the Draft Law on Counter Terrorism a similar wide range of assistance will be available to countries seeking to enlist the assistance from Cambodia in terrorism related investigations/prosecutions (article 103).

522. **Reason for refusal (c 36.2, 36.4 and V.1):** According to article 3 of the ASEAN MLA treaty, a country may refuse to render the requested assistance for a number of reasons, political/military nature of the offence, offence already tried, amongst which is the fact that the offence does not constitute an offence under the requested state's law.

523. Similar conditions are contained in article 105 of the Draft Counter Terrorism Law. Article 93 explicitly states that an offence under that law is not to be considered a political offence.

524. None of the conditions, which are not yet in force can be said to be unduly restrictive or unreasonable.

525. The fact that a request might also involve fiscal matters is not a reason for refusing to render assistance.

526. **Processing MLA requests (c 36.3 and V.1):** According to the ASEAN MLA Treaty (article 4) each contracting party is to appoint a Central Authority to make and receive requests pursuant to the

treaty. In Cambodia that authority is the Ministry of Foreign Affairs. In practice requests will be submitted through the embassies and the Ministry will forward the request to the relevant authority (either the Ministry of Justice or the Ministry of Interior). Requests are also submitted through INTERPOL channels.

527. According to the Draft Counter Terrorism Law (article 103) the “procedures and processes for investigation and prosecution of offences may be used for the provision of assistance to a foreign State”.

528. **Bank secrecy and MLA (c 36.5 and V.1):** A request for mutual legal assistance will not be refused on the grounds of laws that impose secrecy or confidentiality requirements on financial institutions or DNFBP. According to the Law on Control of Drugs (article 76) bank confidentiality may not be taken as a pretext for refusing to provide evidence.

529. According to the Draft Counter Terrorism Law (article 106) a request for assistance may not be refused for reasons of bank secrecy.

530. **Powers of competent authorities (c 36.6 and V.1):** The assistance available under the Law on drug control and the ASEAN MLA treaty, include (see above) collecting evidence, conducting searches and seizures. Article 108 of the Law on drug control makes explicit reference to bank statements, business documents and accounting documents. The fact that there is no identification and reporting system in place does mean that banks do not necessarily have identification and transaction information available.

531. The Draft Counter Terrorism Law (article 103) also provides for the collection of evidence, conducting searches and seizures and the investigation of financial dealings in response to requests from foreign authorities.

532. **Best venue for prosecution (c36.7 and V.1):** There are no provisions in place to determine the best venue for prosecution of defendants in cases that are subject to prosecution in more than one country. On a case by case basis Cambodia will decide whether to proceed domestically or not.

533. **Effectiveness:** The mission was informed of some instances in which Cambodian authorities had cooperated with foreign judicial authorities despite the absence of a legal or treaty basis for such cooperation. In some instances the police had offered their services to a foreign prosecutor and had invited him to come and conduct the investigation in Cambodia- demonstrating their willingness to cooperate. In addition various examples were provided of MLA being provided in drug related investigations.

R37

534. **Legal framework:** The framework for mutual legal assistance is the ASEAN MLA treaty and the Law on drug control. For specific TF related mutual legal assistance it will be dealt with in the Draft Counter Terrorism Law.

535. **MLA in the absence of dual criminality (c 37.1 and V.2):** In accordance with the law on Control of Drugs, MLA is only provided if there is dual criminality. This principle is also laid down in the ASEAN MLA treaty. There is no provision of less intrusive and non compulsory measures to be

taken in the absence of dual criminality.

536. **No legal or practical impediments to MLA and extradition (c 37.2 and V.2):** There are no specific legal or practical impediments to rendering MLA- other than the dual criminality principle. In rendering MLA in drug related cases, the denomination or categorization of the drug related offence in the requesting state, is irrelevant. Given that as yet only ML of drugs related funds has been criminalized the legal basis for MLA is restricted- ratification of the MLA treaty will not alter that. In relation to extradition (see below) there are no such specific legal or practical impediments either. In fact in those instances where there is no provision for extraditing someone to a country, the Cambodian authorities will use immigration laws to deport someone (being escorted by an officer from the requesting state).

537. **Effectiveness:** Cambodian authorities appear willing to provide assistance to foreign investigative or prosecutorial authorities- despite the lack of a formal legal basis. They have in the past (see under R36) offered assistance even in the absence of legal provisions. In relation to ML/TF, dual criminality provisions would at this stage only allow for provision of MLA or extradition (see below) in drug related ML cases. Whether this would in fact be so applied is not certain.

R. 38

538. **Legal framework:** The framework for mutual legal assistance on freezing seizing and confiscation measures is the ASEAN MLA treaty and the Law on drug control. Measures on confiscation are also included in the ASEAN MLA treaty (not yet ratified). For specific TF related mutual legal assistance on freezing seizing and confiscation measures it will be dealt with in the Draft Counter Terrorism Law.

539. **Appropriate laws for freezing, seizing and confiscation (c 38.1 and V.3):** The measures that Cambodia may take in the context of a request for mutual legal assistance are set out in article 108 of the Law on Control of Drugs, which include freezing seizing and confiscation of instruments used in a crime and the proceeds thereof (see above). Similar measures are set out in article 1 of the ASEAN MLA treaty. Since money laundering (of proceeds other than those generated by drug related offences) and terrorist financing are not criminalized and since provision of MLA is conditional upon dual criminality, measures to freeze seize and confiscate cannot be rendered in the context of investigations/prosecutions into those offences.

In the context of predicate offences (other than drug related), no MLA can legally be rendered. In practice MLA has been rendered. Examples were provided of seizure measures being executed at the request of other countries.

Since Cambodian law only provides for seizure and confiscation of instruments used or intended for use in the commission of a crime and does not provide for the confiscation of proceeds (other than for drug related offences, see above discussion under c3.1) Cambodia cannot as yet offer assistance involving the seizure and confiscation of proceeds.

540. Under the Draft Counter Terrorism Law, (article 103) freezing seizing and executing a confiscation order for “tainted property” (see definition under c III.1) in response to an MLA request is provided for.

541. MLA providing for seizure and confiscation of property of corresponding value, coordinating seizure, establishment of asset forfeiture fund, sharing of confiscated assets (c38.2,38.3,38.4,38.5 and V.3)

542. Under Cambodian law there is no provision for equal value confiscation and hence it cannot be provided in response to an MLA request.

543. There are no arrangements for coordinating seizures with other countries.

544. No asset forfeiture fund has been considered.

545. There has been no consideration of authorizing the sharing of confiscated assets with other countries in those cases where confiscation is the result of coordinated law enforcement action.

546. **Effectiveness:** Numerous examples were provided of seizing evidence in the context of an MLA request. Other than that, given the limitations on Cambodia's use of freezing seizing and confiscation measures in the context of national investigations and the fact that money laundering and terrorism financing are not criminalized, the application of these measures in the context of mutual legal assistance is equally limited.

Recommendations and comments

547. Currently the legal basis for mutual legal assistance applies only in the context of drug related offenses. In that context Cambodia can offer and has offered assistance. In those instances where there is no legal basis Cambodia does appear to be rendering legal assistance. Although commendable from an effectiveness-point of view, rule of law considerations do make it necessary to provide for such legal basis.

548. The ASEAN MLA treaty creates a solid legal basis and procedures for different types of MLA requests- including collection of evidence and seizure and confiscation provisions. The Cambodian authorities should consider initiating the procedure for the ratification of this treaty by Parliament.

549. ML and TF not being criminalized so far (with the exception of drug money laundering), it is as yet legally not possible for Cambodia to provide MLA in those types of investigations. Authorities should consider creating a firm legal basis to enable MLA in all criminal cases also to non ASEAN members.

550. Authorities may wish to consider the adoption of provisions permitting non compulsory assistance in the absence of dual criminality.

551. There are no clear, written procedures that determine the process for execution of an MLA request, nor has Cambodia considered the establishment of a mechanism to determine the best venue for prosecution of defendants in cases subject to prosecution in more than one country .To be able to extend the full range of MLA envisaged under Recommendation 38 for ML/TF and predicate crimes related investigations and prosecutions Cambodian authorities should consider widening the scope of its domestic seizure/confiscation provisions as recommended under R3. In addition consideration should be given to putting in place arrangements for coordinating seizure and confiscation, the establishment of an asset forfeiture fund and the sharing of assets with foreign law enforcement

authorities in relevant cases.		
552. The authorities should consider expediting the enactment of the Draft Counter Terrorism Law, providing for the criminalization of the collection of property for terrorists and terrorist organizations and for the provision of MLA in terrorism related cases.		
Compliance with FATF Recommendations		
	Rating	Summary of factors relevant to section 5.3 underlying overall rating
R.32	NC	
R.36	PC	No legal basis for providing MLA in ML cases -other than drug money laundering cases No legal rules for dealing with MLA requests Assistance has been provided in drug matters
R.37	PC	No legal basis for provision providing, to the greatest extent possible, for rendering MLA in the absence of dual criminality for less intrusive and non-compulsory measures
R.38	NC	No legal basis for provision of MLA in ML/TF cases (except for drug money laundering) Limited scope of seizing/freezing measures under domestic law No equal value confiscation in the context of MLA No arrangements for coordinating seizure and confiscation with Foreign authorities No consideration given to asset forfeiture fund, sharing of assets with foreign law enforcement authorities
SR.V	NC	No Criminalization of TF, no legal basis for provision of MLA on TF
5.3 Extradition (R.32, 37 & 39, & SR.V)		
Description and analysis		
553. R 39 Extradition		
554. Legal framework: Provisions on extradition are contained in the Law on drug control and in extradition treaties with Laos, Thailand and China. The Draft Criminal Procedure Code also contains provisions on extradition as does the Draft Counter Terrorism Law		
555. Money laundering/TF an extraditable offence (c39.1, 39.2, 39.3, 39.4 and V.4): According to the Law on drug control (articles 102-107) a person may be extradited for offences under that law (including the laundering of proceeds of a drug related offence). According to article 33 of the Constitution, Khmer nationals will not be extradited unless there is a mutual treaty of extradition that overrides that. In cases in which a person is not extradited because he is a Khmer citizen and the requesting state requests Cambodia to take action, the case will be reviewed by the Ministry of Justice for further action (article 105 of the Law on drug control) and if it finds a case prosecute according to Cambodian law. In urgent matters a prosecutor may order the arrest of the foreigner whose extradition is requested “simply after receipt of information which is sent to him directly by any means of available communication” whilst awaiting formal confirmation of the request. (article 106).		
556. The extradition treaties mentioned, deal with extradition procedures between Cambodia and the country concerned on the basis of dual criminality -only for crimes punishable in either state by a penalty of at least one year of imprisonment. When a country refuses to extradite its nationals, it will submit the case to its competent authority for prosecution and the requesting party shall submit		

documents and evidence to the requested party for this purpose. The treaties contain requirements as to the information that should accompany the request and provide for communication through diplomatic channels. There is provision for effecting immediate arrests in urgent cases.

557. Under the Draft Criminal Procedure Code (articles 912-929) extradition *of foreign residents* is also subject to dual criminality. It would appear (based on a contrario reasoning) that for offenses that are punished by less than six months Cambodia may refuse extradition (article 912-6). The channels for communication and the supporting information are stipulated. There are no provisions for what to do when refusing to extradite because the person concerned is of Cambodian nationality.

558. Under the Draft Counter Terrorism Law, any terrorist offence is an extraditable offence and, where there is no treaty- or convention based obligation between the requesting state and Cambodia, extradition can be granted if the requesting state gives an undertaking that it would grant extradition to Cambodia under similar circumstances, provided there is dual criminality. If, for whatever reason, Cambodia does not grant extradition it will submit the case to the prosecuting authorities for prosecution and they will decide upon the matter in the same way as in the case of any offence under that law. The law contains no provisions regarding the nationality of the person whose extradition is being sought.

559. Since Cambodia has not yet criminalized money laundering other than for the proceeds of drugs related crimes nor terrorist financing, at present Cambodia can only extradite persons for the laundering of funds that are the proceeds of drugs related crimes. In cases in which a person is not extradited there is an obligation to take up the matter. Cambodia has adopted measures that allow for immediate execution when the case is urgent. Although only the extradition treaties contain an obligation to cooperate when refusing extradition, the mission was informed that in practice such cooperation would always take place.

Effectiveness

560. So far there have been no cases of (requests for) extradition on the basis of the laundering of proceeds of drugs related crimes.

Recommendations and comments

Authorities should consider expediting adoption of the Draft Criminal Procedure Code and the Draft Counter Terrorism Law to provide for a legal basis for extradition of those accused of ML or TF by prosecution authorities in another jurisdiction.

Compliance with FATF Recommendations

	Rating	Summary of factors relevant to section 5.4 underlying overall rating
R.32	NC	No statistics
R.37	PC	No legal basis for provision providing, to the greatest extent possible, for rendering MLA in the absence of dual criminality, for less intrusive and non-compulsory measures
R.39	NC	No criminalization of ML /TF, no legal basis for extradition
SR.V	NC	No criminalization of TF, no legal basis for extradition

5.4 Other Forms of International Cooperation (R.32, 40, & SR.V)

Description and analysis

561. The Cambodian National Police cooperate through normal police-to-police information exchange channels. Cambodia was initially a member of Interpol between 1956 and 1975. In 1994, Cambodia rejoined Interpol following the first election under the UNTAC.

562. The CNP's Interpol unit is contained with the Central Office of International Police under the office of the General Commissariat of National Police. In 2006, this office handled over [to be provided] incoming requests and made [to be supplied] requests to overseas jurisdictions.

563. The General Information Department and Anti-Drug Unit provided examples of joint operations and co-operation with overseas authorities, including the US Drug Enforcement Administration, the Hong Kong Police and the Macanese Anti-Corruption Agency. This co-operation ranged from controlled buy operations to the location of suspects for deportation. The CNP exchanged intelligence and provided cooperation, in the absence of formal bilateral arrangements.

564. Cambodia Customs Agency is also able to exchange information on customs related issues and has entered into number of bilateral arrangements with neighboring jurisdictions to investigate and take enforcement on customs related cross-border smuggling issues. Cambodia is also a member of the World Customs Association.

Financial Intelligence Unit

565. Cambodia's FIU has not been established. The AML Law (article 25) provide the FIU with the capacity, subject to reciprocal arrangements, to exchange information with overseas FIUs and enter into bilateral arrangements in respect of the exchange of information. To date, the pre-FIU has not engaged in any international cooperation.

566. Cambodia has been a member of the APG since 2004 and representatives from the pre-FIU and CNP have regularly attended its meetings.

567. Supervisory Authorities

568. The supervisory departments of National Bank have no arrangements for international cooperation.

Recommendation 32 (Statistics related to other forms of international cooperation)

569. The CNP maintain statistics limited statistics on the total number of cases of international cooperation.

570. **Analysis of Effectiveness:** CNP demonstrated to the mission that mechanisms for appropriate international cooperation outside of the mutual legal assistance framework are working effectively. The pre-FIU has no capacity for international cooperation. There are no arrangements for international cooperation for supervisor

Recommendations and comments

571. The international cooperation conducted by the law enforcement is conducted upon established pathways have proven to be effective. The FIU as not been established. The AML Law provides a good framework for international cooperation. There are no arrangements for international cooperation for supervisors.

Compliance with FATF Recommendations

	Rating	Summary of factors relevant to section 5.5 underlying overall rating
R.32	NC	Total statistics in respect of international cooperation are maintained though not in an annual format

R.40	PC	<p>Law enforcement authorities are undertaking appropriate international cooperation outside of the mutual legal assistance framework (foreign requests)</p> <p>The FIU has not been established. The pre-FIU could not provide any examples of international cooperation.</p> <p>Absence of arrangements for international cooperation for supervisors</p>
SR.V	NC	<p>Law enforcement authorities have engaged in appropriate international cooperation outside of the mutual legal assistance framework (foreign requests)</p> <p>The FIU has not been established. The pre-FIU could not provide any examples of international cooperation.</p> <p>The supervisory authorities have no arrangements for international cooperation</p>

Table 1. Ratings of Compliance with FATF Recommendations

Forty Recommendations	Rating	Summary of factors underlying rating ⁵⁶
Legal systems		
1. ML offense	NC	The range of predicate offences is limited to drug money laundering only. Not clear that the offense extends to conduct occurring abroad, and to self laundering
2. ML offense—mental element and corporate liability	NC	The range of predicate offences is limited to drug money laundering only Inadequate sanction regime for money laundering (too high for imprisonment and too low for fines)
3. Confiscation and provisional measures	NC	Very limited scope of seizure and confiscation provisions Limited tracing and identification powers Very limited use in practice of seizure and confiscation provisions No protection of third party rights
Preventive measures		
4. Secrecy laws consistent with the Recommendations	PC	Lack of implementation of the provisions of the AML law lifting FI secrecy for AML /CFT purposes
5. Customer due diligence	NC	NBC out of the scope of AML /CFT laws and regulations No threshold for occasional transactions, including wire transfers, above which CDD measures have to be undertaken No requirement for FIs to verify that any person purporting to act on behalf of the customer is so authorized, and identify and verify the identity of that person and verify the legal status of the legal person or legal arrangement Unclear that beneficial owners refer to <i>natural</i> persons No requirement for FIs to determine whether the customer is acting on behalf of another person, and then take reasonable steps to obtain sufficient identification data to verify the identity of that other person Too narrow requirements to undertake enhanced due diligence for higher risk categories No requirement for FIs to ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant by undertaking regular reviews of existing records, particularly for higher risk categories of customers or business relationships No detailed requirements as to when FIs have to apply CDD measures to existing customers Lack of implementation of CDD requirements

⁵⁶ These factors are only required to be set out when the rating is less than Compliant.

6. Politically exposed persons	NC	<p>No requirements require FIs to (i) put in place appropriate risk management systems to determine whether a potential customer, a customer or the beneficial owner is a PEP, (ii) obtain senior management approval for establishing business relationships with a PEP, (iii) take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as PEPs and (iv) conduct enhanced ongoing monitoring on such relationships</p> <p>Too narrow definition of PEPs</p>
7. Correspondent banking	NC	<p>No requirement for FIs to (i) gather sufficient information about a respondent FI to understand fully the nature of the respondent's business and to determine from publicly available information the reputation of the FI and the quality of supervision, including whether it has been subject to a money laundering or terrorist financing investigation or regulatory action, (ii) assess the respondent institution's AML/CFT controls, and ascertain that they are adequate and effective, (iii) obtain approval from senior management before establishing new correspondent relationships, (iv) document the respective AML/CFT responsibilities of each institution, (v) where a correspondent relationship involves the maintenance of "payable-through accounts", to be satisfied that the respondent FI has performed all the normal CDD obligations on those of its customers that have direct access to the accounts of the correspondent FI; and is able to provide relevant customer identification data upon request to the correspondent FI</p> <p>No requirement for FIs to be satisfied that the respondent FI has performed all the normal CDD obligations on those of its customers that have direct access to the accounts of the correspondent FI; and is able to provide relevant customer identification data upon request to the correspondent FI</p>
8. New technologies & non face-to-face business	NC	No specific requirement regarding the misuse of technological development and non face to face business relationships and transactions
9. Third parties and introducers	NA	
10. Record-keeping	NC	<p>Unclear that FIs have to keep record of business correspondence and have to ensure that relevant information are made available <i>on a timely basis</i> to competent authorities</p> <p>Lack of implementation</p>
11. Unusual transactions	NC	<p>No requirement for FIs to examine as far as possible all complex, unusual large transactions, or unusual patterns of transactions that have no apparent or visible economic or lawful purpose and keep record of findings</p> <p>No implementation of the provisions of the AML law</p>
12. DNFBP-R.5, 6, 8-11	PC	<p>DNFBPs' obligations under the AML law are substantially in line with the requirements of Recommendations 5, 6 & 8-11 and are applicable to all categories of DNFBPs.</p> <p>The obligations for one-off transactions are not yet in force. This is contingent on prescribing a minimum</p>

		threshold for transactions to be covered. The obligations have been imposed upon DNFBPs recently by the AML law and are not yet implemented (no guidance by pre-FIU). The provisions of the law are therefore not yet effective.
13. Suspicious transaction reporting	NC	Partial and confusing reporting requirements No STR ever received
14. Protection & no tipping-off	PC	No protection against civil or criminal liabilities for reporting entities filing STRs
15. Internal controls, compliance & audit	NC	No guarantee of the independence of the audit and compliance functions Lack of implementation
16. DNFBP–R.13–15 & 21	NC	Lack of implementation of reporting mechanisms and of measures recommended in Rec. 14, 15 and 21 Lack of protection against civil or criminal liabilities for reporting entities filing STRs Lack of guarantee of the independence of the control functions (e.g. audit and compliance functions) Lack of requirement to examine as far as possible transactions related to countries which insufficiently apply the FATF Recommendations
17. Sanctions	NC	FIs: Insufficient penal fines and lack of implementation of disciplinary and penal sanctions DNFBPs: No sanctioning regime is currently in operation
18. Shell banks	PC	No prohibition for FIs to enter into, or continue, correspondent banking relationships with shell banks No requirement for FIs to satisfy themselves that respondent FIs do not permit their accounts to be used by shell banks
19. Other forms of reporting	PC	No implementation of a cash reporting regime
20. Other DNFBP & secure transaction techniques	NC	No assessment of the level of ML and TF risk posed by other DNFBPs not covered by the AML Law Non implementation of existing provisions to limit the use of cash in the economy
21. Special attention for higher risk countries	NC	No requirement for FIs to examine as far as possible transactions related to countries which insufficiently apply the FATF Recommendations No law or regulation allowing Cambodia to apply counter-measures where a country does not or insufficiently applies the FATF Recommendations
22. Foreign branches & subsidiaries	NA	No foreign branches and subsidiaries
23. Regulation, supervision and monitoring	NC	AML supervision based only on limited CDD requirements at the time of the on-site mission Insufficient implementation of fit and proper requirements for foreign legal and natural persons Limited requirements on internal control
24. DNFBP—regulation, supervision and monitoring	NC	No supervisory regime is currently in operation
25. Guidelines & Feedback	NC	No feedback provided in the absence both of STRs and of an FIU No framework in place to provide such feedback Guideline to FIs based on international recommendations without taking into account specific features of the Cambodian environment The rating in this box is an aggregate rating across the

		various parts of the report
Institutional and other measures		
26. The FIU	NC	No FIU in place
27. Law enforcement authorities	NC	Specific provisions only exist in relation to drug related money laundering investigations (CNP is not responsible for investigating other ML and TF predicate offenses as defined by the FATF)
28. Powers of competent authorities	PC	Specific provisions only exist in relation to drug related money laundering (CNP is not responsible for investigating other ML and TF predicate offenses as defined by the FATF) No evidence to demonstrate the effective implementation and use of the powers under the Law on Drug Control.
29. Supervisors	PC	Too limited scope of on-site inspections reflecting shortcomings in the AML /CFT requirements imposed on banks (at the time of the mission) Lack of off-site AML /CFT supervision
30. Resources, integrity, and training	NC	Banking supervisor: No internal regulation at the NBC regarding potential conflicts of interests for banking supervisors as well as proper mechanisms to ensure ongoing compliance with integrity standards Investigating and prosecuting authorities: only limited training (which alter their capacity to conduct ML and TF investigations). The rating in this box is an aggregate rating across the various parts of the report
31. National co-operation	PC	No mechanisms in place for operational co-operation Limited mechanism in place for policy co-operation
32. Statistics	NC	ML /TF cases: no framework to gather statistics (and no convictions) Freezing of proceeds of crime and TF funds: no statistics Law enforcement: no ML or TF investigation or prosecution and no demonstrated capacity to maintain statistics. FIU: no demonstrated capacity to maintain statistics Cross-border cash movement: no meaningful statistics available International cooperation: statistics not maintained in an annual format
33. Legal persons–beneficial owners	PC	Increasing foreign interest in Cambodian companies and complete lack of information on foreign beneficial owners Outdated information, no enforcement of update obligation
34. Legal arrangements – beneficial owners	NA	No concept of trust or similar legal arrangement under Cambodian law, nor are any assets in Cambodia held by way of such arrangements or do (legal) service providers provide trust related services
International Cooperation		
35. Conventions	NC	No implementation of the Palermo Convention and the Convention of the Suppression of the financing of terrorism
36. Mutual legal assistance (MLA)	PC	No legal basis for providing MLA in ML cases -other than drug money laundering cases No legal rules for dealing with MLA requests Assistance has been provided in drug matters

37. Dual criminality	PC	No legal basis for provision providing, to the greatest extent possible, for rendering MLA in the absence of dual criminality, for less intrusive and non-compulsory measures
38. MLA on confiscation and freezing	NC	No legal basis for provision of MLA in ML/TF cases (except for drug money laundering) Limited scope of seizing/freezing measures under domestic law No equal value confiscation in the context of MLA No arrangements for coordinating seizure and confiscation with Foreign authorities No consideration given to asset forfeiture fund, sharing of assets with foreign law enforcement authorities
39. Extradition	NC	No criminalization of ML /TF, no legal basis for extradition
40. Other forms of co-operation	PC	Law enforcement authorities are undertaking appropriate international cooperation outside of the mutual legal assistance framework (foreign requests) The FIU has not been established. The pre-FIU could not provide any examples of international cooperation. Absence of arrangements for international cooperation for supervisors
Nine Special Recommendations		
SR.I Implement UN instruments	NC	No system in place to implement the UNSCR resolutions
SR.II Criminalize terrorist financing	NC	Terrorist financing is not criminalized
SR.III Freeze and confiscate terrorist assets	NC	No mechanism in place to give effect to UNSCR 1267 and 1373 No procedure for reviewing foreign countries lists No mechanism for communicating actions to the financial sector
SR.IV Suspicious transaction reporting	NC	No reporting requirement for TF prior to the AML law (2007) which was not implemented at the time of the on-site mission
SR.V International cooperation	NC	Law enforcement authorities have engaged in appropriate international cooperation outside of the mutual legal assistance framework (foreign requests) The FIU has not been established. The pre-FIU could not provide any examples of international cooperation. The supervisory authorities have no arrangements for international cooperation No criminalization of TF, no legal basis for extradition
SR.VI AML/CFT requirements for money/value transfer services	NC	Too limited requirements for banks Large informal money and value transfer sector
SR.VII Wire transfer rules	NC	No requirement for wire transfers that (i) each intermediary FI in the payment chain to maintain all the required originator information with the accompanying wire transfer and (ii) each FI to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information No measures to effectively monitor the compliance of FIs with rules and regulations implementing SR.VII No implementation of wire transfer requirements set in the AML law

SR.VIII Nonprofit organizations	PC	<p>No domestic review of rules on NPOs</p> <p>No outreach</p> <p>No formal channels for international cooperation</p>
SR.IX Cash Border Declaration & Disclosure	NC	<p>A declaration system is in place for cross border currency transportation but it does not provide any mechanisms to ascertain the origin or intended use of the currency</p> <p>The system does not allow for temporary restraint to facilitate further investigation as to the origin or purpose</p> <p>No effective requirement for outbound travelers to fill in a declaration form concerning the amount of currency or negotiable instruments they are carrying</p>

Table 2. Recommended Action Plan to Improve the AML/CFT System

FATF 40+9 Recommendations	<i>Recommended Action (in order of priority within each section)</i>
1. General	The authorities should assess the ML /TF threats Cambodia faces and elaborate a strategy to address such threats accordingly. The Cambodian authorities should clarify which provisions of prior laws and regulations were repealed by the AML law.
2. Legal System and Related Institutional Measures	
Criminalization of Money Laundering (R.1, 2, & 32)	The Cambodian authorities should criminalize ML. For that purpose, they could amend the AML law. In such a case, they should ensure that a consistent definition is used in the draft criminal code, They should also include TF, counterfeiting of products and piracy as predicate offenses. It is recommended to review sanctions stated in the law on drug control and create appropriate ones for non drug-related predicate offenses. The Cambodian authorities should ensure that offences committed abroad qualify as predicate offences
Criminalization of Terrorist Financing (SR.II & R.32)	The Cambodian authorities should criminalize TF. For that purpose, they could expedite the enactment of the draft counter terrorism law. In such a case, higher pecuniary penalties for legal entities should be included in the draft counter terrorism law and its contemplated definition of a terrorist act should be reviewed (e.g. extortion would be included under the definition in the draft the mission received).
Confiscation, freezing, and seizing of proceeds of crime (R.3 & 32)	The Cambodian authorities should set up a comprehensive confiscation regime. Should they adopt the confiscation regime contemplated in the draft criminal code, they would also have to allow for equal value confiscation, ensure its applicability to all designated predicate offences. Wider law enforcement powers to identify and trace property should also be provided for under the draft criminal procedure code. Provision should be made for the protection of the rights of bona-fide third parties to confiscated property.
Freezing of funds used for terrorist financing (SR.III & R.32)	The Cambodian authorities should put in place a system for freezing of funds used for TF. For that purpose, they could complement and adopt the framework contemplated under the draft counter terrorism law. Additions should include (i) a mechanism for reviewing terrorist lists of other countries and give effect to them if appropriate;(ii) a procedure for disseminating the list among FIs, requirements for FIs and guidance on how to implement them (iii) procedures for unfreezing and for allowing access to funds for basic expenses. Bona fide third party rights should also be protected. A mechanism for monitoring compliance and imposing sanction in cases of failure to comply should also be established.
The Financial Intelligence Unit and its functions (R.26, 30 & 32)	The Cambodian authorities should establish an FIU, as contemplated in the new AML law. It is also recommended that they consider (i) setting strategic directions for the FIU, (ii) formulating clear plans as to the resources, structure and information technology requirements of the FIU, (iii) organizing the collection and analysis of relevant statistics, (iv) defining the precise role and responsibilities of the FIU board to ensure no interference with the day-to-day operation and autonomy of the unit and (v) drawing up a code of conduct and a set of regulations for the staff of the FIU.

	It is also recommended to increase outreach to the private sector on the Cambodian AML /CFT framework and issue appropriate guidance.
Law enforcement, prosecution and other competent authorities (R.27, 28, 30 & 32)	The Cambodian authorities should review the resources available to investigate and prosecute ML and TF cases, once they are criminalized (only drug related offences currently are and no investigation has ever been initiated). Attention should in particular be paid to multi-agency investigation teams, elaboration of appropriate structure, funding, staff, technical and other resources as well as training arrangements.
3. Preventive Measures–Financial Institutions	
Risk of money laundering or terrorist financing	
Customer due diligence, including enhanced or reduced measures (R.5–8)	The Cambodian authorities should (i) ensure that the new CDD requirements set by the AML law are implemented and (ii) rapidly clarify some of the requirements set by the law. The latter may require amending the AML law and issuing a revised AML Prakas as contemplated. It is in particular recommended to set a threshold for occasional transactions, clarify the definition of beneficial owners and associated CDD measures, set detailed CDD requirements for PEPs and review the definition of the latter, broaden requirements related to higher risk categories, set a regime for correspondent banking, define information updating requirements, bring the NBC within the AML /CFT framework and clarify requirements for non-face-to-face business relationships.
Third parties and introduced business (R.9)	
Financial institution secrecy or confidentiality (R.4)	
Record keeping and wire transfer rules (R.10 & SR.VII)	The current regime could be strengthened by (i) defining more precisely record keeping requirements, (ii) establishing measures to effectively monitor the compliance of FIs with rules and regulations implementing SR.VII and (iii) setting more precise requirements for FIs intervening in a chain of payment as well as for risk-based control on originator information in wire transfers.
Monitoring of transactions and relationships (R.11 & 21)	The Cambodian authorities should require FIs to examine as far as possible the background and purpose of “unusual” transactions (including those with countries not implementing FATF recommendations) <u>and</u> set forth their findings in writing. It is also recommended to set legal or regulatory provisions allowing Cambodia to apply appropriate counter-measures where a country continues not to apply or insufficiently applies the FATF Recommendations.
Suspicious transaction reports and other reporting (R.13, 14, 19, 25, & SR.IV)	The authorities should set up the cash transaction reporting regime created by the AML law. The threshold above which cash transactions have to be reported should be set as well as operational ways to report these transactions. For what concerns STRs, it is recommended (i) that appropriate measures be taken to protect the confidentiality of persons that file STRs, (ii) to organize the ways the FIU will provide feedback to reporting entities and (iii) prepare guidance taking into account the local environment
Cross Border Declaration or disclosure (SR IX)	It is recommended to strengthen the cross-border declaration regime to make it effective. The authorities should consider to (i) effectively require outbound travelers to fill in an appropriate declaration form, (ii) give explicit power to the customs authority to request further information as to the origin and intended use of

	transported funds and to stop or restrain transported funds in order to ascertain whether evidence of ML or TF exists. Cooperation between the customs authority and the NBC should be organized.
Internal controls, compliance, audit and foreign branches (R.15 & 22)	The Cambodian authorities should set up comprehensive internal control requirements for FIs. It is recommended that FIs be required to communicate AML/CFT policies throughout their organization, give compliance staff access to all information necessary to discharge their duties, maintain an adequately resourced and independent audit function and establish ongoing employee trainings.
Shell banks (R.18)	It is recommended to prohibit FIs to enter into, or continue, correspondent banking relationships with shell banks as contemplated in draft revised AML Prakas and require FIs to satisfy themselves that respondent FIs in a foreign country do not permit their accounts to be used by shell banks
The supervisory and oversight system—competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 30, 29, 17, 25, & 32)	The Cambodian authorities should strengthen financial supervision to ensure FIs comply with the new requirements created by the AML law. Proper coordination with the FIU needs to be established. It is also recommended to (i) strengthen the licensing process, (ii) issue a comprehensive internal control regulation, (iii) review guidelines to the financial sector, (iv) clarify the cooperation between the FIU and supervisors, (v) review the adequacy of the amount of fines imposed in accordance with the penal provisions of the AML law, (vi) organize and implement off-site AML /CFT supervision, (vii) contemplate the possibility to publicly disclose sanctions, (viii) define the conditions under which disciplinary sanctions taken according to the AML law could be challenged in court, (ix) provide legal protection from personal or institutional liability for supervisory actions taken in good faith in the course of performing supervisory duties and (x) set proper mechanisms regarding banking supervisors' integrity.
Money value transfer services (SR.VI)	It is recommended to set up an appropriate supervisory framework for non bank MVT operators, define the “money remittance services” which are referred to in the AML law and step up actions engaged to rein in the informal sector.
4.Preventive Measures–Non financial Businesses and Professions	
Customer due diligence and record-keeping (R.12)	The Cambodian authorities should ensure that adequate regulations to implement the new AML law are adopted for DNFBPs. Appropriate risk assessments should be undertaken to prepare such regulations in an effective and balanced way.
Suspicious transaction reporting (R.16)	Supervisors should conduct outreach within the sectors as to their new reporting obligations. The authorities should also consider setting a protection against civil or criminal liabilities for reporting entities filing STRs (also see detailed comments under Rec. 14, 15 and 21).
Regulation, supervision, monitoring, and sanctions (R.17, 24, & 25)	Cambodian authorities should designate supervisory authorities for the different DNFBPs and resource them appropriately. Proper coordination with the FIU needs to be established.
Other designated non-financial businesses and professions (R.20)	The Authorities should consider giving effect to existing measures to limit the use of cash in the economy (which is likely to be a long-term project).
5. Legal Persons and Arrangements & Nonprofit Organizations	
Legal Persons–Access to beneficial ownership and control information (R.33)	The Cambodian authorities should strengthen the regime for identifying foreign beneficial ownership in Cambodian companies. Efforts should also be increased to have data on Cambodian companies kept by the Ministry of commerce regularly updated.

Legal Arrangements–Access to beneficial ownership and control information (R.34)	
Nonprofit organizations (SR.VIII)	Cambodian authorities should adopt a comprehensive legal framework for NPOs.
6. National and International Cooperation	
National cooperation and coordination (R.31 & 32)	The authorities should set up mechanisms for ensuring operational cooperation and policy coordination among Cambodian authorities.
The Conventions and UN Special Resolutions (R.35 & SR.I)	The authorities should consider implementing the Palermo Convention and the Convention of the Suppression of the financing of terrorism and establish a system to implement UNSCR resolutions.
Mutual Legal Assistance (R.36, 37, 38, SR.V & 32)	The authorities should consider expediting the enactment of the draft counter terrorism law, providing for the criminalization of the collection of property for terrorists and terrorist organizations and for the provision of MLA in terrorism related cases.
Extradition (R. 39, 37, SR.V & R.32)	Authorities should consider expediting adoption of the draft criminal procedure code and the draft counter terrorism law to provide for a proper legal basis for extradition of those accused of ML or TF by prosecution authorities in another jurisdiction.
Other Forms of Cooperation (R. 40, SR.V & R.32)	The authorities should consider establishing proper international cooperation mechanisms for the FIU and the banking supervisor.
7. Other Issues	
Other relevant AML/CFT measures or issues	

Table 3: Authorities' Response to the Assessment

In their response dated 15 June 2007⁵⁷, the Cambodian authorities acknowledge certain weaknesses with the existing AML /CFT regime in Cambodia. They nonetheless emphasize that the passing of the new AML law will be able to make important change to the AML /CFT regime. Eventually, they stress their commitment to improve the AML /CFT regime to bring it in line with the FATF 40+9 Recommendations, while mentioning this will be a step by step process.

⁵⁷ Letter dated 15 June 2007 from H.E. Tal Nay Im, Director general, NBC

ANNEXES

- Annex 1: Details of all bodies met on the on-site mission - Ministries, other government authorities or bodies, private sector representatives and others.**
- Annex 2: List of all laws, regulations and other material received**
- Annex 3: Copies of key laws, regulations and other measures**

Annex 1: Details of all bodies met on the on-site mission
- Ministries, other government authorities or bodies, private sector institutions and others.

- Council of Ministers (Deputy Prime Minister)
- National ME Coordination Group (All relevant ministries and agencies)
- NBC Pre-FIU Dept
- NBC Bank supervision Dept
- NBC (Legal Division)
- NBC Micro-Finance Dept
- NBC Supervisor precious metals/stones Dept
- NBC Dept. in charge of promoting deeper domestic financial system
- Ministry of Interior (Criminal Police Dept, Counter Terrorism Dept, Anti-Drug Dept, General Information Dept, Anti-Economic Crime Dept, Anti Human Trafficking and Juvenile Dept, Transnational Crime Working Group)
- Ministry of interior (General Information Dept, Intelligence Services, Human Trafficking Dept, Drug Trafficking Dept)
- Ministry of Economy and Finance (Dept in charge of promoting deeper domestic financial system, Insurance, Securities market, Micro finances, Real estate, Casinos and sport betting and others gambling)
- Ministry of Economy and Finance (National Accounting Council)
- Tax Dept.
- Customs & Excise Dept
- Ministry of Foreign Affairs (International Organization Dept, Legal and consular Dept and International Cooperation Dept)
- CDC (General Secretariat for Special Economic Zone)
- Ministry of Justice
- General Prosecutor in Appeal Court
- Council for legal and Judicial reform
- Forestry Administration (illegal logging)
- Ministry of Commerce (Legal Affairs Dept)
- Council for Administration Reform
- Ministry of Urban Land Management and Construction (General Directorate of Urban and Land Management)
- Cambodian Bankers' Association
- Representatives of precious metal/stone dealers
- Bar Association
- Kampuchea Institute of Certified Public Accountants and Auditors
- May Bank
- NAGA Casino
- Representatives of Real Estate Agents
- ANZ royal Bank
- ACLEDA Bank (Remittance Service)
- Cambodian Public Bank
- Lawyers (two)

Annex 2: List of all laws, regulations and other material received

Annex 3: Copies of key laws, regulations and other measures

Unofficial Translation

**KRAM****We****NORODOM SIHAMONI****KING OF CAMBODIA****NS/RKM/0607/014**

- With reference to the Constitution of the Kingdom of Cambodia
- With reference to the Royal Decree N° NS/RKM/0704/124 of July 15, 2004, regarding the formation of the Royal Government of Cambodia
- With reference to Royal Kram N° 02/NS/94 of July 20, 1994, promulgating the Law on the Organization and Function of the Council of Ministers,
- With reference to Royal Kram N° NS/RKM/0196/27 of January 26, 1996, promulgating the Law on the Organization and Function of the National Bank of Cambodia,
- With reference to the request by the Prime Minister and Governor of the National Bank of Cambodia,

PROMULGATE

Law on Anti-Money Laundering and Combating Financing of Terrorism as adopted by the National Assembly on April 30, 2007 during its sixth session of third legislature and ratified by the Senate as to its entire form and legality on May 28, 2007 during its third plenary session of the second legislature with the following provisions:

CHAPTER I

GENERAL PROVISIONS

ARTICLE 1.- PURPOSE

This Law has the purpose to set up measures against money laundering and financing of terrorism as well as the organization and the control of those measures enforcement.

Article 2.- Scope of Application

This Law and others regulations set forth for its implementation are to be used for the prevention and the control of money laundering and financing of terrorism.

Article 3.- Definitions

For the purposes of the present law, the term:

- (a) **“Money laundering”** shall mean:
 - (i) The conversion or transfer of property, knowing that such property is the proceeds of offence, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the offence to evade the legal consequences of his or her action;
 - (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of offence;
 - (iii) The acquisition, possession or use of property, knowing that such property is the proceeds of offence;
 - (iv) Participation in, and attempts to commit, aiding and forcing somebody to commit any of the acts defined in accordance with Article 3 of the present Law.
- (b) **“Proceeds of offence”** shall mean any property derived from or obtained, directly or indirectly, through the commission of any felony or misdemeanor.
- (c) **“Property”** shall mean assets of every kind, whether movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets.
- (d) **“Supervisory authority”** shall mean the National Bank of Cambodia, the Securities Commission and any other authority having oversight over a reporting authority.
- (e) **“Predicate offense”** means any felony or misdemeanor, even if committed abroad, as a result of which proceeds have been generated that may become the subject of money laundering as defined above under Article 3 (a) of the present Law;

In order to be used as a basis for proceedings in respect of money laundering, a predicate offense committed abroad must have the nature of offense in the country where it was committed and under the laws of Cambodia, unless there is special agreement stated otherwise.

- (f) **“Financing of terrorism”** shall mean the willful provision of financial or other services with the intention that such services be used or in the knowledge that they are or may be used, in full or in part, for the purpose of supporting terrorism, terrorist acts or terrorist organizations.

- (g) “***Suspicious transaction***” shall mean a transaction that involves funds suspected to be the proceeds of offense, or funds related to the financing of terrorism.
- (h) “***Financial Intelligence Unit***” shall mean a central body responsible for receiving, analyzing and disseminating reports on suspicious transactions, as defined in Article 3(g) of the present law, cash transactions as defined in Article 12(1) of the present Law and other information regarding money laundering or financing of terrorism.
- (i) “***Ultimate beneficial owner***” shall mean a person who ultimately owns or controls a customer on whose behalf a transaction is being conducted, including those persons who exercise ultimate effective control over a legal person or arrangement.
- (j) “***Politically exposed persons***” shall mean any individual who is or has been entrusted with prominent public functions in a foreign country, such as head of state or of government, senior politician, senior government official, judicial or military official, senior executive of state owned corporation or important party official.
- (k) “***Trust***” means a legal entity established by a person known as trustor. The trustor transfer legal title of property to the trustee, who manages it for the benefit of named beneficiaries.
- (l) “***Invalidate***” shall mean to make null and void.

CHAPTER II

REPORTING ENTITIES

Article 4.- Institutions and Professions Subject to the Present Law

The present law shall apply to the following institutions and professions, hereinafter referred to as “reporting entities”:

- (a) banks, including branches of foreign banks;
- (b) non-bank financial institutions, including securities brokerage firms and insurance companies;
- (c) micro-finance institutions;
- (d) credit cooperatives;
- (e) leasing companies, investment and pension funds, investment companies and companies for the management of investment funds;
- (f) exchange offices;
- (g) money remittance services;
- (h) real estate agents, building and land;
- (i) dealers in precious metals, stones and gems;
- (j) post office operating payment transactions;
- (k) lawyers, notaries, accountants, auditors, investment advisors and asset managers when they prepare for or carry out transactions for their clients concerning the activities listed in Article 5 of this present Law;
- (l) casinos and other gambling institutions;
- (m) Non-governmental organizations and foundations engaging in business activities and fund raising;
- (n) Any other institution or profession that is designated by the FIU to fall within the scope of this Law.

Article 5.- Business Activities of Reporting Entity

Business activities of the reporting entities mentioned in Article 4-k of this Law are the following:

- 1. Buying and selling real estate, building and land;
- 2. Managing of client money, securities or other assets such as:
 - (a) management of banking or securities accounts;
 - (b) organization of contributions for the creation, operation or companies management.
- 3. Creation, operation or management of legal persons or arrangements, and buying and selling of business entities;
- 4. trust or company service providers when they prepare for or carry out transactions for a client concerning the following activities:

- acting as a formation agent of legal persons;
- acting as or arranging for another person to act as a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
- providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
- acting as or arranging for another person to act as a trustee of an express trust
- acting as or arranging for another person to act as a nominee shareholder for another person.

CHAPTER III

MEASURES TO BE TAKEN BY BANKING AND FINANCIAL INSTITUTIONS AND NON-BANK FINANCIAL BUSINESSES AND PROFESSIONS TO PREVENT MONEY LAUNDERING AND FINANCING OF TERRORISM

Article 6.- Banking and Professions Secrecy

Banking or professions secrecy shall not inhibit the implementation of this Law and may not be invoked as a ground for refusal to provide information to the FIU and supervisory authority, whether for domestic or for international cooperation purposes, or as required in connection with an investigation which relates to money laundering or financing of terrorism ordered by, or carried out under the supervision of, a judicial authority.

Article 7.- Prohibition of Anonymous Accounts or Similar Products

Reporting entities shall not:

- (a) open or keep anonymous or numbered accounts, or accounts in obviously fictitious names;
- (b) issue, keep or accept any other financial products unless the customer due diligence measures were taken in accordance with Article 8 of the present law.

Article 8.- Customer Due Diligence Measures

1. Reporting entities referred in Article 4 of the present Law shall take customer due diligence measures, including the identification of their customers and the verification of their customers' identity:
 - (a) prior to establishing business relations, such as opening accounts, taking stocks, bonds or other securities into safe custody, granting safe-deposit facilities or engaging in any other business dealings;
 - (b) prior to carrying out occasional or one-off transactions, including wire-transfers, that involve a sum in excess of amount as defined by the supervisory authority; identification information accompanying wire transfers shall contain the name and address of the originator, and where an account exists, the number of that account. In the absence of an account, a unique reference number shall be included;

- (c) if the reporting entity has a suspicion of money laundering or financing of terrorism irrespective of the sum involved in the transaction;
 - (d) if the reporting entity has any doubts about the veracity or adequacy of previously obtained customer identification data.
2. The following customer due diligence measures shall be taken by reporting entities:
- (a) identifying the customer by obtaining at the minimum name, birth date, and address, for natural persons and name, articles of incorporation or registration, tax identification number, address, telephone number, for legal persons as defined by the supervisory authority and verifying that customer's identity using reliable, independent source documents, data or information by using a national ID card, a passport or any other official photo ID document.
 - (b) identifying the ultimate beneficial owner, and taking reasonable measures to verify the identity of the beneficial owner such that the financial institution is satisfied that it knows who the beneficial owner is. For legal persons and arrangements, the reporting entities should taking reasonable measures to understand the ownership and control structure of the customer.
 - (c) obtaining information on the purpose and intended nature of the business relationship.
 - (d) conducting ongoing due diligence on the business relationship and scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the reporting entities knowledge of the customer, their business and risk profile, including, where necessary, the source of funds.
3. Where the reporting entity is unable to comply with paragraphs 2 (a) to (c) above, it should not open the account, commence business relations or perform the transaction, or in case of existing business relations with the customer, it should terminate such business relations, unless instructed to the contrary by the FIU. In any such cases, the reporting entity should consider making a suspicious transactions report in relation to the customer.
4. The requirements set forth by this Article shall apply to all new customers as well as to existing customers on the basis of materiality and risk. Reporting entities shall conduct due diligence on such existing relationships retrospectively.

5.5 Article 9.- Identification of Customers Carrying Out Transactions below the Threshold

Identification shall also be carried out in cases where separate operations repeated involve an individual amount, which is less than that the threshold specified by the supervisory authority but the reporting entity has reasons to believe that those transactions are aiming at avoiding identification.

Article 10.- Special Monitoring of Certain Transactions

1. A reporting entity shall pay special attention to:
- (a) any complex, unusual or large amount transactions;
 - (b) any unusual patterns of transactions; that have no apparent or visible economic or lawful purpose;
 - (c) business relations and transactions with institutions or persons in jurisdictions that do not have adequate systems in place to prevent or deter money laundering or financing of terrorism;

- (d) wire transfers that do not contain complete originator information;
 - (e) business relations and transactions with persons with whom the reporting entity has had no face-to-face contact during the identification procedure;
 - (f) business relations and transactions with politically exposed persons;
 - (g) business relations and transactions conducted by means of cross-border correspondent banking or other similar relationships.
2. In cases referred to under paragraph 1 of this article, the reporting entity shall seek additional information as to the origin and destination of the money, the purpose of the transaction and the identity of the transacting parties.

Article 11.- Record-keeping by Reporting Entities

Reporting entities referred to at Article 4 of the present Law shall maintain, at least for 5 years after the account has been closed or the business relations with the customer have ended, and shall hold at the disposal of the competent authorities any records of customer identification and records of transactions conducted by customers in a manner that they are sufficient to permit the reconstruction of individual transactions, including the amounts and types of currency involved if any, so as to provide, if appropriate, evidence for the prosecution of offense

Article 12.- Reporting Cash or Suspicious Transactions to the FIU

1. Reporting entities referred to at Article 4 of this present Law shall report to the FIU any cash transaction exceeding the amount of the threshold as defined by the supervisory authority, as well as such transactions, which involve several connected cash transactions whose total value exceeds the same amount.
2. Irrespective of the reporting obligation set forth by paragraph 1 of this article, if a reporting entity suspects or has reasonable grounds to suspect that funds are the proceeds of offense, or are related to the financing of terrorism, it shall promptly, within 24 hours, report its suspicions to the FIU.
3. Reports of suspicions shall be transmitted to the FIU by any expeditious means of communication, such as facsimile or, failing which, by any other written means. Reports communicated by telephone shall be confirmed by facsimile or any other written means within the shortest possible time. The FIU shall acknowledge receipt of the report upon receipt thereof.
4. A reporting entity that has made a report to the FIU, as well as any other entity that holds information related to the transaction or customer involved in the report, shall give the FIU or a law enforcement agency that is carrying out an investigation arising from, or relating to the information contained in the report, any further information that it has about the transaction or attempted transaction or the parties to the transaction if requested to do so by the FIU or the law enforcement agency.
5. If the FIU has reasonable grounds to suspect that a transaction or a proposed transaction may involve a money laundering offense or an offense of financing of terrorism and for reasons of the seriousness or the urgency of the case it considers necessary, it may direct the reporting entity in writing or by telephone to be followed up in writing, not to proceed with the carrying out of that transaction or proposed transaction or any other transaction in respect of the funds affected by that transaction or proposed transaction for a period as may be determined by the FIU, which may not exceed 48 hrs, in order to allow the FIU :

- to make necessary inquiries concerning the transaction; and
- if the FIU deems it appropriate, to inform and advise a law enforcement agency.

Article 13.- Contents of Suspicious Transaction Reports

The suspicious transaction reports submitted to the FIU shall at a minimum contain:

- (a) the identity and identifying particulars of the reporting entity, including the name and contact details of the reporting officer;
- (b) the identity and identifying particulars of the customer and of the beneficiary involved in the transaction;
- (c) the type and details such as amount, currency, date, parties involved of the transaction that is reported as suspicious, including the account number and particulars of the account holder;
- (d) a short description of the circumstances and reasons that justify the suspicion.

Article 14.-Exemption from Liability for Reporting Cash or Suspicious Transactions in Good Faith

The persons, directors or employees of the reporting entities:

1. Who in good faith transmit information or submit reports to the FIU in accordance with the provisions of the present law shall not be subject to any proceedings instituted against them for breach of any restriction on disclosure of information or of banking or professional secrecy.
2. Who in good faith transmit information or submit reports in accordance with the provisions of the present Law, there is no civil or criminal liability action may be neither brought, nor any professional sanction taken against them, even if there are investigations, do they not give rise to a conviction.
3. Are not hold responsible for civil or criminal actions that may be brought against them by reason of any material and/or non-material loss, resulting from the suspension of a transaction as provided for in Article 12, paragraph 5 of the present Law.

Article 15.- Prohibition of Tipping Off

In no circumstance shall persons required to disclose the information and submit reports referred to in Article 13, or any other individual having knowledge thereof, communicate such information or reports to any natural or legal persons other than the FIU, except where so authorized by the FIU.

Article 16.- Internal Controls and Compliance at Reporting Entities

Reporting entities referred to at Article 4 of this Law shall develop programs for the prevention of money laundering and the financing of terrorism in accordance with the guidelines of the supervisory authority as stipulated in article 31 of the present law. Such programs shall include the following:

- (a) Development of internal policy procedures and controls, including appropriate compliance arrangements and adequate screening procedures to ensure high standards when hiring employees;
- (b) Designation of compliance officers at management level;

- (c) Ongoing training for officials or employees;
- (d) Internal audit function to check compliance with and effectiveness of the measures taken to apply the present law.

Article 17.- Compliance Officers

The compliance officer to be appointed pursuant to Article 16, paragraph (b) of this Law shall be a senior officer with relevant qualifications and experience to enable him/her to respond sufficiently well to enquiries relating to the reporting entity and the conduct of its business, and be responsible at minimum:

- (a) for establishing and maintaining internal policy, procedures and manual of compliance;
- (b) for ensuring compliance by staff of the reporting entity with the provisions of this Law and any other law relating to money laundering or financing of terrorism and the provisions of policy, procedures and manual of compliance established pursuant to this Article;
- (c) to act as the liaison between the reporting entity and the FIU in matters relating to compliance with the provisions of this Law and any other legislation with respect to money laundering or financing of terrorism.

Article 18.- Fit and Proper Requirements

The competent supervisory agencies shall ensure that the management and shareholders of reporting entities are fit and proper so as to prevent criminals or their associates from holding, or being the beneficial owners of, a significant or controlling interest or management function in such entities.

CHAPTER IV

FINANCIAL INTELLIGENCE UNIT

Article 19.- Organization

1. A financial intelligence unit hereinafter referred to as the FIU shall be established as a unit under the control of the National Bank of Cambodia.
2. The FIU shall have adequate financial resources and independent decision-making authority on matters coming within its sphere of responsibility.

Article 20.- FIU Board and Staff

1. The FIU shall have a permanent secretariat, which shall be headed by a senior official appointed by the Prime Minister proposed by the National Bank of Cambodia. The permanent secretariat shall work under the authority of a Board of Directors, composed of the senior representatives of the following agencies:
 - (a) Office of the Council of Minister;
 - (b) Ministry of Justice;
 - (c) Ministry of the Interior;
 - (d) Ministry of the Economy and Finance;

(e) National Bank of Cambodia

2. The head of the Board shall be appointed by the Prime Minister proposed by the National Bank of Cambodia selected from amongst the representatives of the above agencies for a period of 2 years. The first head of the Board shall be the representative of the National Bank of Cambodia. The board members shall be appointed by the Royal Sub-degree with reference to the proposal of the National Bank of Cambodia.
3. The permanent secretariat of FIU shall have adequate staff selected by the head of FIU and approved by the Board. Staff shall meet high standards of integrity and shall be screened by the relevant authorities before employment by the FIU.

Article 21.- Functions

The FIU shall:

- a) receive suspicious and cash transaction reports made in pursuance of Article 12 of this present Law and information provided to the FIU about suspicions of money laundering or financing of terrorism;
- b) collect information that the FIU considers relevant to its activities with regard to money laundering or financing of terrorism and that is publicly available, including commercially available databases, as well as other information necessary to carry out its functions, such as information collected maintained and stored in the database by the reporting entity;
- c) have access on a timely basis to financial, administrative and law enforcement information as authorized by law that is necessary to undertake its functions set forth by this Article, including information collected and maintained by, or stored in the databases of, any public agency;
- d) analyze and assess all suspicious transaction reports and related information in order to determine whether there are reasonable grounds to believe that a money laundering offense or an offense of financing of terrorism has been committed and in such cases refer the matter to the relevant law enforcement authority for criminal investigation;
- e) compile statistics and records on suspicious and cash transaction reports received, analyzed and forwarded to the law enforcement authorities and disseminate information to other public agencies on related matters as required;
- f) provide feedback to reporting entities and other relevant agencies regarding the outcome of suspicious transaction reports or information provided to it under this Law;
- g) ensure that personal information under its control is protected from unauthorized disclosure;
- h) act to enhance public awareness and understanding of matters related to money laundering and financing of terrorism.

5.6 Article 22.- Supervision by the FIU

1. The FIU shall issue guidelines to reporting entities in relation to customer identification, record keeping, reporting of suspicious transactions and other obligations established pursuant to this Law. The FIU shall consult with supervisory agencies in those sectors where such supervision is already in place.

2. The FIU shall be responsible for ensuring compliance of reporting entities with the requirements set forth by this Law through off-site monitoring and by conducting on-site inspections in accordance with the relevant legislation. The FIU shall coordinate its supervision of compliance under this Law with the existing supervisory agencies.
3. If during its supervision of compliance with this Law, the FIU discovers non-compliance with any of its provisions, it may:
 - (a) instruct the reporting entity to take remedial action as determined by the FIU to rectify non-compliance;
 - (b) inform the other supervisory agencies of such non-compliance and propose that they implement control measures, including the imposition of sanctions or the revocation of license, within their competence, as appropriate;
 - (c) initiate administrative sanctions under this Law.

Article 23.- Obligation of Confidentiality

The FIU Board and its permanent secretariat shall be required to keep confidential any information obtained within the scope of their duties, even after the cessation of those duties within the FIU. Such information may not be used for any purposes other than those provided for by this Law.

Article 24.- Database

The FIU shall, in conformity with the relevant laws and regulations on the protection of privacy and on computerized databases, operate a database containing all relevant information concerning reports of suspicious transactions as well as currency transactions as required under the present law. That information shall be updated and organized with a view to ensure maximum effectiveness of the FIU operational analysis and help confirm or invalidate suspicions.

Article 25.- Relationships with Foreign FIU

1. The FIU may, subject to a reciprocal arrangement, exchange information with foreign FIU, provided that they are subject to similar requirements of confidentiality and irrespective of the nature of those units. It may, for that purpose, conclude cooperation agreements with such units.
2. Upon receipt of a request for information or transmission from a counterpart foreign FIU, it shall comply with that request within the scope of the powers conferred upon it by this Law.

CHAPTER V

ANCILLARY PROVISIONS

Article 26.- Internal Coordination

FIU, law enforcement authorities, supervisory authorities as well as other competent Government agencies entrusted with the prevention or control of money laundering and financing of terrorism shall establish their own permanent and senior-level mechanism for:

- (a) ensuring information exchange and coordination among these authorities and with the relevant private sector associations,

- (b) providing guidance as to the implementation of this Law, and
- (c) formulating policy for various areas falling under its scope.

The role and functions of this coordination mechanism shall be regulated by sub- decree.

Article 27.- Limiting the Use of Cash in Commercial Transactions

The Government shall adopt appropriate measures to reduce the circulation and use of cash in commercial transactions and encourage the use of non-cash means of payment that facilitate the identification of the participants.

CHAPTER VI

SANCTIONS

5.7 Article 28.- Disciplinary Sanctions

The Supervisory Authorities shall cooperate with the FIU to impose disciplinary sanctions to any reporting entity, which is not in compliance with the provisions of Articles 7 through 12 and Article 16 of the present Law.

Violation as mentioned in above paragraph shall be subject to the following sanctions:

- the warning;
- the reprimand;
- the prohibition or limitation to conduct any transactions for a period of time as indicated by the supervisory authorities;
- the revocation of the business license;
- the proposal to a demotion of relevant officials or directors of the reporting entities;
- the fine;
- the order to a temporary freezing on means and proceeds of money laundering and financing of terrorism;
- to complaint to the court while there is serious violation of the provisions of the present Law and other relevant regulations that leads to the damage of public interest and national security.

ARTICLE 29.- PENAL SANCTIONS

Without taking into consideration of any offenses in the penal provisions of other law:

- Any person who denies providing information to the FIU and the supervisory authorities as contrary to the provisions of Article 6 of the present Law will be sentenced to imprisonment from six days to one month and subject to a fine from 100,000 Riels up to 1,000,000 Riels or any one thereof.
- Any person who neglects to provide report on cash and suspicious transactions to the FIU as contrary to the provisions of Article 12 of the present Law will be sentenced to

imprisonment from one month to one year, and will be subject to a fine from 1,000,000 Riels up to 5,000,000 Riels or any one thereof.

- Any person required to disclose the information and submit reports referred to in Article 13, or any other individual having knowledge thereof, communicate such information or reports as the contrary to the provisions of prohibition of tipping off in Article 15 of the present Law will be sentenced to imprisonment from one month to one year, and will be subject to a fine from 1,000,000 Riels up to 5,000,000 Riels or any one thereof.
- Any person who violates the obligations to keep professional secrecy as contrary to Article 23 will be sentenced to imprisonment from one month to one year, and will be subject to a fine from 1,000,000 Riels up to 5,000,000 Riels or any one thereof.

Article 30.- Freezing and confiscation of property

In case of a proceeding on the violation of money laundering or financing terrorism as stipulated in the existing Penal Code all relating or suspicious to be related property may be frozen or restrained from transferring until the court decision becomes definitive.

In case where the court has decided to penalize the offence of money laundering or financing terrorism, the property shall be confiscated as state property.

CHAPTER VII

FINAL PROVISION

Article 31.-

The supervisory authorities shall issue regulations, instructions and guidelines for the implementation of the present Law, particularly regarding:

- the arrangement for information sharing with the FIU to the agreement in imposing disciplinary measures to be taken, or in suing the offenses to the court .
- the mutual coordination among supervisory authorities for the issuance of regulations, instructions, and guidelines for the implementation of the present Law.
- issuing regulations and guidelines to determine the duties and to protect officials and staff who perform their duties with integrity in the FIU, the information confidentiality protection and the information disclosure rules.

The supervisory authorities shall cooperate with the Financial Intelligence Unit in guiding the reporting entities to create program for the prevention of the money laundering and the financing of the terrorism in accordance with Article 16 of the present Law, and to issue the report formats according to the nature and character of the reporting entities.

Regulations and guidelines issued by the supervisory authorities under the present Law can be modified or amended in an appropriate circumstance or when necessary.

Article 32.- If there are provisions of other laws not consistent with this law the present law shall prevail.

Article 33.- This law has been declared as urgent.

Royal Palace, Phnom Penh, 24 June 2007

Signature and Seal

NORODOM SIHAMONI

PRL.0706.263

Submitted for the signature of H.M the King

The prime Minister

Signature

HUN SEN

Submitted for information
to Samdech the Prime Minister

The Governor of the National

Bank of Cambodia

Signature

CHEA CHANTO

N^o258 C.L

Certified copy for dissemination

Phnom Penh, 27 June 2007

The Deputy General Secretary of Royal
Government

Signature

KHUN CHINKEN

**KRAM DATED JANUARY 24, 1997
ON DRUG CONTROL**

We,
His Majesty Prince Norodom Sihanouk,
The King of the Kingdom of Cambodia,

- having seen the 1993 Constitution of the Kingdom of Cambodia;
- having seen Kret dated November 1, 1993 on the appointment of the Royal Government of Cambodia;
- having seen Kret dated September 24, 1993 on the appointment of the First Prime Minister and the Second Prime Minister of the Royal Government of Cambodia;
- having seen Kram No. 02 dated July 20, 1994 on the organization and functioning of the Council of Ministers;
- having seen Kret No. 1094-83 dated October 24, 1994 on the modification of the composition of the Royal Government of Cambodia;
- having seen Kret No. 1094-90 dated October 31, 1994 on the modification of the composition of the Royal Government of Cambodia;
- having seen Kram No. 0196-04 dated January 24, 1996 on the creation of the Ministry of Justice;

upon the proposition of the two Prime Ministers and the Minister of Justice;
promulgate;

the law on Drug Control, adopted by the National Assembly of the Kingdom of Cambodia on December 6, 1996, during the 7th session of the first legislature, the text of which appears below:

CHAPTER I
CLASSIFICATION OF STUPEFIENTS OR PSYCHOTROPIC SUBSTANCES AND THOSE
USED
AS INGREDIENTS IN DRUG MANUFACTURING

Article 1 :

Shall be considered as narcotic drugs, those stupeficients, psychotropic substances and those substances used as ingredients in drug manufacturing which are classified in the Tables as hereunder:

[Table I](#) - Plants and substances which cause severe dangers but which are not useful for the medicine.

[Table II](#) - Plants and substances which cause serious danger, but which are useful for the medicine.

[Table III](#) - Plants and substances which cause danger, but which are useful for the medicine.

[Table IV](#) - Substances and chemicals which are used for the production of narcotics and psychotropic substances and which are classified in the 1988 UN Convention on Combating against the illicit trafficking of drugs and psychotropic substances, or in the application of this Convention against the illicit trafficking of drugs.

These above 4 Tables will be mentioned in detail, in the Annexes.

All these 4 Tables will be modified later by a Proclamation (Prakas) of the Ministry of Health, after consultation with the National Anti-drug Authority, primarily when upon there is re-registration, elimination or transfer of drugs from one Table to another.

CHAPTER II
PROHIBITION THE CULTIVATION OF NARCOTIC PLANTS, PRODUCTION, USE,
DISTRIBUTION AND TRADING /TRAFFICKING OF DRUGS

Article 2 :

Except for the cases of the [article 14](#), the cultivation of opium poppy, cocoa plants, cannabis indica and cannabis saliva in the Kingdom of Cambodia , shall be prohibited.

Article 3 :

Except for the cases of the [article 14](#), the production, distribution and trading/trafficking, wholesale or retail, transportation, storage, procurement, distribution by charging money or with free of charge,

purchase, use, import, export or pass-by and transit on the territory of the Kingdom of Cambodia of those narcotic plants, substances or ingredients which are stated in the Table I above, shall be prohibited.

Article 4 :

Production, trading/trafficking, wholesale or retail distribution, international trading/trafficking, use/consumption of narcotic plants, substances and preparation for the fabrication of those plants and substances as stated in the [Tables II and III](#), shall be prohibited for whoever who got no special License from the Ministry of Health and for any establishment or place which did not have a special License granted under the same condition.

Procedures for the application of articles and primarily those procedures relating to the conditions for the application and authorization, contents, limitation, ceasing of consumption (for temporary) and cancellation of both above Licenses, shall be determined by a Sub-Decree.

Article 5 :

It is likewise prohibited as the above, for those plants, substances and ingredients which are stated in the [Tables II and III](#), especially their pass-by and transits on the territory of the Kingdom of Cambodia, whether those narcotic plants, substances and ingredients are disembarked or not from the means of transportation, except only when such purchase, transportation and storage are for the purposes of producing pharmaceutical for treatment of people or animals which is under the authorization and control of the Ministry of Health.

Article 6 :

Measures for the control and follow up as a provided for in this law, shall also be carried out in a duty-free port and tax-free zone.

Article 7:

The Ministry of Health shall determine once a year, of maximum quantity of narcotic plants, substances and ingredients needed by the State's and private enterprises for the production of pharmaceutical for treatment of people or animals, according to their respective real necessities.

Article 8:

The Ministry of Health imports various narcotic plants substances and ingredients which are needed for the year for State's enterprises and private enterprises as above, to produce pharmaceutical.

Those private enterprises which are producing pharmaceutical for the treatment of people and animals and which need to purchase narcotic plants, substances or ingredients for drug manufacturing as stated in the [Tables II and III](#), shall request to buy them from the Ministry of Health.

Article 9:

Commercial advertisement of narcotic plants, substances and ingredients or of pharmaceutical as stated in the [Tables II and III](#), shall be prohibited. Provision to the privates of samples or formula of pharmaceutical and of samples of substances and ingredients as stated in the Tables II and III, shall be prohibited.

Article 10:

The Minister of Health may issue a Proclamation (Prakas) to additionally instruct with regard to the commercial advertisement as provided for in the article 9.

The rules regarding to the issuance of Licenses and conditions under which any enterprise or private may conduct activities which are provided for in this law, shall be determined by Sub-Decree.

Article 11:

Any manufacture, sale, purchase or wholesale distribution and international trading of the substances as stated in the Table IV, shall comply with the provisions of the [articles 5 through 8](#) of this Law.

Article 12:

Those producers, wholesalers, retailers who received authorizations through Proclamation (Prakas) of the Ministry of Health, shall record in their respective log-books which are page numbered and with initials made by the authority every times upon any purchase or sale of substances as stated in the [Tables II, III and IV](#).

Such record, shall be done during the operation and on which should leave no blank space, make no scratch or erase or double writing.

When taking record it is indicate the date of the operation, name and number (quantity) of the products received or sold, name, address and occupation of purchasers or sellers.

The logbook shall be kept file for ten (10) years period from the date the last records were taken in, to show it to the competent authorities following their request.

Article 13:

When upon there is indication which is enough to have doubt that any of the substances as in the [Table IV](#), is for production of any illicit drug or psychotropic substance, such substance shall be seized immediately pending the result of investigation by the court.

CHAPTER III

MEDICAL, SCIENTIFIC AND EDUCATIONAL RESEARCH

Article 14 :

For the purposes of medical, scientific and educational research and scientific police research, the Minister of Health may grant authorization to any natural person to produce, fabricate, purchase, import, use or store the plants, substances and ingredients as listed in the [tables I, II and III](#) at a quantity which should not exceed the quantity which is absolutely needed.

The authorized person, shall take record in a log-book, of quantity of plants, substances, ingredients which have been purchased, fabricated, used and destroyed. The concerned person shall keep file this above logbook for at least 10 years.

Moreover, the operation date and names of suppliers, shall also be recorded in the logbook. Each year, authorized person shall report to Minister of Health of quantities which have been used or destroyed and also of actual quantity existing in his/her stocks.

CHAPTER IV

INSPECTION AND TAKING RECORD OF OFFENSES

Article 15 :

Every person, private or State's enterprise, medical or scientific establishment which are conducting activities or operation which are concerning with narcotic plants, substances, ingredients or pharmaceutical which are stated in this law, shall be under control and monitoring of the Minister of Health who shall assign a pharmacological inspector to carry out regular inspection of at least once a year and also irregular inspection at any time, at the establishments, places, stocks and recordings in log-books. The inspector of the Ministry of Health, may request for forces for help as necessary during the inspection.

Shall also be subject to under the control and monitoring above, those rooms which are storing medicine box for first aids for the public means of transportation which are serving the international transports.

A procedure for the application of this article, shall be determined by a Sub-Decree.

CHAPTER V

PENALTIES

Article 16:

Without yet considering of the charges which may due for the cultivation of narcotic plants, production, fabrication or illicit trafficking of drugs, which if any, shall be subject to a fine penalty in cash from 100,000 (a hundred thousand) riels to 1,000,000 (one million) riels, for any person who within any framework of lawful activity which is carried out for the interest of the medicine or pharmacology, but who violated provisions of the laws and regulations relating to:

1- the prohibition of cultivation, production, fabrication or wholesale or retail trade, transportation, storage, gift, distribution, use in factory, import, export, transportation with transits, of substances or plants as stated in [Table I](#).

2- the Licenses for carrying out any activity as stated above or any condition required by such License.

3- the importation or exportation, transportation with transits on the territory of the Kingdom of Cambodia of the substances as stated in the [Tables II and III](#).

4- the maximum limitation specified by the Ministry of Health on the production and preparation of substances from those substances which are stated in the [Tables II and III](#).

5- the commercial advertisement of the products from the substances which are stated in the [Tables II and III](#).

6- the distribution, issuance of medical prescriptions, subscription of the manufactured medicine or of substances which are stated in the [Tables II and III](#).

7- the taking records of operations and statistics which are required to do.

8- the production, trade or use of substances mentioned in the [Tables I, II and III](#), for the activities of research in the medicines, science or education.

In case of not repetition of offenses, the punishment term shall be doubled.

Shall be punished to imprisonment from 6 days to 1 month and with a fine penalty of from 1,000,000 (one million) riels to 5,000,000 (Five million) riels or either one of the 2 punishments, for any person who obstructs by whatever means the fulfillment of function by the pharmacological inspector.

Article 17:

If there is any incident which proves that the principal of the offense as stated in the article 16 has committed an offense for the benefit of his/her employer, such concerned employer shall be liable jointly in the payment of the fine as decided by the court.

CHAPTER VI

**PREVENTION AND DETECTION OF THE LAUNDERING OF MONEY
GENERATED FROM CLANDESTINE ILLICIT TRAFFICKING OF DRUGS**

Section 1

Limitation of the amount of settlement of payment in cash

Article 18:

Any settlement of payment in cash which exceeds the amount as determined by the competent institution, shall be prohibited.

Section 2

Obligation of making a declaration on the international transfer of valuables

Article 19:

All the transfers to or from foreign countries of funds, checks or other valuable objects which amount exceed to what determined in the Proclamation (Prakas) of the Minister of Finance, shall declare to the National Bank of Cambodia. In such declaration, shall indicate of the amount of the transfer, name and address of the sender and receiver.

Section 3

Regulations regarding business of manual exchange of currencies

Article 20:

Any natural person or legal entity who are authorized to perform a business of manual exchange of currencies, shall:

1- ask for the identity of its customers, by asking them to prove a still valid document with photos, before accepting to exchange them any money which amount exceeding what specified by the competent institution.

2- record all the operations in chronological order by indicating of the first names, surnames and addresses of the customers in a serial books and with initial signature by the National Bank of Cambodia, which shall be kept file for at least five years after the last recorded operations.

The National Bank of Cambodia may designate its officer go down to inspect those books on site.

3- respect all the regulations of the National Bank of Cambodia, which is a competence which manages the exchange of money.

Section 4

Obligations required for Casinos

Article 21:

When any gambler buys, brings coins with him/her or changes coins or tickets for settling payment during the gambling, which have their values exceeding the amount specified by the Minister of Finance and Economy, the casino which has authorization from the Royal Government, shall:

1- ask for the identity of such gambler, by asking him/her to show his/her still valid documents with photo.

2- record down those operations in chronological order, following the actual amount of money, stating of the surname and first name and address of the gambler in a book which has serial number and with initials made by the Ministry of Finance. This book shall be kept file for at least 5 years from the last recorded operation.

The Ministry of Finance and Economy may designate its officers to inspect all these books on site.

Section 5

Obligation of taking precaution by the financial organizations

Article 22:

Credit establishments and financial institutions shall ask for identification of customers before proceeding any business transaction with them. Credit establishments and financial institutions shall monitor to see especially if there is any complicated or unusual operation taking place. All the documents related to the identification of their customers and the operation they have done shall be kept file. Credit establishments and financial institutions shall educate their staff members to be alert and join in the fighting against the laundering of money generated from the clandestine trafficking of drugs.

Conditions for the application of this article, shall be determined in a Sub-Decree.

CHAPTER VII

DETECTING AND REPORTING OF SUSPICION OF MONEY LAUNDERING

Section 1

Reporting Individuals and Organizations

Article 23:

Credit establishments, financial institutions and other persons which in the exercise of their professions, have done, controlled or instructed an operation which caused the flow of capitals, shall report of the amounts of money which they have suspicion of generated from the commission of offenses as stated in [articles 31 through 33](#), [37 through 40](#) and [42 through 44](#), and indicate of the operations related to such amount of money. The lawyers shall only report of those operations which they had known of, apart from their function of defense.

Credit establishments and financial institutions have the obligation to report on such operations as stated above, despite that it is not possible to suspend those operations or that the amount of money stated above emerges after the operations was accomplished.

Organizations and persons stated in paragraph 1, shall also report on all the information which increases or rules out the fore suspicion.

Section 2

Reporting Procedures

Article 24 :

Credit establishments, financial institutions and other persons as stated in the above article, shall immediately send a report to the prosecutor. The prosecutor shall ask to the Commission which is established under the article 25 to provide him/her sufficient information, in order that he/she will make decision on due charge.

Article 25 :

A Commission shall be established to combat against the laundering of money generated from the illicit trafficking of drugs and which is placed under the power of the Prime Minister(s).

Composition and duty of this Commission, shall be determined by a Sub-Decree.

Section 3

Management of reports by the Commission of Anti-Money Laundering

Article 26 :

The Commission of Anti-Money Laundering shall respond that it has already received the report within a specified period for conducting of banking or financial operation. In this above letter of response, there could be an objection which may require a suspension of the operation within a period of not exceeding

24 hours. If such letter of response does not mention of any denunciation complaint or upon the expiry of the denunciation period, there is no decision which orders to reporter take preventive measures as stated in the following paragraph, such reporter may then to proceed on with the operation.

When, within 24 hours period, it is not possible to determine the source of the money, the Chief Judge of the competent court may, upon request of the Prosecutor who received the complaint from the Anti-money Laundering Commission, order to stop the fund, account and checks, except when the investigating judge had already ordered to stop them up.

Decision of the court made following the request from the prosecutor shall be implemented immediately.

Article 27:

No individual or leader or persons in charge of inspection of the organization as stated in [article 23](#), shall be subject to any prosecution for the breach of confidentiality of the profession for what he/she reported in good faith as stated in that article.

No civil action and professional sanction shall be taken against individuals or organizations that had reported in good faith, even if the investigation or decision of the court proved that such report is unfounded.

Article 28:

Credit establishments or financial institutions, shall be exempted from all responsibilities, and no leader or person responsible for supervision of these establishments shall be subject to any criminal prosecution, if the operation was conducted as what mentioned in the sub-para.1 of the article 26, except when those establishments or institutions accomplices with the owners of the money or holders of the operation.

CHAPTER VIII **PENAL PROVISIONS**

Article 29:

Without yet taking into account of those due punishment terms which were provided for the illicit trafficking of drugs and psychotropic substances and for the laundering of money generated from the illicit trafficking of drugs :

1- Shall be subject to imprisonment from six (6) days to one (1) month and a fine penalty of from 100,000 (one hundred thousand) to 1,000,000 (one million) riels or, to either one of the two penalties, for:

a)- any person and leader or person in charge of supervision of the organization as stated in the [Article 23](#) who have told the money owner or holder of the operation as stated in [Article 23](#) of the report which he/she has obligation to do or of the consequences which the money owner or holder of the operation will suffer or that he/she did not have intention to make such report as stipulated in the Article.

b)- any person who uses fake identity cards to achieve or attempt to achieve the operations stated in [articles 18](#) and [21](#) of this Law.

2- Shall be subject to imprisonment from 1 month to 1 year and with a fine penalty in cash of from 100,000,000 (one million) riels to 5,000,000,000 (five million) riels, for those who destroy or steal register books or documents which are required to be kept files by the [articles 20 and 21](#) of this law.

3- Shall be subject to a fine penalty of from 100,000 (a hundred thousand) riels to 1,000,000 (one million) riels, for:

a) any person who made or accepted to settle a payment in cash which exceeds the amount permitted.

b) any person who violated the reporting obligation on the international transfer of funds, checks or valuables which are required to be reported by the Law.

c) any leader or person in charge of handling direct money exchange, person in charge of a casino, credit establishment and financial institution, who violated the provisions of the [articles from 19 to 22](#) this Law.

Any person who committed offenses as stated in this Article may be ceased definitively or for a period of 6 months to 5 years from carrying out a profession which he/she has violated the law.

CHAPTER IX **DISCIPLINARY PROVISIONS**

Article 30:

If credit establishments and financial institutions or persons mentioned in [Article 23](#) or enterprises of direct money exchange or casinos failed to fulfil any obligation which is required to them by the

provisions of this Law or by subsequent sub-decrees for application of this Law due to serious fault, negligence or lack of internal procedures, the Disciplinary Authorities may spontaneously/automatically take actions under the conditions stated in the administrative or professional regulations.

CHAPTER X **CHARGES AND PRINCIPAL PUNISHMENTS**

Section 1 **Seriously endangering drugs** **(Tables I & II)**

Article 31:

Any person who intentionally violates the provisions of this Law and regulations related to the cultivation of narcotic plants for the trading, producing, manufacturing, refining or transforming of drugs which result in serious dangers, shall be punished from 10 to 20 years imprisonment and with a fine penalty in cash of from 10,000,000 (ten million) riels to 50,000,000 (fifty million) riels.

Article 32:

Any person who intentionally violates the provisions of this Law and regulations related to the export, import, international transportation of drugs which result in serious dangers, shall be punished 10 to 20 years imprisonment and with a fine penalty in cash of from 10,000,000 (ten million) riels to 50,000,000 (fifty million) riels.

Article 33:

Any person intentionally violates the provisions of this law and regulations related to the request to supply for display, distribution, brokering, sale, delivery, in whatever rank, consigning, dispatching, transporting, purchasing, conserving or use of drugs which cause in serious dangers to other persons, shall be punished from 10 to 20 years imprisonment and with a fine penalty in cash of from 10,000,000 (ten million) riels to 50,000,000 (fifty million) riels or either one of the two punishments.

Article 34:

Any person who organizes and directs a group of criminals or who finances such group of criminals in order to commit one or many offenses as stated in the [articles from 31 to 33](#) and the [article 39](#), shall be punished to life imprisonment and with a fine penalty in cash from 50,000,000 (fifty million) riels to 100,000,000 (a hundred million) riels.

Article 35:

Shall be subject to punishment from one (1) year to five (5) years in prison and with a fine penalty of from 5,000,000 (five million) to 10,000,000 (ten million) riels or either one of the two penalties for:
1- any person who intentionally facilitates the others to consume drugs illicitly even with charge or free of charge and which caused the latter serious danger.

Such person is primarily: a landlord, manager, director, businessman of whatever title of a hotel and renting house which has furniture facilities, places for sleeping and eating, bar lounge, restaurant, club, leisure, dancing and entertainment or any open place for the publics or for use by the publics etc..., who tolerates the consumption of drugs which cause serious dangers inside those establishments or affiliate of such establishments or places.

2- any person, who has knowledge in advance, but still issues a pleasing medical prescription for consuming drugs which resulted in serious danger.

3- any person, who knows that the medical prescription is not appropriate or which is only made to please the consumer, but still gives it to a person to buy drugs which causes serious dangers.

4- any person, who brings an inappropriate or pleasing medical prescription in order that one will provide drugs to him/her or, who attempts to make the other to supply drugs which results in serious dangers.

5- any person who without letting the consumer to know of and stealthily puts a very dangerous drugs in the foods and drinks.

Section 2 **Distribution for personal consumption**

Article 36:

Shall be punished to imprisonment from one(1) month to one (1) year and with a fine penalty of from 1,000,000 (one million) to 5,000,000 (five million) riels, or to either one of the two penalties, for any person who sold or provided very dangerous drugs to a person for personal consumption.

Section 3
Dangerous drugs
(Table III)

Article 37:

Shall be punished to imprisonment from five(5) to fifteen (15) years and with a fine penalty of from 10,000,000 (ten million) to 50,000,000 (fifty million) riels, or to either one of the two penalties, for any person who intentionally violates the provisions of the law and regulations relating to the cultivation of narcotic plants, production, fabricating, refining, preparation for manufacturing, transforming, importing, exporting, supplying, displaying, distributing, brokering, selling, delivering of whatever status, sending, donating, transmitting, transporting, purchasing, storing or consuming of dangerous drugs which cause serious danger as stated in the [Table III](#).

Section 4
Ingredients for drug manufacturing (Table IV), materials and equipment

Article 38:

Shall be punished from five (5) to ten (10) years in prison and with a fine penalty of 10,000,000.00 riels (ten million) to 50,000,000.00 (fifty million) or either of the two penalties, for any person who intentionally produces, imports and exports, transports, provides, sells, distributes, delivers despite of in what capacity, sends, dispatches, buys or preserves drug constituent substances, equipment and materials or for the purpose of planting, producing, or illegally manufacturing drugs which cause serious dangers or endangering drugs or with clear knowledge that such substances, equipment and materials are used for this purpose.

Section 5
Laundering of money generated from illicit trafficking of drugs

Article 39:

Shall be punished 10 (ten) to 20 (twenty) years imprisonment and with a fine penalty of 10,000,000 (ten million) riels to 50,000,000 (fifty million) riels or either one of the two penalties, for :

- 1- Any person who intentionally transferred resources or properties acquired through the commission of offenses as stipulated in [articles 31 through 38](#) of this Law, for the purpose of concealing or diverting the illegal original source of such resources or properties or in order to help the offender to get away from punishments as a result of his/her own act.
- 2- Any person who helps concealing or diverting the original source, place, management, movement or real ownership over the resources, properties or rights related to the resources and properties obtained from any offenses stated in the sub-paragraph 1 above.

Section 6
Purchasing, storing or consuming, with knowledge of the consequences of resources and properties which are generated from offenses

Article 40 :

Shall be subject to imprisonment from one (1) to five (5) years and a fine penalty of from 5,000,000 (five million) to 10,000,000 (ten million) riels or, to either one of the two punishment terms, for any person who purchases, stores or consumes in whatever form, of the properties and resources which he/she had knowledge that they are obtained from the commission even directly or indirectly, of the offenses of the [articles from 31 to 39](#) of this law.

CHAPTER XI
COMMON PROVISIONS FOR OFFENSES

Section 1
Incitement for commission of offenses and drug abuses

Article: 41:

Shall be punished for this above offence, for any person who has incited through whatever means, even directly or indirectly, to commit any offence as stated in the [articles from 31 to 40](#) of this law, even though if such incitement is successful or not.

Shall be subject to punishment from one(1) to five (5) years imprisonment and with a fine penalty from 5,000,000 (five million) to 10,000,000 (ten million) riels or, to either one of the 2 punishments, for any person who has incited, by whatever means, even directly or indirectly to illicitly consume of drugs which cause serious dangers or of substances which have the same effect as these drugs.

Shall be subject to punishment from one (1) month to one (1) year and plus a fine penalty from 1,000,000 (one million) to 5,000,000 (five million) riels, in case of incitement to consume illicitly of drugs which cause dangers or of substances which have the same effects.

Section 2

Attempt of commission of offenses in conspiracy or Agreement

Article: 42:

The attempt of commission of offenses as stated in the [Articles 31 to 40](#) of this law, shall be punished the same term as which of a successful commission of such offenses.

Any conspiracy or joint agreement for commission of any offence above, shall be punished the same term as which of the case of successful crime.

Section 3

Conspirator

Article: 43:

A conspirator, who with knowledge of the causes and effects, but who still provides means, helps supporting, provides assistance in whatever way or gives advice (to someone) to commit any offence, shall be punished the same term as which of the principal of such offence.

Section 4

Financial Operation

Article: 44:

Financial operations which are done intentionally and which are concerning with the offenses as stated in [articles 31 to 38](#) of this law, shall be subject to the same punishment term as which of the commission of such offence itself.

Section 5

Extra Provisions

Article: 45:

Those punishment terms as provided for in the [articles from 31 to 40](#) of this law, shall be also applied even if the acts which are elements of offenses are committed in different countries.

Article: 46:

Legal entities shall be criminally liable for the offenses as provided for in this law. The court may pronounce a sentence for one or many punishments as hereunder :

- 1- a fine penalty of maximum amount equal to 5 times the maximum punishment term as provided for in this law.
- 2- Dissolution of a legal entity when such entity was established for the purpose of diverting its objective to commit offenses which are subjected to imprisonment of above 5 years.
- 3- Prohibition from performing any profession or social activity either directly or indirectly, forever or for a period of not more than 5 years.
- 4- Placed under the court supervision for a period of not more than five years.
- 5- Closure for definitively or for a period of not more than 5 years, those establishments or establishments of enterprises which are used for the purpose of committing offenses.
- 6- Forbidden from joining in the public bidding for definitively or for a period of not longer than 5 years.
- 7- Forbidden from making advertisements for the publics to come with their money to open their saving accounts, forever or for a period of not more than 5 years.
- 8- Prohibition from issuing checks apart from those checks for cash box, or from certifying checks or using order of payment, for a period of not over 5 years.

9- Confiscation in accordance with the provisions of the [Articles from 50 to 59](#).

10- Posting decisions of the courts or publicizing these decisions through newspapers or TV,
The 1st punishment term above shall not be applied for an institution, which represents the personnel.
The 1st and 3rd punishment terms above shall not be applied for public legal entities which their responsibility may concern.

CHAPTER XII **GROUND FOR AGGRAVATION OF PUNISHMENT**

Article: 47:

The maximum punishment terms as specified in [articles 31 to 40](#) of this law, shall be increased in double, if :

- 1- the principal of the offense is a member of an organized group/click.
- 2- the principal of the offense has involved in other illegal activities which the existing drug offense that he/she committed, has facilitated them.
- 3- the principal of the offense has used violence or weapon.
- 4- the principle of the offense is performing in a public function and if the offense is committed during the accomplishment of such function.
- 5- the offense is committed by a health professional or person who is in charge of duty of combating against the illicit drug abuse or trafficking.
- 6- when there is a delivery of drugs or request to use them or facilitation to a minor or mentally insane person or person under medical detoxification treatment, for the abuse of drugs.
- 7- When during the commission of the offence, there is involvement of a minor or mentally insane person.
- 8- when drugs which have been delivered caused death or serious danger to health of one or many persons.
- 9- when the offense was committed in a penitentiary, military or educational establishment, hospital or clinic, social service center or other places where pupils and students are conducting their educational or sporting activities or social action, or if the offense is committed in the nearby area adjacent to the establishments and those places.
- 10- the principal of the offense had added in the drug of other substances that aggravated the extent of the danger.
- 11- the principal of an offense is in a state of recidivism (repetition of offenses), the sentences that were pronounced so far by the courts of other foreign countries, shall also be included for considering such recidivism.

CHAPTER XIII **ACQUITTAL, ATTENUATION OF PUNISHMENT FOR REPENTANT**

Section 1

Acquittal/Remission from punishment

Article: 48:

Any person who are culpable for joining in a group or for having agreement with such group to commit any offense as specified in [articles from 31 to 40](#) of this law, may be acquitted/remitted from punishment if such culprits had reported to the administrative or court authority before the offense is taking place by such above conspiracy with the group or by such agreement, in order that the latter could have sufficient time to prevent the successful achievement of such offence, or if such culprits had reported of their knowledge of other persons involved, in order to prevent the successful achievement of such offence and to investigate or monitor the unlawful activities of such group.

Section 2

Attenuation of punishment

Article: 49:

Apart from those cases as stated in this above article, the maximum punishment terms as specified in the [articles from 31 to 40](#) of this law may be reduced to half, for any principal of the offense or accomplice

who had reported for enabling to identify other culprits, before he/she is prosecuted or, who had help facilitating for the arrest of culprits after he /she was prosecuted.

Besides, such person shall also be exempted from a fine penalty and sub-punishment as well as from other additional optional penalties.

CHAPTER XIV **PUNISHMENTS AND ACCESSORY OR COMPLEMENTARY MEASURES**

Section 1

Confiscation, Measures for temporary seizure to guarantee the confiscation

Article: 50:

In case of prosecution is to be made, measures for seizure of properties, objects of the accused person(s) or which obtained from offenses or which are suspected to have been used or which are going to be used for the commission of offenses, shall be carried out in compliance with the conditions as determined in the law.

Section 2

Obligatory confiscation

Article: 51:

The court which made decision of weather to punish or release or acquit from charges for any of the offenses as stated in the [articles from 31 to 38](#) and the [article 98](#), shall order to confiscate the seized drugs which have still not been destroyed or not been send to any authorized establishment or to any authorized person to take care of them.

If no public action was filed so far, the confiscation as stated in above paragraph shall be decided by the chief judge of the court following the prosecutor's conclusion.

Article: 52:

In case of pronouncing a sentence for any of the offenses as provided for in the [articles from 31 to 39](#) and the [article 98](#), the court which passed such judgement, shall order for the confiscation of the equipment, materials, substances used for the production of drugs and other objects which have been used or which are intending to use for the commission of offenses.

In case of punishment for any of the offenses as stated in [article 39](#), the court which passed the judgement, shall order for the confiscation of all the resources or properties that are subject of such offense and all the incomes and other benefits which are the outcomes of those resources or properties.

Article: 53:

In case of pronouncing a sentence for any of the offenses as stated in [articles 31 through 38](#) of this law, the court that passes the judgement, shall order for the confiscation of the resources and properties of all types which are obtained from the offenses and which had become heritage of the offender so far for five years before the punishment date, except only when upon such person has proved concrete evidence that those resources or properties were not obtained either directly or indirectly from the offence.

Shall be considered as obtained from the offenses, those moveable and immovable properties, which are the outcomes obtained through the transformation or investment for benefit from the offenses.

Confiscation of resources or properties gives full rights to lawful confiscation of the incomes or other benefits generated from those resources or properties.

If the outcomes from the offenses are mingled with the properties which are obtained lawfully, the confiscation of such properties may be done only within the amount of value of such outcome corresponding to its actual rate which is mingled in such lawful properties and which had been estimated by the court.

In the decision of confiscation, shall mention precisely of the properties which are to be confiscated, to make it easy to identify and discover them.

Article: 54:

In case of punishment for any of the offenses as provided for in the [Article 34](#), the Court shall order for confiscation of movable and immovable properties of any criminal organization which it inspected them directly and which have been used.

Shall be considered as a criminal organization, a group of dishonest persons which is established in a purpose and objective to commit once and again, directly or under a form of lawful activity, of the offenses which are stated in the [articles 31 through 40](#) of this law or other criminal activities.

Section 3

Optional confiscation

Article: 55:

In case of punishment for any of the offenses as provided for in the [sub-para.1 of the Article 35](#) of this law, the Court may issue an order for the confiscation of the instruments, materials and movable properties which are existing on site of the crime scene.

Article 56:

Section 4

Exercise of Confiscation

Article 56:

The sales of confiscated properties shall be carried out by the Ministry of Finance and Economy, in conformity with the formality for the sales of state's properties.

Properties obtained by the State from confiscation, shall maintain their same value for settling the payment of lawful debts incurred since before the confiscation by the court or before those properties are delivered to someone to take care of or before other measures for taking care of those properties are carried out.

Appropriate measures to insure the application of the provision of this Article, shall be determined by Sub-decree.

Article: 57:

All funds obtained from confiscation and money from the sales or the rest of money after settling all debts, shall be deposited in a National Fund Cash-box for fighting against drugs which is under the authority of the National Anti-drug Authority.

This National Authority manages to provide the remaining money in the cash-box to those State's organizations or to private associations which were guaranteed that they have their precise specialties in fighting against abuses of drugs or illicit trafficking of drugs or psychotropic substances.

Conditions for the organization and functioning of the above National Fund shall be determined by Sub-decree.

Section 5

Nullification of acts which intended to create obstacles for the process of confiscation

Article: 58:

Shall be considered as void, all those letters/messages which are made either with payment of fees or with no fees, letters of testament (Wills) or messages made between living persons, even directly or through a third person or messenger indirectly and which have objective to divert properties, in order to prevent them from confiscation measures. Except if there is contradictory evidence, all acts of management or administration of properties shall be considered as those which are carried out intended to divert the properties (to prevent the confiscation), if those acts had been performed from the time of the arrest or upon charges are made against the concerned owners of properties or against the persons from whom the properties are actually received by the owners, for commission any of the offenses as stated in the [Articles 31 through 40](#).

The civil court has competent to make a decision for nullification of those above letters/messages. If the court decides to nullify a sale contract, the money paid for such sale cost is to be returned to the buyer, if upon there is evidence which proves that such buyer had already paid for such sale cost.

Section 6

Suppression of Obstacles to Confiscation

Article: 59:

Any person who has knowledge of the facts and who facilitated or attempted to facilitate to steal back the equipment, materials, substances for drugs manufacturing or other objects, resources and properties that were ordered to be confiscated according to provisions of the [Articles 51 through 54](#), shall be punished to

imprisonment from 1 years to 5 years and with a fine penalty in cash of from 5 (five million) riels to 10,000,000 (ten million) riels or to either one of the two punishments, without yet taking into account of due punishment for the conspiracy in the offence as provided for in the [Articles 31 through 40](#) of this law, if any.

CHAPTER XV **UNLIMITED PUNISHMENTS**

Article 60:

1- In those cases as provided for in chapters ten, eleven and twelve, and in the [Article 93, 97 and 98](#), the Court may additionally decide:

- a)** to forbid a foreigner from entering into or from living on the territory of Cambodia for forever or for a period of 1 year to 5 years.
- b)** to forbid from staying on the territory of Cambodia for a period of 1 year to 5 years.
- c)** to forfeit the citizenship rights for a period 1 year to 5 years. But this length of time shall not exceed the length of the punishment term.
- d)** to ban from leaving of the territory of Cambodia and to take away the passports for 1 year to 5 years.
- e)** to ban from driving any kind of vehicles and take away the driving license for a period from 1 month up to 3 years.
- f)** to ban from conducting a profession which he/she committed the offence while during the exercise of such profession, forever or for 1 year to 5 years.

2- In those cases that are provided for in the [article 31 to 40](#) of this law, the court may make a decision:

- a)** to close down for a period of 1 to 5 years, those places where crime was committed by the businessmen or by conspiracy of the businessmen such as hotel, renting house with movable properties available, place for staying and eating, drinking shop , restaurant, recreation club, dancing club and entertainment places or branch of those locations or any place opened for public or for use by public.
- b)** to remove the business authorization for a period of from 1 year to 5 years.

Article 61:

Any person who violates those prohibitions as provided for in article 60 or who violates the closure of the establishments as stated in the paragraph 2 of the article 60, shall be punished from 1 year to 5 years in prison and with a fine penalty of from 5,000,000 (five million) riels to 10,000,000 (ten million) riels or to either one of the two penalties without yet taking into account of those provisions of heavier punishments, if any.

CHAPTER XVI **COMPLEMENTARY MEASURES**

Article 62:

If an addicted person is convicted for any of the offenses as provided for in the [articles 31 to 41](#) of this law, the court may, in addition to the punishment, order to take a measure for medical treatment as provided for in the [Section 2 of the Chapter 24](#).

CHAPTER XVII **SPECIAL PROVISIONS OF PROCEDURE**

Section 1 **Competence**

Article 63:

Courts of the Kingdom of Cambodia have competence to make decisions on offenses:

- when an offense has been committed on the territory of the Kingdom of Cambodia or when an act which is an element of the offence was committed on the territory of the Kingdom of Cambodia.
- when the offense has been committed by a Khmer citizen or by any person who is permanently living on the territory of the Kingdom of Cambodia.
- when the principal of the offence is staying on the territory of the Kingdom of Cambodia and that principal was yet not been sent to the original country.

- when the offender has committed an offence on board of an airplane which had been registered on the territory of the Kingdom of Cambodia or on board of a ship which raised up with the flag of the Kingdom of Cambodia.
- Except when upon there is an agreement and settlement between the 2 States, when an offense/crime is committed on board of a ship which the State which is owner of the flag has permitted to the Kingdom of Cambodia to order to stop for a check and control and to take appropriate measures for the ship and people on board and cargo ship's, in case when upon finding an evidence that there is involvement in the illicit trafficking of drugs.

Section 2

Term limitation

Article 64:

The term limitation of the offenses as provided for in the [articles from 31 to 34](#) shall be expired after a period 10 years.

The term limitation of the punishment sentenced for any of the above offenses shall be expired after 20 years, from the date the final judgement or appeal judgement is made.

The term limitation of other offenses shall comply with ordinary law.

Section 3

Seizure

Article 65:

In case of there is any of the offenses as provided for in the [chapters 10](#) and [11](#), the drugs and substances which are used to produce hard drug shall be immediately seized. Things installed and used, materials, equipment and other movable properties which are suspected to have been used or for using in the commission of all these offenses, money and value of movable properties which are suspected that are generated directly or indirectly from the offenses and all documents which are likely to help to prove evidence of the crimes and guilt of the principal of the offence, shall immediately be seized and cannot be raised as a pretext that they are documents of confidentiality of profession .

CHAPTER XVIII

PROVISIONS TO FACILITATE THE INVESTIGATION

Section 1

Arrest

Article 66:

In the cases as provided for in the [articles from 31 to 34](#) and [39](#) of this law, the longest period for the arrest is 48 hours.

From the beginning of the arrest, if the arrested person has requested to the prosecutor or investigating judge, and if upon such file case has already reached to him /her, the prosecutor and investigating judge shall order a doctor to go down to examine the arrested person every 24 hours. The Doctor shall issue a medical certification stated of reason after each examination. Such medical certification shall be included in the file case. Other examinations shall be done if there is a request from the arrested person.

In the medical certificate certifies especially that whether the arrested person is a drug-addicted person or not ? And whether the health condition of such arrested person can allow him/her to be detained in the detention center or not?

The cost of the medical exam must be the burden of such arrested person. If the arrested person is poor, the cost of such medical exam shall then be born by the State.

Section 2

Search

Article 67:

The going down for carrying an inspection, search and seizure at the places which are producing, transforming, storing illegally of seriously dangerous drugs and dangerous drugs or substances for drug manufacturing, equipment and materials for the cultivation of narcotic plants, illicit production those

drugs and at the collective places where seriously dangerous drugs are consumed by many people, may be done at any time, at night and in day time.

An inspection, search and seizure may be carried out at night time only for the cases of investigating and taking records of the offenses/crimes as provided for in [articles 31 to 35](#) and the [article 38](#) of this law. All those minutes that are made for other objectives apart from these above cases, shall be considered as void.

For carrying an inspection or search as above it is required to have a written permission from the prosecutor or from the investigating judge when upon the case has already reached such prosecutor or investigating judge. .

Section 3 **Inspection of postal service**

Article 68:

Persons who have legal competencies in the inspection and taking records or in the suppression of offenses/crimes as provided for in the [articles from 31 to 46](#) of this law, shall be authorized to follow up on the postal services at anytime in the day and night, in order to search for the illegal sending of drugs and substances for producing drugs.

When upon there is enough evidence to assume that there is such kind of illegal sending, the prosecutor or investigating judge, if upon such case has already reached him/ her, may require the post office to open such sending packages.

Section 4 **Searching**

Article 69:

Persons who have competence in the inspection or suppression the offenses/crimes as provided for in [articles from 31 to 46](#) of this law, shall be allowed to carry out searches on physical body of individuals, vehicles, goods, packages, luggage, when there is an indication which may bring forth to a suspicion that there is commission of crime/offenses as provided for in the [articles 31, 32 33 38](#) and [98](#). The body search shall be conducted by a person who has the same sex according to the regulations in vigor.

Section 5 **Investigation based on searching technique of medicine**

Article 70:

When there is enough indication to assume that person who crosses the border, has brought hard drugs with him/her by concealing them in his/her body, the public servants who have competence in taking records of the crimes/offenses may place such person under the examination by a doctor or by a medical technical physician who will primarily use a searching technique of medicine, after there is a written agreement from the concerned person. In case of there is no agreement from the concerned person, such public servant shall sue for authorization from prosecutor. This suit can be dispatched by all means. The prosecutor who received the suit can authorize the examination through medical process. The Prosecutor shall appoint a doctor or medical technical physician to proceed the examination immediately. The medical examination result given by the doctor and the opinion of those who are involving in the process of the medical examination, shall be written down in a minutes which must be sent to the Prosecutor. Any person who refuses to be examined by the doctor following the order of the prosecutor, shall be sentenced to 1 month to 1 year in prison and with a fine penalty of from 1,000,000 (one million) riels to 5,000,000 (five million) riels or to either one of the two punishments.

Section 6 **Delivery under supervision of currencies and instruments which have affects on currencies**

Article 71:

The passage across the territory of the Kingdom of Cambodia of narcotic plants or substances, currencies and instruments which have affects on currencies as provided for under this law which are dispatched/transferred illegally or which are suspected that are illegal and which a competent authority has known of and follows up to control and take records of the offenses as stated in the articles [31, 32, 33,](#)

[37 and 38](#), may be authorized in order to follow up and find out the identification of those persons who are involving in such offenses, for prosecuting them .

May also be allowed to do for the same objective as above, the incitement by a public servant of the competent authority of control and take record of offenses/crimes, to sell illegally of narcotic plants, substances, even directly or through any person who follows instruction of such public servant.

The incitement to buy illegally of narcotic plants and substances by a public servant of the competent authority of control and taking records of offenses/crimes as provided for in this law, shall be prohibited. Otherwise such civil servant shall be charged with " incitement" as provided for in the [article 41](#) and as to the "investigation", shall be considered as null and void, even if such public servant has committed it by himself/ herself or through any person.

Article 72:

A decision to authorize the use of method of delivery under supervision or a method of illegal sale, shall be made by an authority which is appointed through a Proclamation (Prakas) of the Minister of Justice or of a delegate assigned by Minister of Justice for each case. And if it is to be done, shall base on the agreement with other countries, which have interest in this matter. Decision to use of method of delivery under supervision shall be notified immediately to the competent court of the place which is presumed as a place of sending in and out of the territory of the Kingdom of Cambodia in a one hand, and in the other hand, shall also be notified immediately to the competent court of the place which is presumed as a place of delivery or place of sending out.

Decision to authorize the use of method of incitement for illegal sale, shall immediately be notified to the competent court of the place which is presumed as a selling place.

Article 73:

The Authority that is appointed by the Proclamation (Prakas) of Minister of Justice or his/her delegate, directs and supervises the operation on the territory of the Kingdom of Cambodia and orders to intervene when such authority deemed appropriate. If there is agreement from other countries which have related interests or eventually basing on financial agreement, such authority or its delegate may decide to lay ambush to intercept for seizure of objects which are dispatching/transferring illegally and may allow to go on dispatching/transferring them ahead as they are or after seizure of the currencies, instruments which have affects to currency, plants or substances and, eventually, by substituting them by other products.

Section 7
Observation

Article 74:

The prosecutor or investigating judge, when after the case has reached him/her, may :

- 1- Place under control of the bank accounts and other accounts which are considered as bank accounts,
- 2- Place under control and listening of telephone lines,
- 3- Inspect the computer systems,
- 4- Require to provide all authentic or private papers and all financial and commercial banking documents.

When there is enough evidence to prove that these accounts, telephone lines or computers systems are used or may be used by those persons who are suspected of committing or who have committed any of the offenses as stated in the [chapter X](#) and [XI](#), or if those papers or documents are related or may be related to anyone of the above offenses.

The above measures cannot be considered as violation of confidentiality of profession.

The placing of telephone lines under control and listening may be allowed only for a period of less than two months. Any extension of this measure, can be permitted only by the investigating judge who is holding this case.

Article 75:

Without yet taking into account of those punishments due for the offenses as stated in the [chapter X](#) and [XI](#), shall be subject to punishment from one (1) to five (5) years in prison and with a fine penalty from 5,000,000 (five million) riels to 10,000,000 (ten million) riels or, to either one of the 2 punishments, for:

- 1- Any person who has known through the exercise of his/her business of any measure as stated in the article 74 above and who has voluntarily told it to the persons involved.

2- Any person who provides to the court or the competent official of the government, with letters or documents as stated in sub-paragraph 4 of the article 74 above whilst upon he/she has known that these documents had been partly removed or false documents, but he/she had not reported it for the knowledge of the authority.

Section 8

Ban from taking confidentiality of the Bank as pretext for refusing to provide evidence and statements of witnesses

Article 76:

Confidentiality of the bank may not be taken as pretext for refusing to provide evidence or statement of witnesses of the facts which may be susceptible for any offense as stated in the [chapters X](#) and [XI](#).

CHAPTER XIX

TEMPORARY CLOSURE

Article 77:

In case of prosecution for any of the offenses as stated in the [articles 31, 32, 33, 34, 35](#) (paragraphs 1 and 5), [37 and 38](#), the court or investigating judge may order to close down for temporary for a period of not exceeding six (6) months of those hotels, furnished rented houses, boarding houses, drinking shops, restaurants, recreation clubs, dancing, entertainment places or their annexes or any place which is opened for the publics or for use by the publics or where the offenses are committed by businessmen or by their conspiracy.

This closure may be extended under the same form, for a period not exceeding six (6) months.

All decisions as provided for in the above paragraph shall be implemented immediately even if there is an appeal complaint.

CHAPTER XX

ON THE PARTICIPATION INTO THE PROCEDURAL CASES

Article 78:

Those persons who are accused of any of the offenses as stated in [chapters X](#) and [XI](#) and who are staying on the territory of the Kingdom of Cambodia, shall be compelled by all lawful means to participate in the criminal procedure which concerned with them.

CHAPTER XXI

PROVISIONS ON IMPLEMENTATION OF THE SENTENCE

Section 1

Ban from staying on the territory of the Kingdom of Cambodia

Article 79:

The decision which is made to ban any alien from staying on the territory of the Kingdom of Cambodia in compliance with [sub-paragraph a, paragraph 1, article 60](#), will lead to an expulsion of the convicted person from the country, after the latter has served the sentence in the prison.

In case of banning from staying for definitively on the territory of the Kingdom of Cambodia, this measure cannot be cancelled in any later date.

Section 2

Physical forced imprisonment

Article 80:

The period for the physical forced imprisonment shall be determined for 2 years, if upon the fine and forfeit penalty has been decided for any of the offenses as stated in the [articles from 31 to 40](#), or for any offenses related to the customs which amount exceeds 10,000,000 (ten millions) riels.

Section 3

Accumulation of punishment terms

Article 81:

If, under the same procedure, an accused person is found guilty for many offenses/crimes in which includes one of the offenses as stated in the [articles from 31 to 40](#), such person shall undertake to serve all the punishments for all the above offenses which have been sentenced, and his/her imprisonment terms

shall be accumulated to an extent that these terms should not exceed the maximum of the highest punishment term.

If, in separate procedures, an accused person is sentenced for many offenses, in which there is one of the offenses which is as stated as above, and, if the facts which leads to any punishment take place before another punishment become definitive, such a person shall undertake to serve all punishments for all the offenses as decided, and his/her imprisonment terms shall be accumulated to an extent that they should not exceed the maximum the highest punishment term.

CHAPTER XXII **PROVISIONS ON KEEPING OR DESTRUCTION OF THE SEIZED PLANTS AND** **SUBSTANCES**

Section 1

Fabrication and conditions to retain the seals

Article 82:

In all cases as stated in [Chapters X](#) and [XI](#) and [Articles 98 and 99](#), the stupefients, psychotropic substances and those substances that are for producing drugs, shall be seized and put in packages, boxes or cases and sealed from the time they are found.

Sealed packages , boxes or cases, must be well protected in order to prevent the plants and substances inside them from being stolen.

Each sealed package, box or case shall be marked with a serial number on it and on the envelop of such package or on the sealed slip with mention of the type, weight of the plants and substances in it and the number of packages in which there are plants and substances. A minutes shall be made up immediately specifying the days, months, years (date), places and time of the finding by indicating the plants and substances which are seized, the weight and weighing method which is used and also the analyzing test and its results, if any. Such minutes shall mention also of the number of the sealed packages and other things as stated above.

In the minutes shall also mention of the places where sealed packages, boxes or cases are brought and kept and other useful remarks.

Minutes and notes written on each package, box or case, shall be signed by those persons who involved in preparing them.

Sealed packages, boxes or cases, shall be/ preserved in appropriate conditions, in order to prevent them from being stolen or fraud. When upon moving such sealed packages or cases to somewhere else any time later, shall make up a minutes thereof, by indicating the location where they are brought to and the subject of such movement.

In this minutes shall record whether the seal and all the packages are still remaining in good condition or not, and whether their numbers are the same as what stated in the minutes of seizure or there is any loss or damage to the seal or any change from its original state .

Section 2

Taking out for samples

Article 83:

Court authorities have competence to draw out samples immediately from at least 3 packages or at necessary quantity , in front of the persons involved with the offense or, if no such persons are present, in front of two (2) witnesses, in order to be as evidence and as specimen of the seized plants or substances. Each sample shall be put in a sealed package. On the package or on the attached slip of the seal, shall be marked the types and weights of the objects that are inside it. When after taking out the samples, the original package shall be closed and re-sealed, then shall made up a minutes thereof by stating of the number of samples which have been drawn out, type and weight of the plants or substances contained in each package as well as the change of the seal from its original state.

On the minutes and all the inscriptions on each sample and on the re-sealed slip, shall be signed by all the persons who are present during the operation of drawing out the samples.

Section 3

Expertise

Article 84:

An expertise shall be carried out as soon as possible after the seizure by experts recognized by the Ministry of Justice, in order to identify the types, composition and proportion of the active materials of the plants and substances which are seized, in order to avoid damages or decreases of materials and chemical elements of these objects. The experts shall indicate in their reports of the number of samples which have been delivered, the type of plants and substances existed in each sample, number of samples which have been already used for the expertise, and if any, shall also state of the number of samples left which are collected back after the expertise, and any change on those samples.

Section 4**Delivery and destruction of the seized substances****Article 85:**

Except only in case when it is absolutely indispensable to preserve the seized plants or substances for the court proceedings, the court authorities, after seizure, or taking out the samples, shall give orders to manage to implement immediately the followings :

- delivery of the usable medicine to the Ministry of Health ;
- delivery of the plants and substances that are usable in the pharmaceutical industry or for other purposes to the Ministry of Health;
- complete destruction of all plants and other substances, shall be carried out immediately and with most appropriate means, in front of a commission which will be established by a Prakas of the Ministry of Justice.

In the case when it is absolutely necessary to preserve the plants and substances for the court proceedings, their delivery or destruction shall be carried out as soon as possible, after a decision for confiscation becomes final.

When delivering or destroying, it is to inspect and take record in a minutes by indicating precisely of the seals which are delivered or destroyed.

The slips of the seals or inscriptions on the envelops of the packages, must be enclosed as annexes to the minutes which shall be signed by all the persons who are participating or who are present in the above delivery or destruction process.

CHAPTER XXIII**PROVIDING MINORS WITH POISONOUS CHEMICALS TO INHALE****Article 86:**

Anyone who is clearly aware of the affects, but still provides minors to inhale any of the poisonous chemicals which are listed in the Prakas (Proclamation) of the Ministry of Health, shall be subject to punishment from one (1) year to five (5) years in prison and with a fine penalty of from 5,000,000 (five millions) to 10,000,000 (ten millions) riels.

CHAPTER XXIV**MEASURES AGAINST THE ABUSE OF DRUGS****Section One****General Provisions****Article 87:**

An abuse of drugs and illegal use/consumption of drugs means the use/consumption of prohibited drugs or also of other drugs which are under control on the territory of the Kingdom of Cambodia, out of medical prescription .

Drug addicts are persons who are subordinated themselves physically and mentally to drugs, it means that they cannot abstain drugs that are under control on the territory of the Kingdom of Cambodia.

The treatment for detoxification of poisonous substances, is a treatment to eliminate the physical subordination to drugs.

Article 88:

The abuse of prohibited drugs and the use/consumption out of medical prescription of any other drugs that are under control, shall be prohibited on the territory of the Kingdom of Cambodia.

Section 2

Measures for treatment

Article 89:

An addict of poisonous substance who enters by himself/herself in a hospital or any specialized agency or any clinic to ask for treatment, such hospital, agency or clinic shall undertake to keep confidentiality, if so requested by the concerned person. Expenses for the medical treatment in the hospital or specialized agency or state clinic shall be entirely the burden of the State.

Any person who has received medical treatment under condition as stated in the paragraph 1 above, may request to the hospital or body which provides the treatment to issue him/her a certificate which mentions the name, date, duration and subject of the treatment.

Article 90:

Prosecution shall not be made against any person who has committed offenses as stated in the [article 98, para.2](#) and who had appeared by himself/herself for the treatment, before being prosecuted.

Article 91:

The prosecutor may summon those persons who committed offenses as provided for in [article 98, para.2](#) to appear before the court within a period of not less than one month and not exceeds six months, and may make out an order to these concerned persons to show up within eight days in any detoxifying establishment as stated in [article 89](#) for receiving proper treatment in accordance with their respective health conditions. The prosecutor shall notify to the relevant detoxifying establishment of such decision. If such person does not show up in the detoxicating establishment or evades from the treatment prescribed by such establishment, the court shall apply the provision of the [article 94](#) against such person. If such person has complied with the order and undertook the treatment for all long up till the end, or if such person has continued with the treatment regularly, the court may declare the omission of punishment.

Article 92:

A person who is charged with an offense as stated in [article 98](#), if upon examination it is found out that such person is addicted of poisonous substance, the court may decide to compel him/her to undertake an appropriate treatment measure in accordance with his/her health condition, during the implementation of the procedure.

If that person has undertook the treatment up till the end, the court may decide to only issue a warning.

Article 93:

Addicts of poisonous substances who are punished for offenses as stated in [article 98, paragraph 2](#), may voluntarily request for medical treatment in accordance with their respective health conditions, after the court pronounced a sentence. In this case, the execution of the punishment shall be suspended temporarily. Those concerned persons who have undertaken the treatment until the end, shall be considered as having already served the punishment.

The punishment shall be re-applied immediately if the convicted person refuses to undertake the treatment or refuses to undertake the treatment until the end.

Article 94:

Any person who evades from the treatment as stated in [articles 91](#), and articles 95 to 97, shall be punished from six (6) days to one (1) month in prison and with a fine penalty from 100,000 (a hundred thousand) riels to 1,000,000 (one million) riels or either one of the 2 punishments.

Article 95:

The civil court which has received a complaint filed by the spouse or parents or relatives of the concerned person, or from the prosecutor who sued to the civil court that the concerned person who is an addict of poisonous substances is known as dangerous for others, may force such concerned person to stay in a hospital or any specialized organization as stated in [article 89](#) for treatment.

Article 96:

If an addict of poisonous substance commits an offense which is not serious enough to be sentenced to prison and if such person has never been sentenced to imprisonment with or without suspension of punishment during the past 3 years, the court may then decide not to punish him/her, but must compel such person to go for a treatment.

Article 97:

An addict of poisonous substances who was sentenced by the court to more than six months in prison, but with no suspension of punishment for other offenses, the court may compel them to undertake a measure of medical treatment.

Section 3 Suppressive Measures

Article 98 :

Notwithstanding the provisions of the [articles 31 to 37](#), any person who violates the law by storing, purchasing or planting intentionally for his/her personal consumption of narcotic plants or substances which are considered as addicted drugs or psychotropic substances, shall be punished from six (6) days to one (1) month in prison and with a fine penalty from 100,000 (one hundred thousand) riels to 1,000,000 (one million) riels, or to either one of the two penalties.

Any person who uses/consume illegally of narcotic plants or substances considered as addicted drugs or psychotropic substances, shall be subjected to imprisonment from six (6) days to one (1) month and with a fine penalty, from 100,000 (one hundred thousand) to 1,000,000 (one million) riels, or to either one of the two penalties.

The above punishment terms shall be doubled, if the offender is a person who exercises profession in the field of health management and health care.

However, if in a circumstance when the grounds for any of the offenses as stated above has been committed but which involved only a very small quantity and was consumed as usual habit, the Prosecutor may acquit such offender from charges. If such case has reached the court, the chief judge of the court may decide to acquit such principal of the offence from punishment or to give only a warning to such person. Shall be considered as usual habitual consumption, the consumption that does not cause addiction and those who consume are villagers who used to consume since long time before following what practiced by their ancestors.

Article 99:

Any person who is driving vehicle on land traffic, waterways or airways, when he/she is being under influence of a drug which has narcotic/addicted substance that he/she had consumed it illicitly and which causes danger, even if there is no appearance from the outside which shown of his/her addiction, shall be subject to punishment from six (6) days to one (1) month in prison and with a fine penalty from 100,000 (one hundred thousand) to 1,000,000 (one million) riels, or to either one of the two punishments.

Any person who refuses to be tested for drug addict, shall be subject to the same punishment as stated in the above paragraph.

In case when causing injuries or serious dangers to the lives, he/she shall be subject to punishment in triple the specified maximum punishment terms.

CHAPTER XXV INTERNATIONAL CO-OPERATION

Section 1

Common Provisions on Extradition and Mutual Assistance in judicial field.

Article 100 :

In case there is no Extradition Treaty and Mutual Assistance in judicial field, the offenses as stated in the [Chapters X and XI](#), it is to comply with the provisions of [Chapter XXV](#) which can also be applicable on matters which has not provided by the Treaty.

Article 101:

The Royal Government of the Kingdom of Cambodia, will not consider the offenses stated in the above article either as fiscal or political offenses or as offenses based on political grounds, to refuse to extradite

of the principals of those offenses or to refuse to mutually assist in the investigation, prosecution of criminal charges and in the court procedure for these above offenses.

Section 2

Extradition

Article 102:

Conditions, procedure and results of the extradition with regards to the offenses which are especially stated in the [Chapters X](#) and [XI](#), shall be determined in the provisions of [Chapter XXV](#) of this Law.

Article 103:

Extradition may be refused by the Royal Government of the Kingdom of Cambodia, if the court authority of Cambodia thinks that this measure can facilitate to the prosecution or inflict criminal punishment against any person based on the grounds of race, religion, nationality or his/her political opinion.

Article 104:

Except when there is a mutual agreement or negotiations with the requesting State, the Royal Government of Cambodia refers the case to its competent court authorities to proceed a hearing on the public action, if the Royal Government refuses to extradite for the reasons of:

- the offense was committed on the territory of the Kingdom of Cambodia or on board of a ship flying a Cambodian flag or on board of an airplane bearing identification number in conformity with the Cambodian laws in force, at the time when the offense takes place ,
- the offense is committed by a Khmer citizen, or
- the person who is presumed to have committed such offense is on the territory of the Kingdom of Cambodia.

Article 105:

If the Royal Government refuses to extradite as what requested in order to implement a punishment as what was sentenced for any of the offenses as stated in [Chapter X](#) and [XI](#) for the reason that the convicted person is a Khmer citizen, and if such requesting State demands to the Royal Government of Cambodia to manage to implement itself such punishment or its remainder, the Royal Government shall then transmit such request to the Ministry of Justice in order to examine to ensure of the regularity of the complaint and of its conformity with the stipulation of the legislation of the Kingdom of Cambodia and after this to make decision according to the law. If the punishment term which had been sentenced according its type or duration, is more rigorous than what provided for in the Cambodian Law for the same case, the court of the residence or place of detention of the convicted person, following a complaint made by such convicted himself/ herself or by the prosecutor, shall substitute it with a punishment term which is more consistent with Cambodian law or shall reduce the sentenced term pronounced by the foreign court down to the maximum punishment term as stated by the Cambodian law.

Article 106:

If the circumstance requires and in urgent case, the prosecutor may order for temporary arrest a foreigner, simply after reception of an information which is sent directly to him/her by all available means of transmission, which left a written proof that the court at the requesting State has made out an order for an arrest or punishment of such concerned person for commission of any of the offenses as stated in the [Chapter X](#) and [XI](#). The prosecutor informs of such arrest to the Minister of Justice.

The person who is temporary arrested under the above condition, may be released if within a period of twenty (20) days after the arrest no official request for extradition is received by the Royal Government.

Article 107:

The Royal government of Cambodia may agree to extradite after having only seen a request for the temporary arrest, if the person to be arrested has agreed in writing in front of the prosecutor that he/she be extradited immediately to his/her country of origin.

Section 3

Mutual cooperation of the Judiciary

Article 108 :

In the cases of offenses as stated in the [Chapters X](#) and [XI](#), the court authority of the Kingdom of Cambodia may delegate power to the competent court authority of a foreign State and may also receive delegation of power from a foreign State's court authority, to :

- 1- collect evidence or statements which are given according to judicial process,
 - 2- inform of various court's documents,
 - 3- conduct a search and seizure,
 - 4- proceed an inspection of the objects and place,
 - 5- provide information and material evidence,
 - 6- issue the originals or copies with certification that it is in conformity with the original of a document and file case, including a Bank statement, accounting documents, company's file and business documents and other authentic or private paper documents,
 - 7- show or provide witnesses, experts or other persons, including the arrested person who accepted to collaborate in the investigation process or participate in the procedure,
 - 8- Transfer the criminal procedure, in case if necessary to do so, for the interest of good administration of justice,
 - 9- identify and detect the resources, properties, equipment, materials and substances , in order to collect the pieces of evidence.
 - 10- place under measures of temporary seizure of the products and properties obtained from the offense, as well as that equipment, material and substance that are used or kept for use for the commission of offenses.
 - 11- manage to implement a decision which orders for the confiscation of these products, properties, equipment, materials and substances,
 - 12- order to confiscate of those objects which mentioned above,
 - 13- notify of the prosecution in the criminal procedure,
 - 14- make an inquiry of the accused person in the criminal procedure,
- Conditions for requesting co-operation in judicial matters to foreign States or conditions for proceeding with the requests for co-operation in judicial matter from the foreign States, shall be determined by a Sub-Decree.

CHAPTER XXVI

CO-ORDINATION IN COMBATting AGAINST DRUG ABUSE AND ILLICIT TRAFFICKING OF DRUGS

Section 1

Co-ordination in combating against drug abuse

Article 109:

The National Anti-drug Authority implements the policy of the Royal Government for combating against drug abuse.

The General Secretariat of the National Authority organizes meetings of the National Authority and lays down decisions of the National Authority for application.

Composition and function of the National Anti-drug Authority, shall be determined by kret.

Section 2

Coordination in combating against illicit trafficking of drugs

Article 110:

Director of the Anti-drug Service of the Ministry of Interior collects all the information which may facilitate the detection and prevention of the illicit trafficking of drugs and coordinates all the operations inside the territory as well as in the international arena to suppress the illicit trafficking of drugs.

Composition and function of the Director of the above Service, shall be determined in a Sub-decree.

CHAPTER XXVII

FINAL PROVISIONS

Article 111 :

Any provisions which is contrary to this law shall be hereby repealed./.

This law was adopted on December 9, 1996,

ANNEX L A W ON CONTROL OF DRUGS

Lists of stupefiant, psychotropic substances and necessary substances for drug manufacture, which shall be under control.

In this annex there are :

- The following substances which have their international common names or names which are used in the international Conventions in vigor.
- **Isomère**, in all cases which may be in conformity with the prime chemical formula of those substances, except only if there is a precise exceptional case.
- **Esthers and éthers**, of those substances, in all cases which there may be.
- **Salts** of all these substances, including the **salts** of the **esthers**, **éthers** and of the **isomères**, in all cases which all these may have.
- Preparation for combining to produce those substances, except when there is exceptional case stated by the law.

TABLE I

Table IV of the 1961 Convention

- Acetorphine.
- Cannabis and resin of cannabis.
- Cetobemidone.
- Desomorphine.
- Etorphine.
- Psilocine, Psilotsin.
- Psylocybine.
- Rolicyclidine.
- STP.
- DOM.
- Tenamfetamine.
- Tenocyclidine.
- Tetrahydrocannabinol.
- PEPAP.
- TMA.

TABLE II

Table I & II of the 1961 Convention

- Acetyldihydrocodeine.
- Acetylmethadol.
- Alfentanil.
- Allylprodine.
- Alphaméprodine.
- Alphaméthadol.
- Alpha-méthylthiophentanyl.
- Alphaprodine.
- Aniléridine.
- Benzéthidine.
- Benzylmorphine.
- Bétacétylméthadol.
- Bétaméprodine.
- Bétaméthadone.
- Bétaprodine .
- Bézitramide.

- Butyrate de dioxaphétyl.
- Cétobémidone.
- Clonitazene
- Lévomoramide.
- Lévo-phénacylmorphane.
- Lévorphanol.
- Métazocine.
- Méthadone.
- Méthadone, intermediary of the [cyano-4 diméthylamino-2 diphényl-4, 4 butane].
- Méthyl-désorphine.
- Méthyl-dihydromorphine.
- Métopon.
- Moramide.
- Morphéridine.
- Morphine.
- Morphine méthobromide and other by products from morphines of pentavalent azote.
- Myrophine.
- Nicocodine.
- Nicodicodine.
- Nicomorphine.
- Noracyméthadol.
- Norcodéine.
- Norlévorphanaol.
- Norméthadone.
- Normorphine.
- Norpipanone.
- N-oxymorphine.
- Opium.
- Oxycodone.
- Oxymorphone.
- Péthidine.
- Mécloquelone.
- Métamfétamine.
- Métaqualone.
- Méthylphénidate.
- Phencyclidine.
- Phenmétrazine.
- Racémate de Métamfétamine
- Sécobarbitol.

TABLE III

Tables III of the 1971 Convention

- Amobarbital.
- Buprénorphine.
- Butalbital.
- Cathine.
- cyclobarbitol.
- Glutéthimide.
- Pentazocine.
- Pentobarbital.

Table IV of the 1971 Convention

- Allobarbitol.

- Alprazolam.
- Amfépranone.
- Barbitol.
- Banzfétamine.
- Bromazépam.
- Butobarbital.
- Camazépam.
- Chloiazéproxide.
- Clobazam.
- Clonazépam.
- Nordazépam.
- Oxazépam.
- Oxazolam.
- Pémoline.
- Phendimétrazine.
- Phénobarbital.
- Phentermine.
- Pinazépam.
- Papradol.
- Prazépam.
- Pyrovalérone.
- Secbutabarbital.
- Témazépam.
- Trizolam.
- Vinylbital.

TABLE IV

This Table has:

- The following substances have their international common names (C.D.C.I.) or names which are used in the international Conventions in force.
- The salt substances may have importance in all cases, especially sulfuric acid and chlorhydric acids.

Table I of the 1988 Convention

- Acide lysergique.
- Ephédrine.
- Ergométrine.
- Ergotamine.
- Phényl-1 propanone-2.
- Pseudo-éphédrine.

- Acide N-acétylanthranilique.