

## PPP LEGAL FRAMEWORK SNAPSHOT - CAMBODIA

### GENERAL INFORMATION

**Capital:** Phnom Penh

**Population:** 15.33 million

**GDP:** USD 16,778 million

### LEGAL AND INSTITUTIONAL FRAMEWORK

<b>PPP Law and other applicable texts</b>	<p>Law on Concessions, 2007 (LoC 2007)</p> <p>Law on Investment, 1994</p> <p>Law on the Amendment to the Law on Investment, 2003</p>
<b>Other applicable sectoral laws</b>	<p>Land Law, 2001</p>
<b>PPP Unit</b>	<p>Private Sector Development Steering Committee (PSDC) (chaired by the Ministry of Economy and Finance and the Ministry of Commerce serves as vice chair)</p>
<b>Definition (LoC 2007)</b>	<p>“Concession” means any act attributable to the state whereby a competent institution entrusts to a private third party the total or partial implementation of an Infrastructure Project for which that institution would normally be responsible and for which the third party assumes a major part of the construction and/or operating risks or receives a benefit by way of compensation from government revenue or from fees and charges collected from users or customers. (art.3 )</p>
<b>General Principles (LoC 2007)</b>	<p>The purpose of this Law is to promote and facilitate the implementation of privately financed infrastructure in the Kingdom of Cambodia in order to ensure the public interest and the fulfillment of the national economic and social objectives. (art.1)</p>
<b>Tendering and contracting process / Choice of the private partner (LoC 2007)</b>	<ul style="list-style-type: none"> <li>• The Contracting Institution shall select the Concessionaire through international or national bidding procedures or by negotiated procedure according to the circumstances. (art.11)</li> <li>• When evaluating bids for Concession Contracts, the Contracting Institution may take into account the wider social and economic development potential offered by the bidder. (art.23)</li> <li>• Further details on the process for selection of investor to be set forth in the Sub-Decree (in draft form) (art 11)</li> </ul>
<b>Project Evaluation (LoC 2007)</b>	<ul style="list-style-type: none"> <li>• All competent institutions, including ministries, institutions, State-owned legal entities, local governments which have been delegated the required institution have the power to enter into Concession Contracts. (art.4)</li> <li>• Further details on the approvals process will be set forth in the Sub-Decree (in draft form) (art 7, art 12)</li> </ul>
<b>Rights and Obligations of the public partner (LoC 2007)</b>	<ul style="list-style-type: none"> <li>• Obligation, only in exceptional circumstances, to grant a guarantee to a Concessionaire. (art.16)</li> <li>• Right to agree with lenders on the substitution of the Concessionaire by a new entity or person appointed to perform under the existing Concession Contract upon serious</li> </ul>

## Rights and Obligations of the private partner

(LoC 2007)

- breach by the Concessionaire or other events that could otherwise justify the termination of the Concession Contract.(art.18)
- Right to temporarily take over the operation of the facility for the purpose of ensuring the effective and uninterrupted delivery of the service in the event of serious failure by the concessionaire to perform its obligation (art.21)
- Obligation to assist the Concessionaire in obtaining land use right and other rights related to the project. (art.26)
- Right to survey and inspect the Concession Project activities with reasonable access to the Infrastructure Facility, design, reports and other data which are necessary to perform such survey and inspection without unnecessary interference with the process of works and provision of services of the concessionaire. (art.31)
- Obligation to establish and incorporate the legal entity that will implement the Concession project and apply to the Council for Development of Cambodia for a final registration certificate within 60 days of upon receiving the notification of awards. (art.14)
- Obligation to finance the Infrastructure Project, at its own cost and risk and without recourse to credits or guarantees made by the Contracting Institutions. (art.16)
- Right to create security interests over any of its assets, rights or interests, including those relating to the concession Project. (art.17)
- Right of the shareholders of the Concessionaire to pledge or create any security interest in their shares in the Concessionaire to secure any financing needed for the Infrastructure Project. (art.17)
- Obligation to be responsible for the design and construction of the Infrastructure Facility at its own cost and risk. (art.20)
- Obligation to operate and maintain the Infrastructure facility at its own cost and risk. (art.21)
- Obligation, if required in the Concession Contract, to provide and maintain adequate performance security for the specific phases of the Concession project. (art.22)
- Right to convert its income from the local currency into foreign currencies and to remit abroad. (art.28)
- Right to be entitled to compensation in the event that the cost of the Concessionaire's performance of the Concession Contract has substantially increased or that the value that the Concessionaire receives for such performance has substantially diminished, as compared with the costs and the value of performance originally foreseen, as a result of changes in Cambodian laws specifically applicable to the Infrastructure Facility or services it provides after the date of the Concession Contract. (art.29)
- Obligation to provide training to Cambodian nationals where the infrastructure facility is to be transferred to a competent institution at the end of the Concession Contract. (art.33)
- Right to compensation in the event of termination of concession contract due to a serious breach by the Contracting Institution. (art.38)

## Obligations and Rights of Both Public and Private Partners

(LoC 2007)

- The contracting parties shall include certain clauses into the Concession Contract. (art.15)
- Obligation to provide genuine opportunities to competitive Cambodian suppliers to secure orders for construction and deliveries of goods and services. (art.34)

## Applicable Law

### Dispute resolution

(LoC 2007)

- The Concession Contract must be governed by the Law of Cambodia. If no relevant Cambodian law is available for relevant provision of the Concession Contract, parties can choose foreign laws which are not contrary to the Law of Cambodia. The Concessionaire shall be free to choose the governing law of any ancillary agreements related to implementation of the Concession Project.(art.24)
- Any dispute between the Contracting institution and the Concessionaire shall be settled in accordance with the dispute settlement mechanism set forth in the Concession Contract including international arbitration, if so agreed. An award issued by a competent judicial institution or by arbitration shall be valid, binding and enforceable by and against both the Contracting institution and the Concessionaire. (art.39)

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EXAMPLES OF PROJECTS STRUCTURED AS PPP

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**Infrastructure sector -  
Power**

Orussei Hydroelectric Power Plant, Koh Kong Province

**Infrastructure sector –  
Telecom**

Cellcard Mobitel, Siem Reap, Battambang, Campong Cham, Phnom Penh, Kampo

**Infrastructure sector -  
Transport**

Pochentong International Airport, Phnom Penh