

CHAPTER 16: TRUST LAW

Relevant Laws:

- e) Law on the Organization and Functioning of the Non-Bank Financial Services Authority 2021
- f) Law on Trust 2019
- g) Sub-Decree on Uniforms, Insignia, and Signal-Rank of Trust Inspectors 2022
- h) Sub-Decree on the Organization and Functioning of Line-Entities of Non-Bank Financial Services Authority 2021
- i) Sub-Decree on Trust Registration 2019
- j) Sub-Decree on Financial Trust 2013
- k) Prakas on the Rules for Governing, Organization and Functioning of Trust (2022); and
- l) Other sectorial laws and many implementing regulations.

The Law on Organization and Functioning of Non-Banking Financial Services Authority was promulgated in 2021 to establish a Non-Banking Financial Services Authority (“**NBFSA**”) whose role is to regulate and supervise the non-banking financial sector in Cambodia. Under the NBFSA, subordinate entities including the Insurance Regulator of Cambodia, the Securities and Exchange Regulator of Cambodia, the Social Security Regulator, the Accounting and Auditing Regulator and the Trust Regulator (“**TR**”) have their respective roles and duties set out therein. The TR is required to carry out the roles and duties of the MEF as stated in the Law on Trust and other laws and regulations applicable to the trust sector.

The Law on Trust covers the scope of implementation for trusts to be established in the Kingdom of Cambodia. According to the Sub-Decree on Trust Registration, the TR retains, regulates and records trust activities in Cambodia.

I. NATURE OF A TRUST

Any transaction which involves the transfer of assets from a person (a “**Trustor**” or “**Grantor**”) into the custody or management of or at the disposal of another person (a “**Trustee**”) (which may be a natural or legal person) for the benefit of the Trustor or another person (a “**Beneficiary**”) is deemed to create a trust (a “**Trust**”).

A Trust will be bound by the terms of a trust agreement (“**Trust Deed**”) which is entered into between a Trustee and a Trustor or a contributor to a Trust fund (“**Trust Fund**”). Only after the establishment of the Trust is approved by the TR can a Trust be registered with the TR. The validity of the Trust commences from the date of its official registration with the TR.

II. TRUST INSTRUMENTS

A Trust is required to be created by a written instrument, certified by a notary or a lawyer or a Commune/Sangkat chief, in a form which includes, at a minimum, the following:

- name and address of the Trustee, the Beneficiary and the Trustor and/or the replacement Trustor and/or the contributor to the Trust Fund;
- objectives of the Trust;
- juristic instruments certifying the Trust including (1) declaration of the source of the Trust Fund and (2) total amount and/or balance of the Trust Fund;
- the limitation period of the Trust;
- rights and obligations of the Trustee, the Beneficiary and the Trustor and/or the replacement Trustor and/or the contributor of the Trust Fund;
- conditions on termination of the Trust;
- disposition of the Trust when the Trust is terminated;
- conditions regarding amendments of the Trust Deed;
- investment objectives and/or use of the property of the Trust;
- the subject of the Trust;
- other requirements by the trustor and/or the replacement trustor and/or the contributor of the Trust Fund; and
- remuneration of the Trustee which is to be based on the professional qualifications and work experience of the Trustee.

The Trust Law sets out four types of Trust as follows:

- Commercial Trust;
- Public Trust;
- Social Trust; and
- Individual Trust.

A. Commercial Trust

A Commercial Trust is a Trust that is established for the purpose of seeking profit for the benefit of the contributor of the Trust Fund or to any specific individual determined by the contributor of the Trust Fund, including:

1. Retirement pension funds, educational funds and other similar funds/properties which a person transfers to the Trustee and the Trustee transfers such funds/properties to the person or to any other person if the following conditions are satisfied:
 - a) There are regular transfers of property or funds to the Trustee by any person and the Trustee manages and disposes of/deals with the same in the specific interests of that person or of other persons;