

Law

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on

Expropriation

Chapter 1

General Provisions

Article 1:

This law aims to define an expropriation in the Kingdom of Cambodia by defining the principles, mechanisms, and procedures of expropriation, and defining fair and just compensation for any construction, rehabilitation, and public physical infrastructure expansion project for the public and national interests and development of Cambodia.

Article 2:

This law primarily aims to:

- Ensure just and fair deprivation of legal rights to private property,
- Ensure a fair and just compensation in advance,
- Serve the national and public interest, and
- Develop public physical infrastructures.

Article 3:

This law shall be applied to expropriations involving public physical infrastructure projects in the Kingdom of Cambodia.

This law does not govern any issues on expropriation in any agreement or memorandum on supporting investment between the Royal Government of Cambodia and partner countries. In case there is no such agreement or in case the agreement or the memorandum does not deal with expropriation, any expropriation shall be governed by this law.

Article 4:

Key terms used in this law are:

Expropriation refers to confiscation of ownership of, with fair and just compensation in advance, immovable property or the real right to immovable property of a physical person or legal entity or legal public entity, which includes land, buildings, and cultivated plants, and for construction, for rehabilitation or for expansion of public physical infrastructure which is in the national and public interests.

Owner of immovable property and/or rightful owner refers to a physical person, private legal person, or public legal entity including a proprietor, possessor and all persons who have rights to land and are affected by the expropriation project.

Public or common interests refers to use of land or property by the public or agents or public institutions.

The requirement for national interests refers to activities or projects which are primarily:

- the construction, rehabilitation, preservation or expansion of buildings necessary for national defense or security; and
- the occupation of land or property for practical implementation of a policy on defending territorial integrity;

A project implementer refers to a state enterprise or public establishment, contractor or investor.

A lessee refers to a physical person or legal entity that receives a right to occupation and a right to use of the immovable property of the owner.

A hinderer refers to a physical person or legal entity that is a mastermind, an accomplice, or an inciter who does a direct or indirect activity with bad faith, with the intention of blocking the process of implementing a decision on expropriation.

Article 5:

Public physical infrastructure primarily refers to:

- a. construction or expansion of railroads, roads, bridges, airports, ports and accompanying structures and equipment;
- b. construction or expansion of power stations, structures, equipment and lines for transmission and distribution of electrical energy;
- c. construction or expansion of buildings and equipment for postal, telecommunication and information technology systems;
- d. construction or expansion of roads, city space, vehicle parking lots, markets, parks, and public squares;
- e. construction or expansion of irrigation systems, clean water supply systems, sewage systems, and public interest spaces;
- f. construction or expansion of buildings for education, training, science, culture, health care, social security, and stadiums for performances to public audiences;
- g. construction or expansion of refineries, purification stations, buildings and equipment for protection of nature and the environment;
- h. construction or expansion of buildings and equipment for research and exploiting mines and other natural resources;
- i. construction or expansion of gas systems, fuel pipes, oil refineries, oil rigs, and other systems;
- j. construction or expansion of buildings/residences which are seriously destroyed by natural disasters such as earthquakes, floods, fires, and landslides etc., and for preparation for resettlement;
- k. construction or expansion of buildings for protecting and supporting residents;

- l. construction or expansion of border crossing posts;
- m. construction or expansion of or preparation for necessary construction for national defense or security;
- n. establishment of new sites for protection of natural resources, forests, cultural and archeological sites or protection of the environment; and
- o. the implementation as required by the nation in accordance with the determination made by the government;

Chapter 2

General Principles

Article 6:

Expropriation can apply to part or all of an immovable property or to a real right to immovable property.

Article 7:

The state is the only party that carries out expropriation for public and national interest purposes.

The expropriation can be carried out only if it is for implementing a project as set out in Article 5 of this law.

Article 8:

The state shall buy any part of the immovable property remaining after the expropriation for a fair and just price as proposed by the immovable property's owner and/or the rightful owner who cannot live near the project or cannot build a house or cannot practice other businesses as a result of the expropriation.

Article 9:

The expropriated immovable property shall be used for the anticipated purposes as declared on expropriation for public interest or for the requirements for national interests only, and shall not be left unused without appropriate reasons or transferred to a third party for private interest purposes.

The owner or rightful owner shall be given priority to buy the leftover of the required immovable property at the compensation rate. If the owner or rightful owner refuses to buy back the rest of the required immovable property, it shall be kept as state property.

Article 10:

In a special and emergency case in which public security is involved, such as fighting fires, floods, forest fires, earthquakes, wars which are about to break out or terrorist attacks, or other situations as determined by the government, the government might temporarily confiscate immovable property or real rights to property without any consultation. The owner of the immovable property and/or the rightful owner to the property shall be given the property back after the mission is completed.

In an emergency and necessary case in which the national interest is involved, the government has the discretion to carry out the expropriation without arrangement of consultation in respect to procedures as set out in Chapter 4 of this law.

Article 11:

Before exercising any expropriation, the government shall prepare sufficient annual budgets and grant credit fully and timely to the Expropriation Committee in accordance with the proposal submitted by Ministry of Economy and Finance for payment of compensation to the immovable property's owners or rightful owners affected by the expropriation.

Chapter 3

Expropriation Mechanism

Article 12:

An Expropriation Committee shall be established and shall be led by a representative of Ministry of Economy and Finance, and representatives of concerned ministries/institutions shall be involved.

The establishment and functioning of the Committee shall be determined by sub-decree.

Article 13:

An Expropriation Sub-Committee that shall assist the Expropriation Committee shall be established and led by a board of municipal-provincial governors, and representatives of concerned provincial departments and authorities shall be involved.

The establishment and functioning of the sub-committee shall be determined by the sub-decree provided for in Article 12 of this law.

Article 14:

A Complaint Resolution Committee shall be established and led by representatives of Ministry of Land Management, Urban Planning and Construction, and representatives of other concerned ministries/institutions shall be involved.

The organization and functioning of the Complaint Resolution Committee shall be determined by a separate sub-decree.

Chapter 4

Expropriation Procedures

Section 1: Procedures for Prior Expropriation

Article 15:

An expropriation shall be carried out based on the public physical infrastructure project and shall be approved in principle by the government, according to the ministry's/institution's proposal.

An Expropriation Committee shall prepare a submission on an expropriation project to be submitted to the government for review and approval.

Article 16:

Before proposing an expropriation project, the Expropriation Committee shall publicly conduct a survey by recording a detailed description of all rights of the owners and/or rightful owners to the immovable property and other properties which might be needed for compensation; all other related problems shall be recorded as well.

In conducting this survey, the Expropriation Committee shall arrange a public consultation with the authorities at capital, provincial, municipal, district, khan levels, and with the commune and sangkat councils and village representatives or the communities affected by the expropriation in order to give them clear and specific information and to have opinions from all concerned parties about the proposal for a public physical infrastructure project.

In order to set a schedule for the expropriation or for relocation or compensation, the Expropriation Committee shall conduct a detailed interview with all concerned parties about the issues of immovable property affected by the public physical infrastructure project.

Within 30 working days after completing the survey, the Expropriation Committee shall produce a report with recommendations and proposals for the government's approval.

Article 17:

With the government's approval, the Expropriation Committee shall issue a declaration of the expropriation project to the owners and/or the rightful owners about the immovable property which is the subject matter of the expropriation, and the purpose of the deprivation of ownership over or right to the immovable property shall be clearly set out, according to the following legal processes:

- define the subject matter of the public physical infrastructure project, location and schedule of implementing the project, the competent authorities who have the right to confiscate the property or private property;
- determine fair and just compensation;
- set a deadline for complaint;
- send the declaration accompanying a copy of this law to all owners and/or rightful owners;
- put up a sign that identifies "the immovable property that is the subject matter of expropriation for the interest of public physical infrastructure";
- disseminate the declaration via media;
- post this declaration at relevant commune and sangkat offices where the public physical infrastructure is going to take place, and the declaration shall be disseminated by the village chief to the relevant residents.

Article 18:

After receiving this declaration of the expropriation project, the owner and/or the rightful owner can file a complaint for an investigation to find out if the expropriation is required for a real public and national interest or if it can be moved to other locations. This complaint can be prepared by their lawyer or representative.

After receiving the declaration on an expropriation project, the complaint shall be filed in a written form within 30 working days with the Complaint Resolution Committee, as set out in Article 14 of this law. The main content of the complaint shall include:

- name of the owner and/or the rightful owner; address and telephone number;
- reason for the complaint;
- description of the legalities regarding the land; and
- payment to owner and/or the rightful owner of the land to be expropriated.

However, the owner and/or the rightful owner of the immovable property cannot file a complaint for an investigation into the requirement for big development projects such as national roads, bridges, railroads, connection and distribution of water and electricity systems, kerosene pipes, sewage pipes, drainage systems or main drainage systems and irrigation systems.

Within 30 days after completion of the investigation, the Complaint Resolution Committee shall write a report with recommendations and proposals for the government's review and approval.

Section 2: Expropriation Procedures

Article 19:

The expropriation of the ownership of immovable property and real right to immovable property can be exercised only if the Expropriation Committee has paid fair and just compensation to the property's owner and/or rightful owner in advance, in accordance with the compensation procedures and principles set out in Section 3 of Chapter 4 of this law.

The expropriation remains able to be exercised, even though the resolution of a dispute has not been completed. The owner and/or the rightful owner who has already received compensation from the Expropriation Committee still has the right to continue their complaint according to the procedure of complaining and dispute resolution set out in Article 34 in Chapter 6 of this law.

Article 20:

The expropriation of the ownership of and real right to other immovable properties shall be exercised based on the decision made by the Expropriation Committee. The decision on an expropriation shall contain the following:

- Ownership of the immovable property and real right to immovable property to be expropriated;
- Compensation to be paid; and
- Deadline for the owner of the immovable property and/or rightful owner to move from the location and hand over the immovable property to the Expropriation Committee.

Article 21:

The Expropriation Committee shall give notice on the decision on expropriation and shall pay complete compensation to the owner or rightful owner in advance.

Section 3: Compensation for Expropriation

Article 22:

Financial compensation given to the property owner and/or rightful owner shall be based on a market price or replacement price on the date of declaration of the expropriation.

The market price or the replacement price shall be determined by an independent committee or agent selected by the Expropriation Committee.

Article 23:

The owner and/or the rightful owner has the right to compensation for actual damages commencing from the last date of declaration of expropriation for which they are entitled to fair and just compensation.

Article 24:

The compensation shall be made in cash, property or replacement rights, according to the actual situation and consent from the owner and/or the rightful owner and the Expropriation Committee.

The formality and payment procedures shall be defined by sub-decree proposed by the Ministry of Economy and Finance.

Article 25:

The financial compensation shall be calculated using total compensation minus transfer tax and/or unused land tax which has not been paid to the state and the Expropriation Committee shall pay the tax to the national budget according to existing procedures.

Article 26:

The financial compensation for ownership of immovable property and real rights to immovable property does not include fluctuation of value occurring after the declaration of the expropriation project. This is because the fluctuation can be caused by a change of reserved land measures in urban planning which determines land use areas or approved land use plans or because of the declaration of the expropriation.

Article 27:

After receiving full financial compensation, the owner and/or rightful owner shall continue to be responsible for safekeeping, dwelling, possessing and benefiting from the right and immovable property until the property is taken by the Expropriation Committee.

Article 28:

The Expropriation Committee can accept the immovable property or the right to the immovable property after:

- the procedures and requirements are carried out as set out in Sections 1 and 2 of Chapter 4 of this law;
- financial compensation has been paid in accordance with the principles and the procedures set out in Section 3 of Chapter 4 of this law.

Article 29:

A lessee who is holding a proper lease agreement is entitled to compensation for disruptions arising from dismantling equipment and transporting it to a relocation site.

The immovable property's lessee who is operating a business shall have access to compensation for effects on the business and to just and fair additional compensation for the capital actually invested for the business operation. The compensation shall commence from the date of the declaration on an expropriation project.

For the expropriation of a location where a business is in operation, the owner is entitled to support of additional compensation at a fair and just rate for the cost of the property that is actually affected, commencing from the date of the declaration of the expropriation.

Chapter 5

Transitional Control and Management of the Immovable Property

Article 30:

After the date of the declaration of the expropriation project, the owner and/or rightful owner of the immovable property cannot sell or transfer the immovable property to other persons. Any documents and procedures which are against this provision are deemed null and void.

In relation to the use of land or the concerned immovable property, the existing situation and size of land used shall be maintained as it is when the expropriation project is declared. No construction on the land shall take place. The owner or the rightful owner of the immovable property shall not be entitled to compensation for new construction which is against the provisions of this law.

Article 31:

Unless there is another agreement or permission, the owner or the rightful owner may continue to occupy the immovable property for 1 (one) month after receiving from the Expropriation committee the full compensation paid, according to procedures set out in Chapter 4 of this law.

In case the owner and/or the rightful owner refuse to leave their location, the Expropriation Committee might request the competent institutions or authorities to take measures in order that the person leaves the expropriated location.

Chapter 6

Dispute Resolution

Article 32:

The Expropriation Committee and the Complaint Resolution Committee are authorized to review and resolve complaints.

Article 33:

The owner and/or the rightful owner who do not agree with a decision by the Expropriation Committee can bring their complaint to the Complaint Resolution Committee.

Article 34:

If there is a disagreement with the decision on the complaint by the Complaint Resolution Committee, the owner and/or the rightful owner may bring their complaint to the competent court, concerning expropriation procedures carried out improperly, the expropriation which is not for public and national interest, and the compensation which is not fair and just.

The formalities and complaint procedures shall be determined by sub-decree.

Chapter 7

Penalty

Article 35:

Any competent authorities who do not respect these provisions shall be subject to administrative punishment as well as any other punishment in accordance with existing laws and provisions.

Article 36:

Any individual who hinders the implementation of a decision on expropriation with bad faith which blocks the processes of execution of the project which is for public and national interests shall be subject to an imprisonment from 1 (one) month to 1 (one) year and a fine from 100,000 (a hundred thousand) to 2,000,000 (two million) Riel.

Article 37:

Anyone who infringes on the occupation and use of a site which is already expropriated shall be punished, according to existing criminal provisions.

Chapter 8

Final Provisions

Article 38:

Any provision which is against this law is deemed null and void.

Article 39:

This law shall be declared as urgent.

Phnom Penh, February 26, 2010

Signature

Samdech Akkak Moha Poutisal Chea Sim

Prime Minister

Signature

Samdech Hun Sen

Deputy Prime Minister, Minister of Ministry of
Economy and Finance

Signature

His Excellency Keat Chhon