

---

Capital Markets

## Rules on the Management, Establishment, and Functioning of Trust

On 26 January 2022, the Non-Banking Financial Services Authority issued a new Prakas No. 003 OSH/Prokor on Rules on the Management, Establishment and Functioning of Trust ("**Prakas**").

The Prakas consists of eight chapters and 75 articles and applies to the operation of all trusts and the conduct of all persons related thereto in Cambodia. This Prakas aims to set out the rules, conditions, and procedures in controlling, organising, and operating a trust.

This Update highlights the key features of the Prakas.

### 1. The Establishment of Trust

Under the Prakas, a trust is defined as *"the management and disposal of Trust Fund provided for by a Trustor for the benefits of a Beneficiary in accordance with the Trust Agreement or regulations in force"*.

Nevertheless, the Prakas further provides that any activity of transferring a property from its owner (known either as a trustor or a grantor) to another person or entity (known as a trustee) to control, manage and maintain such property for the benefit of another person or entity (known as a beneficiary) shall be considered as a trust operation subject to approval from the Trust Regulator.

The establishment of a trust requires the obtaining of approval for registration from the Director General of Trust Regulator in accordance with the Law on Trust, the Sub Decree on Registration of Trust, the Sub Decree on Financial Trust, other relevant regulations in force, and the provisions of the Prakas. Based on the Prakas, the following summarises the overall process to set up a trust:

- (a) the trustor or grantor must obtain a (preliminary) approval from the Trust Regulator on the establishment of trust;
- (b) the trustor or grantor must propose an appointment of trustee(s), duly licensed / approved by the Trust Regulator, for the Trust Regulator's approval;
- (c) a trust agreement (with minimum contents as prescribed in the Prakas) must be entered into between the trustor or grantor, and the trustee; and

## Capital Markets

- (d) after the (preliminary) approval to establish trust above, the appointed trustee(s) shall proceed with the process to apply for the approval-in-principle for and on behalf of trustor or grantor and complete the process of registration of trust with the Trust Regulator.

### **2. Trustee**

Under this Prakas, a trustee can be a legal entity (trustee company) or individual person (individual trustee). A trustee must first be licensed and/or approved by the Trust Regulator. The license or approval is valid for two years and extendable for another period of three years.

Individual trustees can be licensed to act as (i) an independent individual trustee; or (ii) an individual trustee of a trustee company.

The licensing and/or approval requirements for a (i) trustee company; (ii) independent individual trustee; and (iii) individual trustee of a trustee company vary and can be found in detail in the Prakas.

### **3. Responsibilities of Trustee**

According to the Prakas, a trustee must commence its operation within no later than three months after obtaining its license and/or approval.

In the event that the trustee carries out other business activities, an appropriate Chinese wall mechanism must be put in place to ensure the separation of such business activities from the trust operation.

Furthermore, a trustee shall have the following responsibilities:

- (a) A trustee must observe ongoing compliance obligations as provided for in detail in the Prakas;
- (b) A trustee shall maintain the financial soundness requirements as determined by the Trust Regulator;
- (c) A trustee must ensure and comply with best practices governing principles including good faith, independence, impartiality, transparency, accountability, and efficiency to ensure and protect the interests of the trustor and the beneficiary;
- (d) A trustee must ensure a proper conflict of interest policy and separation of assets;
- (e) Any advertisement made must be in compliance with the requirements as set out in the Prakas;

---

## Capital Markets

- (f) A trustee must either notify or seek prior approval from the Trust Regulator prior to any change made as required under the Prakas;
- (g) A trustee must comply with reporting (both financial and non-financial) requirements;
- (h) Any delegation of the role or responsibility of a trustee must first be approved by the Trust Regulator; and
- (i) A trustee must ensure and maintain records (both trustee accounts and trust accounts) for a period of at least ten years.

### 4. Rules on the Management of Trustee and Custodian in Securities Sector

Under the Prakas, 'trustee' and 'custodian' as designated in the securities sector are considered as trustees and are thus subject to the relevant laws and regulations in force, including this Prakas.

A trustee in a collective investment scheme ("**CIS**") and a custodian under the supervision of the Securities and Exchange Regulator of Cambodia ("**SERC**") shall be registered with the Trust Regulator in accordance with a joint Guideline to be established between the SERC and the Trust Regulator.

The Prakas further provides that the establishment and functioning of (i) a trustee and investment trust in a CIS; and (ii) a custodian and assets under custody accounts in the securities sector, shall be under the supervision of the SERC. However, if the trustee and/or custodian in the securities sector provides other trust operations (other than CIS and securities sector), such trustee and/or custodian shall obtain approval from the Trust Regulator and shall ensure a clear separation of operations and accounts.

### 5. Functioning of Trust

Once the establishment of trust is approved, the Trustee must commence the process of registration of trust with the Trust Regulator within no later than three months. A trust will only be considered as valid and effective from the date of its registration with the Trust Regulator.

#### Management, Disposal of, and Safekeeping of Trust Asset

The management, disposal and safekeeping of trust assets shall be done in accordance with the trust agreement and relevant applicable regulations.

Assets under trust shall not be used or otherwise disposed of for the discharge of liabilities or debts of the trustee or any other persons notwithstanding for the purpose of rehabilitation, voluntary liquidation or dissolution, bankruptcy or any other similar purposes.

---

## Capital Markets

A trustee is required to keep records of trust assets (including assets, liability, revenue, expenses and any other benefits) in a form to be prescribed by the Trust Regulator.

### Investment of Trust Asset

A trustee may use trust assets for investment purposes provided that:

- (a) The trustee has obtained prior approval from the trustor/grantor and the beneficiary;
- (b) The trustee has obtained a non-objection letter the Director General of the Trust Regulator; and
- (c) The trustee has obtained approvals for investment from the relevant competent authorities.

## **6. Termination of Trust**

A trust may be terminated under the following circumstances:

- (a) Expiry of the term as specified in the trust agreement;
- (b) Purpose of trust is achieved;
- (c) At the discretion or unanimous decision of trustor(s);
- (d) Decision of competent courts; or
- (e) Other events as specified in the trust agreement.

Save for social trusts and public trusts or any other trusts as established under the relevant laws or regulations (which shall be governed under such laws or regulations), a trust can be established for a specified or non-specified term period. In any case, the term of trust shall not exceed 100 years from the date of its establishment.

At least 30 days prior to the expiration of the term of trust, the trustee shall notify the Trust Regulator. In addition, the trustee shall request to the Trust Regulator for an approval to proceed with the liquidation of the trust and declare the termination of the trust thereafter.

## **7. Transition Provisions**

Within later than six months from the date of the Prakas:

## Capital Markets

- (i) All trustees which have been registered to operate prior to this Prakas shall apply for license and/or approval and comply with the relevant procedures as determined by the Trust Regulator under this Prakas;
- (ii) All trustees of CIS and custodians in the securities sector which have obtained licence/approval/accreditation from the SERC shall apply for registration with the Trust Regulator; and
- (iii) All trustors which have established but have not registered trusts with the Trust Regulator shall apply for the registration of such trusts and comply with the relevant procedures as determined by the Trust Regulator under this Prakas.

If you have any queries on the above, please feel free to contact our team members below who will be happy to assist.

## Contacts



**HENG Chhay**  
Managing Partner

T +855 23 963 112 / 113  
F +855 23 963 116

[heng.chhay@rajahtann.com](mailto:heng.chhay@rajahtann.com)



**TIV Sophonnora**  
Partner

T +855 23 963 112 / 113  
F +855 23 963 116

[tiv.sophonnora@rajahtann.com](mailto:tiv.sophonnora@rajahtann.com)

## Our Regional Contacts

### RAJAH & TANN | *Singapore*

#### Rajah & Tann Singapore LLP

T +65 6535 3600  
sg.rajahtannasia.com

### R&T SOK & HENG | *Cambodia*

#### R&T Sok & Heng Law Office

T +855 23 963 112 / 113  
F +855 23 963 116  
kh.rajahtannasia.com

### RAJAH & TANN 立杰上海

#### SHANGHAI REPRESENTATIVE OFFICE | *China*

#### Rajah & Tann Singapore LLP Shanghai Representative Office

T +86 21 6120 8818  
F +86 21 6120 8820  
cn.rajahtannasia.com

### ASSEGAF HAMZAH & PARTNERS | *Indonesia*

#### Assegaf Hamzah & Partners

##### Jakarta Office

T +62 21 2555 7800  
F +62 21 2555 7899

##### Surabaya Office

T +62 31 5116 4550  
F +62 31 5116 4560  
www.ahp.co.id

### RAJAH & TANN | *Lao PDR*

#### Rajah & Tann (Laos) Co., Ltd.

T +856 21 454 239  
F +856 21 285 261  
la.rajahtannasia.com

### CHRISTOPHER & LEE ONG | *Malaysia*

#### Christopher & Lee Ong

T +60 3 2273 1919  
F +60 3 2273 8310  
www.christopherleeong.com

### RAJAH & TANN | *Myanmar*

#### Rajah & Tann Myanmar Company Limited

T +95 1 9345 343 / +95 1 9345 346  
F +95 1 9345 348  
mm.rajahtannasia.com

### GATMAYTAN YAP PATACSIL

#### GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*

#### Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)

T +632 8894 0377 to 79 / +632 8894 4931 to 32  
F +632 8552 1977 to 78  
www.cagatlaw.com

### RAJAH & TANN | *Thailand*

#### R&T Asia (Thailand) Limited

T +66 2 656 1991  
F +66 2 656 0833  
th.rajahtannasia.com

### RAJAH & TANN LCT LAWYERS | *Vietnam*

#### Rajah & Tann LCT Lawyers

##### Ho Chi Minh City Office

T +84 28 3821 2382 / +84 28 3821 2673  
F +84 28 3520 8206

##### Hanoi Office

T +84 24 3267 6127  
F +84 24 3267 6128  
www.rajahtannlct.com

Rajah & Tann Asia is a network of legal practices based in Asia.

Member firms are independently constituted and regulated in accordance with relevant local legal requirements. Services provided by a member firm are governed by the terms of engagement between the member firm and the client.

This Update is solely intended to provide general information and does not provide any advice or create any relationship, whether legally binding or otherwise. Rajah & Tann Asia and its member firms do not accept, and fully disclaim, responsibility for any loss or damage which may result from accessing or relying on this Update.

## Our Regional Presence



R&T Sok & Heng Law Office provides top quality and incisive legal services to domestic and international clients; in local and cross-border transactions; on day-to-day operations and the most challenging transactions. As one of the leading law firms in Cambodia, R&T Sok & Heng Law Office helps clients achieve their goals by combining international standard with local expertise.

R&T Sok & Heng Law Office is part of Rajah & Tann Asia, a network of local law firms in Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam. Our Asian network also includes regional desks focused on Brunei, Japan and South Asia.

The contents of this Update are owned by R&T Sok & Heng Law Office and subject to copyright protection under the laws of Cambodia and, through international treaties, other countries. No part of this Update may be reproduced, licenced, sold, published, transmitted, modified, adapted, publicly displayed, broadcast (including storage in any medium by electronic means whether or not transiently for any purpose save as permitted herein) without the prior written permission of R&T Sok & Heng Law Office.

Please note also that whilst the information in this Update is correct to the best of our knowledge and belief at the time of writing, it is only intended to provide a general guide to the subject matter and should not be treated as a substitute for specific professional advice for any particular course of action as such information may not suit your specific business and operational requirements. It is to your advantage to seek legal advice for your specific situation. In this regard, you may call the lawyer you normally deal with in R&T Sok & Heng Law Office.