Asia Pacific Guide to Lending and Taking Security - Cambodia

When lending to borrowers

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# 1. Are there any restrictions in relation to the type of borrower who may borrow foreign currency or in relation to the term of foreign currency and/or the amount of foreign currency borrowed by local entities?

No.

# 2. Are there any restrictions on the rate of interest or default interest that may be charged?

Yes. Under the Civil Code 2007 ("**Civil Code**"), the interest rate for a loan may be fixed by a contract, but the Ministry of Justice may set a maximum interest rate within the range of 10% to 30% per annum ("**MOJ Rate**"). The current MOJ Rate is 18% per annum. The rate fixed by a contract may not be higher than the MOJ Rate. However, it is unclear whether the MOJ Rate applies to an offshore lender that is a bank or financial institution.

If the contract indicates that interest is payable but fails to specify the rate, 5% will apply.

In relation to default interest, the Ministry of Justice has fixed a ceiling rate. Currently, the ceiling rate is 27% per annum of the principal amount of the loan.

# 3. Are there any restrictions on particular lenders or classes of lender entering into credit transactions with borrowers?

No.

# 4. Are there any exchange controls that will apply to payments to be made in foreign currencies or to foreign lenders?

There is no restriction on foreign exchange operations, provided that loan disbursements and repayments are made through an authorized intermediary (i.e., a Cambodian-licensed bank). However, the National Bank of Cambodia may impose temporary restrictions on foreign exchange operations during times of foreign exchange crises.

# 5. Is there any requirement to deduct or withhold tax from any amounts to be paid or repaid to a lender (whether domestic or foreign)? If so, at what rate must tax be deducted and from what kinds of payment?

**Payment to non-resident lender**

A resident taxpayer making payments of interest or other types of payments, such as fees (except payment on goods and the repayment of a loan), to a non-resident lender, must withhold and pay withholding tax at a flat rate of 14% of the amount of the payment.

Cambodia has double taxation agreements, which have an effect on implementation, with some countries such as the Hong Kong Special Administrative Region, the Republic of China, Singapore, Thailand, Vietnam, Indonesia, Brunei, the Macao Special Administrative Region, the Republic of Korea and Malaysia. Therefore, if a non-resident lender is from any of these countries, the 14% rate could be reduced to 10% if the legal condition is met.

**Payment to resident lender**

For an interest payment, the interest payment by a resident borrower to a resident lender is subject to withholding tax at the rate of 15%, but it is exempted if the resident lender is a domestic bank and if it is a repayment loan.

For service-related payments, the withholding rate would be 15%, but it is exempted in the following circumstances:

Payment of service to a tax-registered lender and supported by a valid value-added tax (VAT) invoice.

Payment of service with an amount less than KHR 50,000 (approximately USD 12.50), regardless of whether there is a proper VAT invoice or not.

# 6. Are there any “thin capitalization” or other rules that may limit the extent to which interest payments may be deducted for tax purposes?

The deductible interest expense for one taxable year must not exceed 50% of the net non-interest profit combined with the interest income. In cases where the total interest expense exceeds the amount allowed to be deducted for one taxable year, the interest expense will be carried forward successively to the following tax years until the fifth tax year. On a separate but related note, for a related party's loan, the borrowing rate must follow the arm's length principle under the Cambodian transfer pricing rule. Otherwise, it would be subject to reassessment.

# 7. Are there any registration, notarization, translation or reporting requirements in relation to the loan documents?

No. However, for tax purposes, the borrower must file the loan agreement with the Cambodian tax authority within 30 days after the relevant transaction date. Otherwise, there is a risk that the tax authority may reassess the loan as a taxable profit for the borrower. However, under current practice, the risk is low. In addition, late filing of the loan agreement will result in penalties.

# 8. Are there any stamp, documentary, registration, notarization or other taxes, duties or fees chargeable in relation to the loan documents? If yes, what are the amounts and when are they payable?

No.

# 9. Does the law recognize the subordination of the debt that a debtor owes to one creditor to that which the debtor owes to another creditor? If yes, how is this usually effected?

There is no specific law governing a subordination arrangement. The general rules of the contract are applicable.

Two principal methods are used to document these types of arrangements, usually in the form of a tripartite agreement between the senior lender, the junior lender and the debtor. The two methods are as follows:

The contingent debt method, by which the junior lender's right to have its debt repaid is contingent on the senior lender's debt having been repaid first

The turnover method, by which the junior lender agrees to pay the senior lender (and/or to hold the proceeds on behalf of the senior lender) any amounts paid by the debtor to the junior lender, until the senior lender has been repaid.

# 10. Are there any classes of unsecured and unsubordinated creditor whose claims against a debtor would rank equally with or above those of the debtor’s other unsecured and unsubordinated creditors (e.g., the claims of employees and tax authorities or the claims of creditors under particular kinds of instrument)? If yes, what classes of creditors are preferred?

Under the Law on Insolvency 2007 ("**Insolvency Law**"), the classes of unsecured and unsubordinated claims against a debtor that would rank equally with or above those of the debtor's other unsecured and unsubordinated creditors are as follows:

Employees' wages, provisional administrator remuneration, administrative fees and court fees

Outstanding state taxes

Other admissible unsecured claims, i.e., general unsecured claims exceeding the secured claims that are not satisfied as secured claims

However, please note that the Insolvency Law does not apply to claims against debtors that are covered by the Law on Banking and Financial Institutions 1999 ("**Law on Banking and Financial Institutions**"), the Law on Insurance 2014 ("**Law on Insurance**") and the Law on Non-Government Securities 2007 ("**Law on Non-Government Securities**"), unless provided for in those laws. The Law on Banking and Financial Institutions contains specific ranking provisions for claims against banks, microfinance institutions and other financial institutions stated in that statute. The Law on Insurance contains specific ranking provisions for claims against insurance companies or other entities stated in that statute. The insolvency regime for entities covered by the Law on Non-Government Securities such as securities dealers, securities underwriters, securities brokers, investment advisers or other entities stated in that statute is governed by 2018 Sub-Decree No. 24 on Rehabilitation and Liquidation in Securities Sector.

# 11. Are there any consumer protection or similar laws that apply if credit is made available to individuals or other classes of debtor? If yes, what laws are applicable?

Yes, if credit is made to a consumer for personal, domestic or household purposes, the 2019 Law on Consumer Protection applies to protect  such borrowers' rights and interests.

# 12. Are there any prohibitions or limitations on the extent to which a company can give financial assistance for the purchase of: (a) its own shares or those of any affiliated company; or (b) assets owned by it or any affiliated company?

No.

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