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council of ministers session on October 9, 2009

Draft

Law

on

Expropriation

Approved by the Council of Ministers on its session on dd/mm/2009

Chapter 1

General Provisions

Article 1:

This law aims to define an expropriation in the kingdom of Cambodia by defining the principle, mechanism, procedures of expropriation and fair and just compensation for any construction and rehabilitation, and public physical infrastructure expansion project for the public and national interest and development of Cambodia.

Article 2:

This law primarily aims to:

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

Article 3:

The scope of this law shall be applied to an appropriation involving in public physical infrastructure project in the Kingdom of Cambodia.

This law does not govern any agreement or memorandum of understanding 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 of understanding does not set out about the expropriation shall be governed by this law.

Article 4:

Key terms used in this law are:

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

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

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

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

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

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

Article 5:

The public physical infrastructure primarily refers to:

- a. construction or expansion of railroads, roads, bridges, airports, ports and accompanying structure and equipment;
- b. construction or expansion of power stations, structures, equipment and lines for transmission and distribution of electric energy;
- c. construction or expansion of buildings and equipment for postal, telecommunication and information system;
- d. construction or expansion of roads, city space, vehicle parking lots, markets, parks, and public square;
- 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 stadium for performance to public audience;
- g. construction or expansion of refineries, purification stations, building and equipment for protection of nature and environment;
- h. construction or expansion of buildings and equipment for research and processing mines and other natural resources;
- i. construction or expansion of gas system, fuel pipes, oil refinery, oil rigs, and other systems;
- j. construction or expansion of buildings/ residences which are seriously destructed by natural [disaster] such as earthquake, flood, fire, and landslide etc., and for preparation for resettlement;
- k. construction or expansion of buildings for protecting and supporting the residents;
- l. construction or expansion of border crossing posts;
- m. construction or expansion of or preparation for necessary construction for national defense and security;
- n. establishment of new sites for protection of natural resources, forests, cultural and archeological sites or protection of environment; and

- o. the practice 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 whole of immovable property, or real right to immovable property.

Article 7:

The state is the only party who carries out expropriation for public and national interest purpose. The expropriation is applied to complete the requirements for public interests, and for national, economic, and social development.

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 the remaining immovable property after the expropriation with fair and just price being asked for by the property's owner and/or the rightful owner who cannot live near the project, or cannot build house or cannot practice other business.

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 reasons or transferred to a third party for private interest purposes.

The owner or rightful owner shall be given priority to buy the rest of the required immovable property with the compensation rate. If the owner or rightful owner refuses to accept the rest of the required immovable property, it shall be kept as state property. Article 10:

In a special and emergent case in which the public security is required, such as fighting fire, flood, forest fire, earthquake, war which is about to break out or terrorist attack, or other situations determining by the government, the government might temporarily confiscate the immovable property or real right to the property without any consultation. The owner of the

immovable property and/or the rightful owner to the property shall be given back after the mission complete.

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

Article 11:

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

Chapter 3

Expropriation Mechanism

Article 12:

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

The establishment and function of the Committee shall be determined by a 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 governor, and representatives of concerned departments and authorities shall be involved.

The establishment and function of the sub-committee shall be determined by a sub-decree as provided 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 representatives of other concerned ministries/institutions shall be involved.

Chapter 4

Expropriation Procedures

Section 1: Procedures for Prior Expropriation

Article 15:

An expropriation shall be carried out basing on the public physical infrastructure project and shall be approval in principle by the government according to the ministry/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 with a detail description about the owner and/or rightful owner of the immovable property and other properties which might need for compensation; and all other concerned problems shall be recorded as well.

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

In order to set a schedule for the expropriation or for a relocation or compensation, the Expropriation Committee shall conduct a detail 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 propose 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 owner and/or the rightful owner about the immovable property which is the subject matter of the expropriation, and the purpose of the deprivation of right to the immovable property shall be clearly set out in 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;
- label “the immovable property is the subject matter of expropriated for the interest of public physical infrastructure”;
- disseminate the declaration via media;
- post this declaration at relevant commune 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 shall 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 altered to other location. This complaint might prepared by their lawyer or representative.

After receiving the declaration on expropriation project, the complaint shall be filed in written within 30 working days at the Complaint Settlement Committee as set out in Article 14 of this law. A duplicate of this complaint shall also be sent to the Expropriation Committee and Sub-committee. The main content of the complaint shall primarily be:

- name of the owner and/or the rightful owner; Address and telephone number;
- reason of the complaint;
- description of the legality of the land; and
- benefits 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 can not file a complaint for an investigation into the requirement for the big development project such as roads, bridges, railroads, connection and distribution of water and electricity system, kerosene pipes, sewage pipes, drainage system or main drainage system, and irrigations.

Within 30 days after completion of the investigation, the Complaint Settlement Committee shall settle the complaint and write a report with recommendations and proposal 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 setting out in Section 3 of Chapter 4 of this law.

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

Article 20:

The expropriation of the ownership of and real right to other immovable properties shall be exercised with the decision made by the Expropriation Committee as. The decision on an expropriation shall be basically defined:

- Ownership of the immovable property and real right to immovable property to be expropriated;
- Compensation to be paid; and
- Dead line 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 about the decision on expropriation and shall paid complete compensation to the owner or rightful owner in advance.

Section 3: Compensation for Expropriation

Article 22:

Financial compensation given to the property's owner and/or rightful owner shall be with the 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 project during which they are entitled to fair and just compensation.

Article 24:

The compensation shall be made in cash, property or replacement right with the actuality, and consent by the owner and/or the rightful owner and the Expropriation Committee.

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

Article 25:

The financial compensation shall be calculated using total compensation minus tax and/or unused land tax which has not been paid to the state plus a fine. The Expropriation Committee shall pay the withholding tax to the national budget in accordance to the existing procedures.

Article 26:

The financial compensation for property and real right to immovable property does not include any change of price occurring after the declaration of the expropriation project. This is because the change can be caused by the change of plan for alternative land area which includes land planning which determines land use area or in land use plan which is properly approved 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 might accept the property or the right to the property after:

- the procedures and requirements setting out in Section 1 and 2 of Chapter 4 of this law are followed;
- the financial compensation has been paid in accordance with the principle and the procedures setting out in Section 3 of Chapter 4 of this law;

Article 29:

A lessee who is holding a proper lease agreement is entitled to fair and just rent compensation for disruptions concerning dismantling, equipment and transport to a relocation.

The immovable property's lessee who is practicing business shall have access to compensation for effect on their business and to just and fair additional support for the capital actual invested for business operation. The compensation shall commence from the date of the declaration on expropriation project.

For the expropriation of a location where business is in operation, the owner is entitled to support of additional compensation with fair and just rate for the property 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 use of land or concerned immovable property, the existing situation and size 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 the new construction which is against the provision of this law.

Article 31:

Unless there is another agreement or permission, the owner or the rightful owner might continue to occupy the immovable property for one month after receiving from the Expropriation committee the full compensation paid according to procedures setting 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 the complaint.

Article 33:

The owner and/or the rightful owner who do not agree with decision made 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 might bring their complaint to the competent court on the expropriation procedures being carried out improperly, the expropriation which is not for public and national interest, and the compensation which is not fair and just.

The formality and complaint procedures shall be set out by a sub-decree.

Chapter 7: Penalty

Article 35:

Any competent authorities who do not respect these provisions shall be subject to administrative punishment excluding the other punishment, in according to the existing laws and provisions.

Article 36:

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

Article 37:

Anyone who abusively possesses, uses with infringe the expropriated site shall be liable to the provisions of existing criminal code.

Chapter 8: Final Provision

Article 38:

Any provisions which are against this law are deemed null and void.

Article 39:

This law shall be declared as urgent.

This law is passed by the National Assembly of the Kingdom of Cambodia on dd/mm/2009,

At ...sessions of the National Assembly, ... term

Phnom Penh, dd/mm/2009

President of the National Assembly

Samdech Akkak Moha Chakrei Heng Samrin