
Trust: a better tool for property investment in Cambodia

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Introduction

In recent years, Cambodia has attracted massive investment from various countries due to several favorable factors, such as a stable political situation, no foreign exchange controls, and a younger, cheaper labor force. These factors have led to high economic growth in various sectors, including agriculture, manufacturing, tourism, and real estate.

Of all the industries, real estate is one of the most popular investments in the country. In just a few years, Phnom Penh, the capital city of Cambodia, has become surrounded by office buildings and high-rise condominiums. The prices of suburban land surrounding the city have soared each year, attracting many overseas investors who scramble for a piece of the action.

However, Article 44 of the Constitution and Article 8 of the Land Law state that only natural persons or legal entities of Khmer nationality have the right to own land in the Kingdom of Cambodia. This means that foreigners cannot own land, shophouses, flat houses, or any real estate connected to the land. Therefore, in the past, foreign investors typically sought a local individual or business partner as a nominee to hold the land title, or they created an investment company with 51% Khmer shareholders to address the issue of landholding.

Although a local partner or shareholder can smoothly resolve the land-holding problem, some issues might arise, such as breakup fees, hidden charges, and the nominee going missing or passing away. The nominee also worries about untrustworthy investors absconding with profits and transferring all responsibilities to the nominee, who does not have to accept them. Unreasonable transaction costs and unstable partnerships create investment uncertainty and affect investors' willingness to purchase properties in Cambodia.

The Cambodian Trust Law was officially promulgated in January 2019, with the government hoping to create an environment where local and foreign investors feel at ease. In the following years, the government also enacted regulations on trust registration and other related protocols. The Trust Law accelerated the development of the Cambodian financial industry and enabled current trustees or nominees to legalize their businesses and be monitored by the government. This will resolve investment disputes caused by the old nominee services and rebuild overseas investors' confidence in investing in Cambodia.

Trust Market in Cambodia

Although trust law began in 2019, it is not an entirely new concept in Cambodia. The journey of the Cambodian trust sector started in 2013 when the government issued Sub-Decree No. 476 to regulate the establishment, registration, management, and control of financial trusts in which the trustor is a development partner agreeing with the Cambodian government to invest funds in financial trusts aimed at developing the banking and microfinance sectors. Observing the prosperous development of the banking and microfinance sectors and the use of the trust structure, the Law on Trust was issued in 2019 to facilitate further development and management of the trust sector.

However, there were only seven registered trusts from 2019 to 2021 because the market and regulations were still new, and the world suffered from the severe COVID-19 pandemic, which limited the movement of international investors and slowed the growth of awareness of the new trust scheme. Fortunately, the situation started to improve when the Trust Regulator was established in 2021. The regulator arranged and attended over three hundred public and private events in Phnom Penh and other provinces to raise public awareness of the Cambodian Trust scheme between 2021 and 2024. The government also prepares training and examinations for approved persons in the trust sector and routinely

provides on-the-job training for operators and related businesses to better manage and monitor the industry. Moreover, the government continues to issue regulations to lower operating costs and improve the efficiency of registration and reporting procedures. All these efforts have led to the rapid growth of the trust sector in recent years.

As of August 2024, 979 trusts were registered, valued at around USD 1.524 billion. 98% of the registered trusts are commercial trusts, and approximately 76.02% of the total value is invested in the real estate sector (*Trust Development Strategy 2025-2035, Chapter 2.3.1*). This indicates that the Cambodian trust market has experienced rapid growth in recent years and that trusts have played an essential role in real estate investment.

Trust as a new tool for property investment

According to Chapter 3 of the Trust Law, Trust is a legal arrangement under which the trustor, the asset owner, transfers ownership of assets to a trustee who administers them for the benefit of the beneficiaries. In other words, a trust is like a safety deposit box. The trustee manages whatever the trustor puts into the box as a manager for the beneficiary's advantage. Any profits, interest, bonuses, or dividends belong to the beneficiary. Sometimes, the beneficiary is the trustor himself.

Also, Section 2 of the Chapter 2 Trust Law regulates four types of trusts: personal trust, commercial trust, public trust, and social trust. Personal trusts mainly focus on individual or family interests, while commercial trusts focus on financial returns. Public trusts are created for Cambodian public interests, and social trusts are for the development of society in areas such as culture, education, religion, or science.

Therefore, trusts are usually used for asset management to achieve the goal of safeguarding assets and protecting the privacy of asset owners. They have developed into various products and services, such as financial investment trusts, real estate investment trusts, insurance trusts, escrow services, asset securitization, mutual fund custodian services, fundraising under private collective investment schemes, family trusts, estate management, collateral management, and real estate project management. Different types of trusts exist in various countries that follow distinct market

practices. However, trusts in Cambodia are typically used as property investment tools for overseas investors due to the regulations mentioned earlier in the previous paragraph and other factors. These factors include existing property owners preventing possible arguments and conflicts with nominees, business owners seeking a way to legalize property transactions acceptable to accounting or legal departments, and new buyers looking for safer ways to invest in property.

Foreigners can hold property in Cambodia in several ways, such as nominee structures, land-holding companies, and long-term leasing. However, compared to service costs, structural flexibility, asset safety, and operational complexity, trusts offer a cheaper and safer alternative for overseas investors who want to secure their investments in Cambodia.

Trust Registration is the key to the safety of the Trust asset.

Cambodia regulates different types of trust operators: trustee companies, commercial banks that provide escrow services, and individual trustees. To create a trust, the trustor must sign a trust deed with the operator they choose and outline the required terms and conditions in the agreement. The operator will then manage the trust as a trustee by following those terms and conditions stated in the agreement after the trustor transfers the asset to the trust. The process is quite straightforward. However, a simple agreement with a licensed operator is insufficient for the complete protection of the asset.

According to Article 28 of the Law on Trust (2019), a trust does not become effective unless it is registered with the Ministry of Economy and Finance (MEF) within three months of its creation.

Article 7 of the Sub-Decree on Trust Registration (2019) states that the trustee of the Trust Deeds shall bear the obligation to register the trust deeds with the Ministry of Economy and Finance.

Article 54 of the Prakas on Rules for Supervision, Organization, and Functioning of Trust (2022) states that a trust that has received a permit for the establishment from the Director General of the Trust Regulator shall commence the procedure for trust registration with the Trust Regulator no later than three months after the approval date of the trust's establishment.

Furthermore, Article 20 of the Law on the Organization and Operation of the Non-Banking Financial Services Authority (2021) states that the Trust Regulator shall implement the competencies of the Ministry of Economy and Finance as outlined in the Law on Trust promulgated in 2019, along with other regulations related to the trust sector.

These regulations indicate that the Cambodian Trust regulations protect the assets placed in the trust only if they are fully registered with the Trust Regulator of Cambodia. This is the most important process for creating a trust.

What's Next?

Trust is a relatively flexible financial tool suitable for various investment purposes, not just the real estate sector. In a developing country with tremendous potential across different industries, like Cambodia, some products could accelerate the country's development and enhance the well-being of the people who work and live there, as well as the businesses that reside in the kingdom.

According to projections from Statista, Cambodia's total labor force is forecast to be 9.26 million in 2024. Additionally, approximately 270 thousand foreigners from 161 nationalities work in various fields in Cambodia, as stated by the Ministry of Labor and Vocational Training. Human resources are one of the key factors of production. However, there are currently insufficient tools or products to safeguard what Cambodians and foreigners earn or possess. Trust could be the best choice for protecting the money they make or the property they buy. It can assist in managing assets for greater profits or returning them to the family or a designated person if an unfavorable incident occurs.

In addition to products for individuals, businesses in Cambodia also need solutions for sustainable operation. The current trust service has resolved the asset-holding issue and ensured safety through trust registration. However, since the sector is relatively new in Cambodia, some businesses still have a hard time dealing with audits from the public and private sectors or convincing their partner financial institutions when fundraising or applying for credit lines. Raising public awareness is a priority that the public and private sectors need to do continuously and internationally to spread positive

images of Cambodia, help more people understand the Cambodian trust scheme, and attract more international players to invest and enjoy the results of the development of the Kingdom of Cambodia.