

Legal Impact of Land Registration on Real Estate Investment: The Case of Cambodia

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Abstract

The main purpose of this article was to discover the relations between land registration and real estate investment. Methodologically, the research was based on analysis of the reflection of the actual practice relating to legal regulations available since the beginning of land privatization in 1989, the official reports from the government agencies and other reports from civil society. It has also elaborated the Cambodian land system has evolved in order to boost the country development. The research findings revealed that land registration is one of the main factors to ensure land stability. The legal regulations were made to manage co-ownership and co-owned buildings thereby resulting in a great impact on real estate investment. A great policy to grant co-ownership to foreigners is undeniable for the co-owned building construction. As a result, high buildings have been then flourished in Phnom Penh, the capital city of Cambodia. The research however suggested that local competent authorities should be granted full responsibilities to control constructions in their territorial areas.

Keywords: Sporadic land registration, systematic land registration, complementary land registration, land certificate, ownership, condorminium, investment

I. Introduction

Stability of land tenure is the only way that the government necessarily takes consideration. In Cambodia, where land was just privatized in 1989 with lack of human capital and financial resources, the land registration faced a lot of challenges. Inadequate legal tools resulted in ambiguous implementation. Moreover, the limited number of cadastral staff was another challenge for an incomplete task in a determined period of time. Consequently, a huge number (4.5 million) land applications were made in early 1990s while the issuance of land certificates was a very low number equivalent to only 12% of the total land applications.¹

Trustworthy land registration started in 2002 after the effect of the 2001 Land Law on August 31, 2001. Although the earlier Cambodian land registration was attempted to ensure land security and reduce land disputes,² the outputs of land registration are a great impetus to boost real estate development. Consequently, many companies have been interested in investing in real estate sector thereby contributing to economic growth. It is necessary to respond to the question that - what is the legal impact of land registration on real estate development?

This article argues that the land registration has a very close connection to the real estate investment. This reflects a legal impact of land registration on the development policy of real estate. Regulating co-ownership and co-owned buildings is a good strategy to attract investors who are willing invest in condominiums or real estate. Moreover, granting co-ownership of co-owned buildings from the first floors and up to foreigners will attract more foreigners to buy units of condominiums and therefore boosting high buildings in Cambodia. Consequently, in most recent years, many condominiums have remarkably flourished in Phnom Penh.

II. Land Privatization and Issues of Land Registration

It should be noted that there is a need to understand the close connection between the Constitution and land rights in Cambodia. The 1981 Cambodian

1) Sophal Chan et al., *Land Tenure in Cambodia: A Date Update* 30 (Cambodia Dev. Res. Institute, Working Paper No. 19, 2001).

2) Government Statement on Land Policy, No. 27SCN/AK, July 01, 2009 (Cambodia).

Constitution did not allow private ownership. However, the 1989 Cambodian Constitution allowed private ownership which was determined by law³ resulting that ownership was given only for residential land and possession was given only for agricultural land.⁴ Finally, the 1993 Cambodian Constitution provides full ownership to Cambodia citizens.⁵

A. Inception of Land Privatization and Its Consequence

Land privatization in Cambodia has been introduced since 1989 after 10 year experience of solidarity groups for farming. The policy of solidarity groups for farming starting from 1979 witnessed the failure thereby pushing the government to privatize the land to Cambodian citizens. The government instruction was made in June 1989 in order to deal with land privatization. Ownership was granted over only residential land with no more than 2,000 m² while possession was for agricultural land with no more than 5 hectares.⁶ The call for land applications was opened with interesting remark of the deadline. Those who failed to register their land between June 1989 to December 31, 1989, their land was considered as vacant land without owners. The extension of land applications were allowed as the second phase until June 30, 1990.⁷ The permission from the Minister of Agriculture allowing cadastral staff to accept land applications from July 1990 was available.⁸ The figure below easily shows the open calls for land applications in the early start of land privatization in Cambodia.

3) RODTHATHOMMONOUNH [CONSTITUTION], May 5, 1989, art. 18 (Cambodia).

4) Instruction on the Implementation of Land Use and Management Policy, No. 03SNN, June 3, 1989, in KAMRANG CHBAB NING LIKHET PATORTTHAN KATEYUTH PAKPORN NING DEITHLY NING NOKOROPANIYAKAM [COMPILATION OF LAWS AND LEGAL REGULATIONS RELATING TO LAND AND URBANIZATION] 28-29 (Phalthy Hap ed., 2015); Land Law of Cambodia, No. 100K, Oct. 13, 1992 (Cambodia).

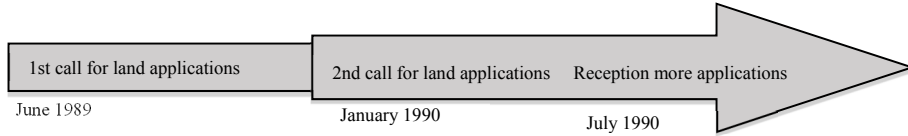
5) RODTHATHOMMONOUNH [CONSTITUTION] Sept. 24, 1993, art. 44 (Cambodia).

6) Instruction on the Implementation of Land Use and Management Policy, *supra* note 4.

7) Letter of the Office of the Council of Ministers on the Request to Delay the Acceptance of Land Applications, No. 94SCN/KS, Jan. 17, 1990, in KAMRANG CHBAB NING LIKHET PATORTTHAN KATEYUTH PAKPORN NING DEITHLY NING NOKOROPANIYAKAM [COMPILATION OF LAWS AND LEGAL REGULATIONS RELATING TO LAND AND URBANIZATION] 49 (Phalthy Hap ed., 2015); Letter of Ministry of Agriculture on the Delay of Acceptance of Land Applications, No. 485KSK/ M/RB, Jan. 29, 1990, in KAMRANG CHBAB NING LIKHET PATORTTHAN KATEYUTH PAKPORN NING DEITHLY NING NOKOROPANIYAKAM [COMPILATION OF LAWS AND LEGAL REGULATIONS RELATING TO LAND AND URBANIZATION] 52 (Phalthy Hap ed., 2015).

8) Notification on the Acceptance of Land Applications and Subsequent Measures, No. 3451KSK/SCN, July 21, 1990, in KAMRANG CHBAB NING LIKHET PATORTTHAN KATEYUTH PAKPORN NING DEITHLY NING NOKOROPANIYAKAM [COMPILATION OF LAWS AND LEGAL REGULATIONS RELATING TO LAND AND URBANIZATION] 56 (Phalthy Hap ed., 2015).

Figure 1: Calls for land applications in Cambodia in 1989-1990



It should be noted that the cadastral situation when starting land privatization faced limited human resources. Before 1975, the number of cadastral officers was approximately 1,000 while after the collapse of the Khmer Rouge regime in 1979 this number came down to less than 50.⁹ There were no records of statistical number of the alive cadastral officers until 1989. As such, when establishing the Department of Cadaster in October 1989,¹⁰ the number of cadastral officers was probably inadequate. Despite such a hardship, approximately 3.7 million land applications were remarkably applied by landholders accounting to 70% of the total land parcels throughout the country.¹¹ Yet, land certificates were not yet issued on time.

1. Evolvement of Competent Authorities for Land Registration

Before going into detailed discussion, it is necessary to understand the current territorial administrative system in Cambodia. The whole territory of Cambodia is divided into 24 provinces and one capital that is Phnom Penh. The province and capital, hereinafter called the province, has equal authority. The province is broken down into districts and the district is sub-divided into communes. The national authority or national level refers to the ministerial level while local authority or local level includes from provincial authorities to commune authorities. Noticeably, since 2002 only the commune councils have been elected by the people within the territory while district governors and provincial governors have been appointed by the government.

9) VOAN LIM, LAND SYSTEM IN CAMBODIA 7 (2006).

10) Proclamation on the Appointment and Activity of the Department of Cadastre, No. 111PK/KSK, Oct. 31, 1989, in KAMRANG CHBAB NING LIKHET PATORTTHAN KATEYUTH PAKPORN NING DEITHLY NING NOKOROPANIYAKAM [COMPILATION OF LAWS AND LEGAL REGULATIONS RELATING TO LAND AND URBANIZATION] 45 (Phalthy Hap ed., 2015).

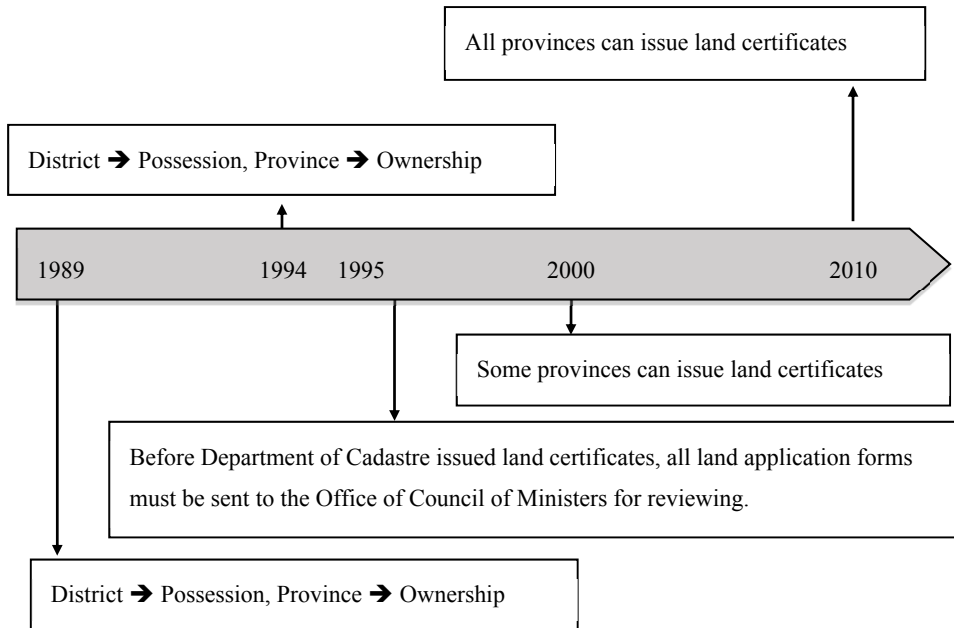
11) Instruction on the Amendment of Instruction No. 03SNN dated June 3, 1989, of the Council of Ministers, No. 03SNN, Dec. 8, 1990, in KAMRANG CHBAB NING LIKHET PATORTTHAN KATEYUTH PAKPORN NING DEITHLY NING NOKOROPANIYAKAM [COMPILATION OF LAWS AND LEGAL REGULATIONS RELATING TO LAND AND URBANIZATION] 63 (Phalthy Hap ed., 2015).

Interestingly, district and provincial authorities played a vital role in early land privatization. The competent authorities having power to grant possession were given to district authorities while ownership was given to provincial authorities. However, this power was taken to the Department of Cadastre from 1994. In 1995, before allowing the Department of Cadastre to issue land certificates, all land application documents were required to be sent to the Office of Council of Ministers.¹² Until 2000, some provinces received the signature delegation for signing the land certificates.

In order to deepen the discussion of this article very well, the understanding of the nature of land certificates and their evolvement is important. The term land certificate is a common term used to cover all types of land certificates starting from 1989. Soon after land privatization, the government was able to provide land certificates in form of possessory land certificates or simply speaking - sporadic land certificate. This type of possessory land certificates is still available until now in the case that landholders individually apply for land registration. However, from 2002, another co-existent land registration has been available when Cambodia received the international cooperation to start up systematic land registration projects, then the land certificates have been issued in the form of certificates of ownership or other words, systematic land registration certificates. Figure 2 below shows the power of competent authorities to issue land certificates and how land application process has been made.

12) Letter of the First Prime Minister to the Second Prime Minister, No. 918KhT/94, June 16, 1995, *in* KAMRANG CHBAB NING LIKHET PATORTTHAN KATEYUTH PAKPORN NING DEITHLY NING NOKOROPANIYAKAM [COMPILATION OF LAWS AND LEGAL REGULATIONS RELATING TO LAND AND URBANIZATION] 208 (Phalthy Hap ed., 2015) (Requesting that the Applications of Land Possession be Passed to the Office of Council of Ministers); Letter of the Second Prime Minister to the First Prime Minister on Agreeing with Letter No.918KhT dated June 16, 1995, No. 97Kh/2-95, June 22, 1995, *in* KAMRANG CHBAB NING LIKHET PATORTTHAN KATEYUTH PAKPORN NING DEITHLY NING NOKOROPANIYAKAM [COMPILATION OF LAWS AND LEGAL REGULATIONS RELATING TO LAND AND URBANIZATION] 209 (Phalthy Hap ed., 2015); Letter of the Council of Ministers on the Land Conflict Issues between Authorities and People, No. 1052SCN/SR, July 5, 1995, *in* KAMRANG CHBAB NING LIKHET PATORTTHAN KATEYUTH PAKPORN NING DEITHLY NING NOKOROPANIYAKAM [COMPILATION OF LAWS AND LEGAL REGULATIONS RELATING TO LAND AND URBANIZATION] 212 (Phalthy Hap ed., 2015).

Figure 2: Evolution of the power of competent authorities to issue land certificates



Decentralizing of power to issue land certificates results in more disadvantages than advantages. Such decentralized power deters landholders from registering their land because it causes the land registration process to become costlier, time consuming and complicated. When landholders do not register their land, those who are able to start registering earlier will get land certificates. It is then one of the main causes of land disputes between those who have actually possessed and those who have the land certificates. From the inception of land privatization in 1989 to 1994, district authorities were responsible to issue land certificates with regard to possessory rights over agricultural land while provincial authorities issued land certificates concerning ownership rights over residential land. As a result, 448,277 sporadic registration certificates were issued as of 1995.¹³ In September 1994, the government required the Department of

13) Chan et al., *supra* note 1, at 30.

Cadastré which was under the Ministry of Agriculture, Forestry and Fisheries to sign land certificates.¹⁴ More remarkably, in October 1995 the government transferred the Department of Cadastré to be under the supervision of the Office of the Council of Ministers attempting to have better land administration.¹⁵ However, the output of land registration has been far from expectation. Consequently, only 70,357 sporadic registration certificates were issued during the period of five years from 1995 to 2000.¹⁶

It is noted that the first ministry dealing with land issues was firstly available after 10 years of land privatization. The Ministry of Land Management, Urban Planning and Construction established in 1999 was a hope to cope with land management and administration including urbanization and construction in the whole country. However, following the 2001 Land Law and relevant legal regulations, the sporadic land registration processes still require the power of provincial authorities and national authority to issue land certificates. District authorities just fulfill the cadastral work such as demarcation, survey and adjudication but do not have authority to finalize the registration. Reasons may come from limited cadastral knowledge and resources at the district level. However, the 2001 Land Law requires that Ministry of Land Management, Urban Planning and Construction issue a certificate of ownership¹⁷

2. Types of Land Registration

Understanding the nature of land registration in accordance with legal tools regulating land registration is crucial. Under the government instruction, from 1989, land registration was compulsory sporadic land registration with the first deadline December 31, 1989.¹⁸ The extension of the deadline was to July 31, 1990.¹⁹ Despite the delay of the deadline of land registration application, the flexibility of accepting land application was going on until the first Land Law

14) Department of Cadastré, *The Form for Filling Certificates of Immovable Property* "New Certificates", Sept. 7, 1994.

15) Sub-Decree on the Transfer of the Department of Cadastré of the Ministry of Agriculture, Forestry and Fisheries to be under the Supervision of the Office of the Council of Ministers, No. 58ANK, Oct. 3, 1994 (Cambodia).

16) Chan et al., *supra* note 1, at 30.

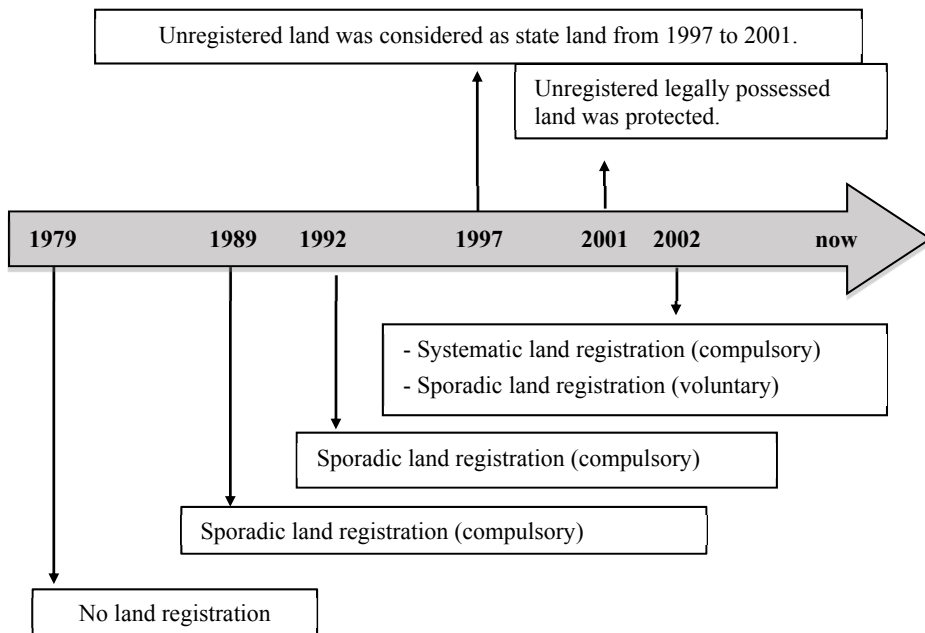
17) Land Law of Cambodia, No. NS/RKM/0801/14, Sept. 30, 2001, art. 226 (Cambodia); *see also* Interview with Hor Lim, Under the Secretary of State of the Ministry of Land Management, Urban Planning and Construction of Cambodia (May 25, 2010).

18) Instruction on the Implementation of Land Use and Management Policy, *supra* note 4, at 30.

19) Letter of the Office of the Council of Ministers on the Request to Delay the Acceptance of Land Applications, *supra* note 7, at 49.

was stipulated in 1992, hereinafter called the 1992 Land Law. The land registration was also compulsory under the 1992 Land Law for the period of 5 years starting from October 1992.²⁰ However, the 2001 Land Law stipulates reliable land registration system that is systematic land registration which can only happen with the government initiatives. Since then, sporadic land registration system has become voluntary.²¹ The legal effect of the two types of land certificates is the same but only sporadic land registration is not final while systematic land registration is fine. Noticeably, when systematic land registration projects happen in any area, then sporadic land registration certificates in that area is required to change to systematic land registration otherwise it is invalid. It means that sporadic land registration certificates are available only in any areas where systematic land registration projects do not exist yet. The figure below describes the compulsory and voluntary land registration process in Cambodian laws and legal regulations from 1989 to the current situation.

Figure 3: Nature of land registration in accordance with the required Laws



20) Land Law of Cambodia, No. 100K, Oct. 13, 1992, arts. 18, 224 (Cambodia).

21) Land Law of Cambodia, No. NS/RKM/0801/14, Aug. 30, 2001, art. 42 (Cambodia).

In Cambodia currently, branches of the Ministry of Land Management, Urban Planning and Construction at district and provincial levels serve a secretarial function for the central ministry office, in terms of land management and administration. For example, at the district level, District Office of Land Management, Urban Planning, Construction and Land is responsible for performing cadastral work such as demarcation, survey and adjudication in case of sporadic land registration. When all cadastral work is completed, and land parcels are recorded with a sporadic index map, all land documents have to be sent to the Provincial Department of Land Management, Urban Planning, Construction and Cadastre for more examination and record of land parcels in land registers. The provincial authorities who received signature delegation from the Ministry of Land Management, Urban Planning and Construction are able to issue sporadic registration certificates while the General Department of Cadastre and Geography of the ministry issues sporadic registration certificates in provinces which have not received signature delegation from the ministry. Since July 2010, all provincial authorities throughout Cambodia have been entitled to issue land certificates in their territorial province. It is important to know the year that provincial governor of each province receiving the signature delegation to sign the land certificates. For more information, please refer to the table below.

Table 1: Date of Signature Delegation from the Ministry of Land Management, Urban Planning, and Construction to Provincial Offices to Issues Land Certificates

No	Provinces/Capital	Date of Receiving Signature Delegation
1	Kandal	July 18, 2000
2	Phnom Penh	July 18, 2000
3	Sihanoukville	August 12, 2002
4	Kampot	August 12, 2002
5	Kampong Thom	August 12, 2002
6	Takeo	August 12, 2002
7	Prey Veng	December 23, 2003
8	Kampong Cham	December 23, 2003
9	Battambang	April 25, 2005
10	Siem Reap	October 13, 2005
11	Kampong Speu	October 13, 2005
12	Svay Rieng	August 13, 2007
13	Kep	August 13, 2007
14	Kratie	September 5, 2007

No	Provinces/Capital	Date of Receiving Signature Delegation
15	Oddar Meanchey	September 5, 2007
16	Banteay Meanchey	September 5, 2007
17	Pursat	September 5, 2007
18	Kampong Chhnang	September 5, 2007
19	Koh Kong	October 1, 2009
20	Preah Vihear	October 1, 2009
21	Stung Treng	October 1, 2009
22	Ratanak Kiri	October 1, 2009
23	Mundul Kiri	July 1, 2010
24	Pailin	July 1, 2010

Source: Letter of signature delegation from Ministry of Land Management, Urban Planning and Construction, 2000-2010

a. Sporadic Land Registration

Sporadic land registration has remarkably started, from the inception of land privatization in 1989. As mentioned above, the nature of sporadic land registration was changed from compulsory from 1989 to 1997 but voluntary from 2001 until now. The result of sporadic land registration has also reflected the nature and registration processes. As mentioned in Section II.A.1 above, 448,277 land certificates were issued from 1989 to 1995 while provincial authority and district authority was given the power to issue the land certificates. However, the number of land certificates remarkably went down to only 70,357, accounting to 12 percent of the total land applications during the period of five years from 1995 to 2000 while the Department of Cadastre took the power from local authority to issue land certificates.²² The number of land certificates which was issued through sporadic land registration reached only 589,827 as of November 2008.²³ This number shows a slow pace of sporadic land registration. Therefore, it is necessary to know clearly how sporadic land registration procedure works. It is necessary to study the defect of sporadic land registration which may discourage landholders from registering their land through sporadic land registration. However, it is vital that the government provide a possible way to successfully motivate landholders to voluntarily register their land.

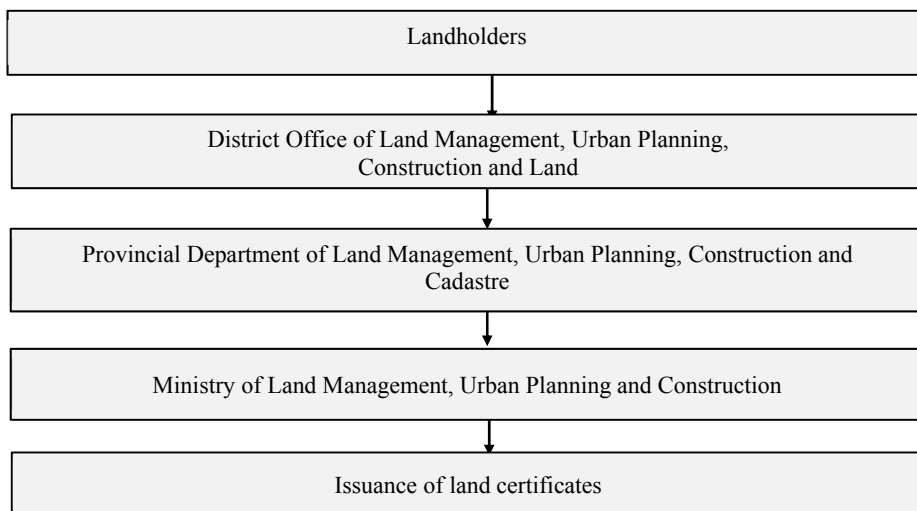
In early period of land registration, there was no detailed procedure determining the number of days that the applicants could receive land

22) Chan et al., *supra* note 1, at 30.

23) VANNA SIEK, SUMMARY OF THE RESULT OF SPORADIC LAND REGISTRATION FROM 1989 TO NOVEMBER 25, 2008 (2008).

certificates from the date of filing applications. Consequently, a huge number of landholders applied for land certificates and a small number of land certificates were issued. This slow pace of registration has resulted in a great deal of uncertain land tenure since most of landholders do not have land certificates. Remarkably, after May 2002, a detailed procedure of sporadic land registration was available allowing any landholder who intends to receive a land certificate.²⁴

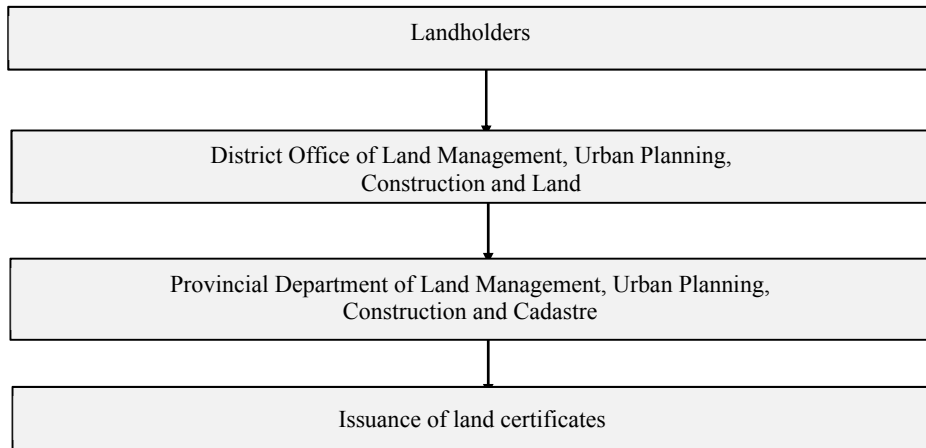
Figure 4: Brief systematic land registration process before 2010



It is crucial to understand the brief procedure of sporadic land registration before and after 2010. As mentioned earlier, before 2010, all land applications must be sent to the central level, that is the Ministry of Land Management, Urban Planning and Construction. But from 2010, all land applications must be sent to only provincial level so that the provincial authorities can issue the land certificates. The shorter process of land registration is a way to make land registration faster. See figure 4 above for the simplified procedure of sporadic land registration and figure 5 below for the simplified procedure of systematic land registration.

24) Sub-Decree on Sporadic Land Registration, No. 48ANK/BK, May 31, 2002 (Cambodia).

Figure 5: Brief systematic land registration process from 2010



Sporadic land registration has several advantages. For those who wish to have their land certificates can apply for the certificates at any time. Although the state does not oblige landholders to apply for land certificates, landholders realize the importance of right to land which is registered, for registered land is fully protected by law. More importantly, it is necessary for those who want to transact their land if they have land certificates. If landholders apply for land certificates through sporadic land registration, cadastral service fees obtained therefrom will increase state income. Furthermore, the procedure of sporadic land registration which requires that land disputes be resolved before issuing land certificates makes it clear that the areas where all landholders have land certificates will not have land disputes.

Although advantages arising from sporadic land registration exist, the defect thereof is necessary to be taken into consideration. It is noted that the attempt to fasten the cadastral work has been made,²⁵ the actual days of completing land

25) *Id.* at 3 (“District governor shall issue the announcement on the date of demarcation land boundary to land applicants and post it publicly at least 14 days before the demarcation starts.”); *But see Slight Changes to the Sporadic Land Registration Procedure*, RAJAH & TANN ASIA, https://kh.rajahtannasia.com/media/2525/kh_client_update_amendment_sporadic_land_registration_process.pdf (last visited Oct. 31, 2018) (stating that the Amendment of this Sub-Decree dated on June 9, 2016 reduces the number of 14 days to 7 days); *see also* Joint Proclamation on Providing Public Services of the Ministry of Land Management, Urban

registration has not been reached accordingly. For example, the legal regulation determines only the period from the date of collecting data to the date of issuing land certificates, but it fails to mention how much time the cadastral administration has to respond to land applicants from the date of filing the application.²⁶ The decision also fails to mention the punishment provisions if period stated in the decision is not followed. This flaw in law may result in corruption especially in the case that landholders who want to receive their land certificates within a short period of time may bribe cadastral staff. Therefore, it is necessary for sporadic land registration to include the available period of time for its whole procedure and open complaint processes.

Albeit imperfect recognition of land certificates through sporadic land registration,²⁷ landholders should be encouraged to register their land through sporadic land registration. An attempt of the 2001 Land Law is to provide a definitive certificate of ownership which cannot be contested if there is no refusal when creating a land register.²⁸ As such, only systematic land registration, in which cadastral index maps and land registers are included, can provide such a definitive certificate known as an owner certificate for immovable property equalizing a certificate of ownership or simply called a systematic registration certificate. On the other hand, sporadic land registration can usually provide a certificate of immovable property equalizing a possessory certificate or sporadic registration certificate.²⁹ Since the systematic land registration takes more efforts from the government including budget, and costly and modern technical equipment, it is therefore necessary that landholders register their land through sporadic land registration within the set period of time. So, when the systematic land registration project happens at their areas, the possessory certificate is just to be changed to certificate of ownership with free of charge. Figure 6 elaborates more about the actual sporadic land registration from 2002 to 2017.

Planning and Construction, No. 995SHV/PK, Dec. 28, 2012 (Cambodia) (fixing the period of days for registration work).

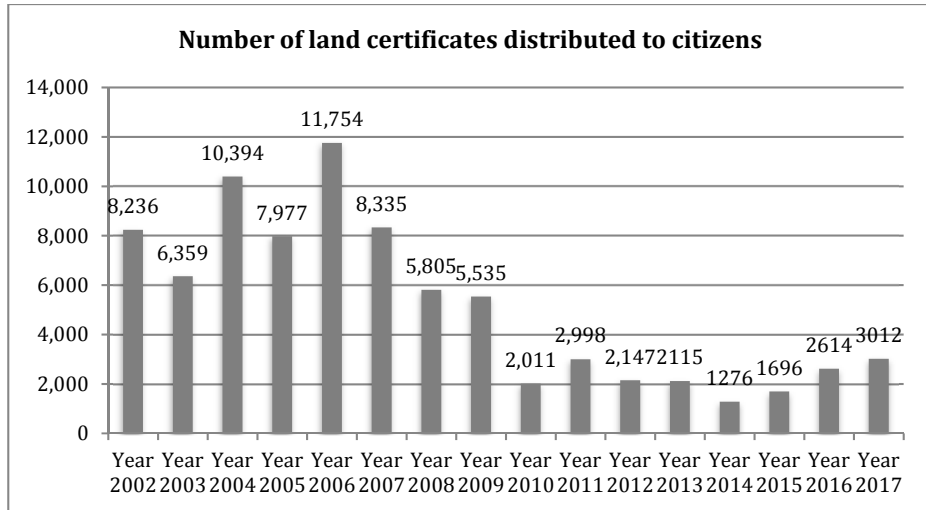
26) Decision on Providing Cadastral Services, No. 51SSR, Dec. 21, 2006 (Cambodia).

27) The chief of Department of Land Registration under the General Department of Cadastre and Geography of the Ministry of Land Management, Urban Planning and Construction said that land certificates issued through sporadic land registration are not 100 percent recognized, but just around 90 percent. Interview with Phalthy Hap, Professor, Royal University of Law and Economics (Dec. 3, 2008).

28) Land Law of Cambodia, No. NS/RKM/0801/14, Sept. 30, 2001, art. 40 (Cambodia).

29) Sub-Decree on Sporadic Land Registration, No. 48ANK/BK, May 31, 2002, art. 11 (Cambodia).

Figure 6: Number of land certificates distributed to citizens from 2002 to 2017



Source: Annual report of Ministry of Land Management, Urban Planning and Construction 2002-2017

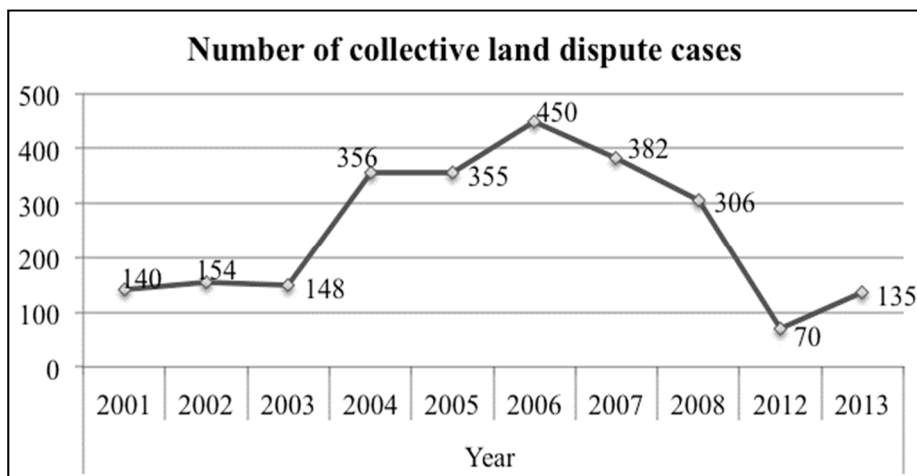
The output of sporadic land registration has been remarkably low achieving only 82,264 sporadic registration certificates from 2002 to 2017 as shown in the figure above.³⁰ This inefficient cadastral work has consequently resulted in several drawbacks although the systematic land registration can now be a main task of the government to speed up more registration. However, areas where systemic land registration projects are not available, disadvantages to unregistered land may exist in case landholders wish to get some loans for business purposes.

The cause of slow sporadic land registration processes has a serious impact on land tenure security. The attempt of the Ministry of Land Management, Urban Planning and Construction to produce a very good sporadic registration certificate has not much responded to the needs of society. As a result, land disputes arising from uncertain land tenure have rampantly occurred. According to the NGO’s reports, collective land disputes consisted of 140 cases

30) Ministry of Land Mgmt., Urban Planning & Constr., Report on the Main Achievement for 5 Years (2012-1016), No. 006DNS/Rba/SRB, Feb. 17, 2017 (Cambodia); *see also* Report on the Outputs of Work in 2017 and the Work Plan 2018 of the Ministry of Land Management, Urban Planning and Construction, No. 002DNS/ARB/RBa, Jan. 12, 2018 (Cambodia).

in 2001³¹ and increased to 306 cases in 2008.³² Between 2009 and 2011, ADHOC did not have any report clearly about land disputes. However, the number of land disputes drastically dropped in 2012 while in 2013, land disputes rose up more than 2 times compared to 2012. There was no official explanation on this matter. Yet, this may be explained by an important phenomenon in 2012 under youth volunteer for land registration. Figure 7 below shows the number of land disputes where a group of people requested ADHOC for facilitation of the dispute complaints.

Figure 7: Number of collective land disputes via ADHOC facilitation



It is unforgettable that financial and technical support from international donors involving in land issues has considerably contributed to Cambodian land system. Apparently, a lack of legal tools to identify landholders is bound to have widespread social ramifications of land disputes. This is a great impetus to motivate international donors to focus on land management and administration project encompassing the systematic land titling program since

31) ADHOC, *Human Rights Situation Report 2006*, COALITION FOR INTEGRITY & SOC. ACCOUNTABILITY 33 (Oct. 29, 2008), http://en.cisa.org.kh/index.php?option=com_content&task=view&id=964&Itemid=99999999.

32) ADHOC, *Human Rights Situation 2008*, COALITION FOR INTEGRITY & SOC. ACCOUNTABILITY 28 (May 25, 2009), http://en.cisa.org.kh/index.php?option=com_content&task=view&id=1603&Itemid=99999999.

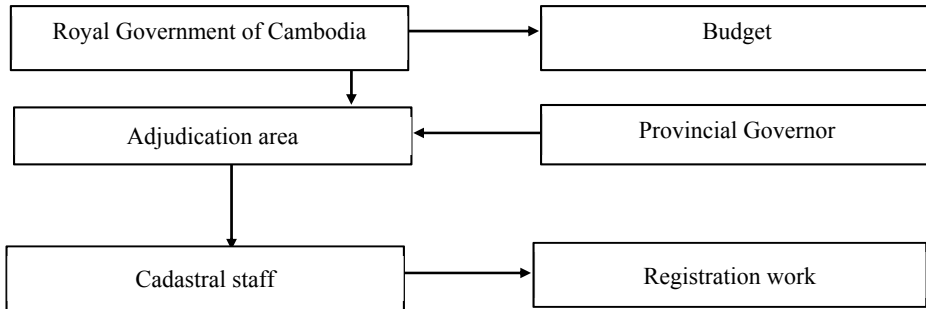
1995.³³ In March 2000, an outcome resulted from the international support led to the Sub-decree on the Procedure of Establishing Cadastral Index Maps and Land Registers aimed at registering land through systematic land registration.³⁴ The 2001 Land Law requires this sub-decree to be slightly amended. Consequently, the newly amended sub-decree was made on May 31, 2002.³⁵ Regarding land disputes which cannot be resolved by administration commission, the newly amended sub-decree requires that the cases be submitted to the national cadastral commission while the old one to the court. Therefore, it is necessary to know how the new sub-decree directs the procedure of systematic land registration and how the project under the support of the international donors works. Challenges arising from systematic land registration are also necessarily discussed.

The Sub-decree on the Procedure of Establishing Cadastral Index Maps and Land Registers describes the procedure of systematic land registration clearly. Unlike sporadic land registration, systematic land registration requires that the action be made by the government's side. It also requires highly technical equipment and technical staff to conduct land registration in the areas which are determined by provincial governors. Consequently, the support from international donors is very much needed in order to proceed with systematic land registration well. Yet, the cooperation of landholders in the determined areas for systematic land registration is also very necessary. The systematic land registration provides landowners and land possessors with trustworthy land certificates which are registered in land registers. The simplified chart of systematic land registration is shown in figure 8 below.

33) Setha Sek, Land Registration to Improve Security, Transparency, Governance and Sustainable Resource Management, Presentation at the Regional Workshop on Land Issues in Asia, Phnom Penh, Cambodia (June 4, 2002).

34) Sub-Decree on the Procedure of Establishing Cadastral Index Maps and Land Registers, No. 46ANK/BK, May 31, 2002, art. 12 (Cambodia).

35) Sub-Decree on the Procedure to Establish Cadastral Index Maps and Land Registers, No. 11ANK/BK, Mar. 22, 2000, art. 12 (Cambodia).

Figure 8: Brief systematic land registration process

Systematic land registration witnessed the cooperation of international donors in Land Management and Administration Project (LMAP) as a remarkable Cambodian land history in this twenty first century. In 2002, four partners including the Royal Government of Cambodia, World Bank, German and Finnish Governments made a 15-year project for conducting systematic land registration projects. With financial support of 100 million US dollars from the World Bank, the project would work in 3 phases in which each phase planned to achieve the registration of 1 million land parcels. The budget for this project was approximately 34 million US dollars. It is noted that the assumption of the number of total land parcels was only 6 million but in fact the actual number of land parcels may reach approximately 10 million. In the aftermath of this project, as of September 2008, only 902,968 systematic registration certificates were issued and distributed to the landowners,³⁶ and this number continued to increase to only 1,316,971 as of April 2010.³⁷

Until 2009, the project has focused on 11 provinces out of 24 provinces with approximately 700 cadastral staff. In 2009, however, this project extended to other 4 provinces required approximately 100 cadastral staff. It is therefore expected that within the second phase, 2007-2012, the number of registered land parcels would remarkably increase. However, the fact has shown that the registration pace was still slow.

36) Land Mgmt. & Admin., Report of the Outcome of Land Registration System from the Start until September 2008, No.0894 LMAP (Cambodia).

37) Letter of the Ministry of Land Management, Urban Planning and Construction to the Royal University of Law and Economics, No. 498 DNS/SDP dated June 16, 2010.

In the inception of the project, international donor cooperation has contributed to a great result of systematic land registration, challenges however cannot be neglected. Difficulties in receiving budget in order to run the project have been complained by the Cambodian side. Moreover, cadastral staff's allowance was limited with a strict condition that if the work was done more slowly than the project's plan, the allowance was reduced to half of the total amount per month.³⁸ When extending to other 4 provinces, the project would lack more technical staff. Technical knowledge was also one of the major problems in systematic land registration. Furthermore, unclear commune territorial boundary was another obstacle to adjudicate in each unit of systematic land registration which covers one commune.³⁹ It is necessary to increase the number of cadastral staff and budget in order to conduct systematic land registration project within appropriate period of time otherwise it will never ensure the date of registration completion.⁴⁰

It is noted that the cooperation between the Royal Government of Cambodia and the World Bank was drastically disconnected in September 2009. The systematic land registration projects started earlier largely depended on the World Bank budget of 100 million US dollars. The disconnection of the cooperation has remained curious among the public. As shown in figure 9 below,⁴¹ since the disconnection between the Royal Government of Cambodia and the World Bank, the national budget has been increased for systematic land registration remarkably from USD 603,635 US dollars in 2009 to USD 2,024,642 in 2010 and to USD 4,387,050 in 2016. The figure below also shows the trend that the government has invested the national budget in systematic land registration from 2009 to 2016.

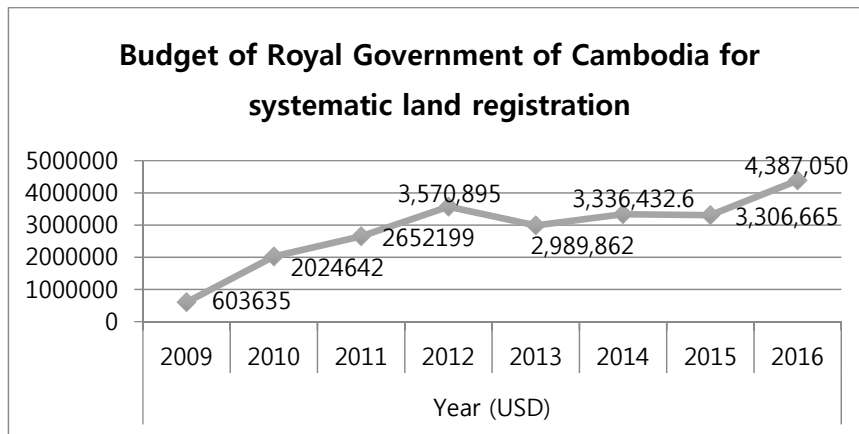
38) Interview with Vanna Siek (Dec. 3, 2008) (stating that each staff received USD180 per month. If the work is done slowly, the allowance is reduced to USD 90 per month.).

39) One unit of systematic land registration previously covered one village.

40) See *Cambodian Program Report: Human Rights Delegations for Young Leaders*, GLOBAL YOUTH CONNECT 6, <http://files3.webydo.com/41/411940/UploadedFiles/1de2a6b8-0183-4c74-9a32-e7bb8087c16c.pdf> (last visited Oct. 30, 2018) (indicating that the current rate of systematic registration would take 50 years to complete all Cambodia's land. This may refer to the total of 6 million estimated land parcels).

41) Letter of Land Management and Administration Project, No. 0501LMAP, Mar. 23, 2010 (Cambodia); Letter of Land Administration Sub-sector Project, No. 0321LMAP, Apr. 29, 2011 (Cambodia); Letter of Land Administration Sub-sector Project, No. 210LMAP, Mar. 16, 2012 (Cambodia); Letter of Land Administration Sub-sector Project, No. 560LASSP, May 27, 2013 (Cambodia); Letter of Land Administration Sub-sector Project, No. 307LASSP, Apr. 23, 2014 (Cambodia); Letter of Land Administration Sub-sector Project, No. 141LASSP, May 12, 2015 (Cambodia); Letter of Land Administration Sub-sector Project, No. 87LASSP, Apr. 6, 2016 (Cambodia); Letter of Land Administration Sub-sector Project, No. 0054LASSP, Mar. 16, 2017 (Cambodia).

Figure 9: Budget of the Cambodian government spending in systematic land registration from 2009 to 2016



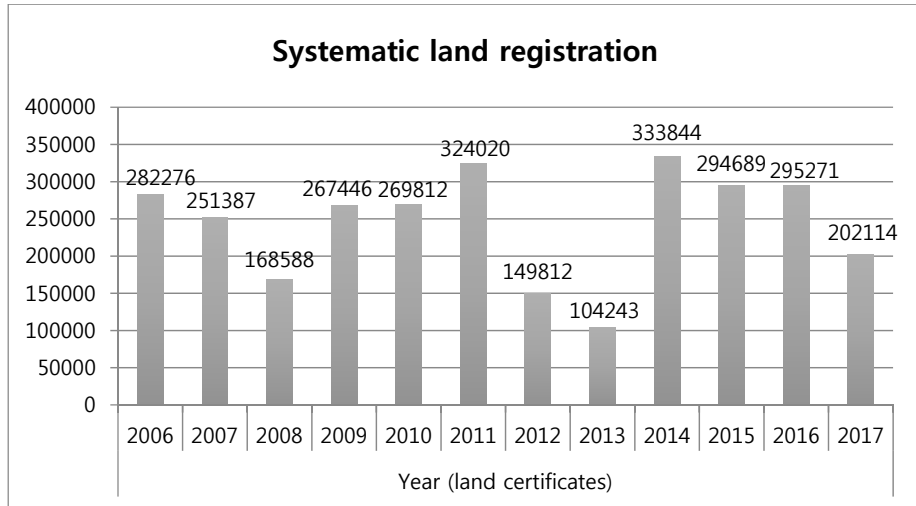
Sources: Letter of Land Administration Sub-sector Project, 2009-2016)

The figure above shows efforts of the government to spend on systematic land registration while stopping fund from the World Bank. The drastic increase in government's budget between 2009 and 2010 has reflected the political commitment when the government tried to show the financial independence for systematic land registration.

The outputs of systematic land registration has marked a noticeable number after 16 years of practice. As of 2017, the total of land certificates distributed to the landowners reached 3,626,158.⁴² This number requires more commitment from the government to fasten the systematic land registration. The figure below shows the yearly number of land certificates arising from systematic land registration from 2006 to 2017.

42) Report on the Outputs of Work in 2017 and the Work Plan 2018 of the Ministry of Land Management, Urban Planning and Construction, *supra* note 30, at 7.

Figure 10: Number of land certificates via systematic land registration by year



Source: Reports of Ministry of Land Management, Urban Planning and Construction from 2006 to 2017

The first ever policy from the Prime Minister with regard to land registration happened in June 2012.⁴³ The Prime Minister initiated this policy by calling youth, especially students at universities to be volunteer for helping register the land. Students were divided into teams in which one team consisted of 12 persons to accompany 12 cadastral officers to go to the field. Their work was to assist cadastral officers only, but their voice was heard by the Prime Minister directly. This gave remarkable power to the youth. The policy was originally planned for one year in order to fasten land registration attempting to calm down land disputes which were affected by the economic land concessions. The Prime Minister decided to introduce a youth volunteer for land registration. The youth were mainly included on-going students from universities throughout Cambodia. However, students from the Faculty of Land Management of the Royal University of Agriculture were required to join the project.⁴⁴ The Prime Minister’s personal money was used to offer the allowance to the youth approximately 225 dollars per person. There were two stages of the project in

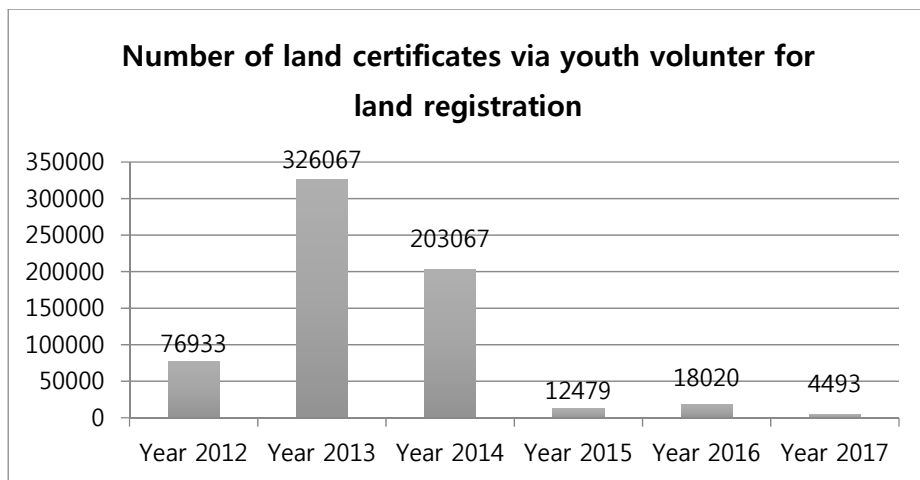
43) This policy is the consequence of the Prime Minister Order on the Measures of Strengthening and Improving Efficiency of Economic Land Concession Management, No. 01BB, May 7, 2012 (Cambodia).

44) Interview with a student of Faculty of Land Management, Royal University of Agriculture (Dec. 2017). The author reserves the right to keep the identity of the student anonymous.

which one stage consisted around 2000 people with the period of 6 months.

Despite the completion of the youth volunteer for land registration policy in June 2013, the work of issuing land certificates has continued. The fact has witnessed that when the students left the fields, all land documents which were approved during the volunteer period was allowed to be under the continued process of certificate registration. Also, the complaints arising therefrom go to competent authorities to resolve. Therefore, during the volunteer period, if a lot of work was not done properly, the result would impact much on competent authority's work. Figure below shows that as of 2017, the total number of land certificates through youth volunteer for land registration is 641,059⁴⁵ among which only in 2013, the registration peaked up to 326,067 land certificates.

Figure 11: The number of land certificates via youth volunteer for land registration from 2012 to 2017



Source: Reports from the Ministry of Land Management, Urban Planning and Construction 2012 – 2017

b. Complementary Land Registration

Only two types of land registration as already discussed, sporadic land registration and systematic land registration, are stipulated in the 2001 Land

45) The total number of land certificates from 2012 to 2017 mentioned in the 2017 report is 641,623. Report on the Outputs of Work in 2017 and the Work Plan 2018 of the Ministry of Land Management, Urban Planning and Construction, *supra* note 30.

Law. The two types of land registration are completely different from one to another. In the systematic land registration, it requires that all landholders be present during the occurrence of systematic land registration projects while the sporadic land registration focuses on the areas which are not yet systematically registered. In practice, however, still landholders are absent during the systematic land registration projects and thereby are not able to register their land. It is noted that the attempt of systematic land registration is to provide full ownership by means of registering land in land registers with accurate cadastral index maps. With this regard, landholders who failed to register their land during the systematic land registration projects are able to apply for land certificates through the complementary land registration, which is not stipulated in the 2001 Land Law, in order to receive full ownership. Therefore, it is necessary to know how the procedure of this complementary land registration works and what impact arises therefrom.

It should be noted that 4 years after the date of issuing the Sub-decree on Sporadic Land Registration and the Sub-decree relating to Systematic Land Registration, these two Sub-decrees remain inadequate. Complementary land registration needs to be regulated. In May 2006, the Ministry of Land Management, Urban Planning and Construction issued the Instructive Circular on the Principles and Procedures of Complementary Land Registration aiming to provide full ownership⁴⁶ for landholders who failed to register their land in the systematic land registration areas. The procedure of complementary land registration is similar to that of sporadic land registration. The main difference between the two registration types is that in complementary land registration, the areas have already been recorded in cadastral index maps which are fully protected by law⁴⁷ while in sporadic land registration, the areas are recorded in sporadic maps which are not fully accurate.

The complementary land registration plays an important role in facilitating landholders who failed to register their land during the process of systematic land registration projects. However, similar to sporadic land registration, the failure to determine the period of receiving a land certificate from the date that an applicant files the application may lead to corruption or the unforeseen delay of land certificate issuance. It is necessary that the state require landholders to apply for land certificates so as to discourage corruption and to protect against

46) Instructive Circular on the Principles and Procedures of Complementary Land Registration, No. 06SNN, May 5, 2006 (Cambodia).

47) Land Law of Cambodia, No. NS/RKM/0801/14, Sept. 30, 2001, art. 238-39 (Cambodia).

the loss of evidence over time. In addition, requiring those landowners to apply for land certificates through complementary land registration will contribute to land stability. As of 2015, only 2,252 land certificates had been registered through complementary land registration.⁴⁸

B. Co-ownership Registration and Its Impact

1. Registration Regulations of Co-owned Buildings

Ministerial instruction regulating the registration co-owned buildings have been remarkably available since 2005.⁴⁹ The meaning of co-owned buildings defined at the ministerial level, the Ministry of Land Management, Urban Planning and Construction, refers to “all types of buildings such as villas, semi-villas, flats or other types of houses which are structurally connected as joint foundations, beams, drains, walls, ladders, porches and terraces with several owners [trans.]”⁵⁰ Also, the sample of a certificate of a private part is then available. However, the definition of co-owned buildings later defined by the government sub-decree in 2009 and then the law in 2010 is shorter than that defined at the ministerial level. A co-owned building is “a building or construction residing by several owners. Co-owned building includes some parts exclusively owned by each owner called ‘private part’ and some other parts are common space for the common use of all co-owners called “common parts [trans.]”⁵¹ The latter, the meaning of co-owned buildings is clearer.

Ministerial instruction for registration of co-owned buildings and co-owned plots have been available. Co-owned buildings and co-owned plots include:

- Plots of land and buildings of only the ground floors having several co-owners dividing into private parts,

48) Letter of the Land Administration Sub-Sector Program, No. 358LASSP, Nov. 10, 2015 (Cambodia).

49) Instructive Circular on the Registration of Buildings and Parcels of Co-owned Land, No. 01DNS/AKKD/SRNN, Sept. 21, 2005 (Cambodia).

50) *Id.*

51) Sub-Decree on the Management and Use of Co-owned Buildings, No. 126ANK/BK, Aug. 12, 2009, art. 4 (Cambodia); Law on Granting Ownership over Private Parts of Co-owned Buildings to Foreigners, No. NS/RKM/0510/006, May 24, 2010, art. 4 (Cambodia).

- Plots of land and building of several floors with common ladders, space and ways in order to reach private parts,
- Plots of land having separate storey buildings with several co-owners,
- Plots of land and buildings previously owned by one person but later on one part or more is sold to other people [trans.].⁵²

Then private parts are required to be registered in separate land registers, which are different from ordinary land registers for general private ownership. Plots of co-owned buildings are registered in the ordinary land registers. As such, it is good for owners of private parts to make full use of their ownership for economic purposes such as real security rights.

The three legal regulations mentioned above serve the same purpose. The Sub-decree on the Management and Use of Co-owned Buildings in 2009 prevails the some overlapped parts in the ministerial instruction in 2005. In addition, this sub-decree makes more details the way to manage co-owned buildings as well as rights and obligations of co-owners. While Law on Granting Ownership over Private Parts of Co-owned Buildings to Foreigners in 2010 just re-states the definition of co-owned buildings but mainly attempting to regulate co-ownership which is granted for foreigners.

2. Co-ownership Granting to Foreigners

Interestingly, legal recognition of co-owned buildings has a great impact on the legal development of land rights with a view to attract foreign investment. The first ever law allowing foreigners to buy buildings from the first floor and up happened in 2010.⁵³ It should also be noted that the first floor in Cambodia is the floor which is above the ground floor where some countries like Korea, Japan call the second floor. It is necessary to understand the main purposes of Law on Granting Ownership over Private Parts of Co-owned Buildings to Foreigners which are:

- To facilitate foreigners in bringing investment capital in Cambodia
- To facilitate business relating to construction investment and to respond to the increase of immovable market in Cambodia.⁵⁴

52) Instructive Circular on the Registration of Buildings and Parcels of Co-owned Land, No. 01DNS/AKKD/ SRNN, Sept. 21, 2005 (Cambodia).

53) Law on Granting Ownership over Private Parts of Co-owned Buildings to Foreigners, No. NS/RKM/ 0510/006, May 24, 2010 (Cambodia).

54) *Id.* art. 2.

However, restriction of rights to foreigners has been made thoroughly. Foreigners can buy private parts of co-owned buildings from the first floor and up which cannot exceed 70% of the total areas of private parts.⁵⁵ Another restriction is that the distance allowed for foreigners to buy private parts of co-owned buildings cannot be less than 30 kilometers from the country border unless otherwise determined by the government.⁵⁶ Yet, there is no clear explanation why the law determines only no more than 70% of the total areas for foreigners. The restriction to the distance from the border which cannot be less than 30 kilometers may also be unnecessary in the sense that it never happens. If investors wish to construct co-owned buildings for selling to the foreigners, they may seek approval from the government to allow the buildings available for the sale to foreigners.

Understanding the given rights of foreigners who own private parts of co-owned buildings is crucial for the whole discussion. It should be noted that foreigners who own private parts of co-owned buildings are called special co-owners.⁵⁷ Unlike Cambodian co-owners, special co-owners have only right of use and right of enjoyment over indivisible ownership of common part meaning that they do not have right to dispose of that common part. However, if special co-owners transfer their private parts to Cambodian people, then Cambodian people become owners of indivisible ownership of common parts. The Cambodian co-owners have right of use, right of enjoyment and right to dispose of common parts.⁵⁸

Interestingly, Law on Granting Ownership over Private Parts of Co-owned Buildings to Foreigners attempts to give trust to foreigners. In case the buildings disappear, special co-owners do not lose right of use and right of enjoyment of common part because the land where the buildings stand is also considered as common property.⁵⁹ Then the law gives two options to special co-owners whether they can rebuild the buildings in accordance with the proportional share of private parts or in case Cambodian co-owners decide to sell the land,

55) *Id.* art. 6; Sub-Decree on the Determination of Proportion and Calculation Method of Private Parts Which are the Ownership of Foreigners in Co-owned Buildings, No. 82ANK/BK, July 29, 2010, art. 2 (Cambodia).

56) Law on Granting Ownership over Private Parts of Co-owned Buildings to Foreigners, No. NS/RKM/ 0510/006, May 24, 2010, art. 6 (Cambodia).

57) *Id.* art. 4.

58) *Id.* art. 9.

59) *Id.* art. 18.

the special co-owners still benefit from the proceeds of the sale of the land proportionally to the price of private parts.

The law gives flexibility to foreigners who previously bought private parts of co-owned buildings before May 2010. The period of two years was allowed for those who bought private parts of co-owned buildings which did not fall under Law on Granting Co-ownership over Private Parts of Co-owned Buildings to Foreigners to make a possible resolution in order to follow the law.⁶⁰ It is however unclear that what kind of possible resolution can be made. For example, if a foreigner bought private parts of co-owned buildings more than 70%, what would happen to that foreigner for the excess parts whether he/she can sell to Khmer citizens or give to the state? Another ambiguity is that if foreigners fail to make a possible resolution in order to comply with the law, whether the competent authorities can claim to the court for the forced sale of the private parts of co-owned buildings.⁶¹

III. Real Estate Investment Opportunities

Cambodia has encouraged investors to invest through investment incentives since 1994 when Law on Investment was first available, hereinafter called the 1994 Investment Law. This law has granted great incentives for investment companies such as tax exemption in whole or in part.⁶² One of the greatest benefits is that investors who fulfill the requirements of qualified investment project can receive exemption of tax on export.⁶³

A. Economic Land Concessions

1. Land Investment Opportunities

Land registration of state private land plays a vital role in granting economic land concessions. It is required that land which is granted for economic land

60) *Id.* art. 22(1).

61) *Id.* art. 22(2).

62) Law on Investment, No. 03/NS/94, Aug. 5, 1994, art. 13 (Cambodia).

63) Law on the Amendment of Law on Investment, No. NS/RKM/0303/009, Mar. 24, 2003, art. 14 (Cambodia).

concessions be registered.⁶⁴ It is also forbidden to grant economic concession land which affects the citizens' land surrounding economic land concession location.⁶⁵ As such, the registration of land in advance ensures that economic land concessions will never get a bad impact on surrounding people so that land disputes will not happen. However, the actual implementation has not been well performed. There is no clear statistics to determine whether all economic land concessions are registered. It was found that in 2017, only 24 certificates were made for economic land concessions equivalent to 12,770.9511 hectares.⁶⁶

Economic land concessions policy is a way that the government has the authority to grant state private land for investors to invest in for a long period of time. Although the 2001 Land Law allows private ownership to only Khmer citizens or Khmer legal entities,⁶⁷ still there is a room for foreigner to have a full right of use and enjoyment of the land through economic land concessions. Legally speaking, the investors regardless of any nationality are entitled to receive economic concession land for no more than 99 years.⁶⁸ This period of time ensures that the right of investors is similar to the right of owners except only right to dispose of. In addition, the economic land concessionaires have a special right to protect the property by a competent authority.⁶⁹

It is remarkable that the clear land size determination was just fixed after some years of practice before the 2001 Land Law came into effect. Some companies such as Phea Pimex Co., Ltd. received 315,028 hectares in January 2000 while Uk Khun Industrial Plant Development received 12,506 hectares in May 2000.⁷⁰ The maximum of land size was then restricted by the 2001 Land Law to no more than 10,000 hectares per one physical person or one legal entity regardless of the number of companies he/she has controlled.⁷¹ The restriction

64) Sub-Decree on Economic Land Concessions, No. 146ANK/BK, Dec. 27, 2005, art. 4. (Cambodia).

65) Instructive Circular on Providing Economic Land Concession for Investment Plan with regard to the Implementation of Order No.02BB dated June 13, 2005 on Strengthening the Management of State Property, No. 05SRNN, July 01, 2005 (Cambodia).

66) Report on the Outputs of Work in 2017 and the Work Plan 2018 of the Ministry of Land Management, Urban Planning and Construction, *supra* note 30, at 8.

67) Land Law of Cambodia, No. NS/RKM/0801/14, Sept. 30, 2001, arts. 8-9 (Cambodia).

68) *Id.* art. 61.

69) *Id.* art. 56(1).

70) Ministry of Agric., Forestry & Fisheries, *Statistics of Companies Investing in Land Concession*, MINISTRY OF AGRICULTURE, FORESTRY & FISHERIES, <http://www.elc.maff.gov.kh/en/> (last visited June 27, 2012).

71) Land Law of Cambodia, No. NS/RKM/0801/14, Sept. 30, 2001, art. 59 (Cambodia).

of land size does not affect the investment since 10,000 hectares is already large. Currently, 229 companies are investing economic land concessions with the total areas of 1,180,082 hectares.⁷² This reflects a large investment on state private land.

2. Economic Land Concession Fees

Economic land concession fee is the main attracting policy for the government to encourage investment in Cambodia. Originally, the main purpose of granting of economic land concessions is to boost country economic development by having investors to create job opportunities spreading throughout the remote areas.⁷³ In this regard, it is clear that economic land concession fee is very low. In 2000, the government decided to divide economic concession land into 4 types with the fee as follows:

Type 4 (unfertile land): rental fee = 0 dollar per hectare a year

Type 3: rental fee = 4-2 dollars per hectares a year

Type 2: rental fee = 6-3 dollars per hectare a year

Type 1: rental fee = 10-5 dollars per hectare a year⁷⁴

Despite the determination of rental fee as said above, the period of year to collect the rental was allowed to be taken after some years of exemption as below:

- For seasonal or yearly plants: the collection of rental fee is commenced at the second year of harvesting year,
- For long term or permanent plants: the collection of rental fee is commenced at the third year or fourth year of harvesting year.⁷⁵

72) Ministry of Agric., Forestry, & Fisheries, Report of Investment Sub-Decree on Economic Land Concessions in Cambodia (Aug. 2018) (unpublished report). It is remarkable that the government just registered the land for 114 companies.

73) Letter of Council of Ministers about the Determination of Land Concession Fee, No. 803SCN, May 31, 2000 (Cambodia); Sub-Decree on Economic Land Concessions, No. 146ANK/BK, Dec. 27, 2005, art. 3.

74) Letter of Council of Ministers about the Determination of Land Concession Fee, *supra* note 73.

75) *Id.*

The charging rental fee policy seems to provide great benefit to investors who are investing in agricultural sector. Yet, it remains unclear about the harvesting year, whether calculating from the year of receiving land. For example, if investors received land but fail to execute soon after receiving the land, then the government could not collect the rental fee. However, this concern was removed when the 2001 Land Law requires an investor to exploit the land according to the plan within 12 months after receiving the license, otherwise the economic land concession contract is considered to be null.⁷⁶

In order to avoid difficulties in collecting economic land concession fee, from June 2012, a new feasible policy was implemented. All economic land concessions are exempted from paying concession fee for only 5 years after the license is granted. In the following year, concession fee is charged to all economic concession land size with the price of 5 dollars per hectare a year.⁷⁷ This fee will be increased by 5% for every subsequent year. However, this increase of 5% every subsequent year was not implemented yet since it was reduced to 1% in October 2012 by the decision of the Office of the Council of Ministers.⁷⁸ Noticeably, a big change was made again in August 2014.⁷⁹ The little price of concession fee is therefore a great impetus for investors to invest in economic land concessions.

B. Real Estate Development

1. Management Policy of Real Estate Development

Real estate development has been flourished noticeably since 2005. This milestone has led to the need of legal regulation to manage this development. In February 2007, the Ministry of Economy and Finance issued a ministerial proclamation to regulate the operations of companies providing real estate services and property evaluation services in Cambodia. Its objectives are:

76) Land Law of Cambodia, No. NS/RKM/0801/14, Aug. 30, 2001, art. 42 (Cambodia).

77) Letter of the Office of Council of Ministers to Request the Determination of the Land Concession Fee and the Deposit of All Economic Land Concession (Both Old and New), No. 660SCN, June 22, 2012 (Cambodia).

78) Letter of Office of Council of Ministers Relating to the Case of Revising Economic Land Concession Fee and the Deposit Payment of All Economic Land Concessions (Both Old and New), No. 1130SCN, Oct. 1, 2012 (Cambodia).

79) Letter of Office of Council of Ministers Relating to Report on Outputs of Narrow Meeting of Economic Policy Committee, No. 1185SCH, Aug. 19, 2014 (Cambodia).

- improve and orient all companies that are acting or having a purpose to offer services on evaluating real estate or to offer real estate services in order to execute according to professional ethics so as to receive legal license,
- push sale, rent, real security rights transactions via real estate companies in order to feasibly manage,
- facilitate the investors and citizens who wish to buy, sell, lease or pledge immovable property in order to get appropriate real estate service and price with the market price,
- ensure the economic sustainability and real estate development in accordance with national and international standards,
- increase national revenues through taxation and other service fees.⁸⁰

In December 2009, the ministerial proclamation, hereinafter ‘the 2009 proclamation’, was issue mainly to “establish a mechanism to manage, control, and issue the license to real estate developers...” in order to sustain the development and generate state income.⁸¹ Since then, the real estate developers are divided into 3 types as follows:⁸²

- Type 1 developer: A real estate developer who has his/her own capital excluding the loans from other third party in order to construct any buildings until completion then class for sales;
- Type 2 developer: A real estate developer who has the main capital from abroad or use the loans from bank or financial institutions in order to construction the buildings and then call for the sales;
- Type 3 developer: A real estate developer who execute the plans by use of financial resources from clients in order to develop the immovable property or any other developers who do not fall under the above types 1 and 2.

Interestingly, the license fee was set clearly depending on the size and types on investment. The table below shows the license fee depending on the size and type of immovable.

80) Proclamation on Granting Professional Certificates and Licenses for Valuation Services and Real Estate Services, No. 965HSV/PK, Feb. 13, 2007, art. 3 (Cambodia).

81) Proclamation on the Management of Immovable Property Development, No. 1222SHV/PK, Dec. 15, 2009, arts. 1-2 (Cambodia).

82) *Id.* art. 3.

Table 2: License fee and its validity

Type	Size	License fee (riel)	License validity
Flats	4-10 flats	1,500,000	2 years
	11-50 flats	3,000,000	3 years
	51-100 flats	5,000,000	4 years
	From 101 and up	8,000,000	5 years
Villas	3-10 villas	3,000,000	3 years
	11-50 villas	6,000,000	4 years
	From 51 and up	11,000,000	5 years
Apartments or condominium	4-10 units	1,500,000	2 years
	11-50 units	3,000,000	3 years
	51-100 units	5,000,000	3 years
	101-200 units	8,000,000	4 years
	201-400 units	10,000,000	5 years
	From 401 and up	12,000,000	5 years

Source: Proclamation on the Management of Immovable Property Development, No. I222SHV/PK, December 15, 2009

The table above shows the appropriate price for each license. Yet, there may be burden on the developers since the proclamation requires the developer to request for renewal of the license with the same fee. This requirement may cause trouble to developers especially in case where the license will shortly exceed the validity set by this proclamation. In actual practice, the completion of construction projects usually ends after the set plan.

Remarkably, in August 2016, the Ministry of Economy and Finance issued another ministerial proclamation, hereinafter the 2016 proclamation, to replace the 2009 proclamation. This latest proclamation has the purpose to establish a mechanism for management, inspection and licensing of housing developments, and to enhance the effectiveness of the management and inspection of housing developments in Cambodia. Any development of at least four units is required to have a housing development license. Without such a license, no advertisement for sale purposes or pre-sale activity is allowed.⁸³ It is interestingly noted that the 2016 proclamation differently classifies housing developer licenses into two categories as follows:⁸⁴

83) Proclamation on Housing Development Business Management, No. 965KSV/PK, Aug. 22, 2016, art. 16 (Cambodia).

84) *Id.* art. 7.

- Developer License 1: This type of license is granted to a housing development company or individual, which is entirely financed by its own capital and/or by a loan from a bank or financial institution for developing housing and can sell such housing upon completion of the construction; and
- Developer License 2: This type of license is granted to a housing development company or individual, which is financed by its own capital, and/or by a loan from a bank or financial institutions, and/or by collecting deposits from buyers as the construction of the housing development progresses and can proceed with the sale of the housing to users in accordance with the terms and conditions prescribed in this proclamation.

Moreover, under the 2016 proclamation the license fee is calculated based on the units of buildings shown in the table below:

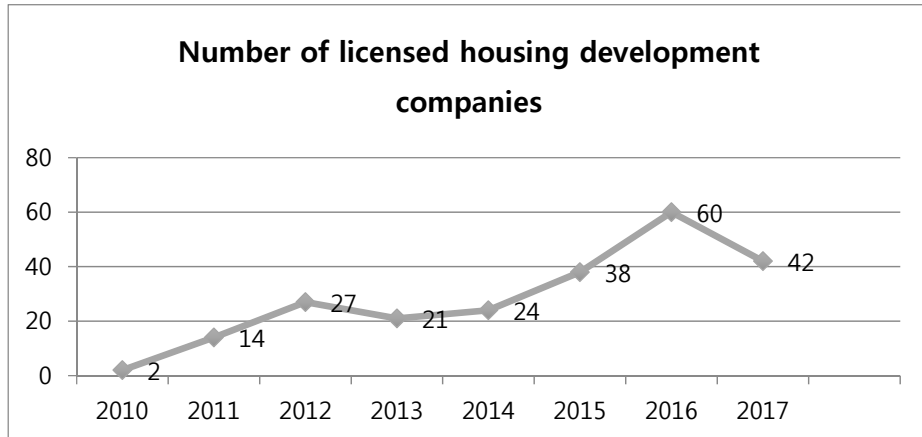
Table 3: License fee under the 2016 proclamation

No	Types	Size	License fee
1	Flat Construction	Flats	USD 25/flat
2	Villa Construction	Twin villas	USD 25/villa
		Single villas	USD 50/villa
3	Co-owned buildings	1-2 bedrooms	USD 25/unit
		From 3 bedrooms and up	USD 50/unit

Source: Proclamation on Housing Development Business Management, No. 965KSV/PK, August 22, 2016, Art. 9

As a result of real estate development and the management policy of real estate development in Cambodia, the number of housing development companies receiving the license has increased remarkably. For 2010 until 2017, there are 228 companies are legally licensed and under the operation. The figure below shows the number of housing development companies which already received license from the Ministry of Economy and Finance.

Figure 12: Number of housing development companies receiving license 2010-2017



Source: Office of Housing Development Business Management, Department of Real Estate Business Management, General Department of Financial Industry, Ministry of Economy and Finance, List of housing development companies receiving license, no date

2. High Building Development

The legal recognition of landownership development has led to a great deal of construction boom. The registration of land parcels including co-owned land is a crucial impetus to needs of regulatory framework for managing co-owned buildings.

It is remarkable that since 2005, many legal regulations have been made available for registering and managing co-owned buildings. The clear guideline to register co-owned buildings was set up by the Ministry of Land Management, Urban Planning and Construction in September 2005.⁸⁵ The legal framework to manage and use co-owned buildings was made by the government in August 2009, giving clear explanation about the co-owned building developers.⁸⁶ Therefore, the government decided to allow foreigners to buy private parts of co-owned buildings from 2010.

85) Instructive Circular on the Registration of Buildings and Parcels of Co-ownership Land, No. 01DNS/AKKD/SRNN, Sept. 21, 2005 (Cambodia).

86) Sub-Decree on the Management and Use of Co-owned Buildings, No. 126ANK/BK, Aug. 12, 2009 (Cambodia).

a. Construction Development

The real estate development has a great impact on investment of construction business. The Sub-decree on Construction Permit issued in 1997 allows all construction to be legally recognized.⁸⁷ Before building any structure on land or substantially remodelling a building, the owner of the land or building is required to obtain a construction permit, which is signed by the provincial governor or Minister of Land Management, Urban Planning and Construction. For any building with the size no more than 3,000 square meters, construction permit application is required to be submitted to the Provincial Department of Land Management, Urban Planning, Construction and Cadastre while the size larger than 3,000 square meters is under the authority of the Ministry of Land Management, Urban Planning and Construction. For more convenience see the table below.

Table 4: The competent authorities having the power to issue the construction permits

Areas of Buildings (m ²)	Competent authorities issuing the construction permits
≤ 3000 m ²	Provincial authorities
> 3000 m ²	Ministry of Land Management, Urban Planning and Construction

Source: Proclamation on Housing Development Business Management, No. 965KSV/PK, August 22, 2016, Appendix

In order to apply for a construction permit, various documents detailing the planned construction must be submitted, in Khmer, for review by the above relevant competent authorities where the construction is planned. Proposed industrial buildings must include information on remedying possible environmental pollution resulting from operation of the industry. The construction plans must be signed by the landowner and drawn by an architect or construction company registered with the Ministry of Land Management, Urban Planning and Construction. The construction office reviewing the documents has 45 days in which to issue a decision after all supporting documents have been submitted.

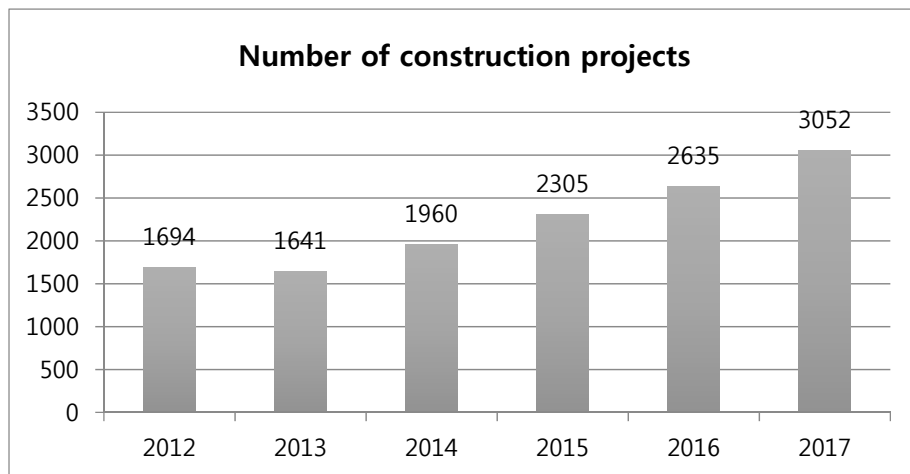
Construction must commence within one year after the construction permit is issued, unless an extension is obtained. Additionally, a construction permit for opening a construction site is required before commencing construction.

87) Sub-Decree on Construction Permit, No. 86ANK/BK, Dec. 19, 1997, art. 1 (Cambodia).

Upon completion, prior to the open of the building to the public, the building's construction must be approved by issuance of a certificate attesting that the construction is properly accomplished according to the approved plans, which is known as a permit for closing the construction site.

Recent reports from the Ministry of Land Management, Urban Planning and Construction has shown a noticeable increase in number of construction projects. From 2012 to 2017, the construction projects have reached 13,287.⁸⁸ See the number of construction projects by year in the figure below. The figure shows the increase in number of construction projects almost double in 2017 compared to 2012. It is also necessary that the competent authorities put effective measures on controlling the construction activities.

Figure 13: The number of construction projects from 2012 to 2017



Source: Report of Ministry of Land Management, Urban Planning and Construction 2012-2016 and 2017.

b. Condominium Boom and the Like

The management policy to register co-ownership and co-owned buildings has resulted in boosting gated communities which is common known as Borey in Khmer language and condominiums. As mentioned earlier, construction projects both individually and commercially used purposes have apparently

88) Report on the Main Achievement for 5 Years (2012-1016), *supra* note 30; Report on the Outputs of Work in 2017 and the Work Plan 2018 of the Ministry of Land Management, Urban Planning and Construction, *supra* note 30.

witnessed economic development. Investment in real estate is on of the main focuses. Evidently, some high buildings were completely built in 2000s. See the table below for the name of buildings and year of construction completion.

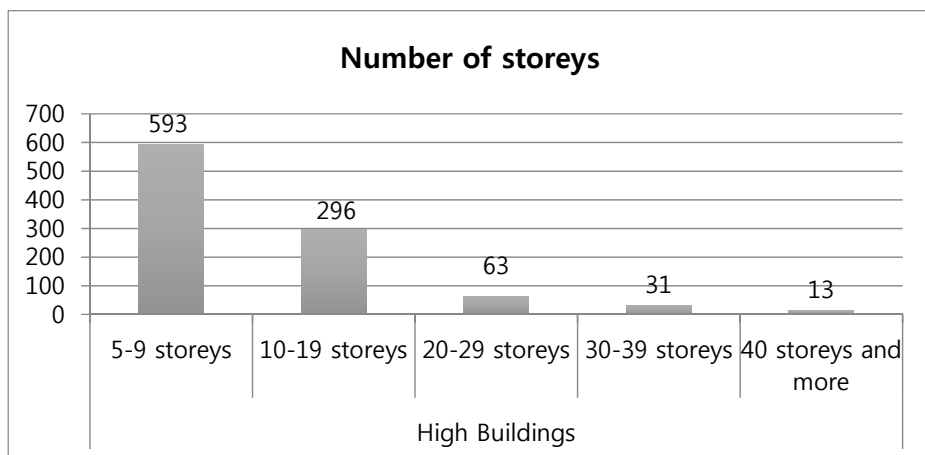
Table 5: Number of tall buildings in Phnom Penh in 2000s

No	Name of buildings	Year of completion	Number of storeys	Height (m)
1	Canadia Bank	2009	32	118.1
2	De Castle Royal	2014	33	117
3	Vattanac Capital Tower	2014	38	187.3

Source: <http://www.skyscrapercity.com/showthread.php?t=1108481>,
<http://decastleroyal.com/building/>, <https://www.vattanaccapital.com/about>

It is interestingly noted that high storied buildings have flourished since the legal regulations managing co-owned buildings came into existence in 2005. The high buildings have boomed firstly in Phnom Penh and later on have grown up to Sihanouk Ville while a lot Chinese investments have been made. The figure below shows the number of high building projects in Phnom Penh starting from 2005 to 2017. The projects of 5-9 storied buildings have reached 593 while the 10-19 storied buildings are 296. The projects of high buildings with 20 storied and up are totally 107. This number reflects the flourish of the high buildings in Cambodia these days.

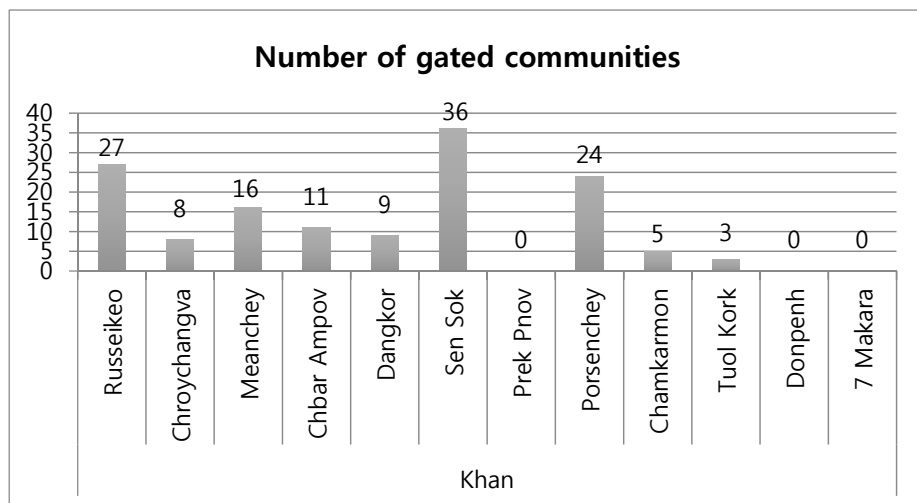
Figure 14: Statistics of high building projects in Phnom Penh, 2005-2017



Source: Phnom Penh Department of Land Management, Urban Planning, Construction and Cadastre, Statistics of high buildings in Phnom Penh, projects from 2005 to 2017, January 11, 2018

In addition to the high buildings, the number of gated communities has spread out throughout many districts in Phnom Penh, hereinafter called Khans. As of September 2016, there totally 139 gated communities in Phnom Penh which can serve the citizens the needs of residences. The figure below elaborates the number of gated communities by each Khan among the total 12 Khans. It is noted that the suburban Khans mostly attract investors to invest in gated communities.

Figure 15: Statistics of gated community in Phnom Penh as of September 2016



Source: Phnom Penh Department of Land Management, Urban Planning, Construction and Cadastre, Statistical Table of Gated Communities in Phnom Penh as of September 2016, Phnom Penh, October 17, 2016

IV. Conclusion

Stability of landownership has played a vital role in land investment. Since Cambodia has privatized land in 1989, many laws and legal regulations relating to land rights have been established to serve the emerging economy. After the government realized that the landownership has been stabilized, then legal regulations to manage real estate development have been made. This links a close connection between way to recognize landownership and the boost of land development.

Speeding up land registration is important to encourage real estate investment.

The registered land ensures identification of landowners and thereby preventing land disputes. Investors usually look for land which has not been involved in disputes. The registration effort from the government has made so that landowners have full legal protection. For example, economic land concessions require that the land be registered so that when investors start the economic land concession projects, they will not face any disputes since there is clear land identification. As discussed previously, the number of construction projects increased from 1,694 in 2012 to 3,053 in 2017 as shown in figure 13. Moreover, the licensed housing development companies increased drastically from 2 in 2010 to 42 in 2017 as shown in figure 12. The increase in number of construction projects and licensed housing development companies reflect land safety and stability through the registration.

An economic land concessions policy is a strategy to encourage investors to invest in land. As of June 2012, the number of companies investing in economic land concession companies reached 117 with the total land size of 1,216,560.5 hectares.⁸⁹ The total number of economic land concession companies continue to rise to 229 as of 2018.⁹⁰ Job opportunities can be available for 64,204 persons.⁹¹ However, in order to avoid land disputes while granting economic land concessions, the land is necessary to be registered in accordance with the legal requirements.

Effective enforcement of legal regulations to manage real estate investment ensures the sustainable economic development. As mentioned earlier, the Ministry of Economy and Finance plays an important role in issuing housing development license for those who have requested for. Yet, the competent authorities responsible for examining this sector are necessarily be in place to make sure that all plans will be surely fulfilled.

89) MINISTRY OF AGRICULTURE, FORESTRY & FISHERIES, <http://www.maff.gov.kh/en/> (last visited June 27, 2012).

90) Ministry of Agric., Forestry, & Fisheries, *supra* note 72.

91) *Id.*

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