

Sub-Decree #146 on Economic Land Concessions_051227

Sub-Decree on Economic Land Concession

Unofficial Translation

**Kingdom of Cambodia
Nation – Religion – King**

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Royal Government of Cambodia
No. 146 ANK/BK

Sub-Decree

on

Economic Land Concessions

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The Royal Government

- Having seen the Constitution of the Kingdom of Cambodia;
- Having seen Royal Kret No. NS/RKT/0704/124 of July 15, 2004 on the Appointment of the Royal Government;
- Having seen Royal Kram No. 02/NS/94 of July 20, 1994 promulgating the Law on the Organization and Functioning of the Council of Ministers;
- Having seen Royal Kram No.01/NS of December 28, 1993 promulgating the Law on Financial System;
- Having seen Royal Kram No. 04/NS/94 of August 10, 1994 promulgating the Law on Land Management, Urban Planning and Construction;
- Having seen Royal Kram No. NS/RKM/0196 of January 25, 1996 promulgating the Law on National Cultural Heritage Protection
- Having seen Royal Kram No.NS/RKM/1296/36 of December 14, 1996 promulgating the Environmental Protection and Natural Resource Management Law;
- Having seen Royal Kram CS/RKM/0298/03 of February 25,1998, promulgating the Law on the Financial Regime and Property of Municipalities and Provinces;
- Having seen Royal Kram No.NS/RKM/0301/05 of March 19, 2001 promulgating the Law on Khum/Sangkat Administration Management;
- Having seen Royal Kram No.NS/RKM/0801/14 of August 30, 2001 promulgating the Land Law;
- Having seen Royal Kram No.NS/RKM/0802/016 of August 31, 2002 promulgating the Forestry Law;
- Having seen Sub Decree No. 46 ANK.BK of May 31, 2002 on Procedures for Establishing Cadastral Maps and Land Register;
- Having seen Sub decree No. 48 ANK.BK of May 31, 2002 on Sporadic Land Registration;
- Having seen Sub Decree No.19 ANK/BK of March 19, 2003, on Social Land Concessions;
- Having seen Sub Decree No. 53 ANK/BK of April 01, 2005, on Procedures, Creation, Classification and Registration of Permanent Forest Estate
- Having seen Sub Decree No. 72 ANK/BK of August 11, 1999, on Environmental Impact Assessment
- Having seen Sub Decree No. 118 ANK.BK of October 07, 2005, on State Land Management
- Having been adopted by the Council of Ministers during the plenary session on December 16, 2005.

DECIDES

Chapter 1: General Provisions

Article 1

The objectives of this sub-decree are to determine the criteria, procedures, mechanisms and institutional arrangements for initiating and granting new economic land concessions; for monitoring the performance of all economic land concession contracts; and for reviewing economic land concessions entered into prior to the effective date of this sub decree for compliance with the Land Law of 2001.

Article 2

The following terms have the meanings defined below:

- Economic Land Concession refers to a mechanism to grant private state land through a specific economic land concession contract to a concessionaire to use for agricultural and industrial-agricultural exploitation.
- Industrial-agricultural exploitation refers to:
 - cultivation of food crops or industrial crops including tree planting to be tree plantation.
 - raising of animals and aquaculture,
 - construction such as a plant or factory and facilities for the processing of domestic agricultural raw materials, or
 - a combination of some or all of the above activities.
- Contracting Authority refers to the authorities who have the legal power and exercise such power as granted by the Prime Minister to enter into Economic Land Concession Contracts on behalf of the Royal Government of Cambodia and who carries out duties in accordance with provisions of this sub-decree.
- Regulatory Institution refers to an authority who has the legal power to issue and enforce rules and regulations governing the activities or facilities that are the subject of the Economic Land Concession Contract.
- Technical Secretariat refers to the Technical Secretariat for Economic Land Concessions.

Article 3

Economic land concessions may be granted to achieve the following purposes:

- To develop intensive agricultural and industrial-agricultural activities that requires a high rate and appropriate level of initial capital investment.
- To achieve a specific set of agreements from the investor for developing the land in an appropriate and perpetual manner based on a land use plan for the area.
- To increase employment in rural areas within a framework of intensification and diversification of livelihood opportunities and within a framework of natural resource management based on appropriate ecological system,
- To encourage small as well as large investments in economic land concession projects, and
- To generate state revenues or the provincial or communal revenues through economic land use fees, taxation and related services charges.

Chapter 2: General Conditions for Granting an Economic Land Concession

Article 4

An economic land concession may be granted only on a land that meets all of the following five criteria:

1. The land has been registered and classified as state private land in accordance with the Sub decree on State Land Management and the Sub decree on Procedures for Establishing Cadastral Maps and Land Register or the Sub decree on Sporadic Registration.
2. Land use plan for the land has been adopted by the Provincial-Municipal State Land Management Committee and the land use is consistent with the plan.
3. Environmental and social impact assessments have been completed with respect to the land use and development plan for economic land concession projects.

4. Land that has solutions for resettlement issues, in accordance with the existing legal framework and procedures. The Contracting Authority shall ensure that there will not be involuntary resettlement by lawful land holders and that access to private land shall be respected.

5. Land for which there have been public consultations, with regard to economic land concession projects or proposals, with territorial authorities and residents of the locality.

Article 5

Evaluating Economic Land Concession proposals shall be based on the following criteria:

- Increase in agricultural and industrial-agricultural production by using modern technology;
- Creation of increasing employment;
- Promotion of living standards of the people;
- Perpetual environmental protection and natural resources management;
- Avoidance or minimizing of adverse social impacts;
- Any linkages and mutual support between social land concessions and economic land concessions;
- Processing of raw agricultural materials, to be specified in the concession contract.

Chapter 3: Procedures for Initiating, Requesting and Granting Economic Land Concessions

Article 6

There are two permissible ways to initiate economic land concession projects:

1. Solicited proposal, where a Contracting Authority proposes a project for solicitation of proposals from investors.
2. Unsolicited proposal, where an investor proposes a project proposal to the state for approval

Part 1: Initiating Economic Land Concessions through Solicited Proposals

Article 7

A Contracting Authority may initiate an economic land concession project by taking the following preparatory steps:

1. Develop initial project documents proposing an Economic Land Concession project in a form established by the Technical Secretariat, includes the information specified in Article 8 of this sub-decree.
2. Send the initial project documents to the Technical Secretariat for preliminary study and recommendations based on Article 3 and Article 5 of this sub-decree.
3. Consult with relevant Provincial Land Use and Allocation Committee and Regulatory Institution regarding the economic land concession project;
4. Arrange for the conduct of an initial environmental and social impact assessment of the proposed economic land concession project.
5. If the initial environmental and social impact assessment indicates a medium or high degree of adverse impact, arrange for the conduct of a full environmental and social impact assessment.
6. Prepare a complete set of project documents, which shall include all of the recommendations and reports from the steps enumerated above, and which shall be the basis for the Terms of Reference for Solicited Proposals.

Article 8

Initial project documents proposing an economic land concession project shall include the following:

1. Description of the proposed land, such as location, size, type, reference to the parcel number in the Land Register, and general information about the area in which the land is located.
2. General land use and development plan for the concession project.
3. Any necessary actions required to be completed by the concessionaire prior to undertaking the economic land concession activities.
4. Any necessary actions required to be completed by the Contracting Authority or any ministry or institution prior to undertaking the proposed economic land concession activities.
5. State obligation or state guarantee required for the economic land concession project.

Article 9

Upon receipt of the complete set of economic land concession project documents from a Contracting Authority, the Technical Secretariat shall prepare documents with solicitation for proposals, which shall include:

- Notice
- Terms of Reference; and
- Application form.

Article 10

The Technical Secretariat shall widely disseminate the Notice for Solicited Proposals and shall also send the Notice to the Council for the Development of Cambodia.

The Notice shall specify the manner, place and time for submission of proposals with specification of the commencing date of acceptance and the ending date of acceptance. Submission period shall not be less than 60 (sixty) days from the date of publication of the Notice;

Article 11

The Terms of Reference for Solicited Proposals shall include:

- Economic land concession project description and supporting documents that shall be attached with a proposal;
- Criteria for evaluating the technical, financial and commercial content of the proposals; and
- Necessary nonnegotiable contract terms.

Article 12

The application for Solicited Proposal shall include the following:

- A business plan detailing the planned use for the land, the investment plan, expenditure and revenue planned for the land development, and the sources of capital to support the proposed concession project;
- A description of the labor needs for the concession project and the source of the labor;
- Information about technology, equipment, machinery, fertilizer, pesticide, use plan for types of priority crops;
- Indication of the environmental and social impacts of the proposed investment activity and preventive or reduction measures the proposer will take;
- A description of any linkages and mutual support between social land concessions and economic land concessions;
- A description of any linkages to processing of raw materials which are domestic harvests;
- The proposer's land use fee offer to the state;
- Disclosure of any land concession holdings by the proposer as provided under article 59 of the Land Law; and
- Any guarantee sought by the proposer from the State.

Article 13

The Technical Secretariat shall at least 30 (thirty) days prior to the deadline for submission of proposal, organize a public meeting for clarification on any point of the solicitation documents, and shall prepare a public document of all the clarification made.

Article 14

The criteria for ranking and evaluating solicited proposals shall include the following:

- Technical soundness for the land use and development, including land suitability;
- Compliance with national environmental standards and provision of sound preventive or reduction measures for adverse environmental and social impacts;
- Operational feasibility of the proposal based on factors such as labor demand and supply requirements; financing sources; and market strategy of the business plan;
- Feasibility of employment creation and promotion of living standards of the people;
- Processing of raw materials or domestic harvests, to be specified in the concession contract;
- Feasibility of linkages and mutual support between social land concessions and economic land concessions;
- The amount and manner of payment of the fee offered by the proposer for the use of the land.

The ranking and evaluation criteria shall not be amended after the publication of Notice for Solicited Proposals under Article 10 of this sub-decree.

The Technical Secretariat shall develop and publish the scoring for ranking each proposal based on the criteria above.

Article 15

Proposal shall be submitted at the Technical Secretariat in a closed envelop under seal or signature of the proposer.

Proposals received after the deadline shall be returned unopened to the proposer.

All proposals or a single proposal received shall be opened publicly at the date set forth in the Notice for Solicited Proposals. Each proposer has the right to be present at the opening of the proposals.

The Technical Secretariat shall determine responsive proposals and shall review and make recommendations to the Contracting Authority on the basis of the criteria specified in Article 14 of this sub-decree and following the procedures set forth in the Terms of Reference for Proposals.

Article 16

After considering the recommendations of the Technical Secretariat, the Contracting Authority shall evaluate and prepare short-list based on ranking of all responsive proposals, and shall prepare a report on the evaluation of the responsive proposals, and then shall provide a copy of the evaluation report to each proposer.

Article 17

The Contracting Authority shall not negotiate certain necessary contract terms that were pre-determined as nonnegotiable in the solicitation documents.

The Contracting Authority shall invite the highest ranked proposer for negotiations of the Concession Contract. If Contracting Authority does not find the proponent's final offer acceptable, indicating that the negotiations will not result in a Concession Contract, the Contracting Authority shall terminate the negotiations with the proposer concerned and shall then invite for negotiations the other proposers in the order of their ranking.

If the negotiation leads to agreement on a draft Concession Contract, the Contracting Authority shall require the proposer to comply with Article 23 of this sub-decree.

In case, only one or two proposals submitted, the Technical Secretariat shall also observe the procedure specified in the above Articles.

Part 2: Initiating Economic Land Concession Projects through Unsolicited Proposals

Article 18

The prioritized method for granting economic land concessions is through competitive solicited proposals; however, a Contracting Authority may consider an unsolicited proposal where the proposer promises to provide exceptional advantages to achieving the purposes of economic land concessions in situations such as below:

- the introduction of new technology
- exceptional linkages between social land concessions and economic land concessions
- exceptional access to processing or export markets

A Contracting Authority shall not consider an unsolicited proposal if the proposal relates to land that is the subject of Solicited Economic Land Concession Project for which a Notice has been published.

Article 19

The Technical Secretariat shall develop an Application Form for Unsolicited Proposal that shall include a brief description of the proposer's business and financial background, the economic land concession investment concepts, and information related to land size and location.

The proposer may submit the application at either the Council for the Development of Cambodia or at the Provincial/Municipal Investment Sub-Committee or at the Contracting Authority. If an application is submitted at the Council for the Development of Cambodia or the Provincial/Municipal Investment Sub-Committee, the Council for the Development of Cambodia or the Provincial/Municipal Investment Sub-Committee shall, within 7 (seven) working days from the receipt of the application, send the application to the Contracting Authority.

If the Contracting Authority chooses to consider the unsolicited proposal, the Contracting Authority shall conduct consultations as specified in Article 7, points 3 of this sub-decree. Then the Contracting Authority shall arrange to meet the criteria for selection of land for concession as provided in Article 4 of this sub-decree and request the proposer to submit a detailed proposal.

Article 20

The detailed unsolicited proposal shall contain the following:

- Information specified in Article 12 of this sub-decree, and
- A report of an initial environmental and social impact assessment. If the initial environmental and social impact assessment indicates a medium or high degree of possible adverse impact, the proposal shall also include a report of full environmental and social impact assessment.

Article 21

The Contracting Authority who has received an unsolicited proposal shall do the following:

- a. The Contracting Authority shall send a copy of the detailed unsolicited proposal to the Technical Secretariat or to the Provincial-Municipal State Land Management Committee for review and recommendations.
- b. The Technical Secretariat or the Provincial-Municipal State Land Management Committee shall make recommendation to the Contracting Authority on whether to accept the proposal for Concession Contract negotiation in compliance with the requirements of Articles 3 to 5 of this sub-decree.

Article 22

Contract negotiation for unsolicited proposal shall be made within a maximum period of 28 (twenty-eight) working days from commencement of negotiations. If the negotiation does not lead to an achievement of a draft concession contract with the specified period the Contracting Authority may end the negotiation with the proposer.

Article 23

Prior to signing an economic land concession contract, the proposer shall register in the commercial register in compliance with the law on Commercial Rules and Commercial Register of the Kingdom of Cambodia.

Article 24

The Technical Secretariat shall prepare a Standard Form of Economic Land Concession Contract that shall be used for every economic land concessions, which shall consult with and be determined by a Joint-Prakas of the Ministry of Economy and Finance and the Ministry of Agriculture, Forestry and Fisheries.

Chapter 4: Management and Amendment of Concession Contract**Article 25**

The Contracting Authority shall be responsible for ensuring that a Concession Contract is enforced by establishing mechanisms and procedures for monitoring contract performance and for reporting on the management of the contract to the Ministry of Economy and Finance on regular basis and for informing the Technical Secretariat or the Provincial/ Municipal State Land Management Committee.

The Contracting Authority shall cooperate with relevant ministries or institutions to review the Concessionaire's Concession Contract performance and shall obtain information from the Concessionaire and from relevant ministries or institutions concerning the Concession Contract performance.

Article 26

Prior to amending any provision of a Concession Contract, the Contracting Authority shall consult with concerned ministries, institutions and contracting party in accordance with the existing laws and regulations.

Article 27

The matter of extension, suspension, or termination of a concession contract shall be determined in the concession contract.

Chapter 5: Administration and Implementation Mechanism**Article 28**

The economic land concession mechanism shall be the following:

- Contracting Authority
- Technical Secretariat
- Provincial/Municipal State Land Management Committee
- District/Khan State Land Working Group
- Commune-Sangkat Councils

Article 29

The Minister of Agriculture, Forestry and Fisheries is authorized and responsible for granting economic land concessions with a total investment value of more than 10,000,000 (ten million) riels or more; or a total concession land area of 1,000 (one thousand) hectares or more.

The relevant provincial/municipal governor is authorized and responsible for granting economic land concession with a total investment value less than 10,000,000 (ten million) riels and a total concession land area of less than 1,000 (one thousand) hectares.

Article 30

Contracting authorities have the following roles and duties:

- Initiate and develop project documents for economic land concession projects for solicited proposals or may consider unsolicited proposals for economic land concession projects;
- Evaluate and prepare short-list based on ranking of proposals;
- Negotiate terms of Concession Contracts;
- Enforce Concession Contracts;
- Monitor Concession Contract performance;
- Report on management of contract performance to the Council of Ministers every 6(six) months and as necessary;

- Coordinate with and collect information and data from the Ministry of Economy and Finance and the Ministry of National Defense on conditions that shall be incorporated into the Concession Contract for land within a military development zone;
- Review the recommendations from the Technical Secretariat on any contract amendment proposal; and
- Carry out other duties in accordance with the provisions of this sub-decree.

Article 31

The composition of the Technical Secretariat shall be as follows:

- Representative of the Ministry of Agriculture, Forestry and Fisheries	Chair
- Representative of the Ministry of Economy and Finance	Member
- Representative of the Council for the Development of Cambodia	Member
- Representative of the Ministry Land Management, Urban Planning and Construction	Member
- Representative of the Ministry of Interior	Member
- Representative of the Ministry of Environment	Member
- Representative of the Ministry of Commerce	Member
- Member of the Council of Jurists	Member

The Chair and members of the Technical Secretariat shall be appointed by a decision of the Royal Government of Cambodia.

The clerical staff of the Technical Secretariat shall be appointed by a prakas of the Ministry of Agriculture, Forestry and Fisheries upon the request of the Technical Secretariat.

The office of the Technical Secretariat shall be located within the Ministry of Agriculture, Forestry and Fisheries.

Article 32

The Technical Secretariat has the duties to provide comments to the Contracting Authority:

- Develop economic land concession projects;
- Develop solicitation documents;
- Make recommendations on all economic land concession proposals;
- Monitor performance of economic land Concession Contracts;
- Make recommendation on the review of existing economic land concessions; and
- Carry out other duties in accordance with the provisions of this sub-decree.

Article 33

The Provincial/Municipal State Land Management Committee has the roles and duties as provided in Article 25 of the Sub decree No. 118 ANK.BK dated October 07, 2005 on State Land Management.

Article 34

The District/Khan State Land Working Group has the roles and duties as provided in Article 28 of the Sub decree No. 118 ANK.BK dated October 07, 2005 on State Land Management.

Article 35

After receiving the development of detailed economic land concession project document or detailed unsolicited proposal, the Contracting Authority shall organize public consultations with territorial authorities and representatives of local residents by sending a copy of the document to each of the Commune Council(s) of the affected area for their review and recommendation within 28 (twenty-eight) working days from the date the Commune-Sangkat Council receives a copy of the detailed document for solicited economic land concession

project or of the detailed unsolicited proposal. The Contracting Authority shall consider the comments of the affected commune council(s). If comments of the affected commune council(s) are rejected, specific reasons shall be given.

Chapter 6: Review of Existing Economic Land Concessions

Article 36

For economic land concession granted prior to the effective date of this sub-decree, and for which the Concession Contract is still valid:

- Within 90 (ninety) days after the decision for appointment of the members of the Technical Secretariat is made the Technical Secretariat shall establish an Economic Land Concession Logbook and shall widely give a 30 (thirty) day-notice to all ministries or institutions or territorial authorities that have signed economic land concession contracts and all concession companies.
- Any ministry or institution or territorial authority that has granted an economic land concession or signed a Concession Contract as well as the concessionaire shall provide information and a copy of relevant documents to the Technical Secretariat for recordation in the Economic Land Concession Logbook within 6 (six) months after the notice or the publication of the notice

Article 37

The ministry, institution or territorial authority that granted or signed an existing economic land concession contract, with technical support from the Technical Secretariat, shall, based on the situation of each case, take the following review steps:

- The concessionaire's contractual compliance with the terms of the existing Concession Contract in consideration of the investment made and to be made;
- The land use fees and other revenue from the concession contracts;
- Hold a public consultation to solicit comments on the land concession activities within communes(s) where the concession land is located;
- If a concessionaire holds economic land concessions in excess of 10,000 (ten thousand) hectares, shall request that the concessionaire voluntarily reduce the concession land size or if the concessionaire will not voluntarily reduce the size, attempt to negotiate a reduction;
- Request land regularization as provided in Article 42 of this sub-decree;
- Recommendations from the Technical Secretariat on the draft review report;
- Within 6(six) months after the Notice regarding the established Logbook, the ministry, institution or authority that signed contract shall submit, with attachment of recommendation of the Technical Secretariat, reports related to the review of existing economic land concessions contract signed by the ministries or institutions or territorial authorities, and then regularly submit such reports every 6(six) months;
- Unless otherwise decided by the Council of Ministers, during the review as well as after the completion of the review, the ministry, institution or territorial authority that signed a contract shall continue to monitor the contract performance and shall not cancel or issue any suspension order and shall report on the performance of the contract.

Article 38

The procedures for voluntarily reducing or conducting negotiation for reducing economic concession holding as provided in Article 59 of the Land Law shall be as following:

1. The ministry, institution or territorial authority that signed the land concession contract shall request that the concessionaire voluntarily choose the parcel of land in the concession land to return to the State in accordance with Article 40 of this sub-decree;

12. If the concessionaire is not willing to voluntarily reduce the size, the ministry, institution, or territorial authority that signed the land concession contract shall invite the concessionaire for negotiations for a concession land use plan with assistance of the Technical Secretariat;

13. If negotiations are not successfully concluded within 6 (six) months from the commencement of negotiations, the ministry, institution or territorial authority who signed the land concession contract shall report to the Council of Ministers through the Technical Secretariat;

14. If the concessionaire fails to report for negotiations within a period of 45 (forty five) days from the date the invitation for negotiation was sent to the address or personally delivered to the concessionaire, the ministry, institution or territorial authority who signed the Concession Contract shall report to Council of Ministers for action.

Article 39

The Council of Ministers may grant an exemption from the requirement to reduce economic land concession holdings of over 10,000 (ten thousand) hectares in the following situations:

- The concession was granted prior to the effective date of the Land Law of 2001;
- A reduction in the holdings would compromise the exploitation in progress on the effective date of the Land Law. Tree cutting or shrub burning for land clearing purpose shall not be considered exploitation in progress or a demonstration of meeting land development requirements under the concession contract.

Article 40

The recommendations of the Technical Secretariat on draft report of the review for each existing concession to the ministry, institution or territorial authority that signed the economic land concession contract, shall specify the following:

- The Contract is being fully operated;
- Specific changes that should be made to the Contract, with specification of the work of the parties to the Contract to be carried out in a way that is acceptable to both parties;
- The existing Contract should be canceled because the concessionaire violated the Contract
- For economic land concession in excess of 10,000 (ten thousand) hectares, whether there is voluntary reduction of the size or whether negotiations for reduction are required or whether there are compelling reasons for granting an exemption. Selection of parcels for reduction shall include disputed areas, areas not yet cleared, areas not yet developed, and state public lands.

Article 41

The review reports, recommendation of the Technical Secretariat, and the final result of the review of each existing economic land concession shall be maintained as public documents at the Technical Secretariat and the Provincial-Municipal State Land Management Committee.

Article 42

In the existing economic land concessions review process, the Ministry of Land Management, Urban Planning and Construction shall regularize the land within the overall area of the economic land concession under review. Land regularization will include land parcel adjustments, adjudication of land rights of occupants of land parcels under review, and demarcation and registration of the land through existing procedures.

Chapter 7: Resources

Article 43

The budget for the operation of the Technical Secretariat shall be under the budget package of the Ministry of Agriculture, Forestry and Fisheries. According to the unified budget system, the resource and budget of the Technical Secretariat shall be generated from the national budget and from financing from local and overseas sources or international donor organizations.

Chapter 8: Final Provisions

Article 44

Any provision contrary this sub-decree shall be abrogated.

Article 45

The Minister of the Office of the Council of Ministers; the Minister of Agriculture, Forestry and Fisheries; the Minister of Economy and Finance; the Minister of Land Management, Urban Planning and Construction; relevant ministers, secretaries of state, heads of institutions, and all provincial-municipal governors shall be in charge of implementing this sub-decree based on his/her respective duties from the date of signature.

Phnom Penh, 27/12/2005

Prime Minister

Hun Sen

C.C:

- Ministry of Royal Palace
- General Secretariat of the Constitutional Council
- General Secretariat of the Senate
- General Secretariat of the National Assembly
- General Secretariat of the Supreme Council for State Reform
- Cabinet of the Prime Minister
- General Secretariat of the Royal Government
- All central ministries and institutions
- All provincial/municipal halls
- As in Article 45
- File