

# Cambodia Agricultural Value Chain Program (CAVAC)

## Manual of Operations CAVAC Anti–Corruption Strategy

May 2010



**Australian Government**

**AusAID**



**Australian Government**

**Australian Centre for  
International Agricultural Research**



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## **ABBREVIATIONS AND ACRONYMS**

ACIAR	Australian Centre for International Agricultural Research
AusAID	Australian Agency for International Development
D&D	Decentralisation and Deconcentration
CARDI	Cambodian Agricultural Research and Development Institute
CAVAC	Cambodia Agricultural Value Chain Program
MAFF	Ministry of Agriculture, Forestry and Fisheries
MOWRAM	Ministry of Water Resources and Meteorology
RGC	Royal Government of Cambodia

## 1 INTRODUCTION

The Cambodia Agriculture Value Chain Program (CAVAC) operates in Phnom Penh, and in the three provinces of Kampot, Kampong Thom and Takeo. CAVAC will work with development partners Ministry of Agriculture, Forestry and Fisheries (MAFF) and Ministry of Water Resources and Meteorology (MOWRAM), with provincial authorities, and with the private sector. The interventions likely to be undertaken during the life of the Program will in some cases involve significant expenditure.

This Anti-Corruption Strategy looks at the policy and regulatory environment, and sets out CAVAC policies designed to address and minimize the risk of corruption related to program activities. The strategy provides clear processes and procedures for CAVAC personnel to promote better activity management.

In this program there are three key parties working together. They are the AusAID appointed Team Leader; the Operational Contractor, Cardno Emerging Markets; and, Research and Extension specialists, Australian Centre for International Agricultural Research (ACIAR). Cardno manages the operational contractor budget, ACIAR manages the Research and Extension budget, and the Team Leader does not manage operational funds. We have endeavoured to make this an overarching document, but it is prepared by the Operational Contractor, and there will be areas where ACIAR will have its own procedures.

## 2 DEFINITIONS

AusAID has defined corruption as:

“the misuse of entrusted power for private gain. A spectrum of corrupt behaviour exists, from petty corruption, which may include bribes or illicit payments for routine bureaucratic processes, to grand corruption, which involves leaders, politicians, and senior officials diverting public resources on a large scale to serve their private interests.”<sup>1</sup>

In this document, we will also address the related issue of fraud, which is defined as :

“Dishonestly obtaining a benefit by deception or other means.”<sup>2</sup>

The following is a list of behaviours/actions that may be defined as fraud:

- a) Theft;
- b) Obtaining property , a financial advantage or any other benefit by deception;

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<sup>1</sup> Tackling Corruption for Growth and Development, AusAID, March 2007

<sup>2</sup> The Commonwealth Fraud Control Guidelines 2002

- c) Providing false and misleading information;
- d) Failing to provide information when there is an obligation to do so;
- e) Making, using or possessing forged or falsified documents;
- f) Bribery, including bribery of foreign officials, corruption or abuse of office
- g) Unlawful use of program computers, vehicles, telephones and other property or services;
- h) Any offences of a like nature to those listed above.

### **3 POLICY AND REGULATORY ENVIRONMENT**

#### **3.1 Royal Government of Cambodia policy**

The Royal Government of Cambodia's "Rectangular Strategy" (2004) addresses the issue of corruption in a number of places, but particularly as a priority under Good Governance. In this document the Royal Government of Cambodia (RGC) expresses a commitment to anti-corruption legislation, and an independent body to fight corruption. The passage of Cambodian anti-corruption legislation has been a significant step towards achieving this goal. The more recent National Strategic Development Plan also addresses this issue in relation to implementing good governance reforms.

#### **3.2 AusAID policy**

Two key documents addressing AusAID's policy on corruption are:

- Tackling Corruption for Growth and Development (AusAID, 2007)
- Mainstreaming Anti Corruption (AusAID)

The first document outlines AusAID's approach, and specifically identifies three key elements for tackling corruption. They are:

- Building constituencies for anti-corruption;
- Reducing opportunities for corruption; and
- Changing incentives for corrupt behaviour.<sup>3</sup>

CAVAC will address these key areas in the following ways:

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<sup>3</sup> Tackling Corruption for Growth and Development, AusAID, March 2007

***Building constituencies for anti-corruption***

CAVAC will work with Ministry staff to build capacity in implementing sound tendering and procurement processes. This may include conducting workshops on procurement, and involving Ministry officials in tender assessment panels. It is expected that CAVAC will undertake a Procurement Risk Assessment and Fiduciary Risk Assessment in the initial stages of the program. These assessments will include details of key areas in need of capacity development. Based on this assessment, training and capacity development activities will be designed to strengthen counterparts' capacity, particularly in tendering, with a view to using RGC processes in future programs.

***Reducing opportunities for corruption***

Employing clear, open and transparent processes and procedures, especially in procurement and recruitment, will reduce opportunity for corruption. In particular, the CAVAC procurement manual will set out sound best practice procedures which will provide a series of checks and balances to ensure opportunities for impropriety are minimised as far as possible. Specifically designated procurement personnel will also provide an added level of security against corruption. Key aspects include:

- Changing incentives for corrupt behaviour.
- Where instances of corruption, fraud or theft can be proved, penalties for offences will be clear and appropriate, providing clear and substantial disincentives. AusAID's zero tolerance policy for fraud will be rigorously enforced.

**3.3 Regulatory Context for Anti-Corruption**

There are two key pieces of legislation relevant to CAVAC which address the question of corruption. These documents are:

- Cambodian Law on Anti-Corruption; and
- The Australian Criminal Code.

**Cambodian Anti-Corruption Legislation**

The Cambodian Anti-Corruption law was passed in March 2010, and came into effect on 17 April 2010. Chapter Six of this law sets out a range of corruption offences, including giving and receiving bribes, and the abuse of power. An unofficial English version of this law is attached at Annex A.

## **Australian Criminal Law – Bribery of Foreign Officials**

In addition, the Australian Criminal Code has extra-territorial jurisdiction in various areas, including the “bribery of foreign officials”. A copy of this section of the law is attached at Annex B. This document sets out in detail the various offences and relevant defences.

## **4 RISKS**

Four main areas of risk for fraud and corruption are identified for CAVAC. They include risks associated with: procurement; informal fees and payments; inappropriate political influence; and conflicts of interest.

### **Procurement**

It is anticipated that expenditure will initially occur through CAVAC procurement systems. CAVAC will have an internationally recruited Procurement Manager, and a locally engaged Procurement Officer who will manage all program procurement in accordance with clear best practice procurement processes and procedures.

A Procurement Risk Assessment and a Fiduciary Risk Assessment will be undertaken. It is then proposed that CAVAC will engage with partner agencies on procurement issues. This engagement will include activities designed to strengthen partner agency processes and procedures initially by conducting procurement workshops, and possibly including agency representatives in tender processes, subject to the findings of the procurement and fiduciary risk assessments.

As referred to in the introduction to this paper, there are two entities in CAVAC responsible for procurement. The Program Design Document indicates that ACIAR will manage the procurement of goods and services related to the implementation of [the] Research and Extension component. It is agreed that wherever possible, the Operational Contractor and ACIAR will ensure consistency in their approach.

In all instances, procurement will be undertaken in strict compliance with the Commonwealth Procurement Guidelines.

An exception to the procurement guidelines will be the procurement undertaken by Cambodia Agricultural Research and Development Institute (CARDI) and Decentralisation and Deconcentration (D&D) system. The risks associated with this will be determined through the procurement risk assessment process, and will be managed accordingly.

### **Informal fees and payments**

It is considered likely that CAVAC personnel will regularly have to deal with the issue of informal fees and payments. At all times personnel will act in accordance with procurement

and financial management guidelines. Expenditure must be acquitted and all payments, whether or not receipted, must be clearly recorded.

### **Inappropriate political influence**

It is possible that from time to time individuals with political connections may seek to improperly influence the approval or implementation of CAVAC activities. In order to manage that risk, strict adherence to prescribed procedures will be mandatory.

### **Conflicts of interest**

A conflict of interest is a situation in which the impartiality of a person in discharging their duties could be called into question because of the potential, perceived or actual influence of personal considerations, financial or other. The conflict in question is between official duties and obligations, on the one hand, and private interests on the other.

In addition, it may be that a person fulfilling more than one role may have a conflict of interest between two or more official roles. Keeping such roles separate is a function of good governance.

CAVAC will require that all people in significant decision making roles sign a conflict of interest form declaring any interest that might be relevant.

## **5 OTHER PROGRAM PROCEDURES**

There are a number of other program procedures which are relevant to the CAVAC Anti-Corruption Strategy. In particular, the CAVAC Procurement Manual, and the Management Procedures Manual are important points of reference.

The Procurement Manual details the processes to be employed in all procurement, and the Management Procedures Manual includes office forms relating to day-to-day financial transactions.

These two manuals provide a clear framework for expenditure, and compliance with these guidelines helps safeguard against fraud and corruption.



## 6 PROCEDURES FOR REPORTING FRAUD AND CORRUPTION

All CAVAC personnel have an obligation to report actual or suspected fraud and corruption. The Team Leader, Operational Contractor and ACIAR have an obligation to report any such incidents to AusAID.

The following procedures apply where corruption and/or fraud is suspected,

1. Any staff member suspecting staff or others of any issues related to fraud, corruption, or mismanagement will contact their immediate supervisor or General Manager, or ACIAR (as appropriate), to report their concerns. They need to explain their concerns including any and all available details. The supervisor will make a note of the conversation for both the staff member and supervisor to sign.

As management comes from two different organisations, concerns relating to Cardno should be discussed with a Cardno representative (such as the General Manager), and concerns regarding ACIAR should be discussed with an ACIAR representative, the Research and Extension Manager.

2. Where fraudulent or corrupt practices are suspected in relation to CAVAC activities, AusAID will be notified in writing within five working days by Cardno or ACIAR, using the attached template at Annex C.
3. On agreement with AusAID and in consultation with the Team Leader, Cardno or ACIAR will conduct an investigation into the matter. The nature of this investigation will be determined on a case-by-case basis.
4. Based on the outcome of the investigation, appropriate action will be taken.

Key points:

- Where fraud or corruption is suspected, personnel are required to report their concerns. Not reporting such concerns will be viewed extremely seriously, and may result in disciplinary action similar to that given to active perpetrators.
- All reports must and will be dealt with in absolute confidence.
- Staff members should not attempt to approach suspected individuals, or deal with instances of fraud or corruption themselves. They should report incidents as indicated in this document.
- Suspicions should not be discussed with anyone other than the person to whom a report is made, in accordance with this document.

- Where a substantial allegation has been made, the staff member concerned will be informed, and given an opportunity to reply and explain the circumstances giving rise to the allegation. The timing of this part of the process will be determined by Cardno / ACIAR / AusAID as appropriate.
- All reports will be investigated. In some instances internal investigations will be undertaken. In other instances an independent external investigation may be conducted.
- CAVAC will engage external investigators and / or audit services in circumstances where it is determined that specialist services are required, and / or that a fully independent investigation is advisable.

### **External personnel**

CAVAC will work with a range of people in a variety of circumstances. It is CAVAC policy to encourage such people to report any fraud or corrupt activities which have any connection with the program. Any such people will be guaranteed anonymity and / or confidentiality.

## **7 BUILDING CAPACITY TO MITIGATE FRAUD AND CORRUPTION ON THE PROGRAM**

A key tool to mitigating the occurrence of fraud is providing team members and counterparts with enough information to make good choices. Too often corruption and fraud are only discussed after an incident has occurred, which can lead to blame rather than constructive initiatives. As such a workshop will be held with all staff in the second half of 2010, aiming to:

- Ensure staff are aware of and understand the Program's anti-corruption strategy and their obligations; and
- Develop a clear understanding of the key areas of risk of corruption and fraud that exist within the CAVAC program, and ways and means to mitigate these risks.

## **8 DISCIPLINARY ACTION**

If an issue of fraud or corruption arises internally, appropriate disciplinary action will be taken. All relevant circumstances are to be taken into account, and action may include (but not necessarily be limited to) recovery of losses, formal warnings, dismissal, and referral to criminal proceedings.

### **Zero Tolerance**

CAVAC takes a Zero Tolerance approach towards fraud. This means that where fraud is shown to have occurred our approach is to take action to ensure that the perpetrator(s) is/are

brought to account and appropriate action is taken. Appropriate action is to be determined on a case-by-case basis and should take into account the following:

- a) applicable laws and jurisdictions;
- b) relevant circumstances.

Once the matter has been sufficiently considered, a decision will be taken:

- a) as to whether or not prosecution or other remedies (e.g. remedies for staff may include: dismissal, discipline, or performance sanctions) are warranted.
- b) on actions to recover any losses;
- c) whether system-wide adjustments are necessary as a result of the fraud; and
- d) any other issues arising.

In almost all cases where an allegation of fraud or corruption by a staff member is proved, that person will be dismissed. In all cases, AusAID will make the final decision about the action to be taken

## **9 RECORDS OF REPORTS MADE AND ACTION TAKEN**

A written report is to be sent to AusAID within five working days of learning of an incident or issue. A template for that report is attached at Annex C.

All reports of fraud and / or corruption are to be recorded, and a complete record of outcomes is to be maintained by Cardno or ACIAR (as appropriate).

# **Cambodia Agricultural Value Chain Program (CAVAC)**

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## **Annex A1 Draft Law on Anti-Corruption**

**Manual of Operations  
CAVAC Anti-Corruption Strategy**

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**LAW**

ON

**ANTI-CORRUPTION**

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## **CHAPTER I: GENERAL PROVISIONS**

### **Article 1: Purpose**

This law has a purpose to promote effectiveness of all forms of service and strengthen good governance and rule of law in leadership and state governance as well as to maintain integrity and justice which is fundamental for social development and poverty reduction.

### **Article 2: Objective**

This law has an objective to combat corruption through education, prevention, and law enforcement with public participation and support and international cooperation.

### **Article 3: Scope**

This law is applicable to all forms of corruption in all sections and at all levels throughout the Kingdom of Cambodia, which occurs after the law comes into effect.

### **Article 4: Definition**

The technical terms in this law are as follow:

1. Corruption offense refers to criminal offense stated in Chapter 6 of this law.
2. Public official shall mean:
  - a. Any person holding office in legislative, executive institutions, or judicial institution, who is appointed by legal letter, whether permanent or temporary, whether paid or unpaid, regardless of his or her status or age.
  - b. Other persons holding a public office, including public agency or public enterprise as well as other public institutions as stated in the law of the Kingdom of Cambodia.
3. Foreign Public Official shall mean any person holding a legislative, executive, or judicial office of a foreign country, whether appointed or elected; and any foreigner exercising a public function for a foreign country, including for a public agency or public enterprise.
4. Official of a Public International Organization shall mean an international servant or any person who is authorized by such an organization to act on behalf of that organization.
5. Citizen vested with public office through election shall mean a member of the Senate, National Assembly, Municipal Council, Provincial Council, City Council, and District Council, Khan Council and members of Sangkat/Commune Councils as well as citizen vested with a public office through election for the performance of other public functions.
6. Judge shall mean trial judge and investigation judge.

7. Legal Person shall mean a group of persons or foundation with juridical personality and is the subject of rights and obligation.
8. Civil Society shall mean community or group of persons created for the sake of protecting the economic, socio-economic, political, science, cultural, and religious benefits, namely association, NGOs and political party.
9. Benefits shall mean:
  - a. any gift, loan, fee, reward or commission, which is not legally permitted, in cash or any valuable objects or other property of any description.
  - b. Any job, position, function or any agreement or any contract;
  - c. Any payment, exemption, discharge, or liquidation of any loan, obligation or liability, whether in whole or in part;
  - d. Any other service or favor, including protection against any penalty of any action or proceedings of a civil or criminal punishment though the punishment is already defined or not.
  - e. The exercise or forbearance from the exercise of any rights, any power or duty; and,
  - f. Any offer or promise of any advantage, whether conditional or unconditional, as defined within the spirit of the preceding paragraphs a, b, c, d and e.
10. Gift shall mean any property or service given to or for the benefit of a person, that is not regarded as an agreement and given as a gift in accordance with custom or tradition.
11. Conflict of Interest shall mean an interest in form of cash, political interest, interest for family or personal interest, which may influence or appear to influence any person's performance of his or her official duty.
12. Property shall mean assets of every kind, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets.
13. Freezing shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property, or temporarily assuming custody or control of property on the basis of an order issued by a court.
14. Seizure shall mean temporarily confiscating any property on the basis of an order issued by a court.
15. Proceeds of Corruption shall mean any property derived from or obtained, directly or indirectly, through the commission of corruption act.
16. Emolument shall mean monetary proceeds derived from office, rank, employment or labor, including salary, fees, and other compensation.
17. Attempt in a felony or misdemeanor shall be punishable when the following conditions are fulfilled:

- a. The perpetrator commenced to commit the offense meaning that the perpetrator has acted with direct intention to commit the offense; and
- b. The perpetrator does not stop his or her commission of the crime voluntarily but the *continuation of crime commission was obstructed (interrupted)* by influence of the circumstances out of his or her willingness.

For any preparation to commit an offence without a direct intention is not a commencement to commit an offence.

18. Initiator shall mean any person who:
  - a. Provides guide to commit felony or misdemeanor.
  - b. Facilitates corruption by giving, promising, threatening, inciting, inducing or abusing his or her own power or authority.
19. Accomplice shall mean any person who has intentionally facilitated an attempt or commission of a crime of corruption through his or her assistance or support;
20. Original Anti-Corruption Unit shall mean the Anti-Corruption Unit was created under sub degree N° 84 (OR NOR KROR BOR KOR) issued on 22 August 2006.

## **CHAPTER 2: ANTI-CORRUPTION INSTITUTION**

### **Article 5: Anti-Corruption Institution**

The Anti Corruption Institution is composed of the National Council Against Corruption and the Anti Corruption Unit.

The Anti Corruption Institution has its own logo and stamp for official use which will be determined in a sub-decree.

## **SECTION 1: NATIONAL COUNCIL AGAINST CORRUPTION**

### **Article 6: Establishment of National Council Against Corruption**

The National Council Against Corruption is created to provide guidance and recommendations on anti-corruption work. The National Council Against Corruption is composed of 11 members as follows:

1. One dignitary appointed by HM. the King

2. One dignitary selected by the Senate through absolute majority of votes of the whole Senate
3. One dignitary selected by the National Assembly through absolute majority of votes of the whole National Assembly
4. One dignitary selected by the Royal Government
5. One dignitary selected by or from the National Audit Authority
6. One dignitary selected by or from the Ministry of National Assembly-Senate Relations and Inspection
7. One dignitary selected by or from the Council of Magistracy, and
8. One dignitary selected by or from the Council for Legal and Judicial Reform
9. One dignitary selected by or from the Supreme Council of Magistracy
10. One dignitary selected by Cambodia Human Rights Committee
11. Chair of Anti-Corruption Unit.

Each member of the National Council Against Corruption must meet the following requirements:

- Khmer nationality from birth;
- Possessing highest moral conduct and good reputation;
- Never committing a misdemeanor or felony and not declared bankrupt;
- Holding a higher education degree or higher;
- At least 10-years of work experience in society;
- At least 45 years of age.

#### **Article 7: Term of Office, Removal and Replacement**

All Members of the National Council Against Corruption shall be appointed by Royal Decree for a five-year term. This term may be renewed.

If a Member of the National Council Against Corruption dies, resigns or is dismissed, or is unable to serve his or her term for any reason for a period of six months or more before the end of the mandate, a new member shall be appointed in his or her replacement.

The position of any member of the National Council Against Corruption shall be automatically terminated upon the decision made by the court that such a member is guilty of a misdemeanor or felony.

In the case as stated above, the Chairman of the National Council Against Corruption shall convene a meeting to make a decision and take any appropriate measure regarding the termination or removal from his or her position as well as the selection of a new dignitary for replacement in compliance with Article 6 (Establishment of the National Council Against Corruption) of this law.

#### **Article 8: Selection of President and Vice-President**

The President and Vice-President of the Council Against Corruption shall be elected by its members through an absolute majority of votes which is made at the first meeting upon the invitation by oldest member. In case the first election fails to come to a result, the next election shall be made using the comparative majority of votes.

Should the President of the National Council Against Corruption is absent or unable to fulfill duties, the Vice-President will take his place.

The Chairman of Anti-Corruption Unit cannot stand for the post of President or Vice-President of the National Council Against Corruption.

#### **Article 9: Rank of members of National Council Against Corruption**

Members of National Council Against corruption hold the following rank:

- The President holds the rank of Deputy Prime Minister
- The Vice-President holds the rank of Senior Minister
- Members hold the rank of Minister.

#### **Article 10: Duties of National Council Against Corruption**

The National Council Against Corruption shall perform duties as follows:

- Develop strategies and policies for fighting corruption
- Provide consultation and recommendations to the Anti-corruption Unit regarding anti-corruption work.
- Oversee the operation of the Anti-corruption Unit
- Ask the Anti-corruption Unit for reports and clarifications
- Report to the Prime Minister on the operations of Anti-corruption Unit
- Report semi-annually and annually to Prime Minister
- Develop and adopt internal regulations for performing its own work.

## **SECTION 2: ANTI-CORRUPTION UNIT**

### **Article 11: The establishment of the Anti-corruption Unit**

The Anti-corruption Unit is established to independently undertake its duties. The Anti-corruption Unit is led by one chairperson with the rank of senior minister, and a number of vice-chairpersons with the rank of minister as his assistants.

The chairman and vice-chairman are appointed by the Royal decree at the request of the Prime Minister.

The organization and function of the Anti-corruption Unit is defined by sub-decree.

### **Article 12: Qualification of the Chairperson and Vice-chairperson of the Anti-corruption Unit.**

Chairperson and Vice-chairperson must meet the following requirements:

- Khmer nationality from birth;
- Possessing highest moral conduct and good reputation;
- Never committing no misdemeanor or felony and not declared bankrupt;
- Holding higher education degree or higher;
- At least 7-years of work experience in society;
- At least 35 years of age.

### **Article 13: Duties of the Anti-corruption Unit**

The Anti-corruption Unit shall perform the following duties:

- Implement law, orders and regulations (which are in force) related to corruption.
- Develop anti-corruption action plan in accordance with the strategies and policy of the National Council Against Corruption
- Direct the work of preventing and combating corruption
- Monitor, investigate, check, and do research as well as propose measures related to corrupt practices in ministries, institutions, public and private units, in conformity with the procedures in force
- Receive and review all complaints on corruption and take action accordingly
- Search, review and compile the documents and information related to corruption
- Keep absolute confidentiality of corruption-related information sources
- Take necessary measures to keep the corruption whistle blowers secure
- Manage the system of assets and debt declaration as stipulated in this law
- Conduct mass education and awareness with regard to the negative impact of corruption and encourage public participation in preventing and combating corruption

- Prepare and propose annual budget for the National Council Against corruption and for Anti-corruption Unit
- Answer verbally or in writing the questions raised by members of National Council Against corruption or members of National Assembly
- Provide work services to National Council Against corruption
- Make appointment, transfer, supervision or propose appointment or transfer of officials under Anti-corruption Unit
- Cooperate with national, regional and international organizations in order to combat cross-border corruption
- Report all activities of Anti-corruption Unit to the National Council Against corruption
- Empowered to warn suspects who initially fail to obey the laws and regulations in force in order to prevent corruption.

#### **Article 14: Officials of the Anti-corruption Unit**

The officials of the Anti-corruption Unit include the persons appointed or transferred or assigned to work for the Unit and the contractual officials. These officials have to follow the provisions of the law and legal norms in force.

The Chairperson of the Anti-corruption Unit can recruit local or international experts, specialists or researchers, on the voluntary or contractual basis, to provide technical expertise on anti-corruption.

#### **Article 15: Branches of the Anti-corruption Unit**

The Anti-corruption Unit may have its offices in the Capital and all provinces of the Kingdom of Cambodia to serve as its branches. The Offices for Anti-corruption perform their work under the leadership of Chairperson of Anti-corruption Unit. The Office for Anti-corruption is led by one chairperson and a number of vice-chairpersons as his assistants.

## **CHAPTER 3: BUDGET AND RESOURCES FOR ANTI-CORRUPTION INSTITUTION**

#### **Article 16: Budget and resources for Anti-corruption Institution**

The Anti-corruption Institution has a separate budget package for its operation and the package is within the budget package of the Office of the Council of Ministers.

The Anti-corruption Institution receives needed resources from the Royal Government and has the right to receive donations or assistance from national and international organizations. The Anti-corruption Institution will not accept any assistance which leads to conflict of interest.

## **CAPERER 4: DECLARATION OF ASSETS AND LIABILITIES**

### **Article 17: Persons required to declare assets and liabilities**

Upon taking and leaving offices, the following persons shall, in writing or electronic form, declare their assets and liabilities, regardless of whether those assets are inside or outside the country, and shall submit, in person, to Anti-corruption Unit.

1. Members of Senate, members of National Assembly, and Members of the Royal Government
2. Appointed public officials with a specific mandate
3. Members of the National Council Against corruption, chairperson, vice-chairpersons and all officials of the Anti-corruption Unit
4. Civil servants, police, military personnel and other public servants appointed by Royal Decrees or Sub-decrees
5. Other officials appointed by Prakas and decided by Anti-corruption Unit's list of declaration on assets and liabilities, after the consultation with National Council Against corruption
6. Trial judges, prosecutors, notary public, court clerks and bailiff.
7. Leaders of civil society.

### **Article 18: Regime of Declaration of Assets and Liabilities**

Officials listed in Article 17 (Persons required to declare assets and liabilities) shall declare their assets and liabilities every two years, in early January and no later than the thirty-first of January. The declaration of assets and liabilities shall be done within 30 days after taking office. The second declaration shall be made in January of the third year and the last declaration of assets and liabilities shall be made within 30 days before leaving the office. In case the declaration cannot be made before leaving the office due to removal from office, declaration shall be made within 30 days after leaving the office.

Officials listed in Article 17 (Persons required to declare assets and liabilities), who are in office, shall declare their assets and liabilities first within 60 days after the anti-corruption institution is established as stipulated in Article 54 (The organization and functioning of National Council Against corruption and Anti-corruption Unit ) of this law.



The formalities and procedures for declaration of assets and Liabilities shall be determined by the decision of the Anti-corruption Unit.

#### **Article 19: Suspected non-listed person to declare assets and liabilities**

After being investigated and receiving a decision from the Anti-corruption Unit, the suspect of corruption shall declare his/her assets and liabilities, in writing or electronic form, even though s/he is not included in the list to declare assets and liabilities as stated in Article 17 (Persons required to declare assets and liabilities) and Article 18 (Regime of Declaration of Assets and Liabilities) of this law.

The declaration of assets and liabilities of the above mentioned suspect shall comply with the formalities and procedures in Article 18 (Regime of Declaration of Assets and Liabilities) of this law to the final stage.

#### **Article 20: Documentation of the assets and liabilities declaration**

Personal documents of each individual's declaration shall be kept highly confidential. The document shall be made in electronic form, assigned with a code number and in two copies in accordance with a guideline determined by the Anti-corruption Unit. They shall be enclosed in separate envelopes, one to be kept by the individual concerned and the other by the Anti-corruption Unit. The enclosed envelope shall be sealed and signed by the Chairperson of Anti-corruption Unit, or a representative, together with the concerned individual's thumbprint.

The Chairperson of the Anti-corruption Unit can decide on the opening of the above envelope or electronic document for the sake of investigation as necessary.

The documents on declaration of assets and liabilities shall be kept within Anti-corruption Unit for ten years upon being received.

Procedures of opening envelopes or electronic documents of declaration of assets and liabilities shall be determined by the Anti-corruption Unit.

## **CHAPTER 5: PROCEDURE FOR CORRUPTION OFFENCES<sup>1</sup> AND COMPETENT AUTHORITY**

### **Article 21<sup>2</sup>: Procedure for corruption offences**

Procedure for corruption offences which is stated in the penal code and corruption offences which is stated in this law, shall be implemented as stated in the penal procedure code if there is no separate procedure in this law.

### **Article 22: Officials competent to investigate corruption offences**

The Chairman, deputy chairpersons and officials of the Anti-corruption Unit who gain an advantage as judicial police official are empowered to investigate corruption offenses that are stipulated in this law and those in the penal code.

Other units that are aware of corruption offenses as stipulated in this law and corruption offenses stated in the penal code shall make corruption complaints to the Anti-Corruption Unit or its branch offices in the Capital or provinces.

### **Article 23: Appointment of Anti-corruption Unit officials as judicial police**

The Chairman and deputy chairpersons of Anti-corruption Unit are legally entitled to a status as judicial police officials in order to perform their duties.

Officials of Anti-Corruption Unit may be entitled to status as judicial police officials in accordance with the provisions in the penal procedure code.

The Chairman of Anti-corruption Unit takes charge of preparing list of officials of Anti-corruption who are entitled to status as judicial police officials through Prakas of the Minister of Justice.

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<sup>1</sup> For an ease of understanding, we believe that article 4 related to definition of offences and Chapter 8 related to penalty applicable to offences should be included in the same Chapter.

<sup>2</sup> Numbering of this article remains provisional.

## **Article 24: Oath**

The Chairman, deputy chairpersons and officials of Anti-corruption Unit who are appointed as judicial police officials have to take an oath that they are honest in fulfilling their tasks in accordance with conditions stated in Article 63 (the oath by judicial police official) of the criminal procedure code.

## **Article 25: Investigative power of Anti-corruption Unit**

Officials of Anti-corruption Unit who are appointed as judicial police take charge of investigating corruption offences. If during the course of a corruption offence investigation different offenses are found whose facts are related to the offence being investigated by Anti-corruption Unit, officials of Anti-Corruption Unit can continue the investigation of the offences to the final stage.

The Anti-corruption Unit cannot investigate other offences except corruption ones unless the unit is ordered by the court to do so.

The court can order the Anti-corruption Unit to undertake forensic inquiries in order to facilitate the work of the court.

In the framework of these investigations and contradictory to article 85 (power of judicial police officials in flagrant offence investigation), article 91 (searching), article 94 (subpoena in the case of flagrant offence investigation) and the article 114 (subpoena for preliminary investigation) of the code of criminal procedure, the Chairman of Anti-corruption Unit or officially assigned representative has the duty to lead, coordinate and control the mission of those officials instead of the role of prosecutor to the point of arresting a suspect.

After the arrest, prosecutor exercises his power as stated in the code of criminal procedure.

At the end of each investigation, the Anti-corruption Unit shall submit all facts to the prosecutor for further action in conformity with the provisions of the code of criminal procedures.

## **Article 26: Special Privileges of Anti-corruption Unit**

The Chairman of the Anti-Corruption Unit can ask the concerned authority to suspend all functions of any individual who is substantially proven to be involved in a case of corruption offence.

If the suspect flees to a foreign country, the chairman of the Anti-corruption Unit can ask the competent authority to undertake an extradition in accordance with the provisions in force.

The Anti-corruption Unit can reserve some appropriate spaces, permanently or temporarily, as detention rooms, in accordance with the code of criminal procedure. When the Anti-corruption Unit cannot afford to have the appropriate permanent or temporary place for detention, the Anti-corruption Unit can ask the competent institution to detain the suspects arrested by the Anti-Corruption Unit.

#### **Article 27: Privileges of Anti-corruption Unit related to monitoring**

Being contradictory to article 105 (prohibition from wire-taping), and article 172 (wire taping ordered by the court) of the criminal procedure code, in the case there is clear hint of corruption offence, the ACU can:

- a. Check and put under observation the bank accounts or other accounts which are described to be the same as bank accounts.
- b. Check and order the provision or copy of authentic documents or individual documents, or all bank, financial and commercial documents.
- c. Monitor, oversee, eavesdrop, record sound and take photos, and engage in phone tapping.
- d. Check documents and documents stored in the electronic system
- e. Conduct operations aimed at collecting real evidence.

The above measures shall not be considered as violations of professional secrets. The secret of banks shall not be served as justification for not providing evidence related to corruption offences in the provisions of this law.

#### **Article 28: Privileges of ACU related to freezing an individual's assets**

Upon the request by the chairman of ACU, the Royal Government can order the General Prosecutor of the Appeals Court or Prosecutor of the Municipal/Provincial Court to freeze the assets of individuals who commit offences stated in this law and corruption offences stated in the code of criminal procedure.

The individual assets, stated in the above first paragraph, includes the funds received or which forms asset belonging to the individual.

#### **Article 29: Privileges of ACU in cooperation with public authority**

The Chairman of the ACU can order public authorities, government officials, citizens who hold public office through election, as well as units concerned in private sector, namely financial institutions, to cooperate with officials of the ACU in the work of investigation.

The Chairman of the ACU can also ask the national and international institutions to cooperate in forensic examinations related to its investigation work.

### **Article 30: Seizure**

The seizure shall be implemented in accordance with the code of criminal procedure.

### **Article 31: Procedures at criminal court**

With regards to the criminal case related to corruption offence, the judge, after receiving the complaint, shall open the trial as soon as possible.

## **CHAPTER 6: CORRUPTION OFFENSES AND PUNISHMENT**

### **Article 32: Corruption offenses stipulated in the Criminal Code**

In addition to the offenses stipulated in this law, the offenses in article 278 (bribe taking by employees), article 279 (bribe offered to employees), article 280 (bribe taking by governor), article 283 (Criminal responsibility by legal entity), article 387 (improper bidding), article 404 (definition of money laundering), article 405 (sentence to be served), article 406 (aggravating circumstance), article 409 (Criminal responsibility by legal entity), article 517 (bribe taking by judges), article 518 (bribe offered to judges), article 519 (Criminal responsibility by legal entity), article 547 (bribe taking by witnesses for false testimony), article 548 (bribe offered to witnesses), article 553 (bribe taking by interpreter), article 554 (bribe offered to interpreter), article 555 (bribe taking by experts), article 556 (bribe offered to experts), article 559 (criminal responsibility by legal entity) , article 592 (definition of misappropriation), article 593 (sentence to be served) , article 594 (bribe taking) , article 595 (definition of passive business influence) , article 597 (definition of embezzlement) , article 598 (sentence to be served), article 599 (definition of favoritism), article 600 (sentence to be served) , article 601 (intentional destruction and dishonest embezzlement) , article 605 (bribe offering) , article 606 (active business influence) , article 607 (extortion) , article 608 (destruction and embezzlement), article 625 (criminal responsibility by legal entity) , article 637 (bribe offered to person who has competence to issue false certificate) , article 639 (bribe taking by member of professional board of medicine to issue false certificate) , article 640 (bribe offered to member of professional board of medicine to issue false certificate) , article 641 (execution of misdemeanor of articles 639 and 640 for all medical professions) , article 644 (criminal responsibility by legal entity), of the Criminal Code are corruption offenses to be implemented as part of this law.

### **Article 33: Bribetaking by Foreign Public Officials or Officials of Public International Organizations**

Foreign public officials or officials of public international organizations shall be sentenced from 7 years to 15 years for unrightfully asking for, demanding or accepting, directly or indirectly, gift, donation, promise or any benefit in order to:

1. Either perform his/her duty or be facilitated by his or her function; Or
2. Refrain from performing his or her duty or being facilitated by his or her function.

### **Article 34: Bribes offered to Foreign Public Officials or Officials of Public International Organization**

Any person shall be sentenced from five (5) to ten (10) years if he/she unrightfully, directly or indirectly, offers gift or donation or promise or any benefit to foreign public officials or officials of public international organization, in order that the officials:

1. Either perform his/her duty or be facilitated by his or her function; Or
2. Refrain from performing his or her duty or being facilitated by his or her function.

### **Article 35: Abuse of Power**

An act committed by public servants or citizens invested with public office through election, in the exercise of his or her duty or in the course of exercising his or her duty such as taking action to hinder law enforcement in order to take any illegal advantage, shall be punishable from two (2) to five (5) years in prison and fine from four million Riel (4,000,000) to ten million Riel (10,000,000).

This offence shall be punishable by imprisonment from five (5) to ten (10) years when such offence goes into effect.

### **Article 36: Illicit Enrichment**

Illicit enrichment is an increase in the wealth of an individual and the individual cannot provide reasonable explanation of its increase in comparison to his or her legal income.

After the first assets and liabilities declaration, every person as described in article 17 (people required to declare assets and debt) and article 19 (other people required to declare assets and debt) of this law, who cannot provide a reasonable explanation of the wealth increase in comparison to his or her legal income, shall face confiscation of the unexplainable property. All of the confiscated property will become state property.

If the unexplainable wealth increase is connected to any corruption offense as stated in this law, the wealth owner shall be punished in accordance with this law.

### **Article 37: Corruption proceeds offences**

Corruption proceeds is an act to conceal, keep or transport any kinds of goods with knowledge that those are corruption proceeds as mentioned in this law. Acts that can also be counted as corruption proceeds are as follows:

1. Act as intermediary for transporting items with the knowledge that they are corruption proceeds; or
2. The act that benefits from corruption proceeds with clear knowledge.

Act that benefits from corruption proceeds shall be punishable by imprisonment from two (2) to five (5) years and fine from four million Riel (4,000,000) to ten million Riel (10,000,000).

Act benefits from corruption proceeds shall be punishable by imprisonment from five (5) to ten (10) if the offences are committed:

1. Habitually
2. By the comfort/convenience results from professional duty
3. By organized group

### **Article 38: Punishment for not declaring assets and liabilities**

Any person who does not declare their assets and liabilities or who improperly declares his or her assets in accordance with provisions stated in article 17 (people required to declare assets and debt), article 18 (regime of assets and debt declaration) and article 19 (other people required to declare assets and debt) of this law, shall be sentenced from one (1) month to one (1) year in prison and fined from one hundred thousand Riel (1,00,000) to two million Riel (2,000,000), and is forced to make asset declaration to Anti-Corruption Unit. In case of resisting the declaration, double punishment shall be applied.

The Chairman of the Anti-Corruption Unit shall inform leaders of the civil society in writing before this article is enforced.

### **Article 39: Leakage of Confidential Information on Corruption**

Any person who leaks the confidential information on corruption shall be sentenced from one (1) to five (5) years in prison.

The absolute confidentiality cannot be an obstacle to the right of self-defense.

#### **Article 40: Obstruction or Interference offenses in the work of the Anti-Corruption Unit**

Public servants, soldiers, national police or citizens invested with public authority through election, civil society employees, foreign public officials, or officials of public international origination who make threat, cause obstruction or interfere in the performance of duty by the officials of Anti-Corruption Unit shall be sentenced from two (2) to five (5) years in prison and fined from four million Riel (4,000,000) to ten million Riel (10,000,000).

#### **Article 41: Defamation and disinformation**

Defamation or disinformation complaints on corruption lodged with the Anti-corruption Unit or judges, which lead to useless inquiry, shall be punishable by imprisonment from one (1) month to six (6) months and fine from one million Riel (1000,000) to ten million Riel (10,000,000).

#### **Article 42: Abuse of the assets which are the subject of seizure**

Any unauthorized person who transfers, assigns or changes the assets which are subject to confiscation in violation of provisions stated in article 30 (seizure) of this law, shall be sentenced from one (1) year to five (5) years in prison and fined from two (2) million riels to ten (10) million riels.

#### **Article 43: Petty corruption offences and punishment**

Any person who commits petty corruption stipulated in this law shall be sentenced from seven (7) days to five (5) years, and the petty corruption shall meet the following criteria:

- Offences committed for daily survival
- Offences committed in petty manner
- Offences which is not harmful to society
- Evaluation/description by the Anti-corruption Unit as petty corruption offences.

#### **Article 44: Attempt**

Attempt to commit a misdemeanor as stated in article 278 (bribe taking by employees), article 279 (bribe offered to employees) article 387 (improper bidding), article 404 (definition of money laundry), article 405 (sentence to be served), article 406 (aggravating circumstance), article 592 (definition of misappropriation), article 593 (sentence to be served), article 597 (definition of embezzlement), article 598 (sentence to be served), article 599 (definition of favoritism), article 600 (sentence to be served) article 638 (bribe offered to person who has competence to issue a fake document), article 640 (bribe offered to member of medical board to issue a fake document) of the criminal code and article 35 (power abuse) and article 40 (Obstruction or Interference in the work of the Anti-Corruption Unit) of this law, shall face the same punishment as a misdemeanor.



#### **Article 45: Accessory Penalty applicable to certain Corruption Offences**

In addition to felony or misdemeanor punishment stated in this law, the accessory penalty may be as follows:

1. Deprivation of certain civic rights, either permanently or for a certain period, not exceeding five (5) years.
2. Disbarring from profession, either permanently or for a certain period, not exceeding five (5) years when this offence is committed in the conduct of his or her profession or during the conduct of his or her profession.
3. Prohibition of staying for a period not exceeding ten (10) years for a felony and not exceeding five (5) years for misdemeanor offence.
4. Barring of the entrance and staying of convicted foreigner in the territory of the Kingdom of Cambodia, either permanently or for a period not exceeding five (5) years.
5. Confiscation of instrument, material or any objects which are used to commit offence or aimed to commit offence.
6. Confiscation of objects or funds that are subject of committing offence.
7. Confiscation of capital or property which derives from offence.
8. Confiscation of proceeds, material and furniture in the building where an offence is committed.
9. Confiscation of a vehicle or vehicles of the convict.
10. Prohibition of the possession or the carrying of explosives either permanently or for a period not exceeding five (5) years.
11. Closure of the institution which being used to organize or commit offences either permanently or for a period not exceeding five (5).
12. Prohibition of the business establishment open to the public or used by the public, either permanently or for a period not exceeding five (5) years.
13. Expulsion from public procurement.
14. Posting of the conviction judgment for a period of not exceeding two (2) months.
15. Advertisement of the conviction judgment on print media.
16. Announcement of the conviction judgment on non-print media outlets for a period not exceeding eight (8) days.

#### **Article 46: Accessory Penalty applicable to certain Legal Entities**

The legal Entity that commits corruption as stated in article 37 (corruption proceeds offence) of this law shall be subject to a fine of ten million Riel (10,000,000) to one hundred million Riel (100,000,000) and face accessory penalties as follows:

1. Dissolution.
2. Placement under the court's watch.
3. Barring of operation of an activity or activities.
4. Expulsion from public procurement.
5. Prohibition on public saving appeal.

6. Prohibition on issuing cheque besides the cheque certified by any banks.
7. Prohibition on issuing payment vouchers.
8. Closure of the institution which being used to organize or commit offences.
9. Prohibition of the business establishment open to the public or used by the public.
10. Confiscation of instrument, material or any objects which are used to commit offence or aimed to commit offence.
11. Confiscation of objects or funds which are subject of committing offence.
12. Confiscation of capital or property that derives from offence.
13. Confiscation of proceeds, material and furniture in building where an offence is committed
14. Posting of conviction judgment.
15. Publication of the conviction judgment on print media or the announcement on non-print media outlets.

#### **Article 47: The Release of Bank Records**

Credit entities or financial institutions shall be relieved of responsibility and no criminal complaint will be filed against the leader or trustee of that entity or institution should such operation has been carried out in accordance with the provisions of law, unless otherwise it is found that there is a pre-agreement with the fund owner or transactional operator to forge it.

#### **Article 48: Seizure**

When a person is found guilty of corruption, the court shall confiscate all his/her corruption proceeds including property, material, instrument that is derived from corruption act and the proceeds shall be transformed into state property.

If the above seized asset is transferred/changed into different property from the original asset nature, this transformed asset will become the subject of seizure at the place where it locates.

If the corruption proceeds make more benefits or other advantages, all of these benefits and advantages will be seized as well.

If the corruption proceeds disappear or lose value, the court may order the settlement of the proceeds.

## **Article 49: Repatriation of the proceeds of Corruption**

In case assets and corruption proceeds are found kept in foreign states, the competent authority of the kingdom of Cambodia shall take measure to claim that asset and proceeds back to Cambodia through means of international cooperation. The Kingdom of Cambodia shall cooperate with other countries who request to repatriate corruption proceeds that are kept in Cambodia.

## **CHAPTER 7: EXTRADITION AND MUTUAL LEGAL ASSISTANCE**

### **Article 50: Extradition Provisions**

Provisions of Chapter 2, content 1, part/section 9 of Penal Procedure Code shall be applicable in terms of the extradition of the case related to corruption offenses.

### **Article 51: Mutual Legal Assistance**

In the case of corruption offences, the court authority of the Kingdom of Cambodia may delegate power to competent court authority of any foreign state and may also obtain power from court authority of any foreign state, in order to:

1. Collect evidence/proof or answer/response through court means.
2. Inform about documents of the court.
3. Search, arrest and confiscate.
4. Examine objects and crime scene.
5. Provide information and exhibit.
6. Issue original process-verbal or its authentic copies and dossier, including bank statement, accounting transactions, records of concerned institution, records of concerned company and trade records, as well as authentic and private documents;
7. Identify or provide expert witnesses and others, including detainees who agree to assist in the investigation or participate in the legal proceedings.
8. Identify or seek resources, property, equipment, and materials that derive from offence and offence means.
9. Place under temporary holding the products and properties obtained from corruption offences as well as equipment, materials being used or kept for committing offences.
10. Enforce the decision of confiscation, seizure or repatriation of products, properties, equipment, material derived from offence.
11. Order to confiscate all objects as stated above.
12. Inform about the criminal charge.
13. Interrogate the accused based on criminal procedure.
14. Find out and identify witnesses and suspects.

#### **Article 52: Cambodians holding more than one nationality**

Anti-Corruption Institution and competent authorities concerned have obligation to seek international cooperation and mutual legal assistance in terms of the property's status of Cambodians holding more than one nationality.

#### **Article 53: Mutual Legal Assistance Procedure**

Procedures for Implementing mutual legal assistance shall be in agreement with the principles stated in treaties or bilateral and multi-lateral agreement, and national law in force.

### **CHAPTER 8: TRANSITIONAL PROVISION**

#### **Article 54: Establishment of National Council Against Corruption and Anti-Corruption Unit**

After the promulgation of this law, the Royal Government shall establish the National Council Against Corruption and Anti-Corruption Unit no later than six (6) months.

The original Anti-Corruption Unit shall in charge of implementing anti-corruption duties as stated in the law in force and disseminate this law until the Anti-Corruption Institution is established, and afterward the original Anti-Corruption Unit will be dissolved.

### **CHAPTER 9: FINAL PROVISION**

#### **Article 55: Abrogation**

Any provisions that contradict with this law shall be abrogated.

#### **Article 56: Promulgation**

This law shall go into effect immediately.

#### **Article 57: Law Implementation**

After the promulgation of this law, other provisions besides the provisions stated in Chapter 6 of this law shall go into effect immediately.

The provisions in Chapter 6 of this law shall go into effect 12 (twelve) months after the full implementation of the Penal Code.

This law is adopted by National Assembly of Kingdom of Cambodia  
on .....  
at the Extraordinary session, Fourth Legislature.  
Phnom Penh .....  
President of National Assembly

Samdech Akak Moha Ponhea Chakrey Heng Samrin

# **Cambodia Agricultural Value Chain Program (CAVAC)**

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## **Annex A2 Excerpts from Cambodian Anti-Corruption Law**

**Manual of Operations  
CAVAC Anti-Corruption Strategy**

The following are sections of an unofficial English copy of the relevant Cambodian Law. This is provided for convenience, but should not be relied upon in isolation. You are advised to read the act which is attached in Annex A1

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# DRAFT

# LAW ON ANTI-CORRUPTION

## CHAPTER 6: CORRUPTION OFFENSES AND PUNISHMENT

### **Article 32: Corruption offenses stipulated in the Criminal Code**

In addition to the offenses stipulated in this law, the offenses in the following articles of the Criminal Code are corruption offenses to be implemented as part of this law:

- article 278 (bribe taking by employees),
- article 279 (bribe offered to employees),
- article 280 (bribe taking by governor),
- article 283 (Criminal responsibility by legal entity),
- article 387 (improper bidding),
- article 404 (definition of money laundering),
- article 405 (sentence to be served),
- article 406 (aggravating circumstance),
- article 409 (Criminal responsibility by legal entity),
- article 517 (bribe taking by judges),
- article 518 (bribe offered to judges),
- article 519 (Criminal responsibility by legal entity),
- article 547 (bribe taking by witnesses for false testimony),
- article 548 (bribe offered to witnesses),

article 553	(bribe taking by interpreter),
article 554	(bribe offered to interpreter),
article 555	(bribe taking by experts),
article 556	(bribe offered to experts),
article 559	(criminal responsibility by legal entity) ,
article 592	(definition of misappropriation),
article 593	(sentence to be served) ,
article 594	(bribe taking) ,
article 595	(definition of passive business influence) ,
article 597	(definition of embezzlement) ,
article 598	(sentence to be served),
article 599	(definition of favoritism),
article 600	(sentence to be served) ,
article 601	(intentional destruction and dishonest embezzlement) ,
article 605	(bribe offering) , article 606 (active business influence) ,
article 607	(extortion) ,
article 608	(destruction and embezzlement),
article 625	(criminal responsibility by legal entity) ,
article 637	(bribe offered to person who has competence to issue false certificate) ,
article 639	(bribe taking by member of professional board of medicine to issue false certificate) ,
article 640	(bribe offered to member of professional board of medicine to issue false certificate) ,
article 641	(execution of misdemeanor of articles 639 and 640 for all medical professions) ,
article 644	(criminal responsibility by legal entity),



**Article 33: Bribetaking by Foreign Public Officials or Officials of Public International Organizations**

Foreign public officials or officials of public international organizations shall be sentenced from 7 years to 15 years for unrightfully asking for, demanding or accepting, directly or indirectly, gift, donation, promise or any benefit in order to:

1. Either perform his/her duty or be facilitated by his or her function; Or
2. Refrain from performing his or her duty or being facilitated by his or her function.

**Article 34: Bribes offered to Foreign Public Officials or Officials of Public International Organization**

Any person shall be sentenced from five (5) to ten (10) years if he/she unrightfully, directly or indirectly, offers gift or donation or promise or any benefit to foreign public officials or officials of public international organization, in order that the officials:

1. Either perform his/her duty or be facilitated by his or her function; Or
2. Refrain from performing his or her duty or being facilitated by his or her function.

# **Cambodia Agricultural Value Chain Program (CAVAC)**

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## **Annex B1 Australian Criminal Code Amendment (Bribery of Foreign Public Officials) Act 1999**

**Manual of Operations  
CAVAC Anti-Corruption Strategy**



# **Criminal Code Amendment (Bribery of Foreign Public Officials) Act 1999**

**No. 43, 1999**

**An Act to amend the *Criminal Code Act 1995*, and  
for other purposes**



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<b>Schedule 1—Amendment of the Criminal Code Act 1995</b>		<b>3</b>





# **Criminal Code Amendment (Bribery of Foreign Public Officials) Act 1999**

**No. 43, 1999**

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## **An Act to amend the *Criminal Code Act 1995*, and for other purposes**

[Assented to 17 June 1999]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Criminal Code Amendment (Bribery of Foreign Public Officials) Act 1999*.

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## **2 Commencement**

- (1) Subject to subsection (2), this Act commences on a day to be fixed by Proclamation.
- (2) If this Act does not commence under subsection (1) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

## **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.



## **Schedule 1—Amendment of the Criminal Code Act 1995**

### **1 After section 3**

Insert:

#### **3A External Territories**

The *Criminal Code* extends to every external Territory.

#### **3B Offshore installations**

An installation (within the meaning of the *Customs Act 1901*) that is deemed by section 5C of the *Customs Act 1901* to be part of Australia is also taken to be part of Australia for the purposes of the *Criminal Code*.

### **2 The Schedule (after Chapter 2 of the *Criminal Code*)**

Insert:

## **Chapter 4—The integrity and security of the international community and foreign governments**

### **Division 70—Bribery of foreign public officials**

#### **70.1 Definitions**

In this Division:

***benefit*** includes any advantage and is not limited to property.

***business advantage*** means an advantage in the conduct of business.

***control***, in relation to a company, body or association, includes control as a result of, or by means of, trusts, agreements,

arrangements, understandings and practices, whether or not having legal or equitable force and whether or not based on legal or equitable rights.

**duty**, in relation to a foreign public official, means any authority, duty, function or power that:

- (a) is conferred on the official; or
- (b) that the official holds himself or herself out as having.

**foreign country** includes:

- (a) a colony or overseas territory; and
- (b) a territory outside Australia, where a foreign country is to any extent responsible for the international relations of the territory; and
- (c) a territory outside Australia that is to some extent self-governing, but that is not recognised as an independent sovereign state by Australia.

**foreign government body** means:

- (a) the government of a foreign country or of part of a foreign country; or
- (b) an authority of the government of a foreign country; or
- (c) an authority of the government of part of a foreign country; or
- (d) a foreign local government body or foreign regional government body; or
- (e) a foreign public enterprise.

**foreign public enterprise** means a company or any other body or association where:

- (a) in the case of a company—one of the following applies:
    - (i) the government of a foreign country or of part of a foreign country holds more than 50% of the issued share capital of the company;
    - (ii) the government of a foreign country or of part of a foreign country holds more than 50% of the voting power in the company;
    - (iii) the government of a foreign country or of part of a foreign country is in a position to appoint more than 50% of the company's board of directors;
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- (iv) the directors (however described) of the company are accustomed or under an obligation (whether formal or informal) to act in accordance with the directions, instructions or wishes of the government of a foreign country or of part of a foreign country;
- (v) the government of a foreign country or of part of a foreign country is in a position to exercise control over the company; and
- (b) in the case of any other body or association—either of the following applies:
  - (i) the members of the executive committee (however described) of the body or association are accustomed or under an obligation (whether formal or informal) to act in accordance with the directions, instructions or wishes of the government of a foreign country or of part of a foreign country;
  - (ii) the government of a foreign country or of part of a foreign country is in a position to exercise control over the body or association; and
- (c) the company, body or association:
  - (i) enjoys special legal rights or a special legal status under a law of a foreign country or of part of a foreign country; or
  - (ii) enjoys special benefits or privileges under a law of a foreign country or of part of a foreign country;
 because of the relationship of the company, body or association with the government of the foreign country or of the part of the foreign country, as the case may be.

***foreign public official*** means:

- (a) an employee or official of a foreign government body; or
- (b) an individual who performs work for a foreign government body under a contract; or
- (c) an individual who holds or performs the duties of an appointment, office or position under a law of a foreign country or of part of a foreign country; or
- (d) an individual who holds or performs the duties of an appointment, office or position created by custom or

convention of a foreign country or of part of a foreign country; or

- (e) an individual who is otherwise in the service of a foreign government body (including service as a member of a military force or police force); or
- (f) a member of the executive, judiciary or magistracy of a foreign country or of part of a foreign country; or
- (g) an employee of a public international organisation; or
- (h) an individual who performs work for a public international organisation under a contract; or
- (i) an individual who holds or performs the duties of an office or position in a public international organisation; or
- (j) an individual who is otherwise in the service of a public international organisation; or
- (k) a member or officer of the legislature of a foreign country or of part of a foreign country; or
- (l) an individual who:
  - (i) is an authorised intermediary of a foreign public official covered by any of the above paragraphs; or
  - (ii) holds himself or herself out to be the authorised intermediary of a foreign public official covered by any of the above paragraphs.

***public international organisation*** means:

- (a) an organisation:
  - (i) of which 2 or more countries, or the governments of 2 or more countries, are members; or
  - (ii) that is constituted by persons representing 2 or more countries, or representing the governments of 2 or more countries; or
- (b) an organisation established by, or a group of organisations constituted by:
  - (i) organisations of which 2 or more countries, or the governments of 2 or more countries, are members; or
  - (ii) organisations that are constituted by the representatives of 2 or more countries, or the governments of 2 or more countries; or

- (c) an organisation that is:
  - (i) an organ of, or office within, an organisation described in paragraph (a) or (b); or
  - (ii) a commission, council or other body established by an organisation so described or such an organ; or
  - (iii) a committee, or subcommittee of a committee, of an organisation described in paragraph (a) or (b), or of such an organ, council or body.

*share* includes stock.

## **70.2 Bribing a foreign public official**

- (1) A person is guilty of an offence if:
  - (a) the person:
    - (i) provides a benefit to another person; or
    - (ii) causes a benefit to be provided to another person; or
    - (iii) offers to provide, or promises to provide, a benefit to another person; or
    - (iv) causes an offer of the provision of a benefit, or a promise of the provision of a benefit, to be made to another person; and
  - (b) the benefit is not legitimately due to the other person; and
  - (c) the first-mentioned person does so with the intention of influencing a foreign public official (who may be the other person) in the exercise of the official's duties as a foreign public official in order to:
    - (i) obtain or retain business; or
    - (ii) obtain or retain a business advantage that is not legitimately due to the recipient, or intended recipient, of the business advantage (who may be the first-mentioned person).

**Penalty:** Imprisonment for 10 years.

Note 1: For defences, see sections 70.3 and 70.4.

Note 2: Section 4B of the *Crimes Act 1914* allows a court to impose a fine instead of imprisonment or in addition to imprisonment.

*Benefit that is not legitimately due*

- (2) For the purposes of this section, in working out if a benefit is ***not legitimately due*** to a person in a particular situation, disregard the following:
- (a) the fact that the benefit may be customary, or perceived to be customary, in the situation;
  - (b) the value of the benefit;
  - (c) any official tolerance of the benefit.

*Business advantage that is not legitimately due*

- (3) For the purposes of this section, in working out if a business advantage is ***not legitimately due*** to a person in a particular situation, disregard the following:
- (a) the fact that the business advantage may be customary, or perceived to be customary, in the situation;
  - (b) the value of the business advantage;
  - (c) any official tolerance of the business advantage.

### 70.3 Defence—conduct lawful in foreign public official’s country

- (1) A person is not guilty of an offence against section 70.2 in the cases set out in the following table:

Defence of lawful conduct			
Item	In a case where the person’s conduct occurred in relation to this kind of foreign public official...	and if it were assumed that the person’s conduct had occurred wholly...	the person would not have been guilty of an offence against...
1	an employee or official of a foreign government body	in the place where the central administration of the body is located	a law in force in that place
2	an individual who performs work for a foreign government body under a contract	in the place where the central administration of the body is located	a law in force in that place

<b>Defence of lawful conduct</b>			
<b>Item</b>	<b>In a case where the person's conduct occurred in relation to this kind of foreign public official...</b>	<b>and if it were assumed that the person's conduct had occurred wholly...</b>	<b>the person would not have been guilty of an offence against...</b>
3	an individual who holds or performs the duties of an appointment, office or position under a law of a foreign country or of part of a foreign country	in the foreign country or in the part of the foreign country, as the case may be	a law in force in the foreign country or in the part of the foreign country, as the case may be
4	an individual who holds or performs the duties of an appointment, office or position created by custom or convention of a foreign country or of part of a foreign country	in the foreign country or in the part of the foreign country, as the case may be	a law in force in the foreign country or in the part of the foreign country, as the case may be
5	an individual who is otherwise in the service of a foreign government body (including service as a member of a military force or police force)	in the place where the central administration of the body is located	a law in force in that place
6	a member of the executive, judiciary or magistracy of a foreign country or of part of a foreign country	in the foreign country or in the part of the foreign country, as the case may be	a law in force in the foreign country or in the part of the foreign country, as the case may be
7	an employee of a public international organisation	in the place where the headquarters of the organisation is located	a law in force in that place
8	an individual who performs work for a public international organisation under a contract	in the place where the headquarters of the organisation is located	a law in force in that place

Defence of lawful conduct			
Item	In a case where the person's conduct occurred in relation to this kind of foreign public official...	and if it were assumed that the person's conduct had occurred wholly...	the person would not have been guilty of an offence against...
9	an individual who holds or performs the duties of a public office or position in a public international organisation	in the place where the headquarters of the organisation is located	a law in force in that place
10	an individual who is otherwise in the service of a public international organisation	in the place where the headquarters of the organisation is located	a law in force in that place
11	a member or officer of the legislature of a foreign country or of part of a foreign country	in the foreign country or in the part of the foreign country, as the case may be	a law in force in the foreign country or in the part of the foreign country, as the case may be

Note: A defendant bears an evidential burden in relation to the matter in subsection (1). See subsection 13.3(3).

- (2) A person is not guilty of an offence against section 70.2 if:
- (a) the person's conduct occurred in relation to a foreign public official covered by paragraph (l) of the definition of **foreign public official** in section 70.1 (which deals with intermediaries of foreign public officials covered by other paragraphs of that definition); and
  - (b) assuming that the first-mentioned person's conduct had occurred instead in relation to:
    - (i) the other foreign public official of whom the first-mentioned foreign public official was an authorised intermediary; or
    - (ii) the other foreign public official in relation to whom the first-mentioned foreign public official held himself or herself out to be an authorised intermediary;
 subsection (1) would have applied in relation to the first-mentioned person.



Note: A defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3).

- (3) To avoid doubt, if:
- (a) a person's conduct occurred in relation to a foreign public official covered by 2 or more paragraphs of the definition of *foreign public official* in section 70.1; and
  - (b) at least one of the corresponding items in subsection (1) is applicable to the conduct of the first-mentioned person;
- subsection (1) applies to the conduct of the first-mentioned person.

#### **70.4 Defence—facilitation payments**

- (1) A person is not guilty of an offence against section 70.2 if:
- (a) the value of the benefit was of a minor nature; and
  - (b) the person's conduct was engaged in for the sole or dominant purpose of expediting or securing the performance of a routine government action of a minor nature; and
  - (c) as soon as practicable after the conduct occurred, the person made a record of the conduct that complies with subsection (3); and
  - (d) any of the following subparagraphs applies:
    - (i) the person has retained that record at all relevant times;
    - (ii) that record has been lost or destroyed because of the actions of another person over whom the first-mentioned person had no control, or because of a non-human act or event over which the first-mentioned person had no control, and the first-mentioned person could not reasonably be expected to have guarded against the bringing about of that loss or that destruction;
    - (iii) a prosecution for the offence is instituted more than 7 years after the conduct occurred.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1). See subsection 13.3(3).

##### *Routine government action*

- (2) For the purposes of this section, a *routine government action* is an action of a foreign public official that:

- (a) is ordinarily and commonly performed by the official; and
- (b) is covered by any of the following subparagraphs:
  - (i) granting a permit, licence or other official document that qualifies a person to do business in a foreign country or in a part of a foreign country;
  - (ii) processing government papers such as a visa or work permit;
  - (iii) providing police protection or mail collection or delivery;
  - (iv) scheduling inspections associated with contract performance or related to the transit of goods;
  - (v) providing telecommunications services, power or water;
  - (vi) loading and unloading cargo;
  - (vii) protecting perishable products, or commodities, from deterioration;
  - (viii) any other action of a similar nature; and
- (c) does not involve a decision about:
  - (i) whether to award new business; or
  - (ii) whether to continue existing business with a particular person; or
  - (iii) the terms of new business or existing business; and
- (d) does not involve encouraging a decision about:
  - (i) whether to award new business; or
  - (ii) whether to continue existing business with a particular person; or
  - (iii) the terms of new business or existing business.

*Content of records*

- (3) A record of particular conduct engaged in by a person complies with this subsection if the record sets out:
    - (a) the value of the benefit concerned; and
    - (b) the date on which the conduct occurred; and
    - (c) the identity of the foreign public official in relation to whom the conduct occurred; and
    - (d) if that foreign public official is not the other person mentioned in paragraph 70.2(1)(a)—the identity of that other person; and
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- (e) particulars of the routine government action that was sought to be expedited or secured by the conduct; and
- (f) the person's signature or some other means of verifying the person's identity.

## **70.5 Territorial and nationality requirements**

- (1) A person does not commit an offence against section 70.2 unless:
  - (a) the conduct constituting the alleged offence occurs:
    - (i) wholly or partly in Australia; or
    - (ii) wholly or partly on board an Australian aircraft or an Australian ship; or
  - (b) the conduct constituting the alleged offence occurs wholly outside Australia and:
    - (i) at the time of the alleged offence, the person is an Australian citizen; or
    - (ii) at the time of the alleged offence, the person is a resident of Australia; or
    - (iii) at the time of the alleged offence, the person is a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory.

Note: The expression *offence against section 70.2* is given an extended meaning by subsections 11.2(1) and 11.6(2).

- (2) Proceedings for an offence against section 70.2 must not be commenced without the Attorney-General's written consent if:
  - (a) the conduct constituting the alleged offence occurs wholly outside Australia; and
  - (b) at the time of the alleged offence, the person alleged to have committed the offence is:
    - (i) a resident of Australia; and
    - (ii) not an Australian citizen.
- (3) However, a person may be arrested for, charged with, or remanded in custody or released on bail in connection with an offence against section 70.2 before the necessary consent has been given.
- (4) In this section:

***Australian aircraft*** means:

- (a) an aircraft registered, or required to be registered, under the Civil Aviation Regulations as an Australian aircraft; or
- (b) an aircraft (other than a defence aircraft) that is owned by, or in the possession or control of, a Commonwealth entity; or
- (c) a defence aircraft.

***Australian ship*** means:

- (a) a ship registered, or required to be registered, under the *Shipping Registration Act 1981*; or
- (b) an unregistered ship that has Australian nationality; or
- (c) a defence ship.

***defence aircraft*** means an aircraft of any part of the Australian Defence Force, and includes an aircraft that is being commanded or piloted by a member of that Force in the course of his or her duties as such a member.

***defence ship*** means a ship of any part of the Australian Defence Force, and includes a ship that is being operated or commanded by a member of that Force in the course of his or her duties as such a member.

## 70.6 Saving of other laws

This Division is not intended to exclude or limit the operation of any other law of the Commonwealth or any law of a State or Territory.

## 3 The Dictionary of the ***Criminal Code***

Insert:

***Australia***, when used in a geographical sense, includes the external Territories.

## 4 The Dictionary of the ***Criminal Code***

Insert:

***resident of Australia*** means an individual who is a resident of Australia.

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*[Minister's second reading speech made in—  
Senate on 10 March 1999  
House of Representatives on 3 June 1999]*

(24/99)

# **Cambodia Agricultural Value Chain Program (CAVAC)**

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## **Annex B2 Excerpts from Criminal Code Amendment**

**Manual of Operations  
CAVAC Anti-Corruption Strategy**

The following are key sections of relevant Australian Law. This is provided for convenience, but should not be relied upon in isolation. You are advised to read the act which is attached in Annex B1

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## **Criminal Code Amendment (Bribery of Foreign Public Officials) Act 1999 No. 43, 1999**

### **Division 70—Bribery of foreign public officials**

#### **70.2 Bribing a foreign public official**

- (1) A person is guilty of an offence if:
  - (a) the person:
    - (i) provides a benefit to another person; or
    - (ii) causes a benefit to be provided to another person; or
    - (iii) offers to provide, or promises to provide, a benefit to another person; or
    - (iv) causes an offer of the provision of a benefit, or a promise of the provision of a benefit, to be made to another person; and
  - (b) the benefit is not legitimately due to the other person; and
  - (c) the first-mentioned person does so with the intention of influencing a foreign public official (who may be the other person) in the exercise of the official's duties as a foreign public official in order to:
    - (i) obtain or retain business; or
    - (ii) obtain or retain a business advantage that is not legitimately due to the recipient, or intended recipient, of the business advantage (who may be the first-mentioned person).

Penalty: Imprisonment for 10 years.

#### **70.4 Defence—facilitation payments**

- (1) A person is not guilty of an offence against section 70.2 if:
  - (a) the value of the benefit was of a minor nature; and
  - (b) the person's conduct was engaged in for the sole or dominant purpose of expediting or securing the performance of a routine government action of a minor nature; and
  - (c) as soon as practicable after the conduct occurred, the person made a record of the conduct that complies with subsection (3); and
  - (d) any of the following subparagraphs applies:
    - (i) the person has retained that record at all relevant times;
    - (ii) that record has been lost or destroyed because of the actions of another person over whom the first-mentioned person had no control, or because of a non-human act or event over which the first-mentioned person had no control, and the first-mentioned person could not reasonably be expected to have guarded against the bringing about of that loss or that destruction;
    - (iii) a prosecution for the offence is instituted more than 7 years after the conduct occurred.



# **Cambodia Agricultural Value Chain Program (CAVAC)**

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## **Annex 3 Report Template**

**Manual of Operations  
CAVAC Anti-Corruption Strategy**

**AUDIT-IN-CONFIDENCE**  
**SUMMARY AS AT [Date]**

	CASE REF	PARTICULARS	ACTION BY DATE	ACTION OFFICER	REMARKS