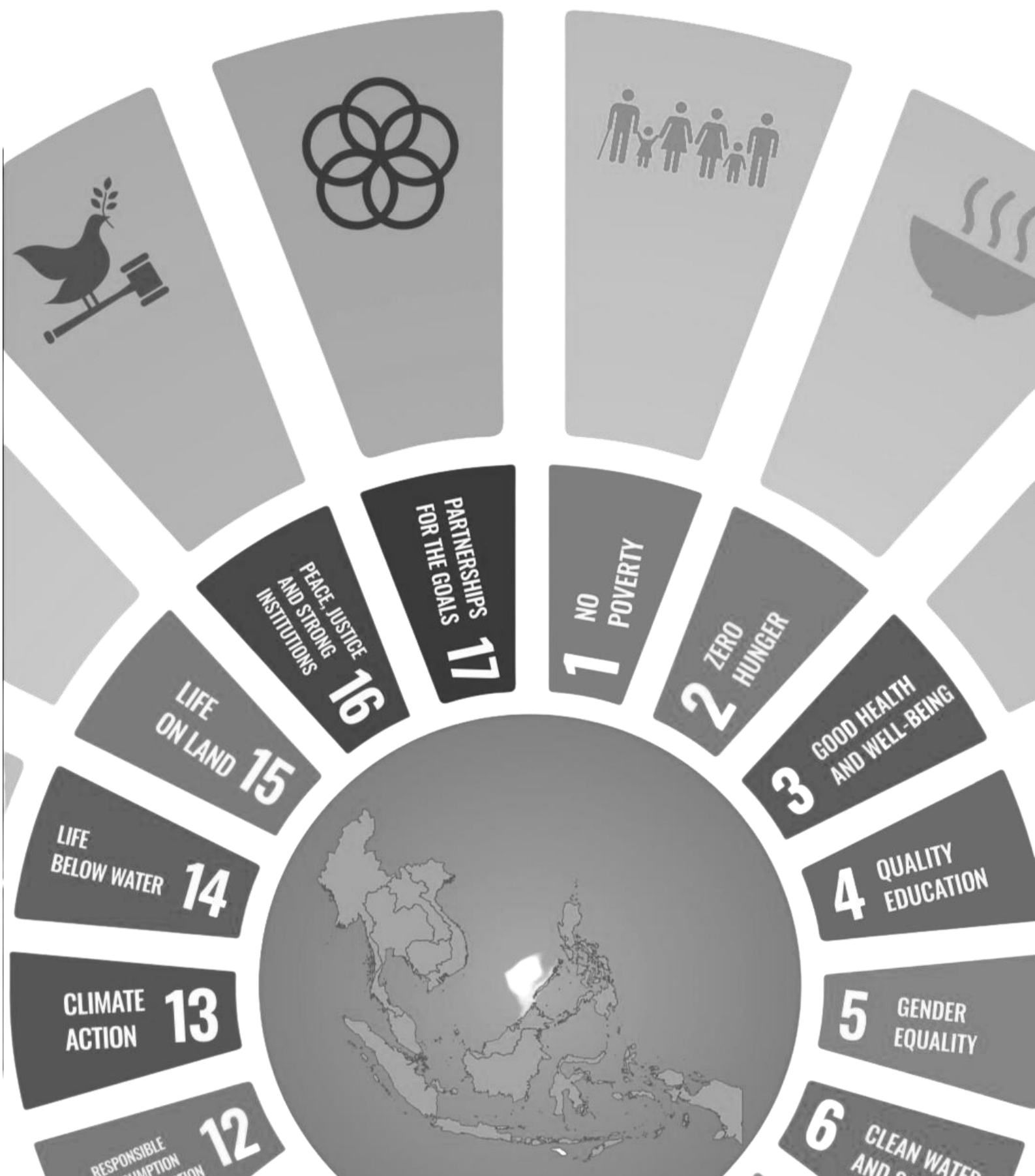


ASEAN SDG Bond Toolkit

Supplement: Legal and Regulatory Aspects for Cambodia



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Introduction

Cambodia is new to the concept of bonds. Currently, there are only ten bonds listed on the Cambodia Securities Exchange ("**CSX**"). As a policy to encourage the issuance of the bond, Cambodia provides certain tax incentives for other sectors to participate in the securities sector. There is no specific requirement or incentive for the issuance of green, social, and sustainability bonds ("**GSS Bonds**"). Nevertheless, recently, the Securities Exchange Regulator of Cambodia in cooperation with the Asian Development Bank has issued a guideline on the issuing of GSS Bonds. Support for green bonds and SDG bonds is expected to grow in the future.

Executive Summary

Cambodia issuers

Both private entity and public sector Cambodian issuers are allowed to issue GSS and SDG Bonds. While there are no mandatory requirements for issuances of GSS/SDG Bonds, there may be incentives available subject to the discretion of the Minister of the Ministry of Economy and Finance to determine special incentives for GSS/SDG bonds.

Cambodia investors

Cambodian investors are allowed to invest in GSS and SDG bonds in the same way as non-GSS/SGD bonds.





Offers of GSS/SDG Bonds do not have specific requirements that they must comply with. There are fewer requirements in relation to the prospectus for the issuance of a bond to qualified investors compared to the requirements of the prospectus for the bonds issued to the public.

A. Information for Issuers in Cambodia

1. Are there any regulations around issuances of GSS and SDG Bonds?

No. General regulations applicable to the issuance of bonds will apply.

2. Can bonds be issued by private and public sector entities in Cambodia?

	Private Placement ¹ <i>Offers not made to the general public</i>	Public Placement ² <i>Offers made to the public</i>
Private Entity Issuers³ <i>Private companies and other entities</i>	Yes. 	Yes. 
Public Sector Issuers⁴ <i>Government bodies and agencies</i>	No. 	Yes. 

3. What key requirements must issuers in Cambodia fulfil to issue GSS and SDG Bonds?

	Private Placement <i>Offers not made to the general public</i>	Public Placement <i>Offers made to the public</i>
Key requirements	<p>Private Entity Issuer:⁵</p> <ol style="list-style-type: none"> The offer shall be made to people of no more than 30 within the duration of no more than 12 months; and The offer shall not be made in public including the invitation to treat or consultation on the investment. <p>Company/Enterprise that intends to conduct private issuance shall provide the related documents to the Securities Exchange Regulator of Cambodia ("SERC") and report the result of the offer when completed to the SERC.</p>	<p>Private Entity Issuer: ⁶</p> <ul style="list-style-type: none"> shall be a public limited company; have a Board of Directors' Resolution on the issuance of the bond; have an audited financial report for the last two consecutive years; have solid corporate governance; obtained an issue rating from a SERC-accredited firm; and obtained the approval in principle from the SERC on the issuance of the bond.
Currency	None.	The issuance of the bond must be in Cambodian currency – Khmer Riel. ⁷

¹ "Private placements" (or **Private Offers**) are issuances that are not offered generally to the public. It means an issuance/offer that is made to people of no more than 30 within the duration of no more than 12 months. The issuance/offer shall not be made in public including the invitation to treat or consultation on the investment. See Article 5, Prakas on Public Offering of Debt Securities.

² "Public placements" (or **Public Offers**) are issuances that are made generally available to the public. It means an invitation or offer to members of the public to subscribe for or purchase securities and includes: (1) an offer of securities for subscription, purchase, or sale made to any section of the public, however, selected; (2) an offer of securities for subscription, purchase or sale made to individual members of the public selected at random; (3) an offer of securities for subscription, purchase, or sale made to a person who has become known to the person or entity making the offer as a result of an advertisement that was intended to promote the offer or invite the person to seek information or advice about investing in securities generally, and (4) the distribution of an advertisement, disclosure document, or application form in relation to the subscription, purchase, or sale of securities, but does not include:

- a private offer of securities for subscription, purchase, or sale that is made only to a related entity or associate;
- a private offer that is made to no more than 30 persons; or
- an invitation to a person to enter into an underwriting or sub-underwriting agreement with respect to an issue of securities.

See Glossary, Non-Government Securities Law, p.4 English Version (Unofficial Translation).

³ "Private entity issuer" means a public limited company by shares in Cambodia which is a separate legal entity from its shareholders and State-Owned Enterprise.

⁴ "Public sector issuer" means the Cambodian Government.

⁵ Article 5, Prakas No.009/17 dated 17 August 2017 on the Public Offering of Debt Securities ("Prakas on Public Offering of Debt Securities").

⁶ Article 6, Prakas on Public Offering of Debt Securities.

⁷ The SERC abides with the National Bank of Cambodia's policy in encouraging the use of the national currency – the Khmer Riel.

Specific requirements for public sector issuers	Public sector issuers do not issue bonds through private placements.	<p>The Cambodian Government will automatically be eligible to list bonds.</p> <p>Government bonds can be issued in local currency or foreign currencies.⁸</p> <p>The Government Securities Law was adopted in 2020; however, the Government has yet to adopt any supplemental regulation to support the implementation of the law.</p>
Specific requirements for foreign issuers	None.	

4. Are there any incentives for issuers of GSS Bonds or SDG Bonds?

No, there are no specific incentives for the issuance of GSS/SDG bonds (however, it is subject to the discretion of the Minister of the Ministry of Economy and Finance to determine special incentives for GSS/SDG bonds issuance).⁹

Nevertheless, there are general incentives as Cambodia is encouraging the issuance of bonds.

Companies/Enterprises that are listed within three (3) years after the adoption of Sub-Decree No.42 dated 24 February 2022 on Tax Incentive on Securities Sector ("**Sub-Decree on Securities Incentive**") are entitled to the following benefits:

- Three (3) years of incentive on Corporate Income Tax:¹⁰
 - 50% reduction on the income tax for firms that issues a bond in the amount of more than 20% of total assets.
 - KHR 8 billion (or approximately USD 2 Million) cap on an income tax incentive for firms that issue a bond in the amount equal to or less than 20% of total assets.
- Tax debt waivers:¹¹
 - For N-3 to N-10 years for enterprises who meet the criteria for listing on the CSX Main Board.
 - For N-2 to N-10 years for small and medium enterprises who meet the criteria for listing on the CSX Growth Board.

(Year N is the year of IPO.)

Any company/enterprise holding a qualified investment project status that benefit from incentives from the Council for the Development of Cambodia is not qualified for the incentives above.¹²

5. Other comments

The government of Cambodia, following the issuance of the new regulation on the incentive, which is applicable to securities sectors, encourage and provides incentives to the entity that intends to list on Cambodia Securities Exchange. GSS/SDG Bonds may, subject to terms and requirements, be entitled to the same rights and privileges.

⁸ Article 4 (c), Government Securities Law.

⁹ Article 4, Sub-Decree on Securities Incentive.

¹⁰ Article 3,4, Sub-Decree on Securities Incentive.

¹¹ Article 5, Sub-Decree on Securities Incentive.





¹² Article 7, Sub-Decree on Securities Incentive.

B. Information for Investors in Cambodia

1. Are there any regulations around offers of GSS and SDG Bonds to investors in Cambodia?

Please see Question 3 of Part A and Question 4 of Part B. There are no specific exemptions for GSS Bonds or SDG Bonds.

2. Can investors in Cambodia subscribe for SDG and GSS Bonds?

	Private Placement <i>Offers not made to the general public</i>	Public Placement <i>Offers made to the public</i>
Private Entity Issuers <i>Private companies and other entities</i>	Yes. 	Yes. 
Public Sector Issuers <i>Government bodies and agencies</i>	No. 	Yes. 

3. Are there any incentives for investors investing in GSS Bonds or SDG Bonds?

No. There are no specific incentives for purchasing GSS or SDG bonds.

However, there are general incentives as Cambodia is encouraging investment in the securities sector. The investors are entitled to the following incentives for the period of three years after the adoption of the Sub-Decree on Securities Incentive:¹³

- 50% reduction of the Withholding Tax of the trading of securities; and
- the exemption on Capital Gain Tax on the trading of securities.

4. When can an offer be made to investors in Cambodia without a prospectus?

There are fewer requirements in relation to the prospectus for the issuance of a bond to qualified investors compared to the requirements of the prospectus for the bonds issued to the public.¹⁴ For public placements, the disclosure document, and prospectus, to be submitted to the SERC need to be in the formats set out by the SERC while for offerings to qualified investors, there is no format to be complied with, it is required only the minimum contents.

Qualified Investors include:¹⁵

- Institutional Investors: refers to the National Bank of Cambodia, SERC-accredited securities firms and SERC-accredited investment consulting firms, banks and microfinance institutions, insurance companies, the National Social Security Fund, SERC-accredited foreign financial institutions, development fund of SERC-accredited financial institutions, and other SERC-accredited entities.
- High Net-Worth Investors: refers to
 - Legal entities which possess all of the following requirements:
 - Total shares worth at least USD500,000.
 - Have an annual income of at least USD125,000 for the last two consecutive years.
 - Has invested in the Cambodian securities sector of at least USD50,000.
 - Natural persons (including spousal assets, if any):
 - Have an active asset of at least USD250,000.
 - Have an annual income of at least USD20,000.
 - Has invested in the Cambodian securities sector of at least USD25,000.

¹³ Article 6, Sub-Decree on Securities Incentive.

¹⁴ Cf. Prakas on Public Offering of Debt Securities; Prakas No.006/20 dated 5 May 2020 on the Issuance of Bond to the Qualified Investors.

¹⁵ Article 3, Prakas No.005/16 dated 17 August 2016 on the Qualified Investors in the Securities Sectors.

Private Placement: Bonds can be offered to up to 30 people in Cambodia within 12 months without a prospectus. However, public advertisement, including information memorandum, is prohibited.¹⁶

C. Notable developments

In late November 2021, the Securities Exchange Regulator of Cambodia and the Asian Development Bank jointly hosted a virtual workshop on the development of the emerging East Asia sustainable bond market. The workshop aims to raise awareness of sustainable finance, as well as to build the capacity of securities issuers, financial advisers, underwriters, and other market participants, as well as to explain the green bond issuance process.

In July 2022, the Securities Exchange Regulator of Cambodia and the Asian Development Bank jointly issued the Guidance on the Issuance of Green Bonds in Cambodia. The Guidance illustrates the rationale and governing principle in issuing the green, social and sustainable bond.¹⁷

On 6 October 2022, a real estate company, Golden Tree Co., Ltd., is said to have obtained the approval in principle from SERC to list the first green bond on Cambodia Stock Exchange. According to Golden Tree CFO, Oum Sereyrotanak, the company would receive a 50 percent exemption on income tax and additional benefits that would be set by the Ministry of Economy and Finance.¹⁸

¹⁶ Article 5, Prakas on Public Offering of Debt Securities.

¹⁷

See https://www.serc.gov.kh/boards/index.php?bid=m24guide_k&nav=read&ntcmode=read&no=40&p=1&sch=&sch_type=&sch_key=&cate=

¹⁸ See <https://www.khmertimeskh.com/501163438/first-green-bond-to-be-issued-listed-on-csx/>.



About Ashurst

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In Singapore, through our Formal Law Alliance, known as Ashurst ADT Law, we are able to provide the full breadth of Singapore and international law services from one integrated platform.

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About Sok Siphana & associates

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