

Kingdom of Cambodia
Nation Religion King
រាជរដ្ឋាភិបាល

Royal Government of Cambodia
No. 39. ANKr.BK

Sub-Decree
on
Management of Borey

Royal Government

- Having seen the Constitution of the Kingdom of Cambodia;
- Having seen the Royal Decree No. NS/RKT/0908/1055, dated September 25, 2008, on the Appointment of the Government of the Kingdom of Cambodia;
- Having seen the Royal Kram No. 02/NS/94, dated July 20, 1994, promulgating the Law on the Organization and Functioning of the Council of Ministers;
- Having seen the Royal Kram No. 04/NS/94, dated August 10, 1994, promulgating the Law on Land Management, Urban Planning and Construction;
- Having seen the Royal Kram No. NS/RKM/0699/09, dated June 23, 1999, promulgating the Law on the Establishment of the Ministry of Land Management, Urban Planning and Construction;
- Having seen the Royal Kram No. NS/RKM/0801/14, dated August 30, 2001, promulgating the Land Law;
- Having seen the Royal Kram No. NS/RKM/1207/030, dated December 08, 2007, promulgating the Civil Code;
- Having seen the Royal Kram No. NS/RKM/0510/006, dated May 24, 2010, promulgating the Law on Ownership Rights on Private Units of Co-Owned Building for Foreigner ;
- Having seen the Sub-Decree No. 86 ANKr.BK, dated December 19, 1997, on Construction Permit;
- Having seen the Sub-Decree No. 62 ANKr.BK, dated July 20, 1999, on the Organization and Functioning of the Ministry of Land Management, Urban Planning and Construction;
- Having seen the Sub-Decree No. 148 ANKr.BK, dated December 29, 2005, on the Establishment and Management of Special Economic Zone;
- Having seen the Sub-Decree No. 114 ANKr.BK, dated August 29, 2007, on Pledge, Transfer of Right on Perpetual Lease or Right on Economic Land Concession;
- Having seen the Sub-Decree No. 126 ANKr.BK, dated August 12, 2009, on the Management and Use of Co-owned Building;
- Having seen the Sub-Decree No. 197 ANKr.BK, dated November 23, 2009, on the Management of Pavement of National Road and Railway;
- Pursuant to the approval of the Council of Ministers at its plenary session on 25th February 2011;

Hereby Decides

Chapter 1 General Provisions

Article 1

The objective of this Sub-decree is to govern the organization and management of Borey and establish principles, mechanisms and procedure for registration of lots, residential lots, and other construction land located within Borey's compound.

Article 2

This Sub-decree has the following objectives:

- To ensure the protection of lawful ownership rights of lot owners and owners of residential building lots and other constructions as well as owners of private units of co-owned building located within Borey's compound.
- To facilitate the management works of Borey, lots, residential lots, and other construction lands located within Borey's compound.
- To facilitate the owners of residences and other constructions located within Borey's compound in relation to the sale, exchange, donation, succession, perpetual lease, hypothec, and pledge of his/her ownership in accordance with applicable laws.
- To protect public space and to maintain beauty and public order within Borey's compound.
- To provide convenience to investors regarding the construction of Borey for sale or lease in the Kingdom of Cambodia.

Article 3

This Sub-decree shall apply to all types of Borey in the Kingdom of Cambodia.

Article 4

Terminologies used in this Sub-decree shall have the following meaning:

- Borey refers to a location developed as lots, residential buildings, other construction, public space, and other infrastructures on a single land parcel in accordance with the officially approved Overall Plan of Borey.
- Land Parcel refers to a parcel which Borey Developer uses for developing a Borey. Parcel in a Borey is divided into lots, residential lots and other construction land which may be under the ownership of different owners thereof. Residences within a Borey's compound include villa, semi-villa, co-owned building, flat, and other constructions.
- Lot refers to lots of land on which a Borey is located and which is managed by Borey Developer in accordance with each category of construction as determined in the Overall Plan of Borey.
- Entry-exit Way refers to the road as set up in the officially approved Overall Plan of Borey and considered as road of Borey for common use by all owners living in the Borey.
- Borey Developer refers to natural or legal persons who invest in the construction of Borey.
- Overall Plan of Borey refers to location plan, on a land parcel, of lots, residential lots, and other construction land on a scale of 1:200 or 1:500. Such Overall Plan shall clearly indicate

the location mapping of each lot and the location of the construction site on each land parcel which is subject the application request for the naming, numbering (both large and small road), size of entry-exit way in Borey's compound, building alignment, size and surface area of each lot, distance between each building, distance from building to the border of the parcel, other management on vacant space (plantation, garden, and parking lot) fence, public sewage connection point for disposal of dirty water, toilet reservoir location, dirty water treatment location, solid waste storage, water flowing system, clean water system, symbol and acronym used in the plan.

- Architectural Plan refers to technical architectural plan which illustrates management and construction plan of a building on a scale of 1:200 or 1:100 and 1:50 including plan of all stories of a building, roof plan, front plan, direction plan of the building, width and length crossing plan of the building, underground system plan, toilet reservoir plan and the table of rationing function of the ground surface area of the construction site and the land use index.
- Successor refers to a person who succeeds to rights and obligations of the deceased through succession.
- Succession refers to the transfer of rights and obligations of the deceased to one or many successors by will or laws.
- The Deceased refers to person who passed away.

Article 5:

Only natural or legal persons of Khmer nationality shall have ownership rights over lots, residential lots, and other construction land within Borey's compound unless otherwise provided for by laws.

Article 6:

Land parcel for construction of Borey must be a single parcel which is already registered in the Land Register or Immovable Property Registrar Book. In the event of construction of Borey on multiple land parcels, the Borey developer shall consolidate all land parcels except for those having public road and/or water stream across of at least 02 (two) meters wide.

In the event the land parcels on which a Borey is to be constructed are located in different communes/sangkats but adjacent to each other, the Borey Developer shall undertake to conduct separate land parcel consolidation in each commune/sangkats. However, they shall leave the boundary between those communes/ sangkats as public open space in accordance with laws and regulations on urban planning.

In the event there are many types of lots, residential lots and other construction land in a single Overall Plan, Borey Developer shall, for first-time transfer of the above, request for division of land parcels into suitable categories and number of lots, residential lots and other construction land in accordance with such Overall Plan to cadastral authorities. The consolidation and division of parcel(s) shall be made in accordance with applicable laws and regulations currently in force.

Article 7

Before requesting for approval on the Overall Plan of Borey, Borey Developer shall consult with relevant authorities to reach prior agreement on such Overall Plan in order to ensure compliance with general land use regulations or land use plan, if any.

Borey Developer may not modify the Overall Plan of Borey which is already officially approved by Ministry of Land Management, Urban Planning and Construction. Such modification can only be made with permission from Ministry of Land Management, Urban Planning and Construction after having received consent from other owners as stated in paragraph 4, point 2 of article 12 hereof.

The Architectural Plan of residential buildings and/or other buildings shall comply with applicable laws and regulations currently in force.

Article 8

Borey Developer shall put in place minimum infrastructure according to the total area of Borey as follows:

- Building containing residential buildings and other construction;
- Public space such as garden, parking lot, common service space;
- Entry-exit way;
- Clean water system, dirty water sewage and dirty water treatment station, solid waste storage, electricity and telecommunication system, safety and fire protection system through the installation of anti-fire water hosepipe.

Article 9

Public space, garden, entry-exit way, common service space and walls of Borey shall be registered as indivisible ownership of the co-owners in Borey for common use by all owners in Borey except for private spaces or private gardens which form parts of separate private lots, residential lots, and other construction land in accordance with the officially approved Overall Plan of Borey.

Article 10

Procedure for registration of lots, residential lots, and other construction land shall be transparent and simple with ease of convenience.

Article 11

Each successor of the deceased who had ownership over lots, residential lots, and other construction land in Borey shall be entitled to the right to succeed to the deceased's rights and obligations in accordance with applicable laws and regulations in force. In the event the estate is unoccupied due to absence of successor, abandon by the successor or non-disposal of the estate to any persons in accordance with applicable laws, such unoccupied estate shall be considered as private state property.

Article 12

Borey Developer shall adopt Internal Regulations before making any announcement for the sale or lease of lots, residential lots, and other construction land developed in Borey. Such Internal Regulations shall be a condition of sale or lease thereof.

The above Internal Regulations shall not be in violation to public order and applicable laws and regulations in force.

In the management of Borey, the property owners shall establish a board of directors or a governing board of Borey based on the agreement between the owners as stated in the Internal Regulations.

The adoption of the Internal Regulations shall be in compliance with principles and minimum conditions of the sample Internal Regulations as attached as an Index herein as follows:

- Rights, obligations and responsibility of the owners of lots, residential lots, and other construction land with regard to the maintenance of collective services therein.
- Determine the proportional collective expenditure of each owner for the maintenance of collective services, security service as well as the expense for accessing various public services.
- Procedure for decision-making in case the owners establish a Borey management body:
 - a. absolute majority vote of all owners is required for making decision in relation to an amendment of the Internal Regulations, maintenance of collective services, security service or payment for other public services.
 - b. at least 75% majority vote of all owners is required for any decision in relation to the modification of the Overall Plan of Borey, repair of residences and other buildings which are different from the original Architectural Plan. In the event the 75% majority vote cannot be reached, an official evaluation by a specialized authority shall be used as basis for the Court's judgment.

Chapter 3

Rights and Obligations of Borey Developer and Property Owners in Borey

Section 1

Rights and Obligations of Borey Developer

Article 13

For first-time transfer of lots, residential lots and any construction, Borey Developer shall request for division of land parcels into suitable categories and number of lots, residential lots and other construction land to cadastral authorities, except for Borey constructed on perpetual lease land.

Borey Developer shall announce to the purchasers of lots, residential lots, and other construction land about the information of the land parcels on which Borey is constructed whether it is land parcel under his/her ownership, perpetual lease or encumbered with other liens and encumbrances.

Article 14

Before announcing for the sale and lease of lots, residential lots and other construction land in Borey, Borey Developer shall have such certificate on solvency and financial resource indication from Ministry of Economy and Finance. Such certificate shall be issued to Borey Developer within 30 (Thirty) days after having received request for the same from Borey Developer.

Article 15

For first-time transfer of lots, residential lots and other construction land, except for land parcel of co-owned building, Borey Developer shall furnish the Certificate of Land Possessory Right or Certificate of Possessory Right over Immoveable Property or Certificate of Ownership over the relevant lots to competent cadastral authorities for filing and keeping in the archive record; whereas the cadastral authorities shall return the above certificates back to Borey Developer in the form of Certificate of Ownership or Certificate of Possessory Right over Immoveable Property before the transfer of the relevant lots to purchasers.

Although any such land parcels shall be divided in accordance with article 13 and paragraph 1 of article 15 of this Sub-degree, such land parcels shall remain existed in the scope of the Overall Plan of Borey and all owners of such lots, residential lots and other construction land shall abide by the above Overall Plan of Borey.

Article 16

In the event Borey Developer has constructed a Borey on perpetual lease land, the validity period of the perpetual lease rights over all kinds of residences and constructions in such Borey shall be limited to such validity period as agreed upon in the perpetual lease agreement between Borey Developer and the owner of the land thereof. Lessees who are entitled to perpetual lease rights or lessees of the perpetual lease over immovable property in Borey shall receive Certificate of Perpetual Lease as provided for in the Sub-degree No. 114 ANKr.BK on Pledge, Transfer of Perpetual Leasehold Right or Economic Land Concession Right dated 29 August 2007.

Article 17

Borey Developer shall abide by any and all applicable policies and legal instruments currently in force, particularly, those related to land management, urban planning and construction.

Section 2

Rights and Obligations of Property Owners

Article 18

Co-owners over private units of a co-owned building in Borey shall have rights and obligations as stated in the Sub-degree No. 126 ANKr.BK on Management and Use of Co-owned Building dated 12 August 2009.

Article 19

Other owners of lots, residential lots or other construction land in Borey are entitled to the right of use, enjoyment and disposal thereon.

Right of disposal over lots, residential lots or other construction land of the owner such as selling, leasing, donation, succession, perpetual lease, creation of usufruct, use and residence, hypothec and pledge shall be exercised as per applicable laws and regulations in force.

Article 20

Owner of lots, residential lots and other construction land shall abide by the Internal Rules governing the management and maintenance works thereon as well as fulfillment of other obligations as prescribed by applicable laws and regulations in force.

Chapter 4

Mechanism and Procedure for Registration of Lots, Residential Lots And other immoveable Property in Borey

Article 21

Ministry of Land Management, Urban Planning and Construction shall have the power and authority to register and issue Certificate of Private Unit Ownership in a Co-owned Building for residence under the form of private units in a co-owned building and to issue Certificate of Ownership over Immoveable Property or Certificate of Possessory Right over Immoveable Property to the owner of lots, residential lots and other construction land in Borey.

Article 22

With regard to residence under the form of private units in a co-owned building, the registration of the private ownership in a co-owned building shall be made in accordance with provisions of Sub-decree No. 126 ANKr.BK on Management and Use of Co-owned Building dated 12 August 2009.

The registration of lots, residential lots and other construction land in Borey shall be made in accordance with applicable laws and regulations in force.

Article 23

Land parcel consolidation process as stated in article 6 of this Sub-decree shall incur payable cadastral fee.

Every land parcel division into categorized parcels, multiple parcels, residential lots and construction lands as stated in article 13 of this Sub-decree shall also incur payable cadastral fee.

Any and all transfer of rights over the land and residence in Borey shall be incurred with payable cadastral fee and stamp duty as per applicable laws.

Chapter 5

Separate Provisions

Article 24

Article 8 of this Sub-decree shall not apply to Borey which has been fully constructed before the entry into force of this Sub-decree or any Borey having Overall Plan and Architectural Plan already approved by competent authorities.

Article 25

The registration of flat of non-Borey form shall be made pursuant to applicable laws and regulations in force by way of land parcel division for each flat or construction in such project.

The Flat Construction Developer and respective owner of each flat in a project whereby its Overall Plan and Architectural Plan have been approved by competent authorities may not modify the same or

repair the flat(s) or conduct other constructions within the scope of the project different from such as approved by competent authorities.

Any modification on the Overall Plan and Architectural Plan or reparation work on the flat or other constructions within the scope of such project shall have approval from competent authorities.

Entrance-exit road and other public space within the scope of such project shall be considered as public property of the state.

Article 26

All types of construction within an area having the form of Borey, regardless of the name whatsoever, shall be made in accordance with the provisions of this Sub-decree.

Article 27

Owner of a Special Economic Zone or developer who owns multiple adjacent land parcels shall request for land parcel consolidation to the cadastral authorities in accordance with applicable laws and procedure except for lots in a Special Economic Zone having public road and/or water stream across of at least 02 (two) meter wide. In the event the lots forming a Special Economic Zone are located in different communes/sangkats but adjacent to each other, the owner of the Special Economic Zone or the developer shall undertake to conduct separate land parcel consolidation in each commune/sangkats. However, they shall leave the boundary between those communes/ sangkats as public open space in accordance with laws and regulations on urban planning.

The registration of immovable property located in a Special Economic Zone established in accordance with the Sub-decree No. 148 ANKr.BK on the Establishment and Management of Special Economic Zone dated 29 December 2005 shall continue in accordance with such applicable regulations in force through land parcel division according to the location of each construction site within the scope of the Overall Plan of such Special Economic Zone.

All transfer of right over immovable property in a Special Economic Zone and transfer of right over immovable property under the framework of modification or merger of investment projects within a Special Economic Zone shall be registered with competent cadastral authorities in accordance with applicable laws.

Public space, garden, entrance-exit road, common space and walls in a Special Economic Zone shall be considered as indivisible property of the owners therein. Any construction and maintenance work of public space, garden, entrance-exit road, common space and walls as stated in this paragraph shall be the burden of the owner of such Special Economic Zone or the developer or the owners therein pursuant to the consent between the owner of the Special Economic Zone and/or the developer and the owners of the lots or other constructions therein. Public Space, garden, entrance-exit road, common space and walls of a Special Economic Zone shall be registered as indivisible ownership of respective owners in such Special Economic Zone for the purpose of common use of all owners within the zone.

Apart from gardens as provided for in article 4 of this Sub-decree, gardens in a Special Economic Zone which form part of lots or residential lots or other private construction land therein shall be considered as private gardens.

All property owners in a Special Economic Zone shall implement any and all projects on their lots in accordance with the Overall Plan of the Special Economic Zone as officially approved by competent authorities.

Chapter 6

Final Provisions

Article 28

Any provision contrary to the provisions of this Sub-decree shall be null and void.

Article 29

Minister in charge of the Council of Ministers, Minister of Economy and Finance, Minister of Land Management, Urban Planning and Construction, Ministers and Secretary of State of all ministries and institutions, Governors of Municipal/Provincial Governing Board shall implement this Sub-decree from the date of signature hereof.

Phnom Penh, 10 March 2011

Prime Minister

[signature and stamp]

Samdach Akka Moha Senapadey Techo Hun Sen

Submitted to:

- Ministry of Royal Palace
- General Secretariat of the Constitutional Council
- General Secretariat of the Senate
- General Secretariat of the National Assembly
- General Secretariat of Royal Government
- Cabinet of Samdech Prime Minister
- Cabinet of H.E and Lokjumteav Deputy Prime Minister
- Pursuance to article 29 above
- Royal Gazette
- Documentary Archive.