

EMERGING BUSINESS OPPORTUNITIES: DEVELOPMENTS IN THE TRUST SECTOR



24 January 2024 | 9:00AM - 12:00PM
Hyatt Regency Phnom Penh



KEYNOTE

H.E. Sok Dara
Director General,
Trust Regulator



Dr. Virak Prum
Chairman & Law Prof,
CamEd Business School



Mr. Hans Chen
Chief Executive Officer,
Stronghold Trustee



Mr. Jonathan Blaine
Tax Director,
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Ms. Sok Vansaka
Managing Partner,
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CONTENTS

- I. Types of Trust Under Cambodia's Law**
- II. US's Concept of Trust**
- III. Duties of the Trustee**
- IV. Closing thoughts**

Dr. Virak Prum, Chairman & Law Professor

I. Types of Trust

There are 5 generic types under **Trust Law 2019 and Prakas No. 003, 26 Jan 2022:**

1. <i>Public Trust</i> [min.1,5 M USD capital]	4. <i>Individual Trust</i> [min.150k USD capital]
2. <i>Commercial Trust</i> [min. 1 M USD capital]	5. “ <i>Financing Trust</i> ”, which existed before the 2019 Law, has been integrated into the Law.
3. <i>Social Trust</i> [min.0,5 M USD capital]	<i>Create an account at NBC and maintain a minimum reserve of 15% at all times.</i>

Terminology

1. Trustor, Creator, Appointer, Grantor, Settlor (បរធនបាលទាមក)
2. Trustee (បរធនបាល)
3. Beneficiary (អត្ថុតាមក)

II. Concept of Trust

- **Definition**

“A trust is an entity recognized by the law in which a trustee holds legal title to the property to benefit the beneficiaries who have an equitable interest in the trust property.”

- **Fiduciary relationship**

“An essential element of a trust is that the trustee stands in a fiduciary relationship with the beneficiaries concerning the trust property.”

SOURCE: LAW ESSENTIALS, Trusts and Estates, Governing Law, Essentials for law school and the bar exam (2022), Boston: Sterling Test Prep.

A trustee can be a firm or an individual.

III. Duties of the trustee, conceptually.

The fiduciary relationship creates numerous duties for the trustee.

- Duty of loyalty

Against self-dealing (exception: Trust allows it; Consent by beneficiaries after full disclosure + good faith)

Avoid conflict of interest (exception: fair and reasonable)

- Duty of prudence

a) *Administrative function*: Administer the trust with such skill and care as a person of ordinary prudence would use in dealing with his or her own property.

b) *Property distribution function*: distribution can be made mandatory or discretionary (“discretionary trust”).

c) *Investment function*: to make the trust property productive, to invest it so it grows. Preserve the principal while generating a reasonable stream of income. (barring speculative investments).

Prudent investor approach: Performance of a trust’s investments is assessed on a portfolio (not individual) basis, acceptable level of risk at an aggregate level.

**Exculpation clause: Often used in a discretionary trust to protect the trustee against liability (except for willful neglect).

SOURCE: Peter Wendel (2018) *Wills, Trusts, and Estates*. New York: Wolters Kluwer Law, emanuel law outlines.

III. Duties of the trustee, conceptually (Cont.)

- Custodial and Administrative Duties

Duty to take proper care

Delegation of duties only for ministerial activities (not requiring discretion). Even after delegation, the duty to supervise remains. [In Cambodia, possible to delegate subject to the Regulator's authorization].

- Duty of impartiality

Where there are numerous beneficiaries, the trustee must balance the competing interests of the different beneficiaries.

- Duty to inform and account

Necessary for the beneficiaries to protect their interest even if the settlor has authorized withholding information. Misleading, improper accounting leads to claims against the trustee.

In Cambodia, Prakas 003, dated 26 January 2022 on *rules governing the organization and functioning of Trusts*, mentions good faith, honesty, independence, impartiality, transparency, accountability, and efficiency (art. 37) and the need to have a policy of conflict of interest (art. 38). The Trust Law also mentions some of these duties (art.22)

IV. Closing thoughts

As a legal instrument, Trust presents both benefits and challenges.

On the benefits side...

- Confidence (“trust”) of the beneficiaries. Ex: a child would know the amount that the trustee will distribute to her per term.
- Impartiality. Ex: Under an escrow account for a sale-purchase agreement, the bank acting as the escrow agent (trustee) will enforce the terms without bias to either party.
- The economic diversification. Ex: Foreigners can bring in FDI to purchase-hold properties by having a trustee holding the property title deeds on their behalf and make the properties productive.
- Professionalism. Ex: Attorney-at-law will be eligible to receive payments held in trust only after completing all the intended tasks for the client.

On the challenges side...

- The mandatory registration system...many countries do not require registrations, but again, every country is different.
- When the language is not self-enforceable (Ex: hopes, wishes, desires, requests,..), conflicts will arise.
- A *spendthrift clause* (prohibiting a beneficiary from transferring his interest in the trust before it is distributed to him) can create conflict with potential creditors of the beneficiary.
- Unclear tax regime: specific taxation regulations for trust don't exist yet. In theory, revocable trust Vs irrevocable trust.

In physics, disorder increases with time. In law, I trust that the opposite is true.

Dr. Virak Prum

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How Trust Can Help Investors?

Presented by: Hans Chen

Who We Are

STRONGHOLD TRUSTEE is a licensed trust company in Cambodia that specializes in trust services, including Collective Investment Scheme and Personal and Commercial trusts tailored to your needs. We provide professionals in various industries and high-quality financial services to fulfill clients' needs and become a trusted financial STRONGHOLD for everyone!



Who We Are

Vision

To accelerate the financial development of Cambodia and enhance the safety of monetary and non-monetary investments.



Mission

To create a financial stronghold for local and overseas investors by providing safe, legal, and customizable trust services.



Who We Are



▲ SERC License



▲ TR License



▲ TR Permit – CIS Business

Our Philosophy

Integrity

We promise to provide our services honestly and genuinely, with 100% transparency, and without hidden information and charges.

Professionalism

We promise to offer professional and legit trust structures and products that fit our client's financial plans and needs.

Innovation

We promise to design our products creatively, combining academic theories and practical experiences for a better customer experience.

What We Achieve

2019

- Founded on 23/05/2019
- Received AIP & got the license in merely 4 months
- Grand Opening Ceremony in Rosewood Hotel

2020

- MOU with SECC on Fintech cooperation

2021

- Completed the 1st Trust Registration in Cambodia

2022

- Attended Real estate EXPO, Fintech Summit
- Invited to give speech for AmCham event, La Maison event, Borey AreyKsat event, etc.
- Interviewed by Cambodia Investment Review and SETNEWS Taiwan

2023

- Invited to give speech for Trust Regulator events and CBRE events and to provide staff training for developers and agencies.
- Issued the first Mutual Fund with a fund management company in Cambodia.
- Invited to give speech in Taiwan and Vietnam.



Who We Serve

Government | Financial Institution & Corporation | Locals, Expats and overseas Investors



Cooperate with regulators to raise public awareness of the Security and Trust sector and assist in developing the related market.



Assist in developing more effective and safer solutions for loans, properties, and financial investments for local and international corporations and financial institutions.



Providing legal and customized trust structures for local and international investors to solve investing and funding problems when investing in various sectors in Cambodia

Ways for foreigners to invest properties in Cambodia

Cambodian Constitution(1993) and Article 8 of the Land Law (1992)

Only natural persons or legal entities of Khmer nationality have the right to ownership of land in the Kingdom of Cambodia.

- **Land Holding Company(LHC)**

Creating a company with 51% Cambodian shares and 49% foreign shares and allowing the foreign shares to possess decision-making power.

- Hire more than one Cambodian shareholder
- Make sure to write all right in the legal documents
- Use extra contracts to enhance the safety of the property.
- Tax declaration

- **Nominee Structure**

Asking a Local individual to hold the title deed on behalf of the foreigner. However, the risk is much higher than LHC. Usually, the investor would sign several agreements with the nominee to protect him/herself.

- Trust issues – hidden or extra charge, selling or payment without permission, nominee disappear.

Ways for foreigners to invest properties in Cambodia

- Long-term Leasing

Long-term Leasing is one of the popular methods for foreigners to invest in lands, especially for people who want to develop the land or build something on it. The flexible terms could be 50, 70, or 99 years.

However, the investor must ensure the agreement is registered with the land officer and add some protective terms in the contract, such as prohibiting the landowner from selling the land unless the new buyer admits the current leasing relationship to protect the investor's right.

- Naturalization

A foreigner can buy land plots or landed properties himself if he or she acquired Khmer nationality, and there are several ways to get it:

- Investment: According to the Cambodian Nationality Law, non-Khmer individuals can apply to naturalize when they invest 1.25 billion Riels (310K US dollars) in Cambodia.
- Donation: People who have special contributions or donate 1.2 billion Riels (300K US dollars) can apply
- Marriage: getting married to a Cambodian spouse
- Purchase

- Trust - A safer way to invest in Cambodia!



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Trust industry in Cambodia

The Cambodian Trust Law was officially promulgated in January 2019, hoping to create a better system or environment for property investment and Wealth management.

Trust is a legal arrangement under which the trustor transfers ownership of assets to a trustee administered for the benefit of the beneficiaries.

Investors can Sign contracts with a Trust company and transfer the title deed to the Trust company, and the Trust company will manage the land on behalf of the client.



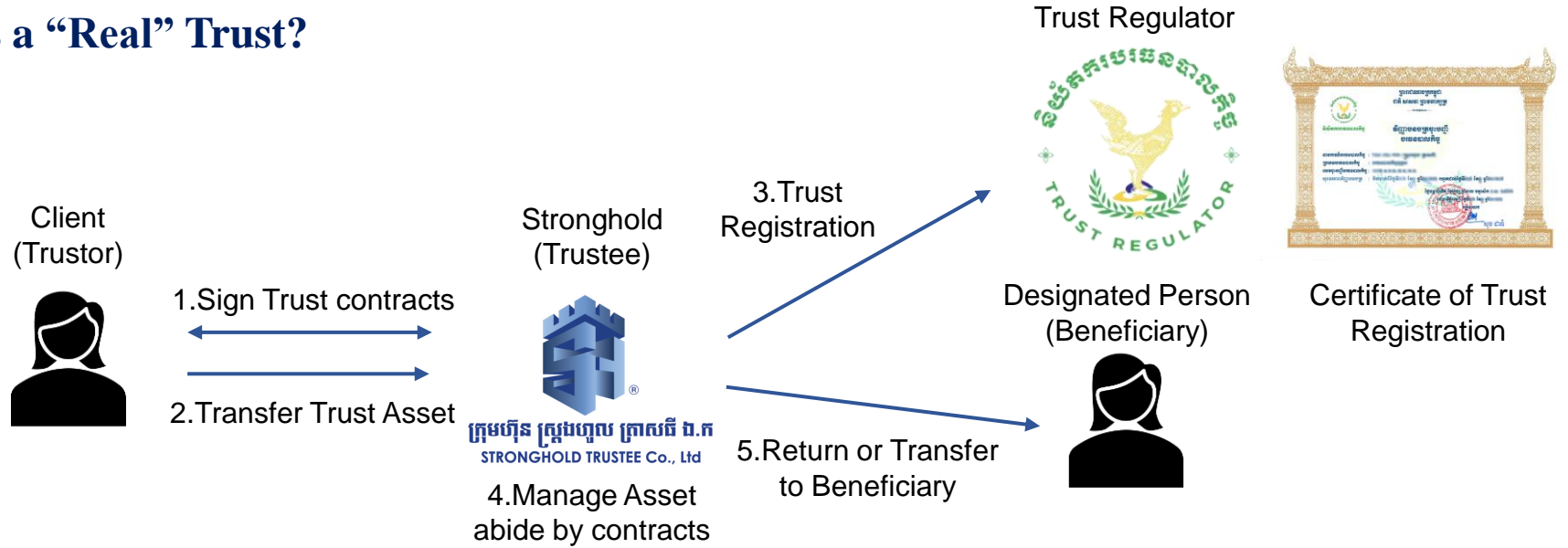
You may already find out that using a Trust company is exactly the same as the nominee structure...



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Trust industry in Cambodia

What is a “Real” Trust?



- **Trustor:** A trustor is the asset owner willing to create the Trust and transfer the asset ownership to the trustee for further managing their assets.
- **Trustee:** A trustee is a legal entity that manages assets on behalf of a person or business and eventually transfers them to the beneficiary. In Cambodia, the trustee must register the trust deed with the Trust Regulator to ensure the trust asset is under Cambodian Trust Law’s protection.
- **Beneficiary:** A beneficiary is a designated person who receives benefits or profits from the trust asset managed by the trustee. A beneficiary also can be the trustor himself.



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Why Using Trust is important

- Trust Registration

[Trust Law\(2019\), Article28](#) - Trust shall become effective unless registered at the Ministry of Economics and Finance (MEF) within 3 months after the date of creating the trust.

[Sub-Decree of Trust Registration\(2019\), Article 7](#) - Trustee of the Trust Deeds shall bear the obligation to register the trust deeds at the Ministry of Economics and Finance.

Benefits of Using Trusts

1. Prevent trust issues with Nominees
2. Release the complexity of creating, managing and closing an LHC
3. No hidden charges, all fee structures are transparent
4. No extra charges, the trustee shall manage the property by following the contract and written instructions.
5. Able to claim the property back when the trustee bankrupt if done Trust registration

Other Products & Benefits



Fund Trust

- Assisting fund owners in managing the trust fund and investing into the right investment on behalf of the owner to gain extra return.
- Compared to other countries, Cambodia's fixed deposit rates or other investment returns are relatively high.

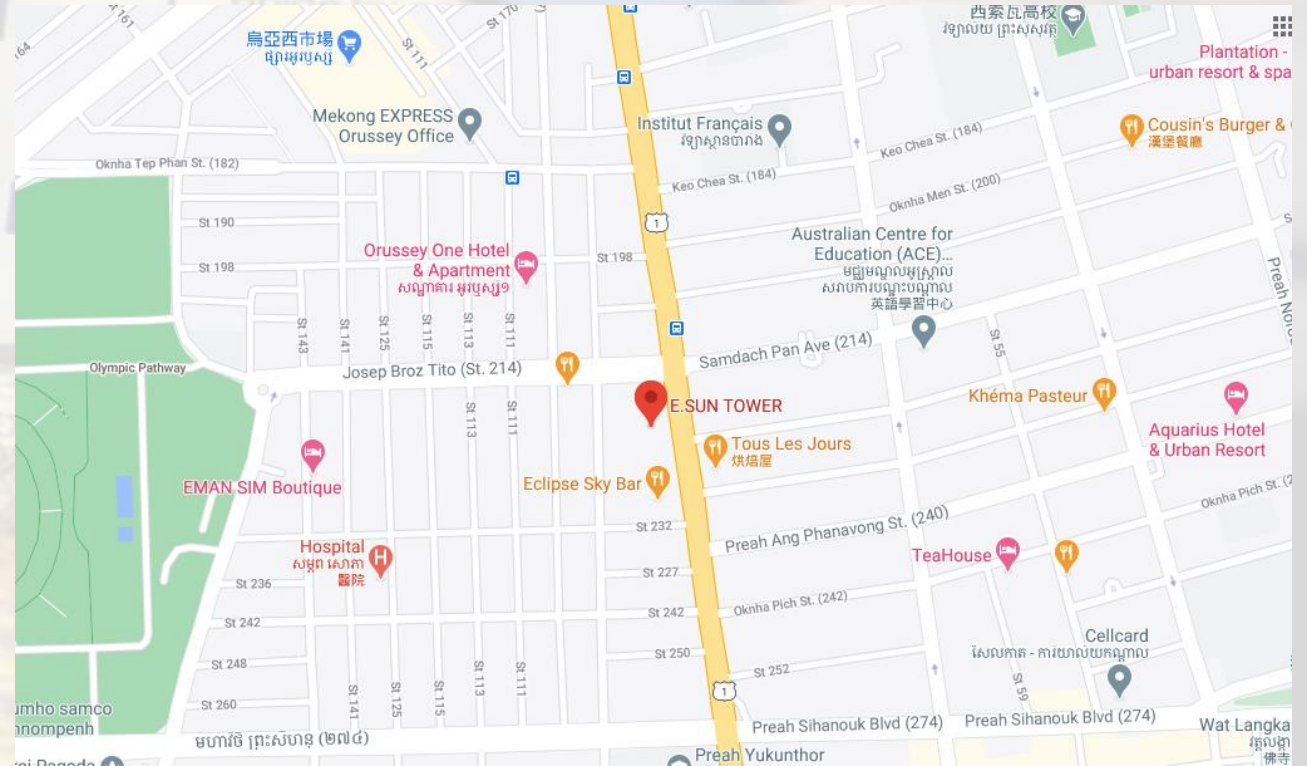
Project Management Trust

- Acting as a third party and helping the fund owners, project owners, and related parties manage building projects, especially for projects in Sihanoukville.
- The tool is not limited to real estate projects; it could be any type of project, such as agriculture and venture capital.



Contact us

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Thank You!

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AmCham Trust Developments

24 January 2024

Organized by AmCham Cambodia

TRUSTEE DUTIES for COMPLIANCE (Tax+)





JONATHAN BLAINE

DFDL Tax Director;

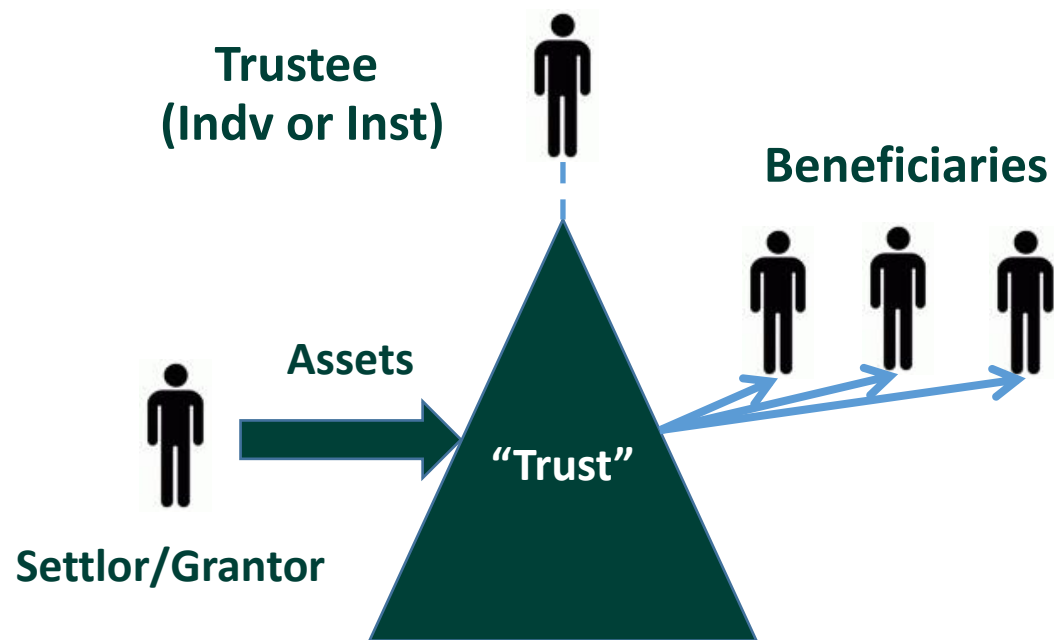
Co-Head of Regional Compliance and Investigations Practice

jonathan.blaine@dfd.com

Jonathan has over 25 years of experience in the Asia-Pacific, specializing in cross-border corporate and personal investment and tax planning with a particular focus on Thailand, US and ASEAN regional investment. He typically advises international businesses, high net worth individuals, trustees, insurers, financial institutions and other intermediaries.

Jonathan has supported numerous individual clients with estate, succession and investment planning, while also providing several well-known multinational corporate clients with international structuring and transaction planning. He is a licensed California attorney and a licensed US CPA (Hawaii) for more than 20 years. He is a frequent lecturer at several universities and speaker at various regional seminars and conferences.

Trust Basics



- Probate can be avoided through the holding of assets via trust
- Implications are actual transfer of title to trustee
- Trustee **must** act in the best interests of Beneficiaries
- Distributions to beneficiaries (taxable?)
- Transfers to trust could be considered gifts
- Assets in trust not part of settlor's estate (maybe)
 - Taxable depending on type of trust:
 1. Revocable (Settlor taxable)
 2. Irrevocable (Settlor not-taxable)

TRUSTEES MUST

1. Comply with any structural requirements provided for in the Prakas
2. Monitor and maintain financial stability of the trust under guidance from the Trust Regulator
3. Hold in custody all assets segregated from others
4. Avoid any and all conflicts of interest (assets, beneficiaries, trustor)
5. Obtain approvals or provide notifications to the Trust Regulator
6. Obtain approval for any delegation of authority from the Trust Regulator
7. Maintain trust and trustee records for a period of at least **ten** years
8. Comply with all financial and non-financial reporting requirements
9. Operate in good faith, maintain independence, ²⁸act with impartiality, provide transparency, uphold accountability, and ensure efficiency
10. **ABOVE ALL ELSE**: Protect the interests of the **TRUSTOR** and the **BENEFICIARIES**

COMMON LAW PRINCIPLES

TRUSTS are a creature of the **COMMON LAW**

- Must meet statutory obligations
- Common Law concepts may apply, including:
 1. Duty of Care (objective duty)
 2. Duty of Loyalty (avoid conflicts of interest)
 3. Duty to Act in Good Faith (honesty)
 4. Duty of Disclosure (provide information upon request)
 5. Duty of Obedience (comply with all legal requirements)





COMPLIANCE IS A TRUSTEE LIABILITY

- Failures to meet compliance obligations can result in Trust Fines as well as Trustee Fines
- The TRUSTEE can be held responsible for the TRUST fines (reimbursement, reduction in fees)
- Other potential impacts: removal, replacement, potential criminal liability

INTERNATIONAL COMPLIANCE (US Example)

Tax Filing Obligations (US FGT/FNGT)

- Potential Reporting to the IRS
- FGT/FNGT Reports to US Beneficiaries
- Tax filing and payment to the IRS

FATCA REPORTING

- Trust Non-Reporting FI, if
- Trustee is Reporting FI
- Registration required

Beneficiary Reporting

- As provided for in the Trust Deed
- As provided for under law
- Non-disclosure issues (i.e., privacy)

A COMPREHENSIVE REACH IN SOUTHEAST & SOUTH ASIA

- 9 countries
- 12 offices
- 170+ legal and tax advisers
- 24 nationalities

Bangladesh (2011)

3 Partners | 14 Advisers

Cambodia* (1995)

10 Partners | 38 Consultants

Lao PDR (1994)

2 Partners | 8 Advisers

Indonesia* (2011)

1 Partner | 2 Advisers

Myanmar (1995)

3 Partners | 18 Advisers

Philippines* (2015)

5 Partners | 10 Advisers

ASEAN Desk in Singapore (2010)

1 Partner | 2 Advisers

Thailand (2005)

10 Partners | 21 Advisers

Vietnam (2006)

6 Partners | 23 Advisers



In Cambodia, DFDL works in commercial cooperation with Sarin & Associates.
 In Indonesia, DFDL works in association with Mataram Partners.
 DFDL collaborates with Philippine law firm, Ocampo & Suralvo Law Offices for local legal advice.
 DFDL in Singapore is qualified as a foreign law practice and is not licensed to practice Singapore law.

AWARDS AND RANKINGS



2022 The Legal 500 Asia Pacific

- Tier 1 – Leading Firm – Cambodia & Lao PDR
- Tier 1 – Corporate and M&A/Projects – Myanmar
- Tier 1 – Tax – Vietnam
- Tier 2 – Corporate and M&A – Vietnam
- Tier 2 – TMT – Thailand
- Tier 3 – Corporate and M&A – Thailand
- Tier 3 – Tax – Thailand



2022 Chambers Asia Pacific

- Band 1 – General Corporate Business Law – Cambodia, Lao PDR, Myanmar
- Band 2 – Corporate/M&A – Vietnam
- Band 3 – Corporate & Finance – Bangladesh
- Band 4 – Technology, Media & Telecoms – Thailand
- Band 5 – Corporate/M&A – Thailand
- Spotlight Table – Tax – Vietnam

Winner of Mekong Region Firm of the Year 2020-2021 (2nd Year Running)



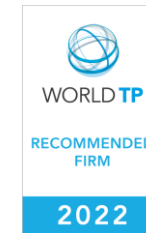
2022 IFLR1000

- Tier 1 – Financial and Corporate – Cambodia, Lao & Myanmar
- Tier 3 – M&A – Thailand & Vietnam
- Notable – Capital Markets – Thailand & Vietnam



2021 World Tax & World Transfer Pricing

- Tier 1 – Private Client – Thailand
- Tier 2 – Customs – Vietnam
- Tier 2 – General Corporate Tax – Thailand & Vietnam
- Tier 3 – Transfer Pricing – Vietnam
- Active – Tax – Cambodia & Myanmar
- Active – Transfer Pricing – Cambodia
- Other Notable – Transfer Pricing – Indonesia



2022 Asialaw Profiles

- Outstanding – General Business Law – Cambodia
- Outstanding – General Business Law – Lao PDR
- Outstanding – General Business Law – Myanmar
- Outstanding – Consumer Goods & Services – Cambodia
- Outstanding – Industrials & Manufacturing – Cambodia
- Outstanding – Tax – Thailand



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* DFDL collaborating firms

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