

REAL ESTATE & CONSTRUCTION LAW UPDATES

Date: 23 June 2023
By Ms. DAVY KONG
CO-HEAD OF REAL ESTATE AND
CONSTRUCTION PRACTICE
DFDL CAMBODIA





Content

I. OVERVIEW OF REAL ESTATE REGULATIONS

II. OVERVIEW OF CONSTRUCTION LAW & REGULATIONS

III. HOW TO DEVELOP CONTRACT IN COMPLIANCE WITH REGULATIONS

I. | Overview of Real Estate Regulations



Quick Glance on Real Estate Business Registration Data in Cambodia

Real Estate Development Business

approx. **400 to 500 real estate business projects** have been registered and granted with the business licenses while around 200 projects are active. *(RPR, June 2023)*

Real Estate Service Business

approx. **200 to 300 real estate service business** (real estate valuation companies, management companies) have been registered and granted with the licenses. *(RPR, June 2023)*

Sub-Decree 50 dated 2 March 2023 on **Management of Real Estate Development Business:**

- To regulate the real estate development business in Cambodia.
- To set rules and procedures for managing and inspecting the business operation, granting licenses and permits, resolving disputes, and imposing penalties.
- It has 31 articles and 9 chapters.
- It mentioned a new competent authority, the Real Estate Business and Pawnshop Regulator (RPR), under the Non-Bank Financial Service Authority (FSA), to oversee the real estate development business.

Sub-Decree 50: Term: “real estate development business” has been updated to include the business or investment activities for developing housing, co-owned buildings or land-lot for sale or **lease**”.

The “lease” was defined under the Sub-Decree 50 as the lease of land or building of a developer with a term of at least **10 years** while the Prakas 089 determines only a **long-term lease with the term of at least 15 years**.

Sub-Decree No. 50 categorizes business license/permits:

Category 1: License or permit for housing development business

>Type 1: license and permit for developer who has completely finished construction, prior to announcement for sales and leases

Category 2: License or permit for co-owned building development business

>Type 2: license and permit for a developer who, at the same time, starts construction and announces gradual sales or leases

Category 3: License or permit for land lot development business

Main provisions:

Real estate business operation



1. Sale and Purchase Agreement or Lease Contract (POA is required, if the signatory is not the owner/lessee)
2. Business Guarantee
3. Developer's Account
4. Suspension and completion of the project.

Inspection

Reporting

Dispute Resolution

Penalty

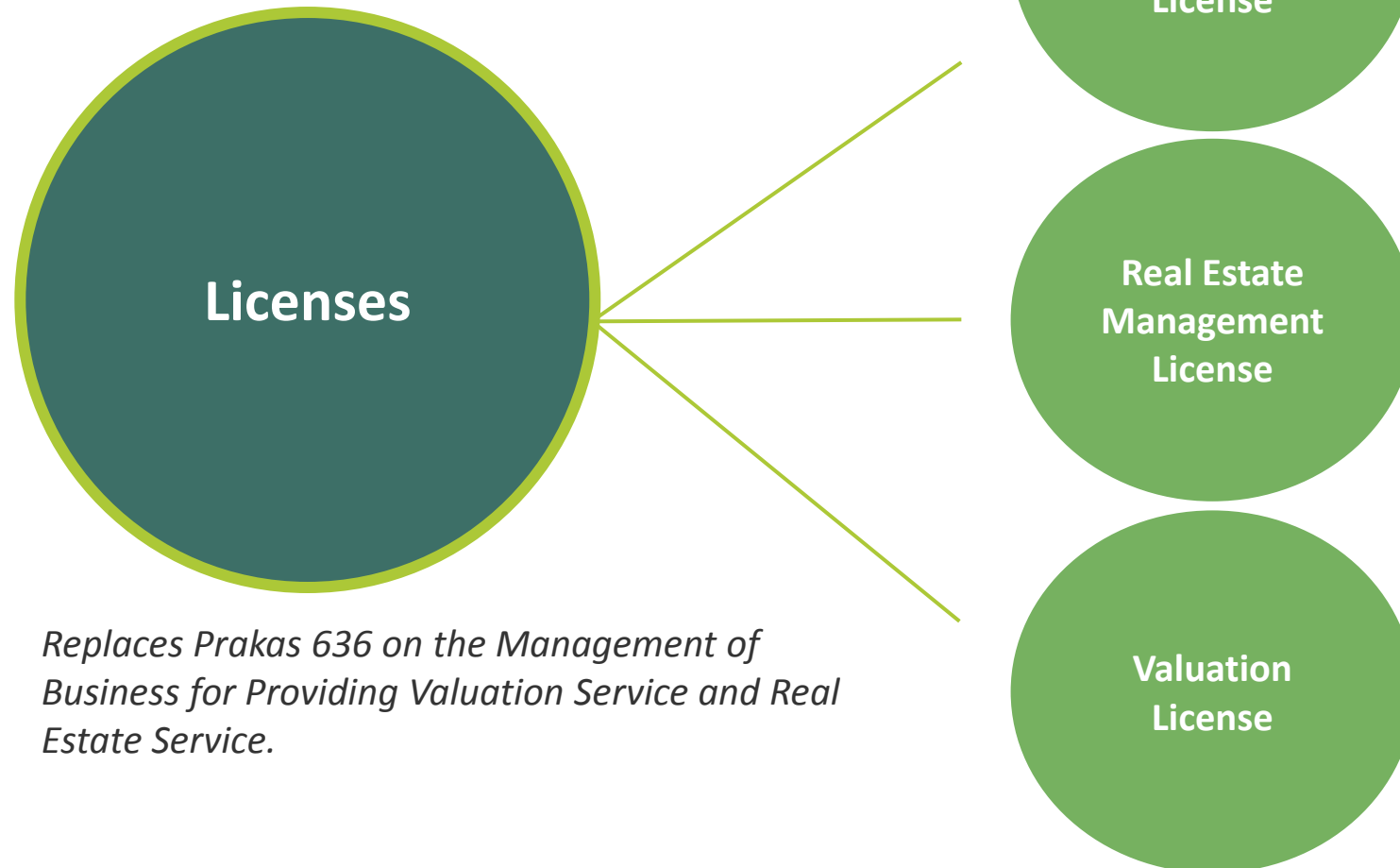
**The Sub-Decree 50 does not provide any specific amount on the monetary fine while the detail of rules-procedures on administrative penalties and breach will be determined by a separate regulation.*

**Sub-Decree 50 is effective from 2 March 2023 and a number of new parkas and separate regulations are to be issued in order to implement many provisions of this Sub-Decree 50.*

New Prakas on Real Estate Business Service Licensing

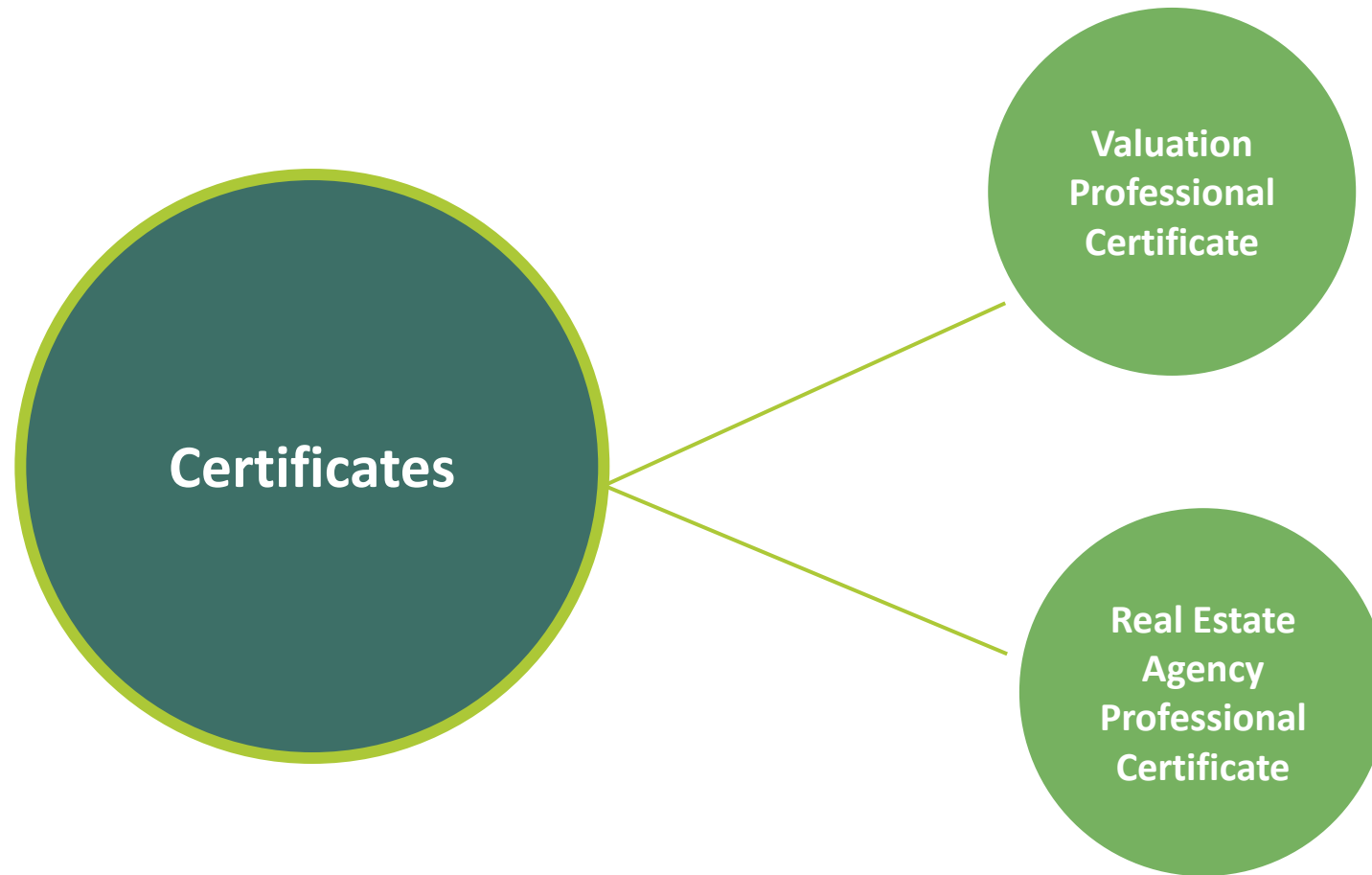
Prakas No. 064 dated 27 December 2022 on Real Estate Business Services

Real estate service: property management, valuation/appraisal, real estate agency



- Applies to any company/branch office
- Validity: 1 year, renewable within 30 days before expiry date.

Replaces Prakas 636 on the Management of Business for Providing Valuation Service and Real Estate Service.



- Applies to any individual
- Validity: 1 year renewable within 30 days before expiry date.

II. | Overview of Construction Law & Regulations



Construction:

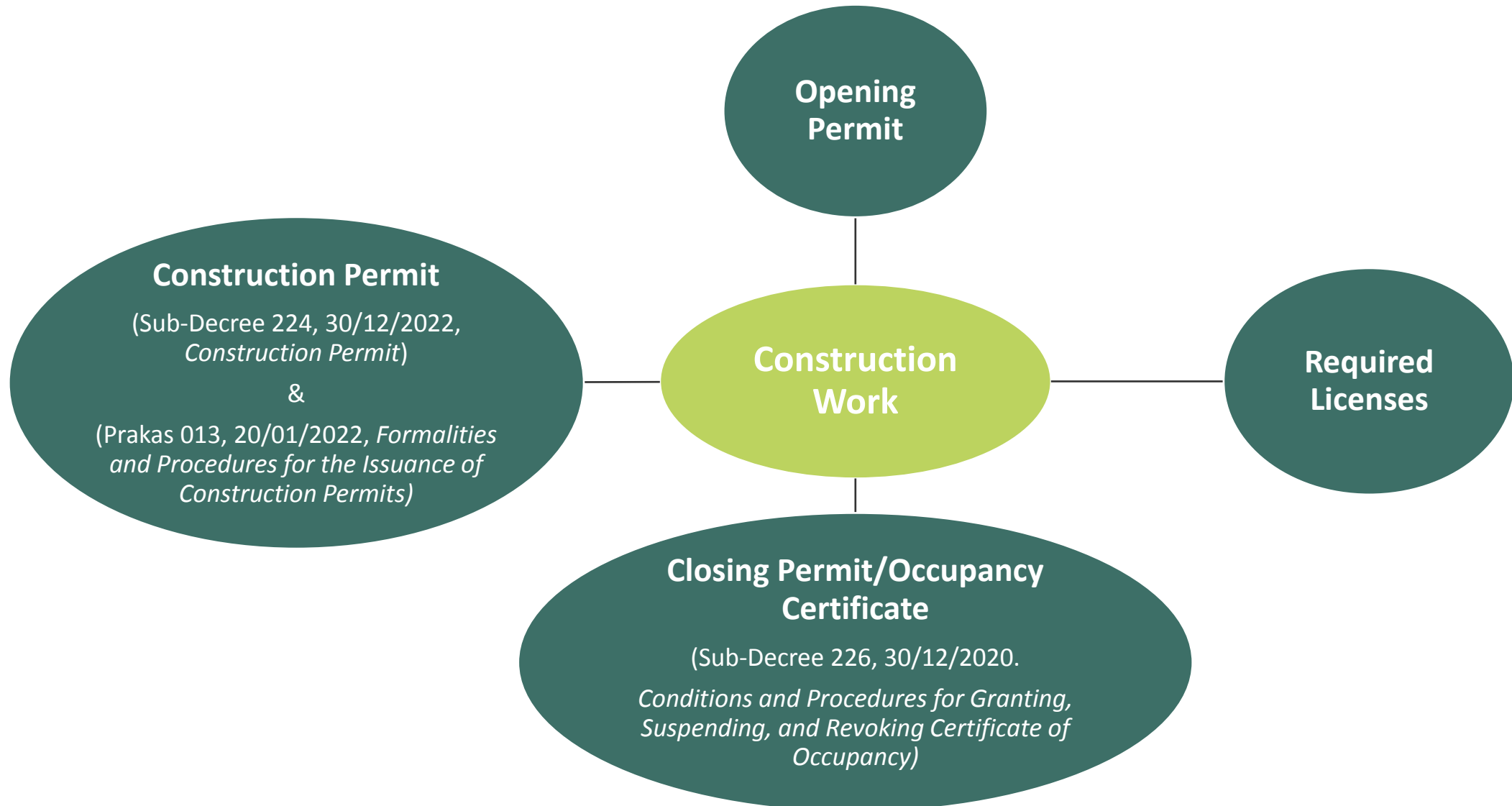
- 271 construction projects (construction areas of 1,479,489 square meters) with the estimated investment capital of USD 611,194,991 (April 2023).
- From April 2022 to April 2023: 304 construction projects (construction area of 576,963 square meters) with estimated investment capital of USD 215,115,296, **increases 184.12%**.
- From March 2022 to April 2023: 278 construction projects (construction area of 1,257,356 square meters) with the est. investment capital of USD 482,465,013, **increases 26.68%**.
- From year 2000 to April 2023: 63,161 construction projects were granted with the construction permits (construction area of 178,401,781 square meters) with the est. investment capital of USD 71,070,470,808.

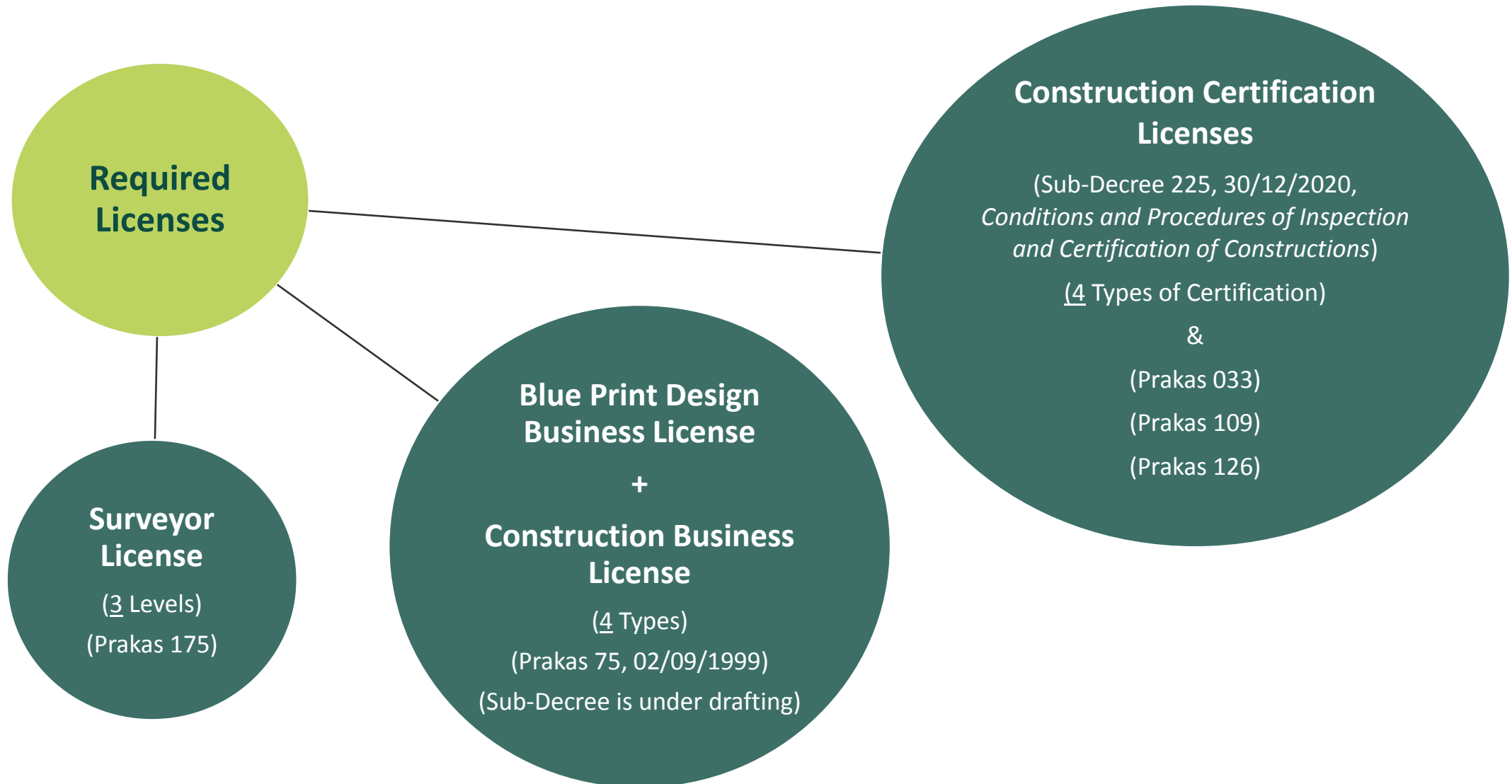
(MLMUPC, April 2023)

Construction Law

- Construction Law was promulgated on 2 November 2019
- 22 Chapters and 111 Articles
- To regulate the construction sector and implement adequate technical and safety standards on construction sites throughout Cambodia (except the types of construction governed by separate legal instruments)

Required Building Permits for Construction Projects





- Prakas 083 dated 19 May 2023 on abrogation of Prakas No. 087 dated 11 May 2018 on Land Development issued by MLMUPC
- Press release No. 001 dated 12 April 2023 of Economic and Financial Policy Committee (the Committee) of the Royal Government of Cambodia with respect to the support of the development of construction and Borey Real Estate Developers

HOW TO DEVELOP CONTRACT IN COMPLIANCE WITH REGULATIONS

- ❖ Principle of Contract (under applicable law)
- ❖ Nature of Contract
- ❖ Required Elements to be Included in Contract

- Competency
- Legal intent
- Offer
- Acceptance
- Consideration



Article 336 of Civil Code: formation of contract via offer and acceptance

(1) A contract comes into effect when an offer and an acceptance thereof conform to each other.

*(2) Notwithstanding the provisions of paragraph (1), a contract in which one of the parties bears a duty to transfer or to acquire ownership on an immovable property, shall come into effect only when such contract is made by **notarial document**.*

Real Estate Contract

Sale and Purchase Agreement

Lease Agreement

Real Estate Agency Agreement

Construction Contract

Sub-Decree 50 + Prakas 089

- Parties and witness
- Project location, land size and purchase price
- Construction commencement and completion date
- Obligations of parties: tax, fees, ownership transfer, default
- **List of the materials to be included in the house or co-owned building (Sub-Decree 50)**
- Bank's name and real estate development account number (for the Type 2 developer license);
- Payment terms and schedules;
- Penalty on late payment
- Rights of the buyer relating to land, or private unit and common areas
- Termination clause
- Warranties on construction quality and safety
- Encumbrances on the property

Other practical clauses

- Payment of management fee
- Notice
- Assignment
- Governing law and dispute resolution
- Language (prevailing language)

Required Elements: Lease Agreement

Sub-Decree 50 + Prakas 089	Other practical clauses
<ul style="list-style-type: none">▪ The same provisions of SPA shall apply▪ If the land is leased from the state or a private land: include the lease term the lessee is entitled to occupy	<ul style="list-style-type: none">▪ Lease term/duration (short or long-term lease?)▪ Lease price (inclusive/exclusive VAT?)▪ Convenance of lessor and lessee▪ Rights and obligation of lessee and lessor▪ Utilities▪ Insurance▪ Registration of lease (if long-term lease)▪ Option to acquire title▪ Assignment▪ Governing law and dispute resolution▪ Language (prevailing language)



Company search



Construction permit search



Title search



License search

Prakas 064

- Parties
- Name of a real estate agent (for a real estate agent company)
- Scope of services and obligations
- Details of the property: location, size, ownership documents and objects fixed to the property
- Responsibilities of the owner of property (i.e reserve fund for maintenance and emergencies at the disposal of the management company to deal with day-to-day transactions)
- Term of services (commencement and termination)
- Service fees and professional commissions from the customer (basis and method for calculating the service fees and professional commissions)/non-professional commission fees (if any) and payment terms
- Confidentiality
- Termination clause
- Dispute resolution

Construction Law

- Parties
- Location, size and type of works
- Contract fee, date and payment term
- Guaranties in respect to the performance of obligations in the contract
- Technical and security conditions of the works
- Conditions in respect to the supply of construction material, construction equipment, tools and machineries in relation to construction or demolition work and for furnishing for the construction
- Conditions in respect to amendment and termination of the contract
- Insurance or other provisions regarding the responsibilities for damages caused by the work
- Representation on the conformity of the design documents which are subject to the construction in accordance with the regulations in force
- Commencement and completion date of the work and handover date
- Condition precedent
- Force majeure
- Dispute resolution

Construction Law – Required minimum warranty period on defect

- Duties to complete the work without defect
- The period of warranty on defect of work from handover date (Article 71):
 - ✓ 10 years for the construction components made of **wire mesh concrete, iron concrete or iron**
 - ✓ 5 years for **exterior wall, window, door and rooftop**
 - ✓ 2 years for work related to **electricity, water, mechanic** and other relevant works
- Insurance clauses (i.e site liability insurance)
(part of requirement for site opening permit approval, contractor's obligation, real estate developer's obligation (Article 74))

It is considered null and void to set a shorter period of warranty on defects of works than that set in Article 71.

Avoid abusive clauses in the private residential building contract > **null and void.**

Construction Law – Abusive Clauses (Article 68)

- construction owner to give a mandate to the contractor to seek a necessary loan to finance the building work
- prohibiting the construction owner from checking a construction site before the payment of the contract fee at each stage and before the handover of the construction
- contractor to carry out building work according to a building permit attached with technical requirements that have changed significantly from the technical requirements of the building project
- relieving the contractor from obligations to effect subsequent completion within the time set in the contract by acknowledging the reasons for delays (except for force majeure and reasons caused by the construction owner him/herself).

- Licensed company for construction work
- Construction Authorization Permits
- Review construction agreement with minimum clauses under the law





1st EDITION

INVESTMENT GUIDE TO

REAL ESTATE

IN CAMBODIA | 2023



Sign up for Cambodia Real Estate Investment Guide 2023- 1st Edition



Thank you.



DAVY KONG

CO-HEAD OF REAL ESTATE AND CONSTRUCTION PRACTICE

davy.kong@dfd.com

078 888 683

