

On the night of 14 April, the Cambodian Government ordered a number of restrictions in response to the recent rise in COVID-19 infections by means of Decision nr. 49 SR dated 14 April 2021 (“Decision 49”).

AUTHOR



Edwin Vanderbruggen
Senior Partner

Edwin has 30 years of experience as a legal adviser, academic, author, and government consultant, and has worked in Southeast Asia for nearly his entire career. He has vast experience advising sponsors, IFIs, oil and gas supermajors, independent power producers, and other multinational enterprises on multibillion dollar energy and infrastructure projects, M&As, and financing transactions.

Edwin’s experience in Cambodia is wide-ranging and has involved many precedent-setting matters, including a bank merger, the acquisition of a market leading telecom infrastructure company and several high profile energy projects, including the first internationally financed solar project in Cambodia at Bavet, and Phase 1 of the National Solar Project.

PHNOM PENH LOCKDOWN: WHO REMAINS OPEN? WHICH AUTHORITIES STILL WORK?

On the night of 14 April, the Cambodian Government ordered a number of restrictions in response to the recent rise in COVID-19 infections by means of Decision nr. 49 SR dated 14 April 2021 (“**Decision 49**”). The regulation was followed up by an amendment providing some additional details by Decision nr. 50 dated 17 April 2021 (“**Decision 50**”). People in Phnom Penh and an adjoining city, Takhmao, are subject to a general stay-at-home order for nearly two weeks – from 15 April to 28 April 2021. In general, people may only move about for a limited number of reasons, including grocery shopping, receiving medical attention, and permitted employment (see below). Leaving one’s residence for individual sports was also permitted under Decision nr. 49, but that has quickly been revoked since in Decision nr. 50. The nightly curfew forbids being outside the home from 20.00 until 05.00 that was put in place earlier, remains in force.

Which businesses must close?

As a rule, all non-essential businesses and business operations must cease. Instead, work should be done by distance, such as online. “**Essential, non-essential**” and “**necessary**” are not defined, but a list of businesses are provided that are considered “**essential**”. Some of the items on the list refer back in a circular manner to the condition of something being essential, which means there is no real certainty of the scope of the definition.

Highlights of this note

- ▶ Which businesses must close?
- ▶ Will any government departments remain open for urgent matters?
- ▶ What happens with employee salaries if one cannot work from home?

Here is our overview of enterprises which can stay open:

- Utilities
- Hospitals
- Transportation of goods, including food. Decision 50 added that this service may not be used for transportation of persons.
- Food markets, supermarkets
- Gas stations
- “Factories and enterprises producing basic necessities”: It is clear from the Decisions that food producing or processing facilities are meant to remain open. The same however also goes for “handicrafts” and anything that “produces basic necessities”. What these “basic necessities” are, is not defined.

According to official statements, garment and footwear factories are also to close.

- Banks and other financial institutions can remain operational but there is a requirement that they must minimize the staff present at their offices. How much that is, is defined in Decision 50, which sets it at 2% of total staff. For example, a bank branch with 50 people working on the premises may only have 1 person at the bank branch office.
- Telecommunications companies can remain operational as well, with the same condition with respect to minimum staff as the banks.
- “Other basic essential services permitted by an authority”: We believe this allows ministries to allow specific businesses to operate by means of a special approval. To date, there are no examples of this.
- NGOs: Although they are not listed as organizations that may remain open, it is noted that international NGO staff may travel despite the stay-at-home order with a certificate of the employer, presumably confirming the need for the movement.
- International governmental organizations such as the United Nations and embassies are also not mentioned in terms of closure, but the Prakas specifies that their staff can continue to move around with proper documents, which implies they can be at least partially operational.
- Pharmacies seem to be allowed to remain open since people in general are still permitted to leave home to purchase medicine.
- Restaurants may remain open for take away and delivery only.
- Hotels and guesthouses may continue in operation, presumably because many of them serve to quarantine international arrivals.

Will any government departments remain open for urgent matters?

The Decisions do not state in detail which departments must or will remain open, and which may close, except for the essential services mentioned above. The Decisions leave it to the good judgement of the management of the department to

decide which activities are essential and must continue. So each department will decide for themselves which activities they will continue to perform, and which will be closed. The basic rule is that anything non-essential will not be operated.

According to our preliminary understanding, the following departments will act as indicated below:

- **General Department of Taxation (“GDT”)**: As confirmed, the GDT will remain open during the lockdown, but with a limited number of staff. For tax audits, taxpayers can provide documents in soft copy via electronic means, such as email or Telegram, and meetings will be conducted online as well. Note that we have seen that the tax auditors understand taxpayers’ difficulties in providing required documents since the COVID-19 spike, i.e. 20 February 2021, by giving extensions of the deadlines to provide documents. Thus, this should not be an issue for tax audits.

The most critical matter for now is the submission and payment of the March 2021 tax returns, which are due on 25 April 2021. The GDT has begun implementing e-filing and e-payment for taxpayers. However, in order to complete the returns via e-filing, taxpayers will need the invoices, receipts, and other documents that are normally kept at their offices by different in-charge persons. In addition, some taxpayers are not able to use

e-payment right now because the e-payment platform is currently available with only three banks: Aceda, Canadia, and Vattanac. Another issue (even though it seems to be taxpayers’ personal issue) is internet connectivity. A fast, consistent internet connection is required to work on the e-filing system; otherwise, interruptions often result in errors, which can be quite time consuming to correct and reinput. Generally, people do not have access to high-speed internet in their homes.

By the way, VDB Loi office remains open and continues to file tax returns through the online platform.

- **Ministry of Commerce (“MOC”)**: To which extent can companies still process registrations with the MOC? We have been informed that the MOC will open with limited staff. By way of context, even before COVID-19, many types of corporate changes were being processed via the MOC’s online platform, including changes of director, registered office address, capital increase, articles of incorporation (“AOI”).

However, for a number of other operations, such as new entity registration, share transfers, and liquidations, personal contact with the officials remains necessary. Applicants are required to submit the relevant application documents in hard copy to the MOC within 30 days of the MOC’s approval in order to have the MOC’s stamp affixed



on the new/amended AOI, so that they can be further processed with the GDT within 15 days after the MOC's approval. It is uncertain for now if providing hard copies within 15 days for the application is still needed during the lockdown period. Perhaps providing hard copies might be postponed until after the lockdown period. The MOC has not yet advised if any such extension will be granted.

Further It is good to know that most registration of security as well as annual declaration of commercial enterprise filings can happen entirely online, without the need for personal contact with officials.

- **Electricite du Cambodge (“EDC”):** EDC will open and work as usual from Monday next week. For submissions of any hard copy documents, one needs to contact the EDC officer before traveling to EDC.
- **Electricity Authority of Cambodia (“EAC”):** The EAC will open as usual to the public, but with a limited staff.
- **Ministry of Labor and Vocational Training (“MLVT”):** The MLVT will open as usual with limited officials. All of registration can be still done through the MLVT's online system. For hard submission, it is advisable by the MLVT to avoid physical interaction that this would be postponed or delayed until the situation returns to normal.
- **National Bank of Cambodia (“NBC”):** The NBC will open but most officer are working from home. Thus, for the submission of hard copy documents, one needs to contact the NBC officer before traveling to the NBC.
- **National Social Security Fund (“NSSF”):** The NSSF will open as usual to the public but with a limited staff.

- **Council for the Development of Cambodia (“CDC”):** The CDC will open with a limited staff.
- **Telecommunications Regulator of Cambodia (“TRC”):** The TRC will open, but with a limited staff.
- **Courts:** We have been informed that the Phnom Penh court will open, but with a limited staff.

What happens with employee salaries if one cannot work from home?

During lockdown, some businesses try to ask employees to work from home while work from home cannot be done for some other businesses such as, factory, manufacture, construction, hotels, guesthouses, restaurants, beauty salons, transport of persons.

For sectors the work from home can be done, it is subject to mutual arrangement between employer and employees: work from home and get paid as usual.

However, for sectors the work from home cannot be done, the government announcements are silent on this point.

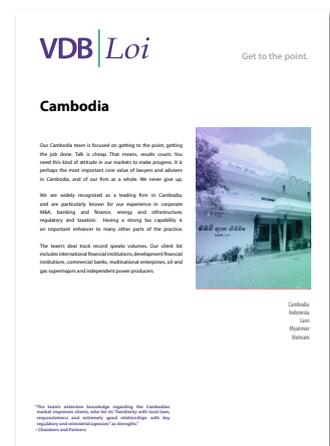
According to the general principles of labor law, if the employee is unable to perform their duties, then contract will be suspended: no work, no pay principle applies unless otherwise provided for by the company's internal rules or policies. Alternatively, employer and employees can mutually agree to reduce salary.

According to unofficial feedback from the MLVT, employers are encouraged to help employees during the lockdown and see a possibility to reduce salary rather than cutting the salary altogether even though work from home cannot be done. As a matter of law, it is debatable whether this is compulsory rather than subject to employers' discretion.

RELATED ARTICLES

- ▶ [COVID-19 IN CAMBODIA: WHAT ARE THE CONSEQUENCES OF VIOLATING THE COVID LAW?](#)
- ▶ [CAMBODIA'S NEW RULES FOR INTERNATIONAL TRAVEL: WHAT HAS CHANGED AND HOW DOES IT REALLY WORK?](#)
- ▶ [ADDITIONAL TAX RELIEF IN THE FOURTH ROUND OF STIMULUS MEASURES TO RESPOND TO THE ONGOING COVID-19 PANDEMIC](#)
- ▶ [CAMBODIA TIGHTENS CONDITIONS FOR INTERNATIONAL ARRIVALS](#)

DOWNLOAD



<https://bit.ly/2XtrWQU>

CONTACT

No. 33, Street 294 (corner of Street 29), Sangkat Tonle Bassac
Khan Chamkarmorn, Phnom Penh 120101
T: +855 23 964 430~434
F: +855 23 964 154