



ក្រុមហ៊ុនច្បាប់ អាស៊ី កម្ពុជា
ASIA CAMBODIA LAW GROUP
亚洲柬埔寨法律集团
LEGAL & ADR

LEGAL INSIGHT

“ESCROW AGREEMENT”

Asia Cambodia Law Group

Corporate & Commercial Practice Group, we have expertise to provide to our clients – both individuals and corporations – with passionate and skilled legal advices in every case.

Asia Cambodia Law Group (ACLG) was established in Cambodia in 2006. ACLG is one of the leading and largest full-service law firm offering legal services over a wide spectrum of industry

verticals, with offices in Phnom Penh, Siem Reap, Battambang and Sihanoukville. ACLG is closely working with its Korean Partner, LOGOS Law LLC to provide seamless, high quality representation in the respective jurisdictions to its clients. ACLG clients comprises of many financial institutions, banks, government and non-governmental organizations.

Contact Us

Address: #64, St 592, BeungKak II, Khan TuolKork, Phnom Penh, Cambodia

Email: info@aclf.com.kh

Telephone: +855 23 885 335

+855 12 910 999

Website: www.aclf.com.kh

Facebook: Asia Cambodia Law Group

INTRODUCTION

Entering into an agreement sounds easy, but to enforce one's obligation thereto is a kind of complicated way – especially in the case of a transaction where a large amount of money is involved. To deal with such a thing, Escrow agreement is the best appropriate agreement where one party is concerned that the other party will be unable to meet its obligations, then funds will be held in escrow until one or both parties meet certain conditions. What is an Escrow agreement? How does it work?

Here are the brief summaries and explanations about the Escrow agreement.

1. Meanings

The Cambridge Dictionary defines the escrow as an agreement between two people or organizations in which money or property is kept by a third person or organization until a particular condition is met.

An escrow agent is a person or organization that keeps an asset or document belonging to another person or organization, until a condition is met which means it can be given to someone else.

Escrow agreements generally involve an independent third party, called an escrow agent, who holds an asset of value until the specified conditions of the contract are met. Escrows are very useful in the case of a transaction where a large amount of money is involved and a certain number of obligations need to be fulfilled before a payment is released.

2. Objects of Escrow agreement

Anything that has value can be put in escrow, such as Stock, Money, Deed, Written instrument, Mortgage, Promise to pay, Bond, License, Patent, Check, etc.

3. Parties

Escrow agreements outline the terms and conditions between involved parties. The arrangement is usually between three parties:

- **Depositor:** One party is obligated to deposit money or property to secure its complete performance. Either seller or buyer bears this obligation.
- **Beneficiary:** Upon the performance of obligation of one party, another party will get benefits from another's performance. E.g. the buyer deposits the sale price in the escrow account. So, the seller feels secured and at peace in mind that the transaction will be fully completed.

- **Escrow agent**: the third party who holds the escrow amount or the property deposited and obligates to release it to the party when the complete performance is met. The escrow agent must be a neutral person like the individual (such as attorney, notary, or title agent in US) or entity (such as bank, insurance company or trust company, etc.). The parties to the agreement cannot be the escrow agent.

4. Escrow's purpose

Escrows are able to provide a safe and secure mode of routing cash flows for all parties. No one wants to lose out on valuable property or funds, and a trusted escrow agent helps to make sure the transaction goes smoothly – especially when it involves the big amount of money in the transaction.

5. How Escrow agreement work: **Agreement** - An offer and acceptance have met in place. After entering into Escrow agreement, all parties agree to the terms of the transaction. Either seller or buyer begins the transaction.

Terms and conditions – rely on the terms and condition set forth in the main agreement, e.g., Sale and Purchase of Land. The parties thereto shall remain binding to the main agreement. However, some terms and conditions in escrow agreement is prevail or follow those in main agreement.

Appointment – Both seller and buyer jointly agree to appoint as an escrow agent.

Opening of escrow - An escrow account is managed by an outside party in order to hold valuables, such as money, property deeds, and personal finance documents in a non-interest-bearing account, on behalf of two agreeing parties until specified conditions are met during the transaction. If the parties appoint any bank as the escrow agent, they have to create an escrow account and simultaneously create personal bank account for each party with the escrow bank.

Deposit into Escrow account – the buyer shall deposit the sale price into Escrow account. For common practice, the buyer shall, on the signing date of this agreement, deposit the earnest amount and the following payment shall be made pertaining to the payment schedule.

Escrow deposit release – Once the specified condition is met, the Escrow agent will release the Escrow amount to the seller. In contrary, where the seller fails to complete its duties on the limited period, it is deemed as breach of agreement. If that is a case, the Escrow agent shall remit the Escrow amount to the buyer. For the avoidance of doubt, the Escrow agent shall give notice to each parties upon the termination of Escrow agreement.

The Duties and Rights of the Escrow agent: Here are some duties and rights as below:

- Hold the Escrow amount
- Must not release the Escrow amount to any person including any party unless otherwise agreed by both parties.
- If there is any dispute arising out of or in connection with the agreement, the Escrow agent shall keep holding the Escrow amount until the dispute is settled and release it to any party obtained by the decision made.
- Safekeeping of Escrow account in a good faith and shall have no duties or responsibilities whatsoever, except for negligence, willful misconduct, or bad faith.
- Free from liable, losses, damages arise out of or in connection with Escrow agreement for any failure or delay in performance of obligations therein.
- Other limitations to the Escrow agent's liability.

Termination - The Escrow Agreement shall remain in full force and effect until the last payment of the Escrow amount is made or if the Escrow Agent receives joint written instruction from both parties to terminate the Agreement.

Escrow agent fee – The parties is obligated to pay the fee to Escrow agent. If it is not specified in the agreement, the Escrow agent has right to demand from the parties for an appropriate amount. Both parties may discuss who will be liable to pay the fee.

Resignation and Removal of Escrow agent - Escrow Agent may resign or be removed, at any time, for any reason provided in the agreement, by written notice of

its resignation or removal to the parties within which amount of working days before the date specified for such resignation or removal to take effect. The parties will have obligation to appoint a new Escrow agent for replacement within such period. Within this period, the Escrow agent shall perform its obligation as normal. If the parties fail to do so within such period, the Escrow, in some practice, may:

- Appoint a successor escrow agent
- Interplead the Escrow amount into the registry of any court having jurisdiction. Normally, this case is applicable when both parties bring the dispute to the court and it takes longer time. If that is the case, the Escrow agent has right to resign and request the court to custody such amount instead.

Dispute resolution - state how you solve the problem by mediation, arbitration and lately bring directly to the jurisdiction including how to handle the legal fees.

Governing law - Choose which local law pertains to the contract that it can be legally enforceable.

CONCLUSION

All in all, an Escrow agreement is a very useful transaction with a safe keeping and releasing method of the Escrow amount whereby the parties to the agreement have the peace in their minds to performing their obligations and ultimately believe that the purpose the transaction will be reached and completed successfully.

D R A F T E D B Y :

Mr. Makara NHEM, LLM
Legal Officers, ACLG
Mr. Meanpunleu PHO, LLB
Admin Officer, ACLG

R E V I S E D B Y :

Mr.Nado SATHYA, LLM
Attorney at Law, ACLG

This legal insight is provided by Asia Cambodia Law group for educational and information purposes only and is not intended and should not be construed as legal advice. The legal insight is considered advertising under applicable state laws.