

FDI and M&A Overviews for Cambodia

1. Foreign Direct Investment (Greenfield Investment)

1.1. What are the principal laws and regulations applicable to FDI in Cambodia? Are there special rules for certain foreign investors, including state-owned enterprises (SOEs)?

The principal laws and regulations applicable generally to foreign direct investment (“FDI”) in the Kingdom of Cambodia are:

- (a) Law on Commercial Enterprise dated 19 June 2005 (“LCE”);
- (b) Law on Commercial Rules and Register dated 26 June 1995 (“LCR”) as amended by the Law on Amendment to the LCR dated 18 November 1999 (“Amendment to the LCR”); and
- (c) Law on Investment dated 15 October 2021 (“LOI”).

Depending on the investment project, more sector and industry-specific laws and regulators may apply to FDI particularly where licensing is required to operate.

The Kingdom of Cambodia (hereinafter referred to as “Cambodia”) has an open and liberal foreign investment regime and places very few restrictions on the level of foreign participation in investments aside from the constitutional prohibition on foreigners owning land in Cambodia. There are no special rules or separate laws that exclusively governs foreign investors. In general, any foreign business doing business in Cambodia, including foreign state-owned enterprises, are subject to the same laws of Cambodia as would apply to local investors.

1.2. Are there any governmental and regulatory approvals required for FDI? If so, please give brief details (such as trigger threshold, relevant authorities and timing requirements)?

Relevant Authorities

FDIs are generally allowed openly and freely in many areas except for land ownership. Specific regulatory approvals and licensing may be required depending on the investment sector, as further discussed in paragraph 1.3.

Governmental approval is required where investment incentives are sought. Certain investment guarantees and protection are automatically provided under Chapter 5 of the LOI, including non-discrimination based on foreign nationality and protection against State nationalization of investor’s assets in Cambodia. To obtain specific investment incentives, such as tax exemptions, investment companies are required to register their investment project as a Qualified Investment Project (“QIP”) with the Council for the Development of Cambodia (“CDC”) or the Provincial-Municipal Investment Sub-Committee (“PMIS”), depending on the type and capital of the investment project. The PMIS regulates the licensing scheme for investments less than US\$2,000,000, whereas the CDC regulates

investment projects exceeding US\$2,000,000, located in two or more provinces or in the Special Economic Zones (“SEZs”). The different types of QIPs are (i) Export QIP; (ii) Supporting Industry QIP; (iii) Domestically Oriented QIP; and (iv) Expanded QIP. Investors shall pay a one-time application fee which covers tax registration, administrative fees, authorizations, licenses, and registrations from all relevant ministries and government departments.

The application for the QIP registration can be made either before or after company incorporation or registration with the Ministry of Commerce (“MOC”). QIP status is granted to specific investment projects upon receipt of a Registration Certificate (“RC”) and it is an administrative practice that an investment company may only carry out a single QIP project. Where the company intends to carry out multiple investment activities as QIPs, they are required to register each separate activity with either the CDC or the PMIS (Article 5.4, Sub-Decree No. 111 on the Implementation of the Amendment to the Law on Investment of the Kingdom of Cambodia, dated 27 September 2005 (“Sub-Decree No. 111”). The issuance of the RC does not exempt the investment company from applying and obtaining all other relevant operating licenses and permits as may be required under applicable Cambodian law (Article 13, LOI). All QIPs are required to obtain a Certificate of Compliance (“CoC”) from the CDC annually to receive investment incentives. The CoC confirms that the QIP has complied with all tax and investment regulations in Cambodia.

Certain investment activities including travel agencies, cigarette manufacturing, alcohol production, movie production, publishing, printing, radio and television, pawn broking and pharmaceutical imports may require specialized licenses from relevant government entities before applying for QIP status.

Timeline

Generally, an automatic approval system of investment projects is adopted, and approval must be completed within 31 working days after receipt by the CDC or PMIS of the investment proposal, unless the investment project falls within a field prohibited under the law, is environmentally sensitive or is related to national interest. Additionally, under Article 11 of Sub-Decree No.147 on the Organization and Functioning of the Council for the Development of Cambodia, the CDC shall submit for approval from the Council of Ministers any investment projects which:

- have a capital investment of US\$50,000,000 and above;
- involves politically sensitive issues;
- has exploration and exploitation of mineral and natural resources as its business objectives;
- is most likely to generate negative impacts on the environment;
- holds a long-term development strategy;
- has a purpose for some infrastructure projects such as projects based on a Build-Own-Transfer (“BOT”), Build-Own-Operate-Transfer (“BOOT”), Build-Own-Operate (“BOO”) or Build-Lease-Transfer (“BLT”) model.

In addition, the following investment activities are prohibited for all investors, both foreign and local, as listed in Section 1, ANNEX 1 of the Sub-Decree No. 111:

- Production or processing of psychotropic substances and narcotic substances;
- Production of poisonous chemicals, agriculture pesticide/insecticide and other goods that affect the public health and environment by using chemical substances prohibited by international regulations or the World Health Organization (“WHO”);
- Processing and production of electrical power by using any waste imported from a foreign country;
- Forestry exploitation business prohibited by the Forestry Law.

Monetary threshold

The monetary threshold for investment is stipulated in the below table:

Fields of Investment	Requirements for Investment
Supporting industry, which has its entire production (100%) supplying export industry	US\$100,000 or more
Production of animal feed	US\$200,000 or more
Production of leather products and related products Production of all kinds of metal products Production of electrical and electronic appliances and office materials Production of toys and sporting goods Production of motor vehicles, parts and accessories Production of ceramic products	US\$300,000 or more
Production of food products and beverages Production of products for textile industry Production of garments, textiles, footwear and hats Production of furniture and fixtures that do not use natural wood Production of paper and paper products Production of rubber products and plastic product Clean water supplies Production of traditional medicines Freezing and processing of aquatic product for export Processing of any kind of cereals and crop products for export	US\$500,000 or more
Production of chemicals, cement, agriculture fertilizer and petrochemicals Production of modern medicines	US\$1,000,000 or more
Construction of modern market or trade center	US\$2,000,000 or more More than 10,000 square meters Adequate space for car park

Training and educational institutes that provide training for skill development, technology or poly technology that serves industries, agriculture, tourism, infrastructure, environment, engineering, sciences and other services	US\$4,000,000 or more
International trade exhibition center and convention halls	US\$8,000,000 or more

1.3. Are there any industry sector controls on foreign investment?

Property sector

Foreigners are constitutionally prohibited from owning land in Cambodia. Land can only be owned privately by natural persons or legal entities with Cambodian nationality. However, under Cambodia's Land Law 2001, foreign investors are permitted to obtain land through concessions or lease land under a perpetual lease (minimum 15 years and maximum 50 years with possibility to renew for another 50 years) or limited short-term leases. Since 2010, foreigners may own condominiums or strata-titled units in co-owned buildings from the first floor up (up to 70% of the private areas of the building), following the adoption of the Law on Foreign Ownership of Co-Owned Buildings.

Labour

To work in Cambodia, foreign employees must hold a valid business visa and work permit issued by the Ministry of Labour and Vocational Training (“MLVT”). Regulations regarding the employment of foreign nationals is discussed further in paragraph 1.5.

Commerce and Financial Services sector

All businesses are required to register with the Ministry of Commerce (“MOC”) and the General Department of Taxation (“GDT”). Banking-related activities are, in addition to the MOC and GDT, supervised and regulated by the National Bank of Cambodia (“NBC”) under various legislations, depending on the particular activity.

Other sectors

Depending on the type of investment activities, the investor may also be required to obtain licenses from other relevant ministries. Some examples include the following:

- A factory license from Ministry of Industry, Science, Technology and Innovation (“MISTI”);
- A mining license from Ministry of Mines and Energy (“MME”);
- An agricultural license and concessions from Ministry of Agriculture, Forestry and Fisheries (“MAFF”);
- An environmental approval from Ministry of Environment (“MoE”);
- A major construction license and permits from Ministry of Tourism (“MOT”) for tourism-sector investments;
- A real estate developer license from Ministry of Economy and Finance (“MEF”).

1.4. Are there any government free carry interest requirements on special industry sector?

There are none.

1.5. Are there any localization requirements (e.g. minimum ratio of local employees, minimum ratio of local procurement) for FDI in Cambodia?

There is no minimum ratio placed on local employees, but there is a maximum cap placed on foreign employees. Only a maximum of 10% of a company's total local workforce may be foreign nationals. If a company intends to hire foreigners in excess of the maximum 10%, they are required to apply for an approval from the MLVT known as the annual quota permit. Pursuant to Prakas 277/20 on Special Conditions on the Employment of Foreign Nationals issued in August 2020 ("Prakas 277/20"), businesses that are not able to employ a sufficient number of Cambodian nationals, due to reasons such as skills or qualifications, may request for additional quota allowances and must provide reasons for the additional quota. Investors must nevertheless prioritize the hiring and training of existing local employees before hiring foreigners. It should also be noted that the Cambodian Labour Law will apply to every person having employment or otherwise self-employed in Cambodia, whether they are local citizens or foreign nationals

1.6. Are there any exchange control restrictions in terms of remittance of capital, profits and dividends?

Foreign exchange rules are governed by the Law on Foreign Exchange dated 22 August 1997 ("LFE"). There are no exchange control restrictions in terms of remittance of capital, profits and dividends provided the transfer is made through an authorized intermediary, being a bank holding a banking license issued by the NBC (Article 5, LFE). As such, to repatriate capital and earnings, foreign investors are required to open an account with a bank licensed by the NBC. Where a transfer relating to investment or liquidation of investment is equal to or exceeds US\$100,000, such transfer shall be reported by the authorized intermediaries to the NBC (Article 17, LFE).

Such transfers are also subject to the Law on Anti-Money Laundering and Combating the Financing of Terrorism dated 27 June 2020 ("AML Law"). Banks are required to submit a report to the Cambodia Financial Intelligence Unit ("CAFIU") for any cash transaction that is equal to or exceeds approximately US\$10,000 (the "Reporting Threshold"), including where multiple cash transactions are made and the total sum of the individual transactions exceed the Reporting Threshold in one day (Article 28, Prakas on Anti-Money Laundering and Combating the Financing of Terrorism, dated 30 March 2008 ("Prakas on AML")). If the bank suspects or has reasonable grounds to suspect that the funds are proceeds of an offence or are related to the financing of terrorism, they are also required to report such suspicions to the CAFIU (Article 29, Prakas on AML).

Where a foreign investor intends to physically transfer into or out of Cambodia domestic or foreign currencies equivalent to or exceeding US\$10,000, they are required to declare such transfer to the Customs authorities at border crossings upon arrival to or departure from Cambodia (Article 13, LFE). Customs authorities thereafter report this information to the NBC on a monthly basis.

1.7. What are the most common types of corporate legal entities established for FDI? For each type of corporate legal entities, please introduce the internal corporate governance structure. What types of corporate legal entities are recommended for partially or wholly foreign owned corporate legal entities?

The types of corporate forms available will depend on whether the foreign investor wishes to register their foreign business in Cambodia from offshore or if they want to do business directly in Cambodia.

Registering foreign business in Cambodia

A foreign business is a legal entity incorporated under the laws of a foreign country, having a place of business and doing business in Cambodia. Per Article 272 of the LCE, a foreign business shall be deemed to be doing business in Cambodia if the foreign business performs any of the following acts in Cambodia:

- a) Rents an office or any other space for the purpose of manufacturing, processing, or performing services for more than one month;
- b) Employs any person to work for it for more than one month;
- c) Performs any other act that the laws of the Cambodia authorize for foreign natural and legal persons.

Under the LCE, the following corporate forms are available for foreign businesses to do business in Cambodia:

- A representative office;
- A branch office; or
- A subsidiary company, incorporated in Cambodia under Cambodian law.

Representative Office

A representative office is not the most appropriate form for FDI as they cannot buy or sell goods, perform services or engage in manufacturing, processing or construction in Cambodia (Article 274, LCE). They are only permitted to conduct market research, to provide information to its parent company and to market and to promote the offshore parent company's products and services in Cambodia.

Branch Office

A branch office created in Cambodia may purchase and sell goods, perform services and engage in manufacturing, processing and construction as a local enterprise as long as it does

not perform acts that are prohibited by law for foreign natural or legal persons, such as owning land (Article 278, LCE). The branch office is the same entity as the foreign parent company, and therefore the foreign parent company will be legally liable for the branch's obligations, losses and debts (Article 279, LCE).

Subsidiary Company

A subsidiary is a company that is incorporated in Cambodia by the principal foreign company, with the principal foreign company holding at least 51% of its registered share capital (Article 283, LCE). The subsidiary has separate legal personality from its principal foreign company. A subsidiary may be incorporated as a partnership or a limited company, as discussed below, and may regularly carry out business similar to a local company, save for owning land. Where a subsidiary company intends to own land, at least 51% of its registered share capital must be held by a Cambodian natural or legal person.

Doing business directly in Cambodia

Limited Liability Company

A limited liability company (“LLC”) is the most common corporate entity for foreign investment and doing business directly in Cambodia. It is usually established as a subsidiary of an investor's offshore holding company. As Cambodia places few restrictions on the levels of foreign participation on investments, investors may choose to establish either a 100% foreign-owned company, a 100% Cambodian-owned company or have any combination of Cambodian or foreign shareholding. Under Article 101 of the LCE, a company shall be deemed to be a Cambodian company only if at least 51% of its registered share capital is held by Cambodian natural or legal persons.

Activities in particular sectors do require certain local equity participation, such as:

- **Owning land:** If the company intends to own land, foreigners can only hold a maximum of 49% shareholding in the company;
- **State-owned enterprises-** the Cambodian government must directly or indirectly hold more than 51% of the capital or the right to vote in state-owned enterprises;
- **Tour operators and travel agents:** individuals or entities operating as travel agents or domestic must be Cambodian individuals or entities (Article 4, Prakas No. 113 on the Issuance of Tourism Licenses for Tour Operators, Travel Agents and Branches (“Prakas No. 113”)).

An LLC may be either a private limited company or a public limited company. A public limited company is permitted to issue securities to the public and must have a minimum of three directors (Article 118, LCE).

A private limited company is the most preferred form of entity for foreign investments. It has a minimum capital requirement of KHR4,000,000 (approximately US\$1). The number of shareholders may be between 2 and 30 and there must be a minimum of one director (Articles 86 and 118, LCE). The company may not offer its shares or other securities to the

public generally, but may offer them to existing shareholders, family members and managers for the purpose of raising capital (Article 86(c), LCE). A private limited company is recommended as the shareholders' liability will be limited to the value of his or her capital contribution.

1.8. What is the procedure of registration and incorporation of foreign-owned companies?

As stated above, there are four types of business setup options available to foreigners investing in Cambodia:

- (i) private limited company;
- (ii) representative office;
- (iii) foreign branch office; and
- (iv) subsidiary.

The procedure of registration and incorporation of foreign-owned companies and locally-owned companies are the same. As per current regulation, incorporation of company shall be done through an Online Single Portal Service for each of the stages as follows:

Stages	Description
Registration with MOC	<p>A proposed name in Khmer has to be entered by a Licensed Agent for company registration of which the proposed name(s) will be automatically checked. The name can also appear in another language (most commonly English). On payment of the application for company name reservation, the name will be reserved for two weeks from the approval date. The name will be made available for other applicants following a failure to follow through in completing company incorporation and a request for extension shall be applied for. The extension for reservation of company's name can be done only once, to reserve the name for another two weeks.</p> <p>After registering the company at MOC, a Certificate of Registration will be issued.</p>
Tax registration	<p>The application form from the GDT must be completed within 4 days.</p> <p>Once registered, the GDT will issue a taxpayer identification number and the company will receive a taxpayer identification card, VAT certificate and patent tax certificate (soft copy).</p>

Notification to the MLVT	<p>Before starting the business operations, all companies with eight or more employees must submit a written declaration to MLVT.</p> <p>It must have internal regulations that adapt the general provisions of the Cambodian Labour Law of which the internal regulations must be filed within three months of the company's incorporation.</p>
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1.9. What are the documents and materials that the foreign investors need to prepare for that purpose? Is notarization or certification required?

Types of business setup	Information/Document required for incorporation
Private limited company	<ul style="list-style-type: none"> • The passport of the shareholder(s) or the certificate of incorporation if the shareholder is a company; • Articles of incorporation in both English and Khmer (must be submitted in hard copy to MOC); • Proof of address of the registered office; • Details of the registered agent; and • Details of the company directors and signed copies of the information page of each director's passport.
Representative office/ Branch Office/ Subsidiary	<ul style="list-style-type: none"> • Copy of the registration certificate and articles of association of the foreign parent company; • Letter of appointment from the foreign parent company for the authorised officer; • Copy of the passport of each director of the foreign parent company along with the signature and residential address; • Copy of the passport of the authorised officer of the representative office along with the signature and residential address; • Principal business activity in Cambodia; • Current photo no longer than three months of the authorised officer with a white background; and • Details of the premises out of which the company will operate.

1.10. How long does it normally take to complete the entire registration and incorporation process?

As mentioned under paragraph 1.9 above, registration and incorporation of company shall be done through Online Single Portal Service for the registration with MOC (Company

registration), GDT (Tax Registration) and MLVT (Announcement of the Opening of Enterprise). The application approval period is normally 8 working days, should there be no issue in between the process of incorporation, however, in practice, we find that incorporation of a new company may take 3-4 weeks.

2. M&A Laws and Regulations & Regulatory Approvals

2.1. What are the principal laws and regulations applicable to M&A transactions in relation to listed and private companies in Cambodia? What are the major issues dealt with in such laws and regulations?

The principal laws and regulations applicable to mergers and acquisitions (“M&A”) transactions in the Kingdom of Cambodia (“Cambodia”) in relation to listed and private companies are:

- Law on Competition dated 5 October 2021 (“LoC”);
- Law on Commercial Enterprise dated 19 June 2005 (“LCE”);
- Law on Commercial Rules and Register dated 26 June 1995 (“LCR”) as amended by the Law on Amendment to the LCR dated 18 November 1999 (“Amendment to the LCR”);
- Law on Investment dated 15 October 2021 (“LOI”);
- Law on the Issuance and Trading of Non-Governmental Securities dated 19 October 2007 (“Law on Issuance and Trading of Non-Governmental Securities”);
- Listing Rules of the Cambodia Securities Exchange dated 10 June 2015 (“Listing Rules”);
- Operating Rules of Securities Market of the Cambodia Securities Exchange dated 10 January 2018 (“Operating Rules”);
- Prakas on the Implementation of Listing Rules dated 3 May 2011 (“Prakas on Implementation of Listing Rules”);
- Prakas on the Implementation of the Operating Rules of the Securities Market dated 3 May 2011 (“Prakas on Implementation of Operating Rules”);
- Prakas No. 005 on Public Offering of Equity Securities dated 10 September 2015 (“Prakas No. 005”); and
- Sub-Decree No. 37 ANKR.BK on the Organization and Functioning of the Cambodia Competition Committee (“Sub-Decree No. 37”).

The LCE primarily governs procedures for company mergers and acquisitions, including procedures for board and shareholders’ resolution and approval, as discussed below in paragraph 3.4. Article 241 permits two or more companies to merge into one company or consolidate to form a new company.

A business combination, being a merger or acquisition, is defined under Article 3.3 of the LoC as either (i) the acquisition of the right to control or voting rights through the purchase of shares or assets by one entity from another entity; or (ii) the combination of two or more entities to acquire joint ownership of an existing legal entity or to form a new legal entity. The LoC primarily covers anti-competitive mergers that have the effect of significantly preventing, restricting or distorting competition in the market. Merger controls are discussed in further details below.

M&A of listed companies shall comply with the laws and regulations of the Securities and Exchange Regulator of Cambodia (“SERC”) or the Cambodia Securities Exchange (“CSX”) including the Law on the Issuance and Trading of Non-Governmental Securities and relevant listing rules.

2.2. Are there any foreign investment review required for foreign buyers in M&A? If so, please give brief details (such as trigger threshold, relevant authority and timing requirements).

Under the LoI, foreign investors are generally guaranteed equal treatment to domestic investors, save for owning land and a few local equity restrictions in certain sectors, such as tourism. Foreign investors are not required to undergo any specific review or oversight procedure in an M&A transaction, other than any due diligence exercises the parties may wish to carry out. Depending on the sector, certain approval may be required from relevant government agencies, as further discussed in paragraph 2.4, but such approval applies equally to domestic and foreign buyers.

It should be noted that where a merger or acquisition leads to Cambodian ownership of an entity decreasing to less than 51%, that entity will no longer be categorized as a Cambodian legal entity and thus will not be eligible to own land (or ground floor of a high-rise building) in Cambodia.

2.3. Are there any merger control required in M&A? If so, please give brief details (such as trigger threshold, relevant authority and timing requirements).

Merger Agreement

Article 243 of the LCE requires a merger agreement which shall include inter alia the terms and conditions of the merger, articles of incorporation of the new entity, method of converting each class of shares of each dissolving company into shares of the new entity and details of any arrangements necessary to provide for the subsequent management and operation of the new entity. Such an agreement needs to be approved by the board of directors, as discussed in paragraph 3.4.

Filing Requirements

Under Article 247 of the LCE, in a merger, the directors of the new entity are required to file the following documents with the Ministry of Commerce (“MoC”):

- (i) The merger agreement;
- (ii) Resolutions of the board of directors and shareholders of each dissolving company approving the merger agreement;
- (iii) Articles of incorporation of the new entity;
- (iv) Declarations by the directors or managers of each dissolving company that establishes, to the satisfaction of the Director of the Companies of the MoC, that there are reasonable grounds for believing that:
 - a) each dissolving company and the new entity are able to pay its liabilities as they become due;
 - b) the realizable value of the new entity’s assets will not be less than the aggregate of its liabilities and stated capital of all classes;
 - c) no creditor will be prejudiced by the merger;
 - d) adequate written notice has been given to all known creditors of the dissolving companies and no creditor has made valid and credible objections to the merger.

Upon receiving the articles of merger, the MoC will issue a Certificate of Merger (Article 248, LCE). Pursuant to Article 248, from the date shown on the Certificate of Merger, the following shall occur:

- (i) the merger of the dissolving company into the new entity will become effective;
- (ii) the property of each dissolving company continues to be the property of the new entity;
- (iii) the new entity continues to be liable for the obligations of each dissolving company;
- (iv) any civil, criminal or administrative matters involving any dissolving company remains effective in relation to the new entity; and
- (v) the articles of merger are deemed to be the articles of incorporation of the new entity and the Certificate of Merger is deemed to be the certificate of incorporation of the new entity.

Anti-Competitive Business Combinations

Under Article 11 of the LoC, any anti-competitive business combination which has or may have the effect of significantly preventing, restricting or distorting competition is prohibited, unless an exemption is granted under Chapter 3 of the LoC. The Cambodian Competition Committee (“CCC”) is the key regulatory authority established to review the effect of any business combination on competition in a Cambodian market, and to review the extent or degree to which the business combination “significantly prevents, restricts or distorts” competition for goods and services (Article 11, LoC). The CCC determines such extent or degree of impact on competition through economic analysis or other means of analysis (Article 3, LoC). At the time of writing, there is no anti-trust/merger control filings available.

Further details of Cambodia's merger control regime are to be defined subsequently by a sub-decree, although at the time of writing, such sub-decree has not yet been released (Article 11, LoC). The MOC also reviews all mergers or acquisitions of businesses as part of the share transfer process.

QIP M&A

In the event of a QIP merger or acquisition, or where there is a transfer of shares in a QIP which leads to the transferee holding 20% or more of the shares in the QIP, written approval from the Council for the Development of Cambodia (“**CDC**”) or the Provincial-Municipal Investment Sub-Committee (“**PMIS**”) must be obtained in order for the new entity to be entitled to the QIP investment incentives and guarantees. Request for approval must be submitted within 10 working days prior to the merger, acquisition or share transfer.

Exemptions under the LoC

Where a company considers that its activities would be prohibited on grounds that it violates the LoC, they may apply to the CCC for an exemption prior to engaging in the activities. The activity may be granted an exemption if it fulfills four requirements, as stipulated under Article 12 of the LoC:

- (i) There are significant identifiable technological, economic or social benefits;
- (ii) Such benefits would not exist without the activity;
- (iii) Those benefits significantly outweigh the effects caused by any determined preventing, restricting or distorting of competition; and
- (iv) The activity does not eliminate competition in any important aspects of goods or services.

The CCC has authority to determine whether the above four conditions have been satisfied and may determine an expiry date for the exemption (Article 13, LoC). If the company does not seek an exemption and the business combination violates the LoC, they will be subject to penalties under the LoC.

2.4. Are there any other governmental and regulatory approvals required for foreign buyers in M&A? If so, please give brief details (such as trigger threshold, relevant authority and timing requirements)?

Mergers and acquisitions in particular regulated sectors must be approved by the relevant government agencies, but obtaining this approval applies to both domestic and foreign buyers. There are no separate governmental and regulatory approvals specifically for foreign buyers.

Company mergers in the telecommunications industry must be approved by the Telecommunications Regulator of Cambodia (“**TRC**”) and the National Bank of Cambodia (“**NBC**”) shall approve any mergers or transfers of shares in the banking sector pursuant to

the Prakas No. B7-01-187 on Transfer of Shares of Banks dated 8 November 2001. Mergers in the insurance sector is regulated by the Ministry of Economy and Finance (“MEF”) and the Insurance Regulator of Cambodia.

3. M&A in relation to Listed Company

3.1. What are the principal methods of acquisition?

The principal methods of acquisition in Cambodia includes:

- mergers whereby two or more companies merge into one company or may consolidate to form a new company (governed by LCE); and
- acquisition of all or a majority of existing shares/assets of a company (Article 3.3, LoC).

3.2. In what circumstances (if any) is a mandatory bid obligation incurred?

Not applicable.

3.3. Is there a minimum price at which the offer must be made?

The law in Cambodia does not set a specific minimum offering price for listed shares in CSX, nor is there any regulation pertaining to the percentage threshold mandating a take-over offer.

For shares listed on CSX, the Operating Rules determines trading conditions such as base price and daily price limits. Based on Article 17 of the Operating Rules, the daily price limits for equity securities shall be equal to the amount calculated by adding or subtracting 10% of the base price, which is typically the closing price of the previous trading day or, in the case of initially listed securities, between 90% and 150% of the initial public offering price. In the event of capital increase/decrease, stock dividend or split off, the base price will be determined using the formulas as set out in Article 16 of the Operating Rules.

Investors are not required to undergo any qualification assessment process or to obtain any prior regulatory approval to trade securities listed on the CSX, but trading must go through a securities firm licensed by the CSX.

3.4. How can the function of the board of directors of the target impact a proposed acquisition?

Pursuant to Article 119 of the LCE, the powers of the board of directors includes proposing to shareholders an agreement of merger or consolidation between the company and any other person (Article 119(6)) and proposing to the shareholders the sale of all or major part of the company’s assets (Article 119(7)).

The board of directors of each company that proposes the merger, which includes the target, shall adopt a resolution approving an agreement for merger and unless otherwise provided in the articles of incorporation, this resolution shall be approved by a majority of a quorum

of the directors (Article 242, LCE). Therefore, the board of directors of the target may impact a proposed acquisition by either passing or not passing such a resolution.

Furthermore, after each company's board of directors approves the resolution of merger, the shareholders of each company proposing to merge is entitled to vote on the merger (Article 244, LCE). The shareholders of the surviving companies shall send a notice of shareholders meeting to each shareholder entitled to vote on the merger. The merger must then also be approved by a special resolution of the shareholders representing two-thirds of each company being dissolved (Article 245, LCE) An application for registration of the merger must then be filed with the MoC (Article 247, LCE).

Although LCE is silent on acquisition transactions, the same procedures regarding board and shareholders' approval will likely apply in an acquisition.

3.5. What key documentation is needed in the acquisition?

Key documents required in a typical M&A transaction include but are not limited to:

- Non-disclosure Agreement (“NDA”) - the buyers make a preliminary evaluation based on publicly accessible information before contacting the potential target. The buyers then contact the target and indicate an interest in purchasing or subscribing to the target's stock. Before beginning the due diligence process, the parties sign an NDA that spells out their commitments to confidentiality throughout the transaction;
- Legal and financial due diligence reports;
- Transaction documents, such as merger agreements, share purchase or subscription agreements, and asset transfer agreements.

3.6. Do acquisition documents require pre-approval by any regulatory body prior to publication?

Generally, the acquisition documents do not require pre-approval by any regulatory body prior to publication. However, the document may be required to be submitted together with an application for registration and approval at the competent authority depending on the industry and sector of the target company.

4. M&A in relation to Private Company

4.1. Are there any special rules in relation to the transferring of a business (compare with the simple share or asset acquisition)?

Other than a simple share or assets acquisition, there are no special rules in relation to the transferring of a business. As each part of the business will be classified as an asset to be

transferred under the asset transfer agreement, there is no distinction made under Cambodian laws and regulations between the transfer of assets and the transfer of a business.

Share acquisition:

Upon acquisition of shares, all rights and liabilities attached to the shares are effectively transferred to the new owners of the shares including the rights to receive dividends, rights to attend and vote in shareholders meeting and rights to nominate any board members etc., and the new shareholders assume liability for the losses incurred by the target company to the extent of their capital contribution. The rights and liabilities of the target company do not change.

In principle, change of shareholding (i.e. by way of shares acquisition or shares transfer) within a company is required to be approved and registered with the MoC and notified to the General Department of Taxation. If the target company carries out any Qualified Investment Project or any activity regulated by a specific regulator, such change of shareholding shall also be approved by the CDC, PMIS and/or relevant regulator. Shares transfer is subject to a stamp duty of 0.1% of the value of the transferred shares.

Assets acquisition:

As opposed to the acquisition of shares whereby the purchaser indirectly owns all assets of the target company, the acquisition of assets will allow the purchaser to control or own specific assets that are held by the target company. The rights and liabilities pertaining to such assets will be passed on to the purchaser.

Requirements in relation to asset acquisition varies depending on the type of assets subject to the transfer.

If the assets are rights of the target company under any agreements, the transfer of assets shall be made by way of assignment of rights from the target company to the purchaser.

If the assets are movable properties, transfer of ownership over the same is in principle by possession of the assets by the purchaser, save for transfer of movable property having a registration number (e.g. vehicles) where registration of the change of owner is required to be carried out with the relevant regulator. In case of vehicles, the transfer of ownership is subject to a stamp duty of 4% of the value of the property. The acquisition of assets in the case of a business transfer is not subject to the general 10% VAT (Instruction No. 15301 issued by the GDT dated 22 June 2020).

If the assets are immovable properties, transfer of ownership has to be registered with the Department of Ministry of Land Management, Urban Planning and Construction and is subject to stamp duty of 4% of the value of transaction or market value of the property, whichever is higher.

4.2. Do labor unit, works councils and other stakeholders (other than the vendors of the

target) play a role in M&A?

The Cambodian Labour Law remains silent on the right to consultation or consent of employees in an event of an M&A. In a share transfer, whether or not there is a change in control of the targeted company, such transfer does not affect the employment relationship between the corporate employer and the existing employees. However, in an asset transfer, the employees of the businesses are not automatically transferred to the buyer. The employment contracts of such employees must first be terminated or transferred through a contractual arrangement.

Furthermore, restriction on change of control may be provided in certain agreements entered into by the target company whereby shares transfer which results in change of control may be subject to prior consent from the counterparty of such agreements.

4.3. What are the principal minority shareholder rights given by law?

In relation to private limited company, there is no express provision on minority shareholder protection under the law. However, the LCE provides certain rights which are applicable to each shareholder regardless of the number of shares they are holding, such as right to access to company's record, to be notified of the shareholder's meeting and to obtain shares certificate issued by the company.

Although majority shareholders tend to control the company due to the number of votes they have, in practice, administrative requirement for certain registration of the company require collaboration from minority shareholders. For example, in case of any amendment of a company's articles of incorporation (the company's constitutional document), a written resolution of shareholders (which is required to be signed by all shareholders) shall be submitted with an application to the MOC in order to register such change. Matters requiring revisions to a company's articles of incorporation include share transfers and changes in the company's capital structure, thus minority shareholders, in practice, are offered protection.

The above answers are prepared by August 17, 2022.

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