

NEW REQUIREMENTS AND PROCEDURES FOR MERGERS IN RELATION TO (UN)FAIR MARKET COMPETITION IN CAMBODIA

March 2023 Legal Update

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The Law on Competition (“the **Law**”) was enacted in 2021 to regulate business activities which significantly prevent, restrict or distort competition in the Cambodian market. The Law covers three pillars including (1) Anti-Competitive Agreements, (2) Abuses of Dominance and (3) Anti-competitive Business Combinations (Mergers) where they have effects within Cambodian markets.

With regards to the third pillar, the Law states that any Business Combination which has or may have the effect of significantly preventing, restricting or distorting competition in the Cambodian market shall be prohibited. The requirements and procedures for Business Combinations are to be determined by a Sub-Decree.

Subsequently, on 6 March 2023, this Sub-Decree on Conditions and Procedures of Business Combinations (also known as Mergers) (“**Sub-Decree**”) was issued to set out the requirements and procedures on this matter.

The Sub-Decree applies to any Business Combination which, directly or indirectly, has or may have the object or effect of significantly preventing, restricting, or distorting competition in the market of Cambodia, regardless of whether the Business Combination takes place inside or outside the territory of Cambodia, except for Business Combination in certain industries that have been regulated by applicable laws and regulations.

According to the Law, Business Combination means:

- the acquisition of the *right of control* or voting rights through the purchase of shares or assets by one person from any other person or;
- the combination of two or more persons to acquire joint ownership of an existing legal person or a new legal person.

The Sub-Decree defines the *right of control* as one of the following:

- One person obtains ownership of more than 50% of the shares, interests, or voting rights of another person.
- One person obtains ownership of or the right to use the assets of, or one or more of the lines of business of, another person of more than 50%.
- One person has one of the following rights:
 - to directly or indirectly decide the appointment, removal or dismissal of a majority or all of the members of the board of directors or senior executives of another person;
 - to decide on the amendment of the constituting documents of another person;
 - to make important decisions on the business activities of another person including, but not limited to, selection of its legal form and organization, its lines of business operations,

- its geographic area of activities, raising, allocating and use of capital, dealing with specific customers or suppliers and other key business decisions.

Threshold

The CCC is the authority that determines the threshold of the Business Combination. This Decision on the Pre-Notification Thresholds for the Business Combinations has been issued by the Ministry of Commerce on 14 March 2023 (“**Decision**”).

The Decision makes a distinction in the threshold for a) General Business Combinations b) Business Combinations where any of the parties is a Banking and Financial Institution and c) Business Combinations where any of the parties is an Insurer or in the Securities Business.

For *General Business Combinations*, the parties to the Business Combination are obligated to pre-notify the Business Combination to the CCC, where any party to the Business Combination falls under one of the thresholds as follows:

No.	Threshold	Amount in KHR	Equivalence in US\$
1	Total assets of any party or its related Group in Cambodia	KHR 340,000,000,000	US\$ 85,000,000
2	Total sales of any party or its related Group in Cambodia; or	KHR 270,000,000,000	US\$ 67,500,000
	Input purchase turnover of any party or its related Group in Cambodia	KHR 120,000,000,000	US\$ 30,000,000
3	Transaction value of the Business Combination	KHR 41,000,000,000	US\$ 10,250,000

For *Banking and Financial Institutions*, the parties to the Business Combination are obligated to pre-notify the Business Combination to the CCC, where any party to the Business Combination falls under one of the thresholds as follows:

No.	Threshold	Amount in KHR	Equivalence in US\$
1	Total assets of any party or its related Group in Cambodia	KHR 4,500,000,000,000	US\$ 1,125,000,000
2	Total sales of any party or its related Group in Cambodia; or	KHR 420,000,000,000	US\$ 105,000,000
	Input purchase turnover of any party or its related Group in Cambodia	KHR 3,800,000,000,000	US\$ 950,000,000
3	Transaction value of the Business Combination	KHR 120,000,000,000	US\$ 30,000,000

For *Insurer or Securities Business*, the parties to the Business Combination are obligated to pre-notify the Business Combination to the CCC, where any party to the Business Combination falls under one of the thresholds as follows:

No.	Threshold	Amount in KHR	Equivalence in US\$
1	Total assets of any party or its related Group in Cambodia	KHR 1,000,000,000,000	US\$ 250,000,000
2	Total sales of any party or its related Group in Cambodia; or	KHR 280,000,000,000	US\$ 70,000,000
	Input purchase turnover of any party or its related Group in Cambodia	KHR 820,000,000,000	US\$ 205,000,000
3	Transaction value of the Business Combination	KHR 61,000,000,000	US\$ 15,250,000

The CCC has the right to amend the Pre-Notification thresholds as it deems appropriate for actual circumstances.

Pre-Notification

A party that proposes to undertake a Business Combination has to notify the Cambodia Competition Commission (“**CCC**”) prior to the completion of the proposed Business Combination.

Primary Review

Any party that is required to provide the Pre-Notification shall provide certain relevant documents and information to the CCC. Once receiving such documents and information, the CCC shall have 7 working days to issue a notice to the party of the completeness or incompleteness of such documents and information; and shall apply the process as follows:

- a. If the CCC does not issue a written notice to the party within the period as set out above, the notification shall be deemed complete and valid.
- b. The party shall provide any documents and information as required by the CCC to complete the notification conditions within 30 working days after the issuance of the CCC’s notice.

After receiving the complete notification, the CCC shall have 30 working days to issue a notice to the party of the results of its Primary Review of the proposed Business Combination by indicating any of the following decisions:

- a. The Business Combination may be completed.
- b. The Business Combination is subject to Secondary Review.

Secondary Review

In case the Business Combination is subject to the Secondary Review, the CCC shall issue a notice indicating additional documents and information required for the party to provide. The CCC shall have 60 working days to complete its Secondary Review starting from the date the party has provided the documents and information as requested. During the process of the Secondary Review, the CCC shall have the following rights:

- a. The CCC may extend the Secondary Review period 2 times, by up to 30 working days each time, by providing notice to the party.
- b. During the process of the Secondary Review, the CCC may request additional documents and information from the party. The period for completion of the Secondary Review shall be suspended until the party has fulfilled the CCC’s additional request.
- c. The CCC shall have the right to make additional requests for documents and information from the party and relevant parties.

By the expiry of the time period referred to above including any extensions or suspensions, the CCC shall issue the notice to the party of the results of its Secondary Review by indicating any of the following decisions:

- a. The Business Combination may be completed.
- b. The Business Combination may be completed subject to conditions.
- c. The Business Combination be prohibited.

If the CCC does not issue the notice within the stipulated time period, the proposed Business Combination may be completed.

A Business Combination shall not be subject to Secondary Review where any of the following conditions exists:

- a. A party being acquired has become bankrupt or may become bankrupt.

- b. Acquisition of voting shares or an interest in a joint venture is solely to underwrite the shares or the interest.
- c. Acquisition of voting shares, an interest in a combination or assets that would result from a statutory succession or testamentary succession.
- d. An acquisition of collateral or receivables, or an acquisition resulting from a foreclosure or default or forming part of a debt work-out, is made by a creditor in or pursuant to a credit transaction entered into in good faith in the ordinary course of business.

Advance Ruling Certificate

A party to the Business Combination may request the Advance Ruling Certificate issued by the CCC. Where the CCC has no grounds to challenge or commence a proceeding to prohibit a Business Combination, the CCC may issue an Advance Ruling Certificate. In this regard, the Business Combination may be completed. The requirements and the procedures for the Advance Ruling Certificate shall be determined by the decision of the CCC.

Within 6 months after the entry into force of this Sub-Decree, parties to a Business Combination shall comply with the provisions of this Sub-Decree.

The Law, the Sub-Decree and the Decision provide a comprehensive regulatory framework for the Business Combination that significantly prevents, restricts or distorts competition in the market of Cambodia.

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