

**AMCHAM EVENT**

**ASSETS TRANSFER/ BUSINESS  
TRANSFER/ SHARE  
TRANSFER/ MERGER &  
ACQUISITION**

06 JULY 2023



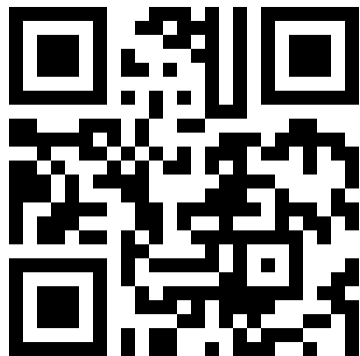
## DFDL SPEAKER



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Tax Director, Cambodia

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Vajiravann is a Tax Director based in DFDL's Phnom Penh office. She has worked professionally in Cambodia for over 10 years with expertise in compliance, tax audits, and tax advice for local and international companies in Cambodia.

She has extensive experience in delivering compliance, tax audit, and tax advisory services to clients from diverse industries.

She holds a Bachelor of Accounting degree from Paññāsāstra University and a degree in Cambodian Tax Law from CamEd Business School. She is currently pursuing her ACCA qualification at CamEd.

# CAMBODIA

Helping you achieve your commercial goals

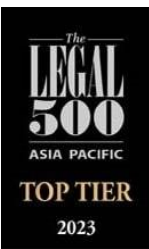
DFDL established its office in Phnom Penh in January 1995, as the first officially authorized foreign investment advisory and tax firm in Cambodia. In 2016, DFDL and Sarin & Associates joined forces and established a commercial association and cooperation in order to form a new business transactions platform to serve clients with interests in Cambodia and across the expanding ASEAN marketplace.

“

Well-regarded regional firm, DFDL is considered a go-to for Cambodian counsel by many international law firms and clients. The full-service firm offers guidance on acquisitions and corporate restructuring, as well as land use, securities, tax and project finance. Also handles employment, immigration and commercial dispute resolution mandates. Represents both Local and foreign corporates, particularly in the energy, finance and real estate sectors.”

(Chambers Asia Pacific 2023)

## DFDL Firm-wide Awards



# A COMPREHENSIVE REACH IN SOUTHEAST & SOUTH ASIA

- 10 countries
- 12 offices
- 150+ legal and tax advisers
- 25 nationalities

**Bangladesh (2011)**

3 Partners | 16 Advisers

**Cambodia\* (1995)**

8 Partners | 52 Consultants

**Lao PDR (1994)**

3 Partners | 8 Advisers

**Indonesia\* (2011)**

3 Partners | 3 Advisers

**Malaysia\* (2023)**

3 Partners | 2 Advisers

**Myanmar (1995)**

2 Partners | 10 Advisers

**Philippines\* (2015)**

5 Partners | 19 Advisers

**Singapore (2010)**

1 Partner | 1 Adviser

**Thailand (2005)**

6 Partners | 22 Advisers

**Vietnam (2006)**

7 Partners | 22 Advisers



- DFDL collaborates with the following local firms:
- Sarin & Associates, Cambodia
  - Nusantara DFDL Partnership, Indonesia
  - Robin Teow & Co, Malaysia
  - Ocampo and Suralvo Law Offices, Philippines

DFDL in Singapore is qualified as a foreign law practice and is not licensed to practice Singapore law.

# LOCAL PRESENCE, REGIONAL EXPERTISE

## DFDL



10 Countries 12 Offices	Bangladesh	Cambodia*	Indonesia*	Lao PDR	Malaysia*	Myanmar	Philippines*	Singapore	Thailand	Vietnam
	Dhaka	Phnom Penh	Jakarta	Vientiane	Kuala Lumpur	Yangon Naypyidaw	Manila	Singapore	Bangkok	Hanoi Ho Chi Minh City
Practices and Sectors	Anti-Trust and Competition					Energy, Natural Resources and Infrastructure				
	Aviation and Logistics					Investment Funds				
	Banking and Finance					Real Estate and Hospitality				
	Compliance and Investigations					Restructuring				
	Corporate, Mergers and Acquisitions					Technology, Media and Telecoms				
	Dispute Resolution					Tax and Transfer Pricing				
	Employment					-				
Desks	China			EU		India			US	

\* DFDL collaborating firms



ASSETS TRANSFER

BUSINESS TRANSFER

SHARE TRANSFER

MERGER AND ACQUISITION

# COMMON TYPES OF RESTRUCTURING

Assets Transfer

Business Transfer

Share Sale

Merger

Etc.



# ASSETS TRANSFER



- **Value Added Tax (VAT)**
  - Transferor will need to charge 10% VAT on the transfer of the assets at the market value.
  - VAT charged –claim as input credit.
  - No VAT is applied on the sale of land and money.
  
- **Transfer Tax**
  - 4% tax imposed when there is a transfer of legal ownership of immovable property and movable property.
  - The seller of the immovable property must pay the tax within three (3) months of the transfer of immovable and movable property.
  - The value of immovable and movable property – market value
  
- **Tax on Income (TOI):** Any gain realized from the transfer of assets will be taxed at 20% TOI of the Transferor.



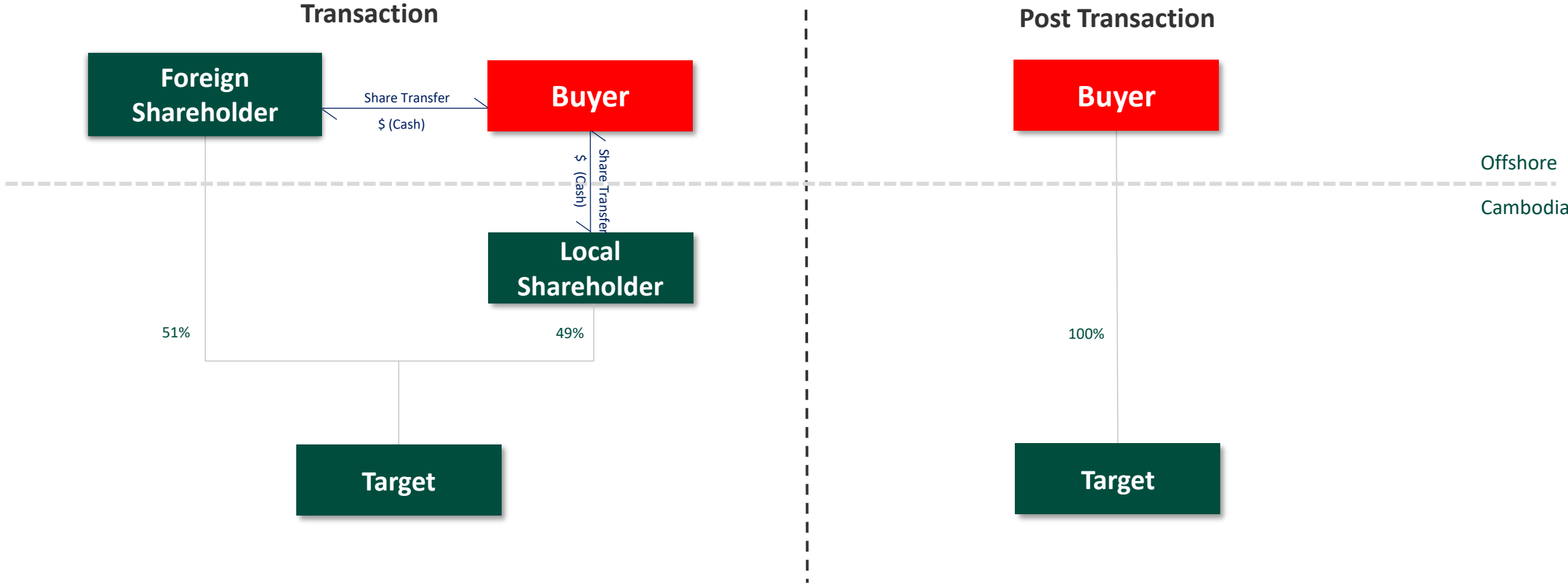
# II BUSINESS TRANSFER

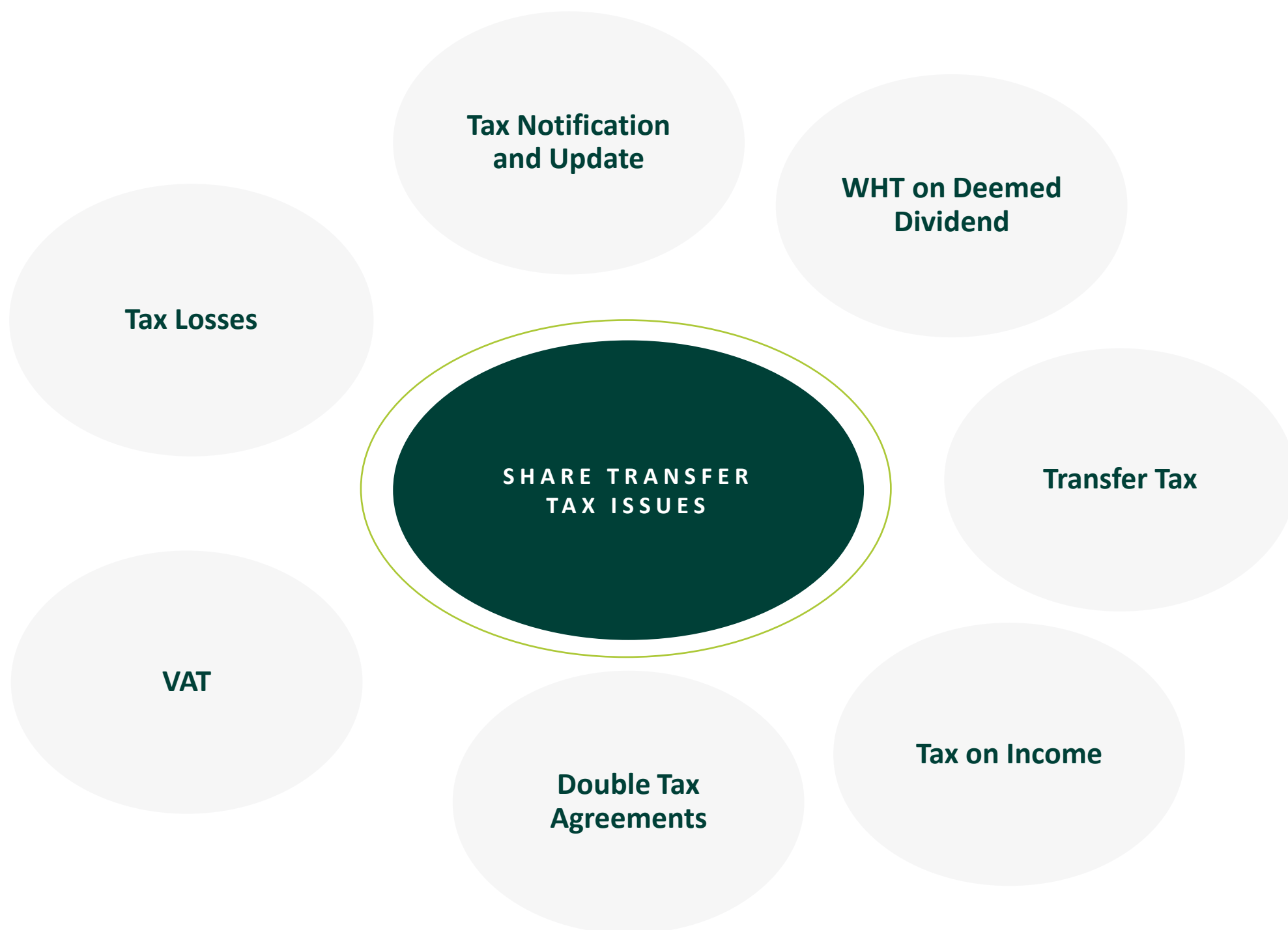
- **VAT:** VAT does not apply to the transfer of a business when all of the following conditions are met:
  - *The business is transferred as a going concern and continues the business under the new ownership;*
  - *The transferor notifies the GDT within 10 days of the date of transfer;*
  - *The transferor applies for the cancellation of its registration;*
  - *The transferee is registered for VAT as a taxable person at the time the business is acquired and must account for the VAT in its books when it sells/disposes of the assets;*
  - *The transferee retains the tax records related to the transferred business for a period of 10 years.*
  
- **Transfer tax:**
  - 4% tax is imposed when there is a transfer of legal ownership of immovable property and movable property.
  - The seller of the immovable property must pay the tax within three (3) months of the transfer of immovable and movable property.
  - The value of immovable and movable property – market value
  
- **Tax Credit:** Any tax credits in Transferor would not be able to be transferred to Transferee. (no clear rule, ruling should be submitted to the GDT)
  
- **TOI:** Any gain realized from the transfer of business will be taxed at 20% TOI of the Transferor (ie: capital gain tax)



# ||| SHARE TRANSFER

# SHARE TRANSFER - DEAL STRUCTURE





- **Tax Notification and update-** within 15 days after receiving approval from MOC
  
- **14% WHT (No DTA) on Deemed Dividend**  
A change of shareholding in the Cambodian entity will trigger a deemed dividend with respect of the retained earnings that relate to the share transfer from non-resident shareholders.
  
- **Transfer Tax:**
  - *0.1%* : General share transfer in Cambodian entity, not *immovable property company*
  - *4%* : A new Law on Taxation (LOT) was introduced in Cambodia in May 2023. The LOT revised the rate of transfer tax for the transfer of all/part of the shares in an Immovable Property Company from 0.1% to 4%.
  - Share value- the market value of the share.
  - The transfer tax is payable by within three (3) months from the approval of the Ministry of Commerce of the share transfer.

The LOT defines an *Immovable Property Company* as any company that directly or indirectly holds immovable property which makes up more than 50% of the total assets of the company.

- **TOI:** Any gain from the share transfer is taxed at the Cambodian entity as part of taxable income.

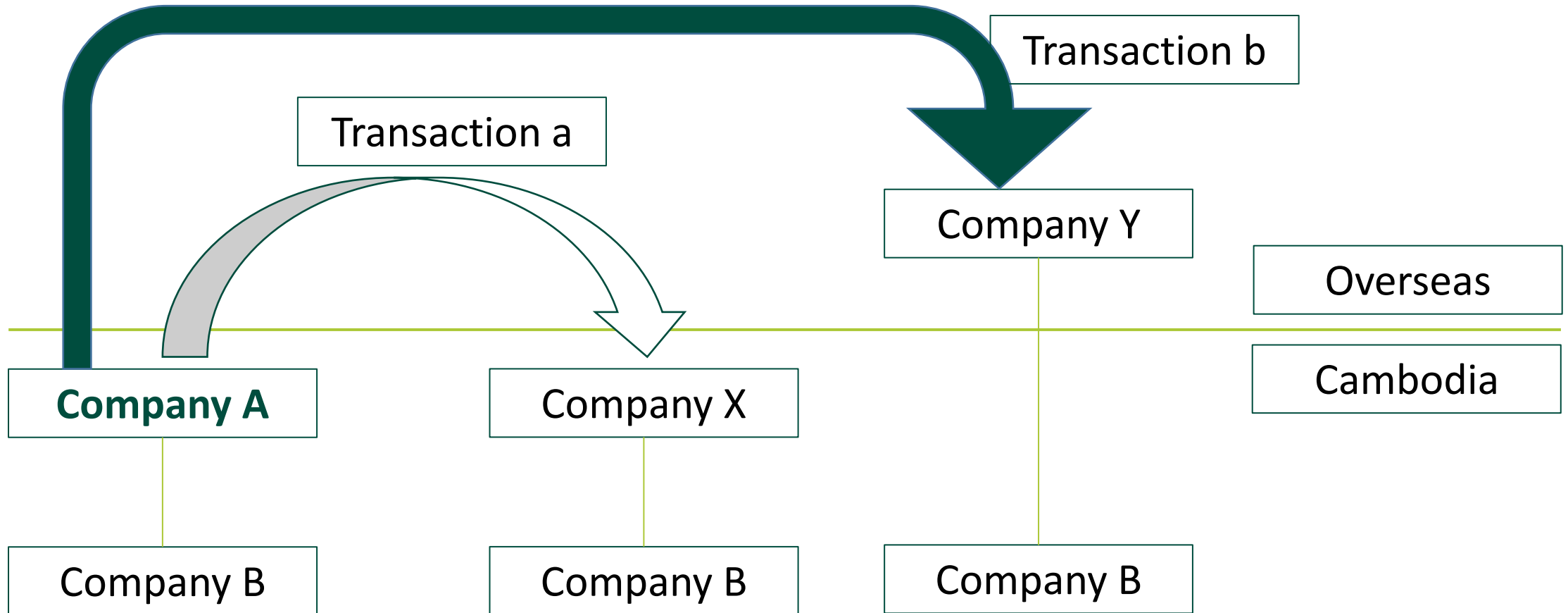
*Note that any gain for the sale of shares in Cambodian Company of individual or non-resident shareholder is taxed through Prakas on Capital gain tax. However, this Prakas will be implemented from 1 January 2024 onwards.*

Please see examples 1 and 2 in the next slides.

- **Loss carried forward:** The change of ownership is no longer effected to the forfeiture of loss carried forward of the Cambodian entity.
- **VAT:** No VAT is applied on the share transfer.



Example 1



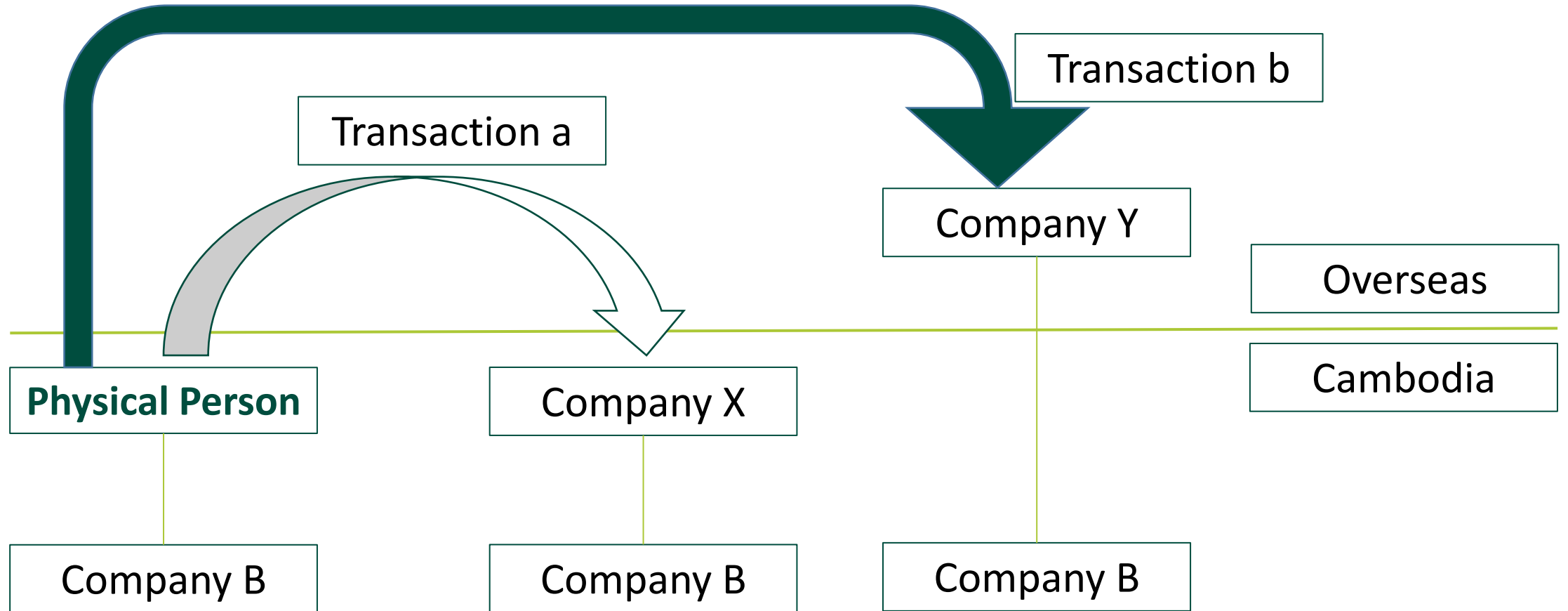
## Example 1– Transaction a

- Company A
  - Received Capital Gain
  - Has an obligation to pay tax on Capital Gain under Prakas 098
- Company B
  - Not received Capital Gain
  - No obligation to pay tax
- Company X
  - Not received Capital Gain
  - No obligation to pay tax

## Example 1 – Transaction b

- Company A
  - Received Capital Gain
  - Has obligation to pay tax on Capital Gain under Prakas 098
- Company B
  - Not received Capital Gain
  - No obligation to pay tax
- Company Y
  - Not received Capital Gain
  - No obligation to pay tax

## Example 2



## Example 2 – Transaction a

- Physical Person
  - Received Capital Gain
  - No tax mechanism for Physical Person to pay tax on Capital Gain
- Company B
  - Not received Capital Gain
  - No obligation to pay tax
- Company X
  - Not received Capital Gain
  - No obligation to pay tax

## Example 2 – Transaction b


- Physical Person
  - Received Capital Gain
  - No tax mechanism for Physical Person to pay tax on Capital Gain
- Company B
  - Not received Capital Gain
  - No obligation to pay tax
- Company Y
  - Not received Capital Gain
  - No obligation to pay tax

- Prakas 346, auspiciously dated 1 April 2020, introduced a capital gains tax regime to Cambodia
- Focus on immovable property – some reference to shares
- GDT approach – relates to transfers on the CSX
- Deferred to 1 January 2024
- we have seen in recent months an array of various attempts by the Cambodian tax authority to tax deemed gains from share transfers.
  
- These attempts range from trying to treat the transfer of shares in a Cambodian entity as the disposal of a fixed asset to asserting that deemed gains from share transfers be considered to be Cambodian sourced income of a Cambodian taxpayer that should be taxed at the level of the Cambodian entity.




## Square peg – round hole?

- Use of Article 7 of the Law on Taxation – who derives the gains?
- Cambodia's WHT system requires payments to be made/expensed at the Cambodian level
- If not then need a specific regulation like Prakas 372.



The expanding double tax agreement (**DTA**) network of Cambodia in recent times has been impressive, with the total number of signed DTA's at eleven at the time of writing, with more slated to be signed shortly.




Countries who have signed DTAs with Cambodia include Singapore, China, Brunei, Thailand, Vietnam, Indonesia, Hong Kong, Malaysia, South Korea, Macau and Turkey.



Much more than reductions in the withholding tax rates of cross-border transactions.



Taxes covered by the DTAs include capital gains tax.



Article 14 of the DTAs, the default position on capital gains tax is that capital gains may only be taxed in the jurisdiction where the transferor of the shares is tax resident unless otherwise stated in Article 14.



# IV | MERGER AND ACQUISITION

- Article 215 of New LOT:

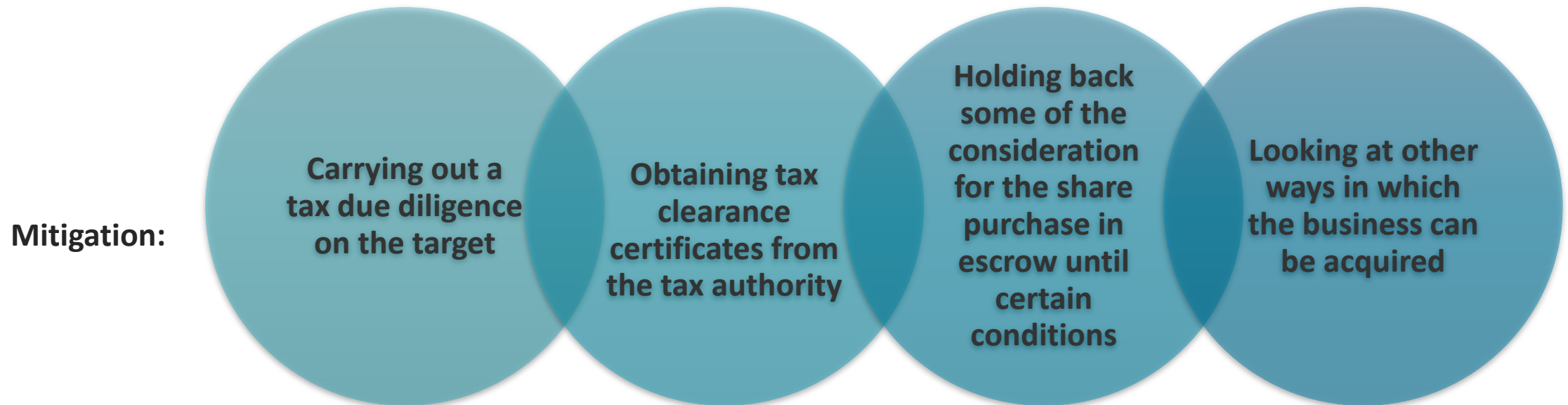
***Article 215- Business Transfer or Share Transfer or Merger of Enterprise***

- *In the case of business or share transfer, the new owner shall be responsible for all the business enterprise's tax liability.*
- *In the case of a merger of two or more enterprises, the enterprise that continues or arises from the merger of two or more shall be liable for all tax liabilities.*



- Tax Notification and update- 15 days after receiving email approval from the Ministry of Commerce?
- Tax Liabilities?
- Transfer Tax?
- 20% TOI?
- 14% WHT?
- VAT?

- You can see the potential and benefits of the business restricting, but you could have some serious issues down the road if you don't look under the bonnet!
- Historical undisclosed tax liabilities have always been a big factor when acquiring shares in a Cambodian company.





Q&A



**THANK YOU**



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# LEGAL REQUIREMENT AND PROCESS FOR THE MERGER AND ACQUISITION (M&A)

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# I. GENERAL REQUIREMENT

## 1. 1 RELEVANT LAWS AND REGULATIONS

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# 1. GENERAL REQUIREMENTS

## 1.1 RELEVANT LAWS AND REGULATIONS

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- 1) Law on Commercial Enterprises 2005 (“**LCE**”);
- 2) Law on Competition 2021 (“**LoC**”)
- 3) Sub-Decree No. 60 on Conditions and Procedures for Mergers and Acquisition of Businesses dated 06 March 2023 (“**Sub-Decree No. 60**”);
- 4) Decision No. 095 dated 14 March 2023 (“**Decision No. 095**”);
- 5) Prakas No. 177 on the Requirement and Procedure of Registration of Business Combinations Requiring the Pre-Notification dated 14 June 2023 (“**Prakas No. 177**”).
- 6) Prakas No. 178 on the Post Notification of the Business Combination issued by the MOC dated 14 June 2023 (“**Prakas No. 178**”);
- 7) Decision No. 179 on the Procedure for the Issuance of Advance Certificate on the Business Combination issued by the MOC dated 14 June 2023 (“**Decision No. 179**”).



# 1. GENERAL REQUIREMENTS

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## 1.1 RELEVANT LAWS AND REGULATIONS - LCE



# 1. GENERAL REQUIREMENTS

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## 1.1 RELEVANT LAWS AND REGULATIONS - LoC

**Anti Competitive  
Behavior**



**An actions taken by a business or organization to limit, prevent, restrict, or distort competition for goods or services, usually in order to gain an unfair advantage or dominate the market.**

# 1. GENERAL REQUIREMENTS

## 1.1 RELEVANT LAWS AND REGULATIONS - LoC

### Horizontal Agreement

- Agreement which is made between persons who operate, or are likely to operate, at the same level in the production or distribution chain.
- Lead to Cartel.

### Vertical Agreement

- Agreement which is made between persons who operate, or are likely to operate, at different levels in the production or distribution chain.

### Abuse of Dominant Power in the Market

- A person with dominant power shall be restricted with certain activities under the Competition Law.
- Such activities can be exempted if there is a reasonable reason and the activity does not affect the market.

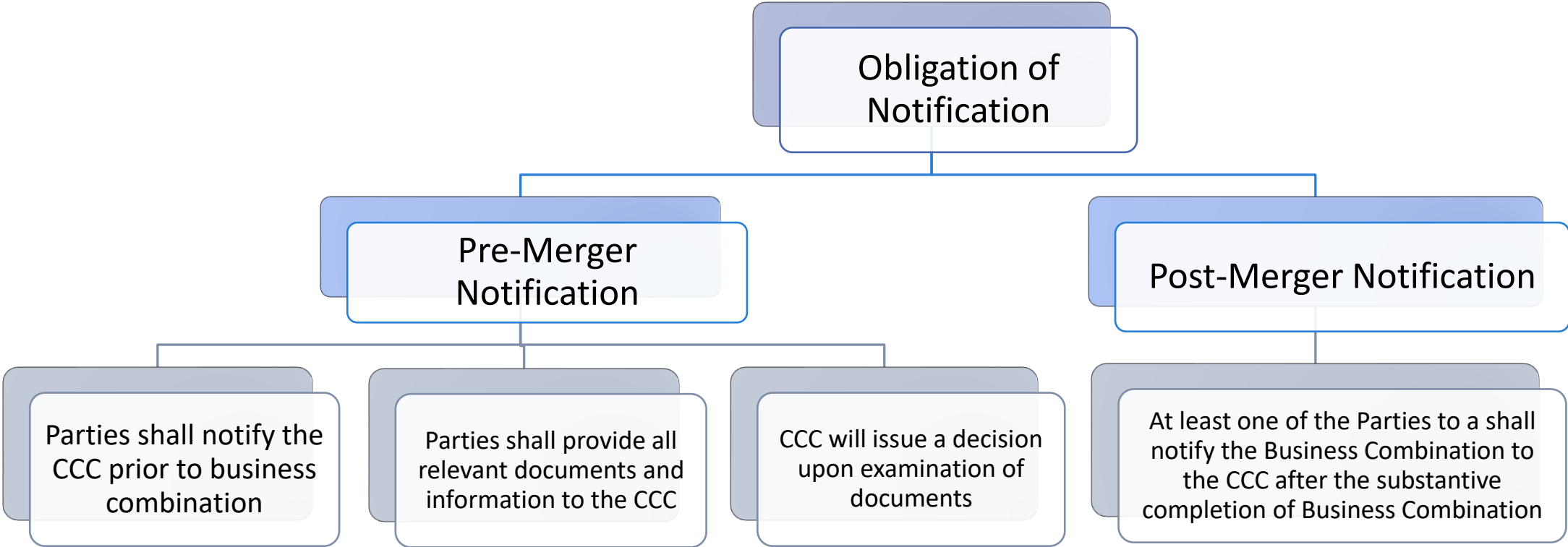
### Business Combination

- A business merger where it affects the competition shall be prohibited.
- Any form of business merger shall be monitored and evaluated by the the Competition Commission of Cambodia (“CCC”).

# 1. GENERAL REQUIREMENTS

## 1.1 RELEVANT LAWS AND REGULATIONS - LoC

### Business Combination





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# I. GENERAL REQUIREMENT

## 1. 2 PRE NOTIFICATION

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# 1. GENERAL REQUIREMENTS

## 1.2 PRE-NOTIFICATION

### 1.2.1 Limitation of Threshold (Ref. Decision No. 095)

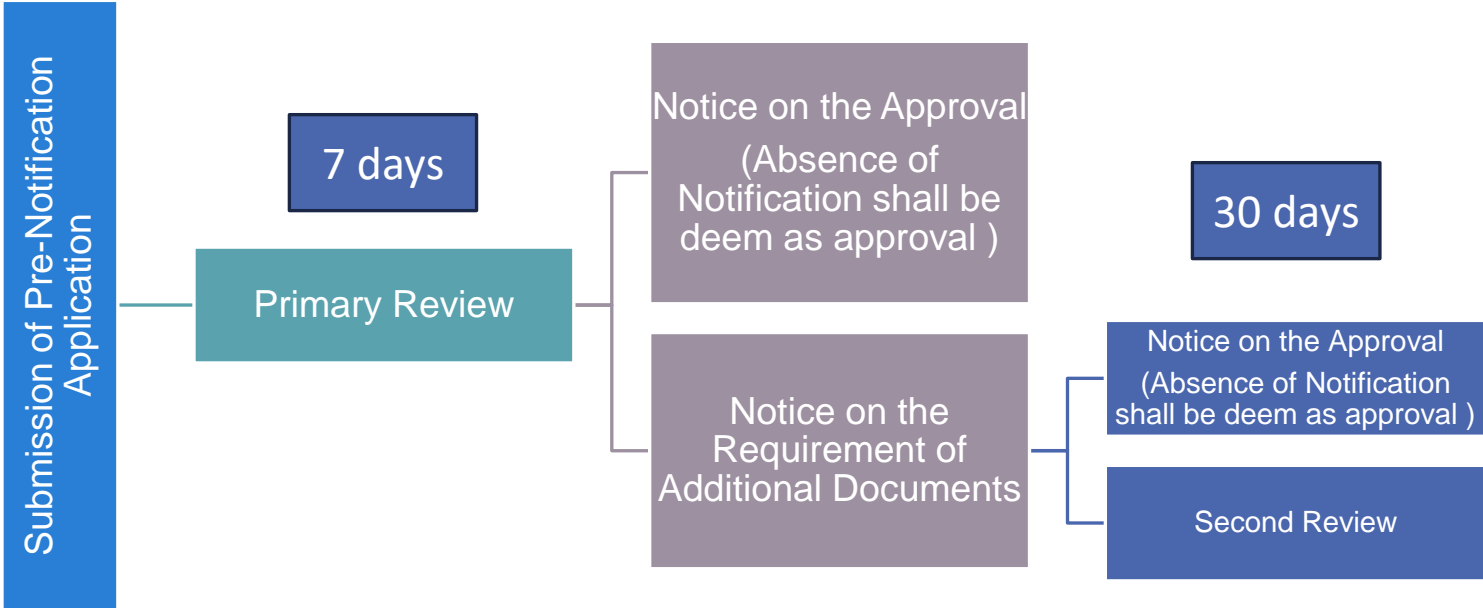
Sector	Total Assets for Previous Financial Year	Total Revenue for Previous Financial Year	Total Value of Parties' purchase orders for Previous financial year	Business Merger transaction value
General Business	At least USD85M (USD1=4,000 Riels)	At least USD67,5M	At least USD30M	At least 10,25M
BFI Sector	At least 1,125M	At least USD105M	At least USD950M	At least USD30M
Insurance and Securities Institution	At least USD250M	At least USD70M	At least USD205M	At least 15,25M

# 1. GENERAL REQUIREMENTS

## 1.2 PRE-NOTIFICATION

### 1.2.2 Primary Review

#### A. Process



# 1. GENERAL REQUIREMENTS

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## 1.2 PRE-NOTIFICATION

### 1.2.2 Primary Review

#### B. Information and Documents Required

1. The notification form issued by the CCC;
2. The description of the key terms of the relevant(s) agreements in relation the proposed Business Combination as well as a current draft or executed copy of the agreement or memorandum of understanding with respect to the proposed Business Combination;
3. Documents and Information for each Party including:
  - Contact persons 'name, email and phone number;
  - Jurisdiction of incorporation and legal registration number;
  - Constating documents of each Party;
  - Registered address;
  - List of major shareholders of each Notifying Party, including ultimate parent company if applicable;
  - List of any affiliates or members of the same Group that may potentially be relevant to a review of the Business Combination.



# 1. GENERAL REQUIREMENTS

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## 1.2 PRE-NOTIFICATION

### 1.2.2 Primary Review

#### B. Information and Documents Required

4. Financial statements of each Notifying Party for the year immediately preceding the year of notification as well as any more recent quarterly accounts of such Party;
5. Identification of each type of good or service in which each Notifying Party (including Persons in the same Group as a Party) directly or indirectly involved in the Business Combination is conducting business or the revenues of each Party for the two (2) years immediately preceding the year of notification and the year of notification in the relevant Market.

# 1. GENERAL REQUIREMENTS

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## 1.2 PRE-NOTIFICATION

### 1.2.2 Primary Review

#### B. Information and Documents Required

**Note :** The documents and information listed above is required to be provided in Khmer language except:

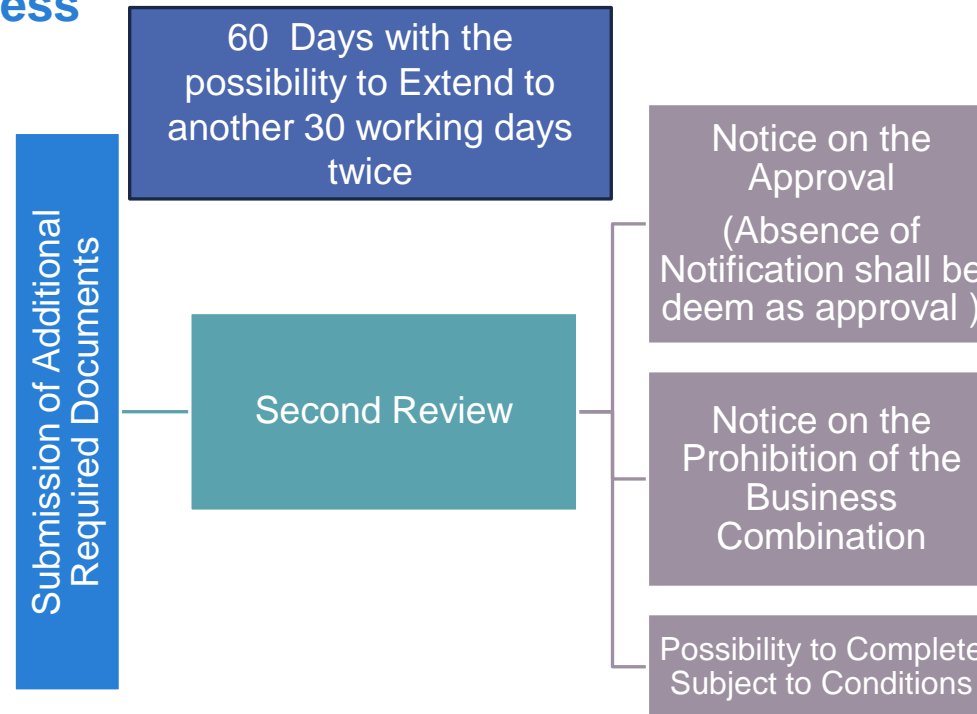
1. Any legal names of Persons or locations;
2. Any information expressed numerically;
3. Any final or draft legal documents, but the description of key terms must be provided in Khmer language;
4. Constating documents must be provided in English or Khmer language; and
5. Financial statements may be provided in either English or Khmer language.

# 1. GENERAL REQUIREMENTS

## 1.2 PRE-NOTIFICATION

### 1.2.3 Second Review

#### A. Process



# 1. GENERAL REQUIREMENTS

## 1.2 PRE-NOTIFICATION

### 1.2.3 Second Review

#### B. Exemption

#### Horizontal Business Combination

The aggregate market share of the Notifying Parties (and, where applicable, the relevant Groups) is less than 30(thirty) percent in each relevant Market;

The aggregate market share of the Notifying Parties (and, where applicable, the relevant Groups) is equal to or greater than 30 (thirty) percent in any relevant Market and the HHI in such relevant Market is less than 1,800 (one thousand eight hundred);

The aggregate market share of the Parties (and, where applicable, the relevant Groups) is equal to or greater than 30 (thirty) percent in any relevant Market and the HHI in such relevant Market is greater than 1,800 (one thousand eight hundred) and the increase in HHI in such relevant Market after completion of the proposed Business Combination is less than 150 (one hundred fifty).

# 1. GENERAL REQUIREMENTS

## 1.2 PRE-NOTIFICATION

### 1.2.3 Second Review

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#### B. Exemption

<p><b>A Vertical Business Combination or Conglomerate Business Combination</b></p>	<p>market share of any Notifying Party (and, where applicable, the relevant Groups) is less than 30 (thirty) percent in each relevant Market.</p>
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# 1. GENERAL REQUIREMENTS

## 1.2 PRE-NOTIFICATION

### 1.2.3 Second Review

#### B. Exemption

#### Special Conditions of Secondary Review

1. A Party being acquired has failed or is likely to fail;
2. An acquisition of voting shares or of an interest in a joint venture is solely for the
3. purpose of underwriting the shares or the interest;
4. An acquisition of voting shares, an interest in a combination or assets that would result
5. from a statutory succession or testamentary succession;
6. An acquisition of collateral or receivables, or an acquisition resulting from a foreclosure or default or forming part of a debt work-out, made by a creditor in or pursuant to a credit transaction entered into in good faith in the ordinary course of business;

# 1. GENERAL REQUIREMENTS

## 1.2 PRE-NOTIFICATION

### 1.2.4 Registration Requirement

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#### **Article 12 of the Sub-Decree No. 60 and Article 3 of the Prakas No. 177 :**

One of the Notifying Parties of the Business Combination Required for Pre-Notification shall submit a registration form within 30 (thirty) working days after substantive completion of the Business Combination to the Cambodia Competition Commission (“**CCC**”)

# 1. GENERAL REQUIREMENTS

## 1.2 PRE-NOTIFICATION

### 1.2.4 Registration Requirement

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Registration Application shall consist of as follows :

1. a registration form for Business Combinations;
2. a copy of the certificate of tax compliance from the General Department of Taxation of the Ministry of Economic and Finance;
3. a copy of the business registration and any documents pertaining to alienation from Ministry of Commerce and relevant ministries and institutions;
4. a copy of documents from relevant sectoral regulators ministries, and institutions pertaining to the request for Business Combinations (if applicable);
5. a copy of the proof confirming the CCC's approval of the Business Combination; and
6. a copy of the receipt of the registration for Business Combinations.





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# I. GENERAL REQUIREMENT

## 1. 3 POST NOTIFICATION

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# 1. GENERAL REQUIREMENTS

## 1.3 POST NOTIFICATION

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### **Who are required to submit post notification of business combination to the CCC?**

- Parties to the business combination subject to Post-Notification pursuant to Article 4 of Prakas No. 178 shall notify the CCC within 30 (thirty) working days after substantive completion of the Business Combination as stipulated in Article 13 of the Sub-Decree No. 60 and Article 5 of Prakas No. 178.

### **Any exception to the above?**

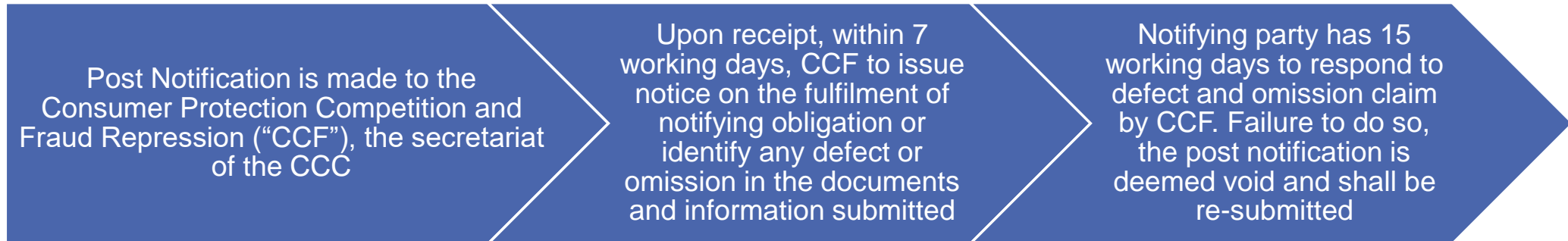
- Businesses that are already subject to pre-notification required by the CCC under Chapter 2 of the Sub-Decree No. 60, in the event that the threshold meet or exceed 50 (percent of the threshold specified in Articles 3, 4 or 5 of the Decision No. 095.

# 1. GENERAL REQUIREMENTS

## 1.3 POST NOTIFICATION

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### Post Notification Timeframe





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## I. GENERAL REQUIREMENT

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# 1. 4 ISSUANCE OF CERTIFICATE OF ADVANCE RULING

# 1. GENERAL REQUIREMENTS

## 1.4 Issuance of Certificate of Advance Ruling

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The parties requesting for the Issuance of an Advance Ruling Certificate shall submit the application to the CCC prior to the substantive completion of the Business Combination. Regardless of whether the Business Combination is subject to pre or post notification, the requesting parties may request the Advance Ruling Certificate issued by the CCC in accordance with the requirements set forth in the application form for Issuance of an Advance Ruling Certificate.



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## I. GENERAL REQUIREMENT

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# 1. 5 SIMPLIFY NOTIFICATION AND EXEMPTION

# 1. GENERAL REQUIREMENTS

## 1.5 SIMPLIFIED NOTIFICATION AND EXEMPTION

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### Who can submit the simplified notification?

Certain business combinations are subject to only a simplified notification which include application form and general information of parties of transaction to the CCC such as:

- Notified parties of business combination are from the same corporate group;
- Business combination have been approved by the RGC; and
- Other transaction as issued by the CCC.

### Within what timeframe?

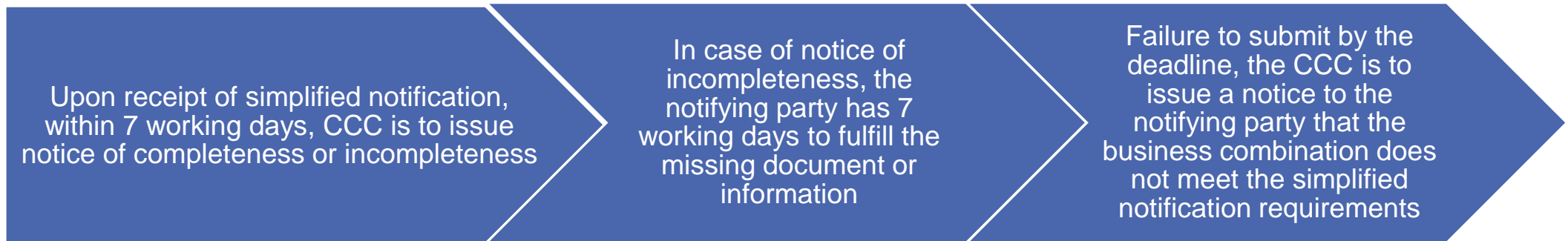
Within 7 working days upon the receipt of simplified notification, the CCC will determine whether such notification is valid and complete or should require additional documents or information or should such notification fulfil criteria for simplified notification or not.

# 1. GENERAL REQUIREMENTS

## 1.5 SIMPLIFIED NOTIFICATION AND EXEMPTION

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### Within what timeframe?





# 1. GENERAL REQUIREMENTS

## 1.5 SIMPLIFIED NOTIFICATION AND EXEMPTION

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### **What business combination is exempted?**

Certain business combination that is normally prohibited may be exempted if:

- Sufficient technology, economic or social benefits resulting from such business combination;
- Without such combination, such benefit would happen;
- Benefit significantly outweighs the anti-competitive effects; and
- Such combination does not eliminate competition in relevant goods and services.



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ដើម្បីជំរុញនូវសេដ្ឋកិច្ច និងសេដ្ឋកិច្ច  
Legal and Economic Empowerment

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# SPECIFIC REQUIREMENT FOR EACH REGULATED SECTOR

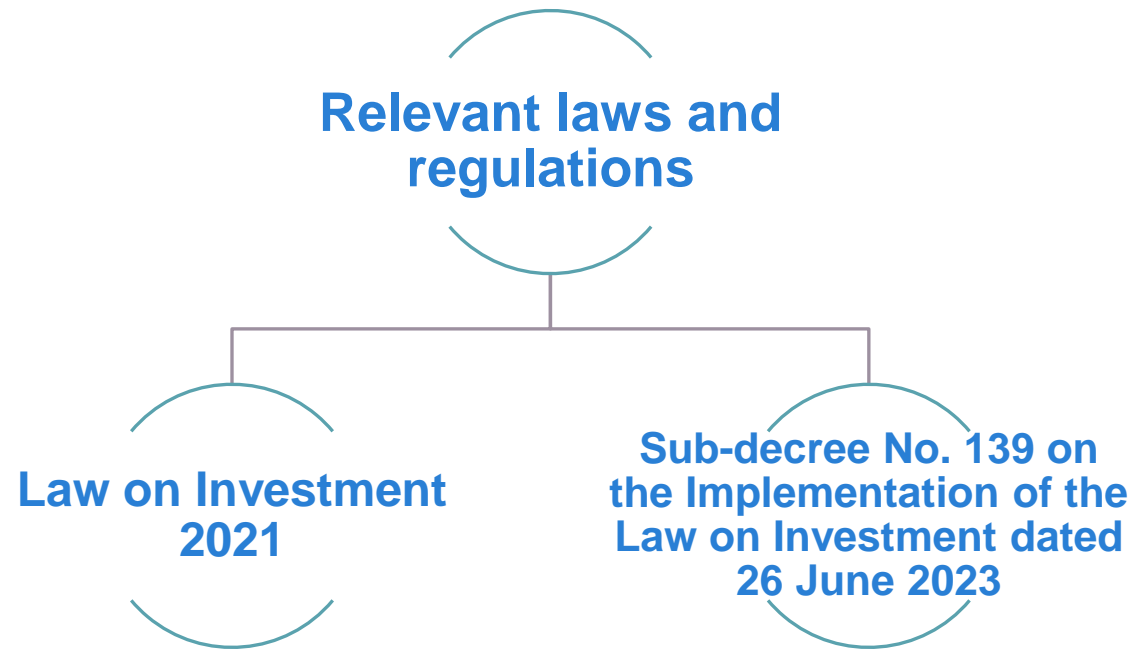
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## 2. SPECIFIC REQUIREMENTS

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### 2.1 QUALIFIED INVESTMENT PROJECT (“QIP”)

#### 2.1.1 Relevant Laws and Regulations



## 2. SPECIFIC REQUIREMENTS

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### 2.1 QIP

#### 2.1.2 Conditions and Requirements

##### Mergeable Person

- Two or more QIP's may be merged into one QIP by retaining any of the QIP's names or creating an entirely new name;
- Those who are yet to be qualified as investors may also make a written request to sell, purchase or merge a QIP to the Council for the Development of Cambodia (CDC) or Municipal-Provincial Investment Sub-Committee (MPISC)

##### Transfer or Existence of Incentives, Guarantees and Protection

- Sale, purchased or merged QIP business can retain its incentives, guarantees and protection on investments, and other obligations in accordance with the Law on Investment and this Sub-decree should such sale, purchase or merger is not prohibited by the existing laws and regulations or restricted by the registration certificate or other concession contracts
- Purchasers who are behind the sale, purchase or merger of one or more QIP's that are not registered with the CDC or MPISC shall lose their incentives, guarantees, and protection on investments.

##### Existence of Legal Personality

- The merger does not forfeit legal personality of the investors unless such investors are legal entities that have been dissolved in accordance with the existing laws and regulations

## 2. SPECIFIC REQUIREMENTS

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### 2.1 QIP

#### 2.1.2 Conditions and Requirements



**Written Request to CDC or  
MPISC**

- Any person who wishes to sell, purchase or merge the QIP shall provide a written request to the CDC or MPISC

## 2. SPECIFIC REQUIREMENTS

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### 2.1 QIP

#### 2.1.2 Conditions and Requirements

**Application  
for Written  
Approval  
from CDC or  
MPISC**

1. Shareholder's or board of directors' resolution attached with a copy of articles of incorporation of the foreign parent company translated into Khmer language or English, attaching with company stamp certified by lawyer or notary in the event that the shareholder is a foreign legal entity.
2. Name of the investor who is to implement the QIP after the merger.
3. Merger agreement.
4. Valid articles of incorporation of the legal entity who is to implement the merged QIP.
5. Clearance certificate on tax and other debts.
6. Certificate on the handover-receipt of inventory list granted incentives by the CDC or MPISC.
7. Khmer identity card or foreign passport (new member).

## 2. SPECIFIC REQUIREMENTS

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### 2.1 QIP

#### 2.1.2 Conditions and Requirements

##### Completion of Merger

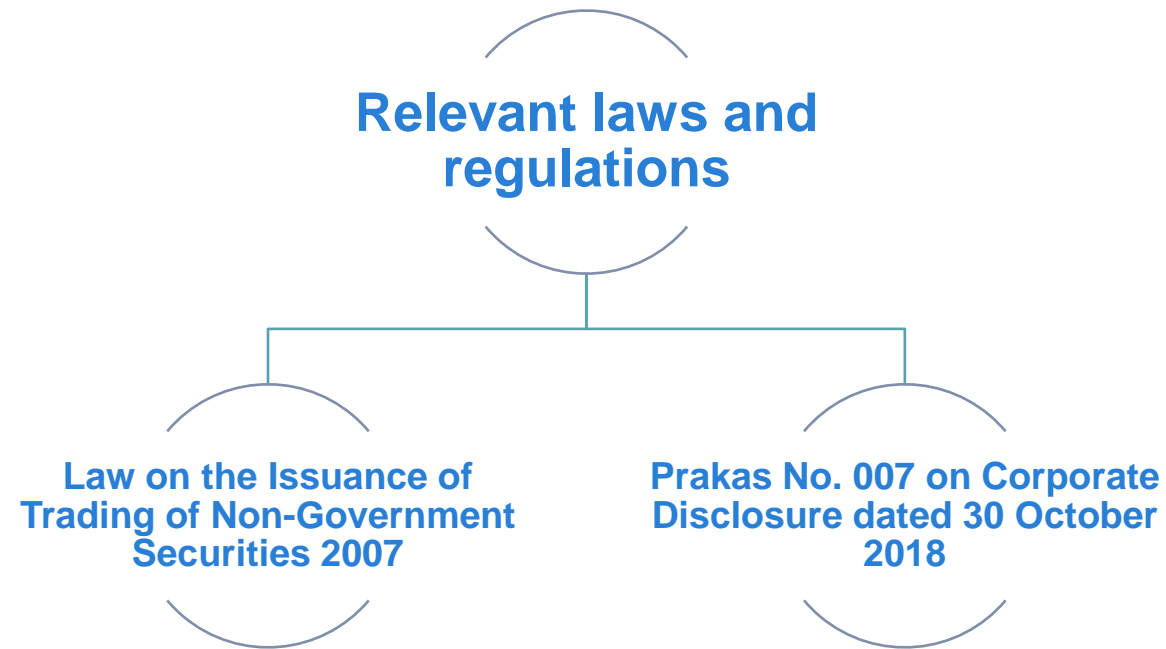
1. The QIP shall be deemed merged upon the receipt of official approval and recognition on the new articles of incorporation of the legal entity who is to implement the QIP from the CDC or MPISC.
2. Investors who are to implement the merged QIP shall be subject to all existing rights and obligations towards the QIP.

## 2. SPECIFIC REQUIREMENTS

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### 2.2 LISTED ENTITIES

#### 2.2.1 Relevant Laws and Regulations





## 2. SPECIFIC REQUIREMENTS

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### 2.2 LISTED ENTITIES

#### 2.2.2 Conditions and Requirements

##### Written Notification Obligation to the SECC

- **Prior Notification** : Any merger of listed entities shall be subject to the written notification to the Securities and Exchange Commission of Cambodia (SECC) immediately and such merger can only proceed upon the receipt of the pre-approval from the General Director of the SECC.
- **Post Notification** : Upon the completion of the merger transaction, listed entities shall notify the result of such transaction to the SECC within 3 working days.

## 2. SPECIFIC REQUIREMENT

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### 2.2 LISTED ENTITIES

#### 2.2.2 Conditions and Requirement



## 2. SPECIFIC REQUIREMENTS

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### 2.2 LISTED ENTITIES

#### 2.2.2 Conditions and Requirements

#### Information Disclosure Obligations

Any merger of listed company shall be subject to the disclosure of information to the SECC. Such disclosure of Information shall consist of any and all information as follows :

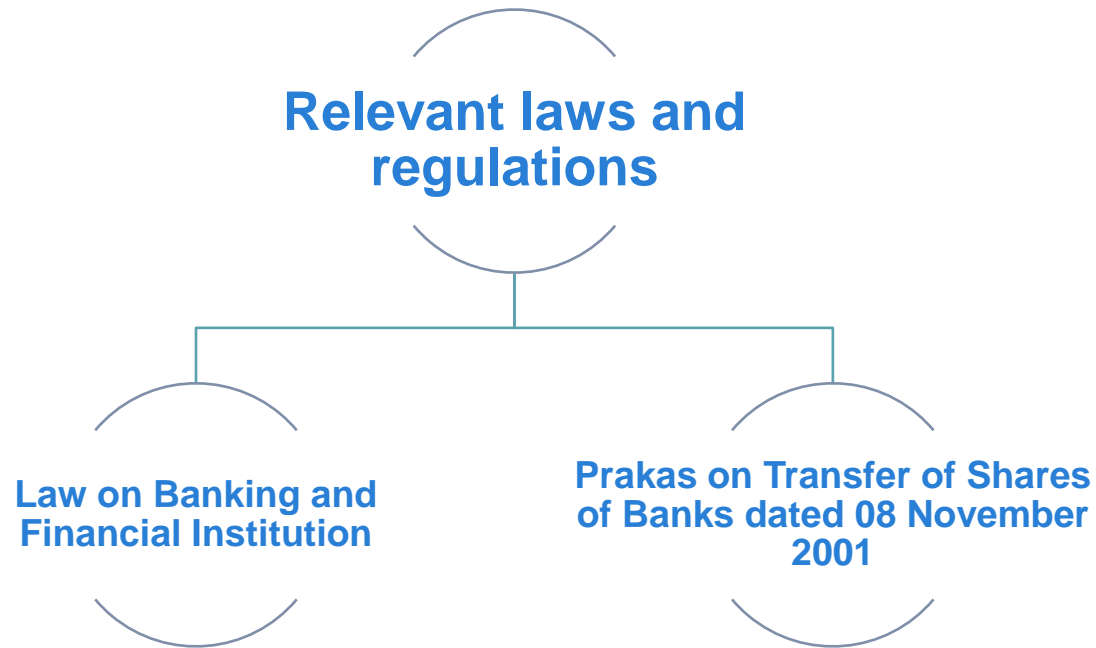
1. Board of directors or shareholder's resolution;
2. Purpose of merger and acquisition;
3. Information of the entity that is the subject of the merger and acquisition;
4. Detailed information on the merger and acquisition; and
5. Other information as required by the General Director of SECC.

## 2. SPECIFIC REQUIREMENTS

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### 2.3 BANKING AND FINANCIAL INSTITUTIONS

#### 2.3.1 Relevant Laws and Regulations



## 2. SPECIFIC REQUIREMENTS

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### 2.3 BANKING AND FINANCIAL INSTITUTIONS

#### 2.3.2 Conditions and Requirements

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**The following acts shall be subject to prior authorization from the National Bank of Cambodia**

any transfer enabling any shareholder or group of shareholders to acquire or lose a half, a third, or a fifth or a tenth of their voting rights in the bank

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any transfer which results in the change of control power over the management of the bank

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any transfer of shares resulting in an increase or decrease equal or superior to 5% and inferior to 10% of the voting rights possessed by any shareholder of the bank

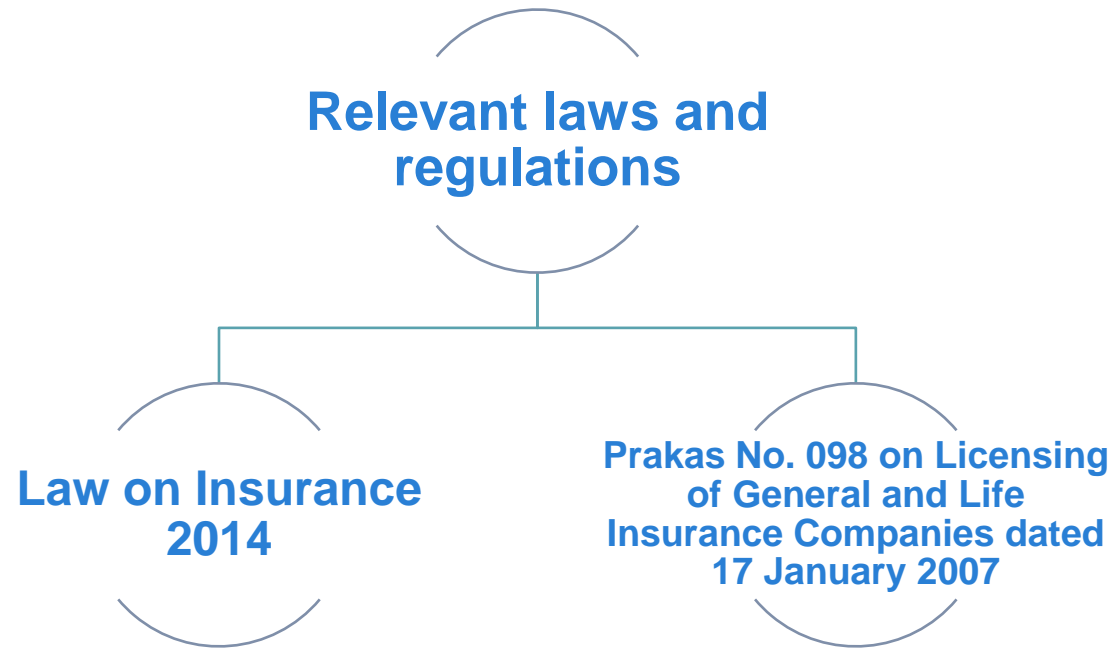
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## 2. SPECIFIC REQUIREMENTS

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### 2.4 INSURANCE

#### 2.4.1 Relevant Laws and Regulations



## 2. SPECIFIC REQUIREMENTS

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### 2.4 INSURANCE

#### 2.4.2 Conditions and Requirements

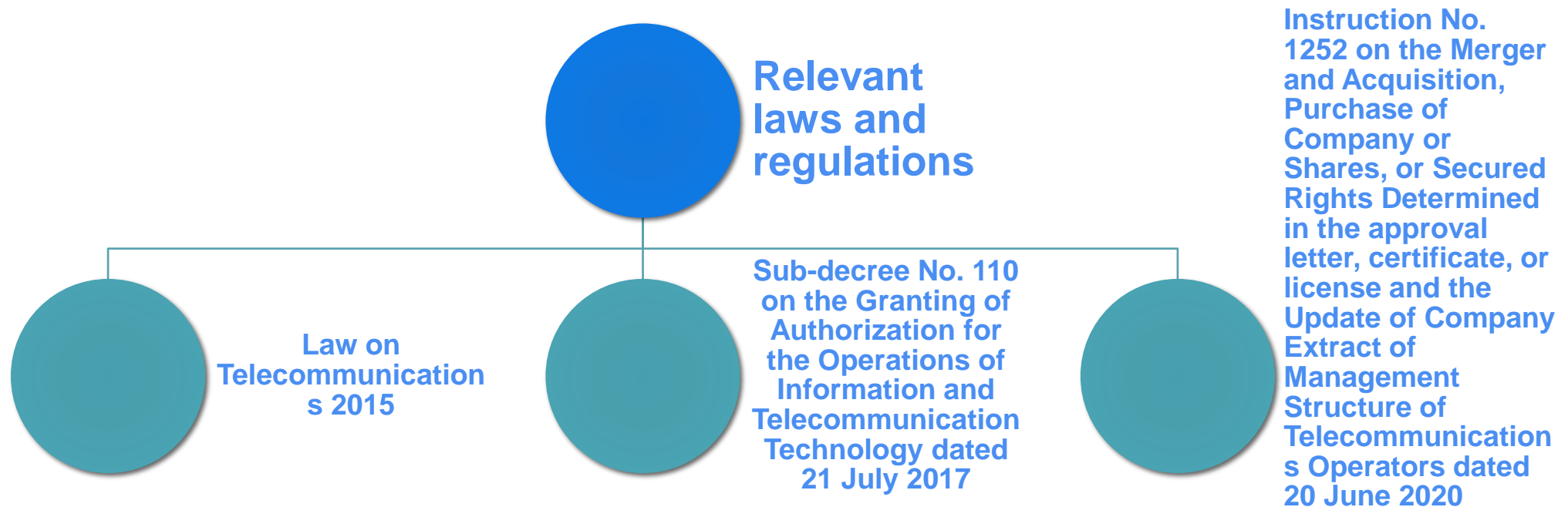
1. Any acquisition of shares in an insurance company resulting in shareholder having, directly or indirectly, 10% or more of the company's shares must be filed with the Financial Industry Department of the Ministry of Economy and Finance including the source of funds for the acquisition.
2. Shares acquired without the prior approval do not possess rights, powers or acknowledgement until the approval is obtained.

## 2. SPECIFIC REQUIREMENTS

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### 2.5 TELECOMMUNICATIONS

#### 2.5.1 Relevant Laws and Regulations





## 2. SPECIFIC REQUIREMENTS

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### 2.5 TELECOMMUNICATIONS

#### 2.5.2 Conditions and Requirements

General Principle

All telecommunication operations shall be made to abide by the principles of fair, free, equal, and effective competition.

## 2. SPECIFIC REQUIREMENTS

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### 2.5 TELECOMMUNICATIONS

#### 2.5.2 Conditions and Requirements

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**A merger between telecommunication operators and persons involved with telecommunication sectors is considered to be against the general principles when it is in nature:**

hinders or limits rights on telecommunication market competition of telecommunication operators or persons involved with telecommunication sector;

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constrains free tariffs which may lead to rise or decrease the fee arbitrarily;

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limits partial or whole rights on managing telecommunication operations, investment, or technical development; or divides telecommunication market or supply sources.

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## 2. SPECIFIC REQUIREMENTS

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### 2.5 TELECOMMUNICATIONS

#### 2.5.2 Conditions and Requirements

##### Process for Transfer of License and Certificate

Transfer through contract, succession, merger or security of rights defined under the permit, certificate or license shall be in accordance with legal procedures and applicable laws and follow the same procedure of granting permit, certificate or license.

## 2. SPECIFIC REQUIREMENTS

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### 2.5 TELECOMMUNICATIONS

#### 2.5.2 Conditions and Requirements





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Legal and Economic Empowerment

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THANK YOU!

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# LEGAL ISSUES IN M&A DEALS

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**Jay Cohen, Partner**  
**Teo Pastor, Associate**

Tilleke & Gibbins | July 6, 2023



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# Agenda

- Part 1: Relevant Framework for M&A
- Part 2: Steps in an M&A Deal

A top-down view of a wooden desk with a person writing in a notebook on the left and another person typing on a laptop on the right. An open book is in the center background. The image is semi-transparent.

# **PART 1**

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## **Relevant Framework for M&A**

# Acquisitions, but no Mergers

- Law on Commercial Enterprises; Law on Investment
- No framework for mergers
- Pre-structuring considerations:
  - Transfer of business as a going concern
  - Offshore holding companies
  - Share purchase and subscription
  - Governing law

# Treaties

- Double Taxation Treaties: Macau SAR, Hong Kong SAR, China, Korea, Malaysia, Brunei, Vietnam, Indonesia, Thailand and Singapore.
  - Lower taxes for offshore holding companies
  - Cambodian taxes covered: income tax, WHT, capital gains, tax on salary.
  - Dividends
  - Royalties

# Treaties (cont.)

- **Bilateral Investment Treaties (in force): UAE, Hungary, Russia, Belarus, Czechia, Japan, Netherlands, Vietnam, Croatia, France, Germany, Korea, Singapore, Switzerland, China and Thailand.**
  - Protection from expropriation
  - Dispute resolution, arbitration or conciliation

A top-down view of a wooden desk with a laptop, two notebooks, and hands working. One hand is writing in a notebook, another is typing on a laptop, and a third is holding a document. The scene is overlaid with a semi-transparent white filter.

# **PART 2**

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## **Steps in an M&A Deal**



# Overview of the M&A Process

1. Target selection
2. NDAs
3. Due Diligence
4. Contract negotiations
5. Filing with Cambodia Competition Commission (if applicable)
6. Closing



# M&A Process

1. Target selection and evaluation
2. Signing NDAs
  - Legal counsel and advisors must have access to information.



## 3. Due Diligence

- DD Checklist and customization for target industry
- Public Searches:
  - Land title searches
  - Trademark / IP / Domain searches
  - Secured Transactions Filing Office
  - Arbitration Council
  - Litigation / court searches (not possible)
- Non-Public Searches (seller to provide): company extract and MLVT search.

## 3. Due Diligence (cont.)

- Due incorporation
  - Capital structure and registration with MoC, GDT
  - Shareholding structure
- Licensing and permits
  - Compliance of employees with necessary licenses
  - Construction permits and certificate of compliance
  - Sector-specific licenses

# 3. Due Diligence (cont.)

- Insurance
  - Mandatory: motor vehicle third party liability; construction; transportation
  - Sector-specific insurance
- Environmental compliance:
  - Environmental Impact Assessment
  - Contract on Environmental Protection
  - Environmental Management Plan

# 3. Due Diligence (cont.)

- Movable and Immovable Property
  - Land ownership: soft vs. hard titles
  - Leases
  - Construction permits and compliance certificate
- Material assets and contracts
  - Restrictive clauses
  - Consent requirements

# 3. Due Diligence (cont.)

- Financial indebtedness:
  - Transfer pricing rules between related parties (arm's length)
  - Loans between related parties
  - Notification to GDT of non-related party loans
  - Change of control clauses and potential events of default
- Tax compliance
  - GDT Clearance Certificate

# 3. Due Diligence (cont.)

- Employment:
  - Workbooks
  - Self-declaration
  - NSSF obligations
  - Other compliance

## 3. Due Diligence (cont.)

- Compliance with the Law on Issuance and Trading of Non-Government Securities
  - Limited to 30 investors (non-public offering)
  - Over the limit – deemed public offering and approval by SECC required

# 3. Contract Negotiation

- Share Purchase Agreement (to purchase existing shares)
- Share Subscription Agreement (to subscribe to newly-issued shares)
- Issues:
  - Dilution of shares
  - Taxation of SSA and SPA
  - Representations and Warranties



# 3. Contract Negotiation (cont.)

- Issues:
  - Conditions Precedent
    - ◆ Covers non-compliant areas from DD report (e.g. licenses, lease agreements, shareholding structure, shareholders loans)
    - ◆ Transfer of employees and new employment contracts;
    - ◆ Notarization of documents
    - ◆ Escrow accounts
  - Conditions Subsequent
    - ◆ Areas that cannot be resolved prior to completion (e.g. registration of lease agreements)
    - ◆ Re-application for licenses

# 5. Filing with CCC; 6. Closing

## 5. Filing with Cambodian Competition Commission (if applicable)

- Filing thresholds and fines for non-compliance

## 6. Closing

- Registration of share transfer and issuance with the MoC (separate)
- CPs: tax, construction, labor compliance, etc.
- CSs: environmental impact assessment, registering long-term lease, etc.
- Signing ceremony and in-person review of documents (company stamps, witnesses, wet-inks).
- Timing of closing process



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