

FOREIGN INVESTMENT REVIEW

Cambodia



Foreign Investment Review

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Quick reference guide enabling side-by-side comparison of local insights, including into law, policy and relevant authorities; procedure, including thresholds and timelines; substantive assessment, including interagency and international consultation, remedies and rights of challenge and appeal; relevant recent case law; and other recent trends.

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LAW AND POLICY

Policies and practices

What, in general terms, are your government's policies and practices regarding oversight and review of foreign investment?

Cambodia's Law on Investment guarantees that foreign investments are generally treated in the same manner as domestic investments. The one notable exception to this rule is that foreign-owned companies (companies incorporated in Cambodia with foreign shareholders owning more than 49 per cent of the shares) are not allowed to own land in Cambodia. For that reason, there are no specific oversight or review mechanisms for foreign investments in Cambodia, and foreign investors do not require any specific approvals to invest in Cambodia.

In addition, the Law on Investment allows certain foreign investments to apply for qualified investment project (QIP) status. A QIP is entitled to receive a number of investment incentives, including profit tax exemptions for up to nine years and import duty exemptions, from the Cambodian government.

While the Law on Investment establishes some criteria and requirements for a foreign investment to obtain a QIP, these criteria and requirements also apply to domestic investors. Further, we want to highlight that there is no obligation on a foreign investor to seek QIP status for its investment, and a foreign investor can make investments in Cambodia under commercial laws of general application that apply to both foreign and domestic investors.

In Cambodia, there are no currency controls and, in practice, Cambodia has a dollarised economy, where most of the currency in circulation is the US dollar. The US dollar is commonly used in commercial transactions.

From a legal standpoint, the Law on Investment guarantees all investors in Cambodia the right to freely purchase and remit abroad foreign currencies to discharge their financial obligations related to their investments. Cambodia's Law on Foreign Exchange governs all foreign exchange operations relating to payments for commercial transactions, transfers or capital inflows. The Law on Foreign Exchange guarantees that there are no restrictions on foreign exchange operations, although transactions must be made through a bank that has been authorised by the National Bank of Cambodia.

Law stated - 15 October 2021

Main laws

What are the main laws that directly or indirectly regulate acquisitions and investments by foreign nationals and investors on the basis of the national interest?

- Law on Investment of the Kingdom of Cambodia, dated 15 October 2021;
- Law on Competition, dated 5 October 2021;
- Sub-Decree 79 on the Establishment of Provincial/Municipal Investment Sub-Committee, dated 8 June 2021;
- Sub-decree No. 111 on the Implementation of the Law on Investment, dated 27 September 2005, as amended on 23 April 2007 and 13 February 2019;
- Law on Commercial Enterprises, dated 19 June 2005; and
- Law on Commercial Rules and Register, dated 19 June 1995, as amended on 18 November 1999.

Law stated - 15 October 2021

Scope of application

Outline the scope of application of these laws, including what kinds of investments or transactions are caught. Are minority interests caught? Are there specific sectors over which the authorities have a power to oversee and prevent foreign investment or sectors that are the subject of special scrutiny?

The Law on Investment establishes conditions and procedures for granting QIP status to foreign investments, and lays out the investments incentives that a QIP is entitled to. Sub-decree No. 111 on the Implementation of Law on Investment further clarifies these matters.

The Law on Commercial Enterprises and the Law on Commercial Rules and Register are the main company laws in Cambodia and broadly address a number of issues, such as available entities under Cambodian law, shareholder rights, the powers of directors and matters related to corporate compliance and mergers.

As for minority shareholder interests, the Law on Commercial Enterprises sets out a number of decisions that require approval by a special resolution of the shareholders, which means that at least two-thirds of the shares must vote in favour or the matter. Aside from special resolutions, Cambodian law does not offer other protections to minority shareholders. In practice, however, any revisions to a company's articles of incorporation (the company's constitutional document) requires the signature of all shareholders before it can be processed by the Ministry of Commerce. 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, have additional protections.

Mergers and acquisitions in a number of regulated sectors (eg, insurance, banking and telecommunications) are subject to approvals by relevant government agencies, such as the Ministry of Economy and Finance. However, the requirements to obtain approval apply equally to both domestic and foreign companies, and there is no specific set of criteria only applicable to foreign investors.

Law stated - 15 October 2021

Definitions

How is a foreign investor or foreign investment defined in the applicable law?

A foreign investor or foreign investment is not explicitly defined under Cambodian law. Under the Law on Investment, an 'investor' is broadly defined as a person carrying out an investment project registered with the Council for the Development of Cambodia or a Municipal-Provincial Investment Sub-Committee; however, this definition applies to both foreign and domestic investors. The Law on Investment and the Law on Commercial Enterprises define a Cambodian entity or an entity having Cambodian nationality as an entity that has a place of business in and is registered in Cambodia, and has 51 per cent or more of its shares held by a legal or natural person with Cambodian nationality. In that sense, an entity that does not meet these characteristics would be considered a foreign-owned entity. However, there is no difference in terms of treatment between a foreign-owned entity and a Cambodian entity, except with regards to land ownership.

Law stated - 15 October 2021

Special rules for SOEs and SWFs

Are there special rules for investments made by foreign state-owned enterprises (SOEs) and sovereign wealth funds (SWFs)? How is an SOE or SWF defined?

Cambodian law does not address investments by foreign state-owned enterprises and sovereign wealth funds. Thus, they would be treated in the same manner as regular investors.

Law stated - 15 October 2021

Relevant authorities

Which officials or bodies are the competent authorities to review mergers or acquisitions on national interest grounds?

Cambodian law has not established any merger or acquisition review mechanisms to review investments by foreign investors on national interest grounds; thus, there are no officials or bodies responsible for such a review. However, mergers or acquisitions in a number of regulated sectors (eg, insurance, banking and telecommunications) are subject to approvals by relevant government agencies (eg, the Ministry of Economy and Finance). Nevertheless, the requirements to obtain approval apply equally to both domestic and foreign companies.

Aside from the above ministry-specific approvals, the Ministry of Commerce reviews all mergers or acquisitions of all business as part of the share transfer process. If a merger or acquisition results in a decrease of Cambodian ownership of an entity to less than 51 per cent, that entity will no longer be deemed a company of Cambodian nationality, and thereby the company will no longer have the ability to own land in Cambodia.

Under Cambodia's Competition Law, the Competition Commission of Cambodia has the authority to review all mergers and acquisitions for various restrictions or distortions of competition. While national security grounds are not an express basis for reviewing a merger or acquisition, national security grounds could be implicated during a review under the Competition Law if the merger or acquisition leads to a dominant market position.

Law stated - 15 October 2021

Notwithstanding the above-mentioned laws and policies, how much discretion do the authorities have to approve or reject transactions on national interest grounds?

The Competition Law has only recently been enacted and the Competition Commission of Cambodia has not yet been established. However, under the Competition Law, the Competition Commission of Cambodia would have broad discretion to approve or reject transactions for reasons set out in the Competition Law. To what extent that discretion would be used to reject transactions on national interest grounds is uncertain.

Law stated - 15 October 2021

PROCEDURE

Jurisdictional thresholds

What jurisdictional thresholds trigger a review or application of the law? Is filing mandatory?

Not applicable.

Law stated - 15 October 2021

National interest clearance

What is the procedure for obtaining national interest clearance of transactions and other investments? Are there any filing fees? Is filing mandatory?

Under the Competition Law, if a person considers that its activity will violate the Competition Law, the person may apply for an exemption prior to entering into the agreement or engaging in the activity. The rules and procedures will be determined by the Competition Commission of Cambodia.

If the person fails to seek an exemption and violates the Competition Law, they will be subject to the penalties under the Law.

Law stated - 15 October 2021

Which party is responsible for securing approval?

Under the Competition Law, any person engaging in an agreement or activity that violates the Competition Law would be obliged to seek an exemption or face the penalties under the Law.

Law stated - 15 October 2021

Review process

How long does the review process take? What factors determine the timelines for clearance? Are there any exemptions, or any expedited or 'fast-track' options?

Not applicable, as the Competition Commission of Cambodia has not been established yet under the Competition Law.

Law stated - 15 October 2021

Must the review be completed before the parties can close the transaction? What are the penalties or other consequences if the parties implement the transaction before clearance is obtained?

Not applicable. Under the Competition Law, parties would only need to seek an exemption if they were violating the Competition Law. Otherwise, there is no need to seek an approval or exemption generally.

Law stated - 15 October 2021

Involvement of authorities

Can formal or informal guidance from the authorities be obtained prior to a filing being made? Do the authorities expect pre-filing dialogue or meetings?

Not applicable.

Law stated - 15 October 2021

When are government relations, public affairs, lobbying or other specialists made use of to support the review of a transaction by the authorities? Are there any other lawful informal procedures to facilitate or expedite clearance?

Not applicable.

Law stated - 15 October 2021

What post-closing or retroactive powers do the authorities have to review, challenge or unwind a transaction that was not otherwise subject to pre-merger review?

In the event that a merger or acquisition violated the Competition Law, the following penalties would apply:

- up to 10 per cent of the total revenue of any natural person who engaged in the action during the period within which the violation took place; or
- up to 10 per cent of the total revenue of any legal person and any related legal person which engaged in the action during the period within which the violation took place; or
- both of the above.

Law stated - 15 October 2021

SUBSTANTIVE ASSESSMENT

Substantive test

What is the substantive test for clearance and on whom is the onus for showing the transaction does or does not satisfy the test?

The Competition Law does not set out any substantive tests. The Competition Commission of Cambodia is authorised to conduct its own investigation and then present its findings to the person under investigation. The Competition Law states that the person under investigation will then be permitted to engage in a hearing, though the rules and procedures for the hearing will be determined by future legislation.

Law stated - 15 October 2021

To what extent will the authorities consult or cooperate with officials in other countries during the substantive assessment?

Not applicable.

Law stated - 15 October 2021

Other relevant parties

What other parties may become involved in the review process? What rights and standing do complainants have?

The Competition Commission of Cambodia may receive complaints from any person, and has the discretion to investigate such complaints.

Law stated - 15 October 2021

Prohibition and objections to transaction

What powers do the authorities have to prohibit or otherwise interfere with a transaction?

In the event that an agreement or activity violated the Competition Law, the Competition Commission of Cambodia could issue an order stating remedial actions. Those remedial actions may include the following:

- prohibitions on continuing unlawful actions;
- selling specified assets or parts of the business;
- mandatory licensing or transfer of intellectual property rights;
- compensation for persons suffering financial harm;
- taking specific actions necessary to restore competition;
- requiring violators to return unlawfully obtained profits;
- requiring violators to file reports demonstrating compliance; and
- requiring violators to pay for experts appointed to advise the Competition Commission of Cambodia on the design of effective remedies and to report on compliance with the orders.

Law stated - 15 October 2021

Is it possible to remedy or avoid the authorities' objections to a transaction, for example, by giving undertakings or agreeing to other mitigation arrangements?

Not applicable.

Law stated - 15 October 2021

Challenge and appeal

Can a negative decision be challenged or appealed?

The Competition Law allows a person to petition the Competition Commission of Cambodia to reconsider, modify or revoke any interim measure or order. In addition, interim measures or orders can be appealed to a competent court within 15 days from the date of receiving the interim measure or order.

Law stated - 15 October 2021

Confidential information

What safeguards are in place to protect confidential information from being disseminated and what are the consequences if confidentiality is breached?

For investigations under the Competition Law, the Competition Commission of Cambodia is obliged to keep information confidential and can only disclose it where: (1) it is necessary to carry out duties under the law; (2) disclosure is permitted under another law; (3) it will enable another government agency, domestic or foreign, to carry

out its duties or functions; or (4) it is necessary to use it in accordance with a person's right of defence. There are no specific penalties for breaching confidentiality obligations.

Law stated - 15 October 2021

RECENT CASES

Relevant recent case law

Discuss in detail up to three recent cases that reflect how the foregoing laws and policies were applied and the outcome, including, where possible, examples of rejections.

We are not aware of any cases under the Competition Law or the Investment Law.

Law stated - 15 October 2021

UPDATE AND TRENDS

Key developments of the past year




Are there any developments, emerging trends or hot topics in foreign investment review regulation in your jurisdiction? Are there any current proposed changes in the law or policy that will have an impact on foreign investment and national interest review?

Following the successful passage of the Law on Investment and the Competition Law in October 2021, the government is now contemplating establishment of the Competition Commission of Cambodia to address competition issues, including evaluating business combinations, such as mergers and acquisitions.

Law stated - 15 October 2021

Jurisdictions

	Australia	Gilbert + Tobin
	Austria	Barnert Egermann Illigasch Rechtsanwälte
	Cambodia	Tilleke & Gibbins
	Canada	McCarthy Tétrault LLP
	Denmark	Bech-Bruun
	European Union	Allen & Overy LLP
	France	White & Case
	Germany	BLOMSTEIN
	India	AZB & Partners
	Indonesia	Nagashima Ohno & Tsunematsu
	Italy	Gianni & Origoni
	Japan	Anderson Mōri & Tomotsune
	Laos	Tilleke & Gibbins
	Malaysia	Nagashima Ohno & Tsunematsu
	Mexico	White & Case
	Myanmar	Tilleke & Gibbins
	Netherlands	Greenberg Traurig LLP
	New Zealand	Russell McVeagh
	Norway	CMS Kluge
	Spain	White & Case
	Sri Lanka	Tiruchelvam Associates
	Sweden	Bokwall Rislund Advokatbyrå
	Switzerland	Lenz & Staehelin
	Thailand	Nishimura & Asahi
	United Arab Emirates	Afridi & Angell

 USA	Cleary Gottlieb Steen & Hamilton LLP
 Uzbekistan	Winfields
 Vietnam	Tilleke & Gibbins