

# Foreign Investment Review 2020

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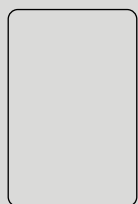
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**Contributing editor**

**Oliver Borgers**  
McCarthy Tétrault LLP

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Lexology Getting The Deal Through is delighted to publish the ninth edition of Foreign Investment Review, which is available in print and online at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Armenia, Cambodia, Laos, Mexico, Myanmar, New Zealand, Thailand and Vietnam.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Oliver Borgers of McCarthy Tétrault LLP, for his continued assistance with this volume.



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# Cambodia

Jay Cohen and Pichrotanak Bunthan

Tilleke & Gibbins

## LAW AND POLICY

### Policies and practices

- 1 | 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 in order 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.

### Main laws

- 2 | 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?

- The Law on Investment dated 4 August 1994, as amended on 24 March 2003;

- 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;
- the Law on Commercial Enterprises dated 19 June 2005; and
- the Law on Commercial Rules and Register dated 19 June 1995 as amended on 18 November 1999.

### Scope of application

- 3 | 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 investment 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 of the matter. Aside from special resolutions, Cambodian law does not offer other protections. 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 governmental 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 are no specific set of criteria only applicable to foreign investors.

### Definitions

- 4 | 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. However, 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, as mentioned in question 1, there is no difference in terms of treatment between a foreign-owned entity and a Cambodian entity, except with regards to land ownership.

### Special rules for SOEs and SWFs

- 5 | 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.

### Relevant authorities

- 6 | 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 governmental 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 and 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.

### National interest

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

Not applicable.

## PROCEDURE

### Jurisdictional thresholds

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

Not applicable.

### National interest clearance

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

Not applicable.

### Securing approval

- 10 | Which party is responsible for securing approval?

Not applicable.

### Review process

- 11 | 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.

### Clearance penalties

- 12 | 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.

### Involvement of authorities

- 13 | 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.

### Facilitating clearance

- 14 | 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.

### Post-closing powers

- 15 | 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?

Not applicable.

## SUBSTANTIVE ASSESSMENT

### Substantive test

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

Not applicable.

### Consulting other countries

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

Not applicable.

### Other relevant parties

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

Not applicable.

### Prohibition and objections to transaction

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

Not applicable.

**Mitigating arrangements**

- 20 | 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.

**Challenge and appeal**

- 21 | Can a negative decision be challenged or appealed?

Not applicable.

**Confidential information**

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

Not applicable.

**RECENT CASES****Relevant recent case law**

- 23 | 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.

Not applicable.

**UPDATE AND TRENDS****Key developments of the past year**

- 24 | 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?

The Cambodian government is in the process of developing a Competition Law. According to the last draft of the Law, which was released in February 2018, the establishment of the Competition Commission of Cambodia (CCC) is being contemplated to address competition issues, including evaluating business combinations, such as mergers and acquisitions. While the current draft of the Competition Law does not contain provisions directly applicable to foreign investment review, foreign investments (as well as domestic investments) may potentially trigger a review by the CCC if they involve a merger or acquisition that prevents, restricts or distorts competition in the market.

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