

PANORAMIC

**FOREIGN INVESTMENT
REVIEW**

Cambodia



LEXOLOGY

Foreign Investment Review

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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 - 3 January 2024

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 Amendment to Law on Commercial Rules and Register, dated 29 January, 2022;
- Law on Investment of the Kingdom of Cambodia, dated 15 October 2021;
- Law on Competition, dated 5 October 2021;
- Law on Commercial Enterprises, dated 19 June 2005;

- Law on Amendment to Law on the Investment dated 24 March 2003;
- Law on Commercial Rules and Register, dated 19 June 1995, as amended on 18 November 1999.
- Sub-Decree No. 139 on Implementation of Law on Investment of the Kingdom of Cambodia, dated 26 June 2023;
- 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 stated - 3 January 2024

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 investment incentives to which a QIP is entitled. 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 to minority shareholders. In practice, however, any revisions to a company's articles of incorporation (the company's constitutional document) require 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 - 3 January 2024

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 regard to land ownership.

Law stated - 3 January 2024

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. As a result, they would be treated in the same manner as regular investors.

Law stated - 3 January 2024

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. As a result, 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 businesses as part of the share transfer process. If a merger or acquisition results in a decrease in 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 business combinations that meet certain filing thresholds and may investigate business activities for various restrictions or distortions of competition. While national security grounds are not an express basis for reviewing a business combination or opening an investigation, national security grounds could be implicated during a review under the Competition Law if the combination leads to a dominant market position or a business activity leads to abuse of dominant market position.

Law stated - 3 January 2024

Relevant authorities

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

Under the Competition Law, the Competition Commission of Cambodia has broad discretion to approve or reject business combinations or impose penalties on business activities 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. In addition, recently issued administrative regulations setting out requirements and procedures for merger filings and filing thresholds, as well as setting penalties for violations of the Competition Law, do not outline national interest grounds as reasons to block a business combination or impose sanctions on prohibited activities.

Law stated - 3 January 2024

PROCEDURE

Jurisdictional thresholds

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

Pursuant to Decision No. 095 on Thresholds for Prior Notification of Business Mergers dated 14 March 2023, notifications of business combinations to the Competition Commission of Cambodia are mandatory if the following thresholds (expressed in Cambodian Riel) are met:

Criterion	General mergers (in Cambodian riel)	Mergers involving a banking and finance company	Mergers involving an insurance or securities company
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Assets	340 billion (approx US\$83.6 million)	4.5 trillion (approx US\$1.1 billion)	1 trillion (approx US\$246.5 million)
The total assets in Cambodia in the previous financial year of any party to the business combination or an affiliate thereof			
Turnover or input purchase turnover	Turnover: 270 billion (approx US\$66.6 million)	Turnover: 420 billion (approx US\$103.6 million)	Turnover: 280 billion (approx US\$69 million)
The total turnover or input purchase turnover in Cambodia in the previous financial year of any party to the business combination or an affiliate thereof			
	Input purchase turnover: 120 billion (approx US\$29.6 million)	Input purchase turnover: 3.8 trillion (approx US\$936.9 million)	Input purchase turnover: 820 billion (approx US\$202.6 million)
Transaction value	41 billion (approx US\$10 million)	120 billion (approx US\$29.6 million)	61 billion (approx US\$15 million)
Total transaction value of the proposed merger			

The concept of 'operating cost' is not defined further in the applicable regulation.

Law stated - 3 January 2024

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?

As outlined above, national interest grounds are not specific criteria for merger filings or investigations of anti-competitive practices. As a result, there is no mechanism for obtaining national interest clearance.

Law stated - 3 January 2024

National interest clearance

Which party is responsible for securing approval?

The Competition Law does not specifically regulate national interest grounds. However, for general merger filings under the Competition Law and ancillary regulations, any of the parties engaging in an agreement or activity that results in a business combination is eligible to seek approval from the Competition Commission of Cambodia.

Law stated - 3 January 2024

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?

The Competition Law does not specifically regulate national interest grounds. However, for general merger filings under the Competition Law and ancillary regulations, after receiving the merger notification, the Competition Commission will determine within seven working days whether it requires additional information or documentation. Once it has all necessary documentation, the Competition Commission will issue a decision on the proposed business combination within 30 days; the combination may be approved outright or declared subject to a secondary review. Sub-decree No. 60 states that a proposed business combination will not be subject to secondary review if the market share of each party does not exceed 30 percent in each relevant market, among other criteria. However, the Competition Commission reserves the right to require a secondary review if it is concerned that the combination could materially affect competition.

For its secondary review, the Competition Commission may request additional information or documentation from the parties. After receiving the additional information, the Competition Commission has 60 working days (which may be extended by 60 working days) to issue a decision, which may approve the combination, approve the combination subject to restrictions, or reject the combination.

If the Competition Commission fails to issue a decision within the prescribed deadlines, the proposed business combination is deemed approved.

After substantive completion of a business combination is approved by the Competition Commission, at least one of the parties must inform the Competition Commission of the status of the transaction within 30 working days.

Simplified Notification and Exemptions

Certain business combinations are subject only to a simplified notification to the Competition Commission. Such combinations include:

- transactions in which all parties are part of the same corporate group;
- transactions that have been approved by the Royal Government of Cambodia; and
- other transactions as prescribed by the Competition Commission.

The simplified notification must include the application form and general information of the parties to the proposed transaction.

After receipt of the simplified notification, the Competition Commission will determine within seven working days whether the notification is valid and complete, if additional information is

required, or if the proposed combination does not fulfil the criteria for simplified notification. If additional information is required, the parties will likewise have seven working days to provide it.

In addition, certain business combinations that would normally be prohibited may be granted an exemption by the Competition Commission if:

- there are sufficient technological, economic, or social benefits resulting from the combination;
- such benefits would not exist without the proposed combination;
- the benefits significantly outweigh the anti-competitive effects; and
- the combination does not eliminate competition in relevant goods or services.

Parties seeking an exemption must submit documents and other information as evidence that the proposed combination complies with the criteria laid out above.

Law stated - 3 January 2024

Review process

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?

Cambodia is subject to a pre-merger notification regime, as outlined above. The Competition Commission broad discretion to impose penalties for violating the Competition Law, which include, but are not limited to, written warning, suspension, revocation or withdrawal of business registration certificates, business licenses, or business permits, pecuniary fine, financial penalty and imprisonment.

Law stated - 3 January 2024

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?

There is no such regime under the Competition Law. However, parties may try to seek informal guidance from authorities as part of market practice.

Law stated - 3 January 2024

Involvement of authorities

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 - 3 January 2024

Involvement of authorities

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 that engaged in the action during the period within which the violation took place; or
- both of the above.

Law stated - 3 January 2024

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. However, Sub-decree No. 60 on the Requirements and Procedures for Business Combinations dated 6 March 2023 outlines certain criteria that the Competition Commission shall take into account when assessing whether or not a merger filing is subject to a more stringent, secondary review. Such criteria include the market share of the parties and other reasonable concerns relating to preventing, restricting or distorting market competition.

Law stated - 3 January 2024

Substantive test

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

Not applicable.

Law stated - 3 January 2024

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 - 3 January 2024

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 - 3 January 2024

Prohibition and objections to transaction

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 - 3 January 2024

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 - 3 January 2024

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 and procedures 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 - 3 January 2024

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 - 3 January 2024

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?

In March 2023, Cambodia issued three new regulations to strengthen its competition law framework. Although this development does not specifically cover foreign investment in Cambodia, it may have an indirect impact, to the extent foreign investors are engaged in business combinations in Cambodia. The three new regulations are:

1. Sub-decree No. 60 on the Requirements and Procedures for Business Combinations dated 6 March 2023;

2. Decision No. 095 on Thresholds for Prior Notification of Business Mergers dated 14 March 2023; and
3. Inter-Ministerial Prakas No. 168 on Penalties for Persons Violating the Law on Competition dated 28 March 2023.

Law stated - 3 January 2024