

CAMBODIA

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1. Foreign Direct Investment (Greenfield Investment)

1.1. What are the principal laws and regulations applicable to FDI in Cambodia? Are there special rules for certain foreign investors, including state-owned enterprises (SOEs)?

The principal laws and regulations applicable generally to foreign direct investment ("FDI") in the Kingdom of Cambodia are:

- (a) Law on Commercial Enterprise dated 19 June 2005 ("LCE");
- (b) Law on Commercial Rules and Register dated 26 June 1995 ("LCR") as amended by the Law on Amendment to the LCR dated 18 November 1999 ("Amendment to the LCR"); and
- (c) Law on Investment dated 15 October 2021 ("LOI").

Depending on the investment project, more sector and industry-specific laws and regulators may apply to FDI particularly where licensing is required to operate.

The Kingdom of Cambodia (hereinafter referred to as "Cambodia") has an open and liberal foreign investment regime and places very few restrictions on the level of foreign participation in investments aside from the constitutional prohibition on foreigners owning land in Cambodia. There are no special rules or separate laws that exclusively governs foreign investors. In general, any foreign business doing business in Cambodia, including foreign state-owned enterprises, are subject to the same laws of Cambodia as would apply to local investors.

1.2. Are there any governmental and regulatory approvals required for FDI? If so, please give brief details (such as trigger threshold, relevant authority and timing requirements)?

Relevant Authorities

Governmental approval is required where investment incentives are sought. Certain investment guarantees and protection are automatically provided under Chapter 5 of the LOI, including non-discrimination based on foreign nationality and protection against State nationalization of investor's assets in Cambodia. To obtain specific investment incentives, such as tax exemptions, investment companies are required

to register their investment project as a Qualified Investment Project ("**QIP**") with the Council for the Development of Cambodia ("**CDC**") or the Provincial-Municipal Investment Sub-Committee ("**PMIS**"), depending on the type and capital of the investment project. The PMIS regulates the licensing scheme for investments less than US\$2,000,000, whereas the CDC regulates investment projects exceeding US\$2,000,000, located in two or more provinces or in the Special Economic Zones ("**SEZs**"). The different types of QIPs are (i) Export QIP; (ii) Supporting Industry QIP; (iii) Domestically Oriented QIP; and (iv) Expanded QIP. Investors shall pay a one-time application fee which covers tax registration, administrative fees, authorizations, licenses, and registrations from all relevant ministries and government departments.

Generally, an automatic approval system of investment projects is adopted, and approval must be completed within 31 working days after receipt by the CDC or PMIS of the investment proposal, unless the investment project falls within a field prohibited under the law, is environmentally sensitive or is related to national interest. Additionally, under Article 11 of Sub-Decree No.147 on the Organization and Functioning of the Council for the Development of Cambodia, the CDC shall submit for approval from the Council of Ministers any investment projects which:

- have a capital investment of US\$50,000,000 and above;
- involves politically sensitive issues;
- has exploration and exploitation of mineral and natural resources as its business objectives;
- is most likely to generate negative impacts on the environment;
- holds a long-term development strategy;
- has a purpose for some infrastructure projects such as projects based on a Build-Own-Transfer ("**BOT**"), Build-Own-Operate-Transfer ("**BOOT**"), Build-Own-Operate ("**BOO**") or Build-Lease-Transfer ("**BLT**") model.

The application for the QIP registration can be made either before or after company incorporation or registration with the Ministry of Commerce ("**MOC**"). QIP status is granted to specific investment projects upon receipt of a Registration Certificate ("**RC**") and it is an administrative practice that an investment company may only carry out a single QIP project. Where the company intends to carry out multiple investment activities as QIPs, they are required to register each separate activity with either the CDC or the PMIS (Article 5.4, Sub-Decree No. 111 on the Implementation of the Amendment to the Law on Investment of the Kingdom of Cambodia, dated 27 September 2005 ("**Sub-Decree No. 111**"). The issuance of the RC does not exempt the investment company from applying and obtaining all other relevant operating licenses and permits as may be required under applicable Cambodian law (Article 13, LOI). All QIPs are required to obtain a Certificate of Compliance ("**CoC**") from the CDC annually to receive

investment incentives. The CoC confirms that the QIP has complied with all tax and investment regulations in Cambodia.

Certain investment activities including travel agencies, cigarette manufacturing, alcohol production, movie production, publishing, printing, radio and television, pawn broking and pharmaceutical imports may require specialized licenses from relevant government entities before applying for QIP status.

1.3. Are there any industry sector controls on foreign investment?

- The following investment activities are prohibited for all investors, both foreign and local, as listed in Section 1, ANNEX 1 of the Sub-Decree No. 111: Production or processing of psychotropic substances and narcotic substances;
- Production of poisonous chemicals, agriculture pesticide/insecticide and other goods that affect the public health and environment by using chemical substances prohibited by international regulations or the World Health Organization ("WHO");
- Processing and production of electrical power by using any waste imported from a foreign country;
- Forestry exploitation business prohibited by the Forestry Law.

Property sector

Foreigners are constitutionally prohibited from owning land in Cambodia. Land can only be owned privately by natural persons or legal entities with Cambodian nationality. However, under Cambodia's Land Law 2001, foreign investors are permitted to obtain land through concessions or lease land under a perpetual lease (minimum 15 years and maximum 50 years with possibility to renew for another 50 years) or limited short-term leases. Since 2010, foreigners may own condominiums or strata-titled units in co-owned buildings from the first floor up (up to 70% of the private areas of the building), following the adoption of the Law on Foreign Ownership of Co-Owned Buildings.

Commerce and Financial Services sector

All businesses are required to register with the Ministry of Commerce ("MOC") and the General Department of Taxation ("GDT"). Banking-related activities are, in addition to the MOC and GDT, supervised and regulated by the National Bank of Cambodia ("NBC") under various legislations, depending on the particular activity.

Other sectors

Depending on the type of investment activities, the investor may also be required to obtain licenses from other relevant ministries. Some examples include the following:

- A factory license from Ministry of Industry, Science, Technology and Innovation ("MISTI");

- A mining license from Ministry of Mines and Energy ("**MME**");
- An agricultural license and concessions from Ministry of Agriculture, Forestry and Fisheries ("**MAFF**");
- An environmental approval from Ministry of Environment ("**MoE**");
- A major construction license and permits from Ministry of Tourism ("**MOT**") for tourism-sector investments;
- A real estate developer license from Ministry of Economy and Finance ("**MEF**").

1.4. Are there any government free carry interest requirements for special industry sectors?

There are none.

1.5. Are there any localization requirements (e.g. minimum ratio of local employees, minimum ratio of local procurement) for FDI in Cambodia?

There is no minimum ratio placed on local employees, but there is a maximum cap placed on foreign employees. Only a maximum of 10% of a company's total local workforce may be foreign nationals. If a company intends to hire foreigners in excess of the maximum 10%, they are required to apply for an approval from the the Ministry of Labour and Vocational Training ("**MLVT**") known as the annual quota permit. Pursuant to Prakas 277/20 on Special Conditions on the Employment of Foreign Nationals issued in August 2020 ("**Prakas 277/20**"), businesses that are not able to employ a sufficient number of Cambodian nationals, due to reasons such as skills or qualifications, may request for additional quota allowances and must provide reasons for the additional quota. Investors must nevertheless prioritize the hiring and training of existing local employees before hiring foreigners. It should also be noted that the Cambodian Labour Law will apply to every person having employment or otherwise self-employed in Cambodia, whether they are local citizens or foreign nationals. To work in Cambodia, foreign employees must hold a valid business visa and work permit issued by the Ministry of Labour and Vocational Training ("**MLVT**").

1.6. Are there any exchange control restrictions in terms of remittance of capital, profits and dividends?

Foreign exchange rules are governed by the Law on Foreign Exchange dated 22 August 1997 ("**LFE**"). There are no exchange control restrictions in terms of remittance of capital, profits and dividends provided the transfer is made through an authorized intermediary, being a bank holding a banking license issued by the NBC (Article 5, LFE). As such, to repatriate capital and earnings, foreign investors are required to open an account with a bank licensed by the NBC. Where a transfer relating to investment

or liquidation of investment is equal to or exceeds US\$100,000, such transfer shall be reported by the authorized intermediaries to the NBC (Article 17, LFE).

Such transfers are also subject to the Law on Anti-Money Laundering and Combating the Financing of Terrorism dated 27 June 2020 ("**AML Law**"). Banks are required to submit a report to the Cambodia Financial Intelligence Unit ("**CAFIU**") for any cash transaction that is equal to or exceeds approximately US\$10,000 (the "Reporting Threshold"), including where multiple cash transactions are made and the total sum of the individual transactions exceed the Reporting Threshold in one day (Article 28, Prakas on Anti-Money Laundering and Combating the Financing of Terrorism, dated 30 March 2008 ("Prakas on AML")). If the bank suspects or has reasonable grounds to suspect that the funds are proceeds of an offence or are related to the financing of terrorism, they are also required to report such suspicions to the CAFIU (Article 29, Prakas on AML).

Where a foreign investor intends to physically transfer into or out of Cambodia domestic or foreign currencies equivalent to or exceeding US\$10,000, they are required to declare such transfer to the Customs authorities at border crossings upon arrival to or departure from Cambodia (Article 13, LFE). Customs authorities thereafter report this information to the NBC on a monthly basis.

1.7. What are the most common types of corporate legal entities established for FDI? For each type of corporate legal entity, please introduce the internal corporate governance structure. What types of corporate legal entities are recommended for partially or wholly foreign owned corporate legal entities?

The types of corporate forms available will depend on whether the foreign investor wishes to register their foreign business in Cambodia from offshore or if they want to do business directly in Cambodia.

Registering foreign business in Cambodia

A foreign business is a legal entity incorporated under the laws of a foreign country, having a place of business and doing business in Cambodia. Per Article 272 of the LCE, a foreign business shall be deemed to be doing business in Cambodia if the foreign business performs any of the following acts in Cambodia:

- (a) Rents an office or any other space for the purpose of manufacturing, processing, or performing services for more than one month;
- (b) Employs any person to work for it for more than one month;
- (c) Performs any other act that the laws of the Cambodia authorize for foreign natural and legal persons.

Under the LCE, the following corporate forms are available for foreign businesses to do

business in Cambodia:

- A representative office;
- A branch office; or
- A subsidiary company, incorporated in Cambodia under Cambodian law.

Representative Office

A representative office is not the most appropriate form for FDI as they cannot buy or sell goods, perform services or engage in manufacturing, processing or construction in Cambodia (Article 274, LCE). They are only permitted to conduct market research, to provide information to its parent company and to market and to promote the offshore parent company's products and services in Cambodia.

Branch Office

A branch office created in Cambodia may purchase and sell goods, perform services and engage in manufacturing, processing and construction as a local enterprise as long as it does not perform acts that are prohibited by law for foreign natural or legal persons, such as owning land (Article 278, LCE). The branch office is the same entity as the foreign parent company, and therefore the foreign parent company will be legally liable for the branch's obligations, losses and debts (Article 279, LCE).

Subsidiary Company

A subsidiary is a company that is incorporated in Cambodia by the principal foreign company, with the principal foreign company holding at least 51% of its registered share capital (Article 283, LCE). The subsidiary has separate legal personality from its principal foreign company. A subsidiary may be incorporated as a partnership or a limited company, as discussed below, and may regularly carry out business similar to a local company, save for owning land. Where a subsidiary company intends to own land, at least 51% of its registered share capital must be held by a Cambodian natural or legal person.

Doing business directly in Cambodia

- Limited Liability Company

A limited liability company ("LLC") is the most common corporate entity for foreign investment and doing business directly in Cambodia. It is usually established as a subsidiary of an investor's offshore holding company. As Cambodia places few restrictions on the levels of foreign participation on investments, investors may choose to establish either a 100% foreign-owned company, a 100% Cambodian-owned company or have any combination of Cambodian or foreign shareholding. Under Article 101 of the LCE, a company shall be deemed to be a Cambodian company only if at least 51% of its registered share capital is held by Cambodian natural or legal persons.

Activities in particular sectors do require certain local equity participation, such as:

- **Owning land:** If the company intends to own land, foreigners can only hold a maximum of 49% shareholding in the company;
- **State-owned enterprises-** the Cambodian government must directly or indirectly hold more than 51% of the capital or the right to vote in state-owned enterprises;
- **Tour operators and travel agents:** individuals or entities operating as travel agents or domestic must be Cambodian individuals or entities (Article 4, Prakas No. 113 on the Issuance of Tourism Licenses for Tour Operators, Travel Agents and Branches ("**Prakas No. 113**")).

An LLC may be either a private limited company or a public limited company. A public limited company is permitted to issue securities to the public and must have a minimum of three directors (Article 118, LCE).

A private limited company is the most preferred form of entity for foreign investments. It has a minimum capital requirement of KHR4,000,000 (approximately US\$1). The number of shareholders may be between 2 and 30 and there must be a minimum of one director (Articles 86 and 118, LCE). The company may not offer its shares or other securities to the public generally, but may offer them to existing shareholders, family members and managers for the purpose of raising capital (Article 86(c), LCE). A private limited company is recommended as the shareholders' liability will be limited to the value of his or her capital contribution.

1.8. What is the procedure of registration and incorporation of foreign-owned companies?

As stated above, there are four types of business setup options available to foreigners investing in Cambodia:

- (a) private limited company;
- (b) representative office;
- (c) foreign branch office; and
- (d) subsidiary.

The procedure of registration and incorporation of foreign-owned companies and locally-owned companies are the same. As per current regulation, incorporation of company shall be done through an Online Single Portal Service for each of the stages as follows:

Stages	Description
Registration with MOC	<p>A proposed name in Khmer has to be entered by a Licensed Agent for company registration of which the proposed name(s) will be automatically checked. The name can also appear in another language (most commonly English). On payment of the application for company name reservation, the name will be reserved for two weeks from the approval date. The name will be made available for other applicants following a failure to follow through in completing company incorporation and a request for extension shall be applied for. The extension for reservation of company's name can be done only once, to reserve the name for another two weeks.</p> <p>After registering the company at MOC, a Certificate of Registration will be issued.</p>
Tax registration	<p>The application form from the GDT must be completed within 4 days.</p> <p>Once registered, the GDT will issue a taxpayer identification number and the company will receive a taxpayer identification card, VAT certificate and patent tax certificate (soft copy).</p>
Notification to the MLVT	<p>Before starting the business operations, all companies with eight or more employees must submit a written declaration to MLVT.</p> <p>It must have internal regulations that adapt the general provisions of the Cambodian Labour Law of which the internal regulations must be filed within three months of the company's incorporation.</p>

1.9. What are the documents and materials that the foreign investors need to prepare for that purpose? Is notarization or certification required?

Types of business setup	Information/Document required for incorporation
Private limited company	<ul style="list-style-type: none"> • The passport of the shareholder(s) or the certificate of incorporation if the shareholder is a company; • Articles of incorporation in both English and Khmer (must be submitted in hard copy to MOC); • Proof of address of the registered office; • Details of the registered agent; and • Details of the company directors and signed copies of the information page of each director's passport.
Representative office/ Branch Office/ Subsidiary	<ul style="list-style-type: none"> • Copy of the registration certificate and articles of association of the foreign parent company; • Letter of appointment from the foreign parent company for the authorised officer; • Copy of the passport of each director of the foreign parent company along with the signature and residential address; • Copy of the passport of the authorised officer of the representative office along with the signature and residential address; • Principal business activity in Cambodia; • Current photo no longer than three months of the authorised officer with a white background; and • Details of the premises out of which the company will operate.

1.10. How long does it normally take to complete the entire registration and incorporation process?

As mentioned under paragraph 1.9 above, registration and incorporation of company shall be done through Online Single Portal Service for the registration with MOC (Company registration), GDT (Tax Registration) and MLVT (Announcement of the Opening of Enterprise). The application approval period is normally 8 working days, should there be no issue in between the process of incorporation, however, in practice, we find that incorporation of a new company may take 3-4 weeks.

2. M&A Laws and Regulations & Regulatory Approvals

2.1. What are the principal laws and regulations applicable to M&A transactions in relation to listed and private companies in Cambodia? What are the major issues dealt with in such laws and regulations?

The principal laws and regulations applicable to mergers and acquisitions ("**M&A**") transactions in the Kingdom of Cambodia ("**Cambodia**") in relation to listed and private companies are:

- Law on Competition dated 5 October 2021 ("**LoC**");
- Law on Commercial Enterprise dated 19 June 2005 ("**LCE**");
- Law on Commercial Rules and Register dated 26 June 1995 ("**LCR**") as amended by the Law on Amendment to the LCR dated 18 November 1999 ("**Amendment to the LCR**");
- Law on Investment dated 15 October 2021 ("**LOI**");
- Law on the Issuance and Trading of Non-Governmental Securities dated 19 October 2007 ("**Law on Issuance and Trading of Non-Governmental Securities**");
- Listing Rules of the Cambodia Securities Exchange dated 10 June 2015 ("**Listing Rules**");
- Operating Rules of Securities Market of the Cambodia Securities Exchange dated 10 January 2018 ("**Operating Rules**");
- Prakas on the Implementation of Listing Rules dated 3 May 2011 ("**Prakas on Implementation of Listing Rules**");
- Prakas on the Implementation of the Operating Rules of the Securities Market dated 3 May 2011 ("**Prakas on Implementation of Operating Rules**");
- Prakas No. 005 on Public Offering of Equity Securities dated 10 September 2015 ("**Prakas No. 005**"); and
- Sub-Decree No. 37 ANKR.BK on the Organization and Functioning of the Cambodia Competition Committee ("**Sub-Decree No. 37**").

The LCE primarily governs procedures for company mergers and acquisitions, including procedures for board and shareholders' resolution and approval, as discussed below in paragraph 3.4. Article 241 permits two or more companies to merge into one company or consolidate to form a new company.

A business combination, being a merger or acquisition, is defined under Article 3.3 of the LoC as either (i) the acquisition of the right to control or voting rights through the purchase of shares or assets by one entity from another entity; or (ii) the combination of two or more entities to acquire joint ownership of an existing legal entity or to form a new legal entity. The LoC primarily covers anti-competitive mergers that have the effect of significantly preventing, restricting or distorting competition in the market. Merger

controls are discussed in further details below.

M&A of listed companies shall comply with the laws and regulations of the Securities and Exchange Regulator of Cambodia ("SERC") or the Cambodia Securities Exchange ("CSX") including the Law on the Issuance and Trading of Non-Governmental Securities and relevant listing rules.

2.2. Are there any foreign investment review required for foreign buyers in M&A? If so, please give brief details (such as trigger threshold, relevant authority and timing requirements).

Under the Lol, foreign investors are generally guaranteed equal treatment to domestic investors, save for owning land and a few local equity restrictions in certain sectors, such as tourism. Foreign investors are not required to undergo any specific review or oversight procedure in an M&A transaction, other than any due diligence exercises the parties may wish to carry out. Depending on the sector, certain approval may be required from relevant government agencies, as further discussed in paragraph 2.4, but such approval applies equally to domestic and foreign buyers.

It should be noted that where a merger or acquisition leads to Cambodian ownership of an entity decreasing to less than 51%, that entity will no longer be categorized as a Cambodian legal entity and thus will not be eligible to own land (or ground floor of a high-rise building) in Cambodia.

2.3. Are there any merger control required in M&A? If so, please give brief details (such as trigger threshold, relevant authority and timing requirements).

Anti-Competitive Business Combinations

Under Article 11 of the LoC, any anti-competitive business combination which has or may have the effect of significantly preventing, restricting or distorting competition is prohibited, unless an exemption is granted under Chapter 3 of the LoC. The Cambodian Competition Committee ("CCC") is the key regulatory authority established to review the effect of any business combination on competition in a Cambodian market, and to review the extent or degree to which the business combination "significantly prevents, restricts or distorts" competition for goods and services (Article 11, LoC). The CCC determines such extent or degree of impact on competition through economic analysis or other means of analysis (Article 3, LoC). At the time of writing, there is no anti-trust/merger control filings available. Further details of Cambodia's merger control regime are to be defined subsequently by a sub-decree, although at the time of writing, such sub-decree has not yet been released (Article 11, LoC). The MOC also reviews all mergers or acquisitions of businesses as part of the share transfer process.

QIP M&A

In the event of a QIP merger or acquisition, or where there is a transfer of shares in a QIP which leads to the transferee holding 20% or more of the shares in the QIP, written approval from the Council for the Development of Cambodia ("**CDC**") or the Provincial-Municipal Investment Sub-Committee ("**PMIS**") must be obtained in order for the new entity to be entitled to the QIP investment incentives and guarantees. Request for approval must be submitted within 10 working days prior to the merger, acquisition or share transfer.

Exemptions under the LoC

Where a company considers that its activities would be prohibited on grounds that it violates the LoC, they may apply to the CCC for an exemption prior to engaging in the activities. The activity may be granted an exemption if it fulfills four requirements, as stipulated under Article 12 of the LoC:

- (a) There are significant identifiable technological, economic or social benefits;
- (b) Such benefits would not exist without the activity;
- (c) Those benefits significantly outweigh the effects caused by any determined preventing, restricting or distorting of competition; and
- (d) The activity does not eliminate competition in any important aspects of goods or services.

The CCC has authority to determine whether the above four conditions have been satisfied and may determine an expiry date for the exemption (Article 13, LoC). If the company does not seek an exemption and the business combination violates the LoC, they will be subject to penalties under the LoC.

2.4. Are there any other governmental and regulatory approvals required for foreign buyers in M&A? If so, please give brief details (such as trigger threshold, relevant authority and timing requirements)?

Mergers and acquisitions in particular regulated sectors must be approved by the relevant government agencies, but obtaining this approval applies to both domestic and foreign buyers. There are no separate governmental and regulatory approvals specifically for foreign buyers.

Company mergers in the telecommunications industry must be approved by the Telecommunications Regulator of Cambodia ("**TRC**") and the National Bank of Cambodia ("**NBC**") shall approve any mergers or transfers of shares in the banking sector pursuant to the Prakas No. B7-01-187 on Transfer of Shares of Banks dated 8 November 2001. Mergers in the insurance sector is regulated by the Ministry of Economy and Finance ("**MEF**") and the Insurance Regulator of Cambodia.

3. M&A for Listed Companies

3.1. What are the principal methods of acquisition?

The principal methods of acquisition in Cambodia includes:

- mergers whereby two or more companies merge into one company or may consolidate to form a new company (governed by LCE); and
- acquisition of all or a majority of existing shares/assets of a company (Article 3.3, LoC).

3.2. In what circumstances (if any) is a mandatory bid obligation incurred?

Not applicable.

3.3. Is there a minimum price at which the offer must be made?

The law in Cambodia does not set a specific minimum offering price for listed shares in CSX, nor is there any regulation pertaining to the percentage threshold mandating a take-over offer.

For shares listed on CSX, the Operating Rules determines trading conditions such as base price and daily price limits. Based on Article 17 of the Operating Rules, the daily price limits for equity securities shall be equal to the amount calculated by adding or subtracting 10% of the base price, which is typically the closing price of the previous trading day or, in the case of initially listed securities, between 90% and 150% of the initial public offering price. In the event of capital increase/decrease, stock dividend or split off, the base price will be determined using the formulas as set out in Article 16 of the Operating Rules.

Investors are not required to undergo any qualification assessment process or to obtain any prior regulatory approval to trade securities listed on the CSX, but trading must go through a securities firm licensed by the CSX.

3.4. How can the function of the board of directors of the target impact a proposed acquisition?

Pursuant to Article 119 of the LCE, the powers of the board of directors includes proposing to shareholders an agreement of merger or consolidation between the company and any other person (Article 119(6)) and proposing to the shareholders the sale of all or major part of the company's assets (Article 119(7)).

The board of directors of each company that proposes the merger, which includes the target, shall adopt a resolution approving an agreement for merger and unless

otherwise provided in the articles of incorporation, this resolution shall be approved by a majority of a quorum of the directors (Article 242, LCE). Therefore, the board of directors of the target may impact a proposed acquisition by either passing or not passing such a resolution.

Furthermore, after each company's board of directors approves the resolution of merger, the shareholders of each company proposing to merge is entitled to vote on the merger (Article 244, LCE). The shareholders of the surviving companies shall send a notice of shareholders meeting to each shareholder entitled to vote on the merger. The merger must then also be approved by a special resolution of the shareholders representing two-thirds of each company being dissolved (Article 245, LCE). An application for registration of the merger must then be filed with the MoC (Article 247, LCE).

Although LCE is silent on acquisition transactions, the same procedures regarding board and shareholders' approval will likely apply in an acquisition.

3.5. What key documentation is needed in the acquisition?

Key documents required in a typical M&A transaction include but are not limited to:

- Non-disclosure Agreement ("NDA") - the buyers make a preliminary evaluation based on publicly accessible information before contacting the potential target. The buyers then contact the target and indicate an interest in purchasing or subscribing to the target's stock. Before beginning the due diligence process, the parties sign an NDA that spells out their commitments to confidentiality throughout the transaction;
- Legal and financial due diligence reports;
- Transaction documents, such as merger agreements, share purchase or subscription agreements, and asset transfer agreements.

3.6. Do acquisition documents require pre-approval by any regulatory body prior to publication?

Generally, the acquisition documents do not require pre-approval by any regulatory body prior to publication. However, the document may be required to be submitted together with an application for registration and approval at the competent authority depending on the industry and sector of the target company.

4. M&A for Private Companies

4.1. Are there any special rules in relation to the transferring of a business (compare with the simple share or asset acquisition)?

Other than a simple share or assets acquisition, there are no special rules in relation to the transferring of a business. As each part of the business will be classified as an asset to be transferred under the asset transfer agreement, there is no distinction made under Cambodian laws and regulations between the transfer of assets and the transfer of a business.

Share acquisition:

Upon acquisition of shares, all rights and liabilities attached to the shares are effectively transferred to the new owners of the shares including the rights to receive dividends, rights to attend and vote in shareholders meeting and rights to nominate any board members etc., and the new shareholders assume liability for the losses incurred by the target company to the extent of their capital contribution. The rights and liabilities of the target company do not change.

In principle, change of shareholding (i.e. by way of shares acquisition or shares transfer) within a company is required to be approved and registered with the MoC and notified to the General Department of Taxation. If the target company carries out any Qualified Investment Project or any activity regulated by a specific regulator, such change of shareholding shall also be approved by the CDC, PMIS and/or relevant regulator. Shares transfer is subject to a stamp duty of 0.1% of the value of the transferred shares.

Assets acquisition:

As opposed to the acquisition of shares whereby the purchaser indirectly owns all assets of the target company, the acquisition of assets will allow the purchaser to control or own specific assets that are held by the target company. The rights and liabilities pertaining to such assets will be passed on to the purchaser.

Requirements in relation to asset acquisition varies depending on the type of assets subject to the transfer.

If the assets are rights of the target company under any agreements, the transfer of assets shall be made by way of assignment of rights from the target company to the purchaser.

If the assets are movable properties, transfer of ownership over the same is in principle by possession of the assets by the purchaser, save for transfer of movable property having a registration number (e.g. vehicles) where registration of the change of owner is required to be carried out with the relevant regulator. In case of vehicles, the transfer of ownership is subject to a stamp duty of 4% of the value of the property. The acquisition of assets in the case of a business transfer is not subject to the general 10% VAT (Instruction No. 15301 issued by the GDT dated 22 June 2020).

If the assets are immovable properties, transfer of ownership has to be registered with the Department of Ministry of Land Management, Urban Planning and Construction and is subject to stamp duty of 4% of the value of transaction or market value of the property, whichever is higher.

4.2. Do labor unit, works councils and other stakeholders (other than the vendors of the target) play a role in M&A?

The Cambodian Labour Law remains silent on the right to consultation or consent of employees in an event of an M&A. In a share transfer, whether or not there is a change in control of the targeted company, such transfer does not affect the employment relationship between the corporate employer and the existing employees. However, in an asset transfer, the employees of the businesses are not automatically transferred to the buyer. The employment contracts of such employees must first be terminated or transferred through a contractual arrangement.

Furthermore, restriction on change of control may be provided in certain agreements entered into by the target company whereby shares transfer which results in change of control may be subject to prior consent from the counterparty of such agreements.

4.3. What are the principal minority shareholder rights given by law?

In relation to private limited company, there is no express provision on minority shareholder protection under the law. However, the LCE provides certain rights which are applicable to each shareholder regardless of the number of shares they are holding, such as right to access to company's record, to be notified of the shareholder's meeting and to obtain shares certificate issued by the company.

Although majority shareholders tend to control the company due to the number of votes they have, in practice, administrative requirement for certain registration of the company require collaboration from minority shareholders. For example, in case of any amendment of a company's articles of incorporation (the company's constitutional document), a written resolution of shareholders (which is required to be signed by all shareholders) shall be submitted with an application to the MOC in order to register such change. 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, are offered protection.

The above answers were prepared by August 17, 2022.

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一、外商直接投资（绿地投资）

柬埔寨适用于外商直接投资的主要法律法规有哪些？对特定的外国投资者（如国有企业）是否有特殊规定？

在柬埔寨适用于外商直接投资的主要法律和条例如下：

- 《商业企业法》（2005年6月19日）（Law on Commercial Enterprise, 简称LCE）；
- 《商业法规和商业注册法》（1995年6月26日）（Law on Commercial Rules and Register, 简称LCR），根据《商业法规和商业注册法修正案》（1999年11月18日）修订；
- 《投资法》（2021年10月15日）（Law on Investment, 简称LOI）。

柬埔寨对外商投资持开放和自由政策，除了禁止外国人在柬埔寨持有土地所有权外，几乎没有限制，也不存在专门管理外国投资者的单独法律或特别规则。总体而言，任何投资柬埔寨的外国投资者，包括外国国有企业，都要遵守柬埔寨的法律，与适用于当地投资者的法律一致。

外商直接投资是否需要取得政府和监管部门的批准？如需要，请简要介绍（例如触发条件、主管机关及时限要求）？

在申请某些投资激励政策时，需要获得政府批准。根据LOI第5章相关规定，投资者依法享有部分投资保护，包括不因外国国籍受歧视，以及资产免受国有化。但如需享有特定投资奖励，如免税，投资者必须根据投资项目类型和注册资本，向柬埔寨发展理事会（Council for the Development of Cambodia, 简称CDC）或省市投资委员会（Provincial-Municipal Investment Sub-Committee, 简称PMIS）申请，将投资项目登记为“合格投资项目”（Qualified Investment Project, 简称QIP）。低于200万美元的投资项目由PMIS监管，CDC则监管位于两个以上省份或经济特区超过200万美元的投资项目。不同类型的QIP包括：（1）出口合格投资项目；（2）支柱产业合格投资项目；（3）国内市场导向的合格投资项目；（4）扩展产业合格投资项目。QIP在企业取得注册证书（Registration Certificate）后方可生效。所有QIP每年都必须从CDC取得合规证书（Certificate of Compliance, 简称CoC），才能获得投资奖励。CoC是QIP遵守了柬埔寨所有税法和投资法规的证明。

投资项目实施自动审批制度，一般情况下，除非项目涉及违法领域、政治敏感或国家利益，CDC或PMIS应在收到投资建议书后31个工作日内完成审批。根据《关于柬埔寨发展理事会的组织和运作》的第147号次级法令第11条，CDC应将下列情况的投资项目提交至部长会议批准：

- 拥有5000万美元及以上的资本投资；

- 涉及政治敏感问题；
- 以勘探和开发矿产和自然资源为经营目标；
- 极有可能对环境产生负面影响；
- 拥有长期发展战略；
- 对于一些基础设施项目有其用途，例如基于建造-拥有-转让（简称 BOT）、建造-拥有-经营-转让（简称 BOOT）、建造-拥有-经营（简称 BOO）或建造-租赁-转让（简称 BLT）模式的项目。

如下文所述，某些行业的投资项目，包括旅行社、卷烟制造、酒精生产、电影制作、出版、印刷、广播电视、典当业和药品进口，在申请成为 QIP 之前，还需要获得相关政府部门的特殊许可。

对特定行业领域是否有外商投资限制？

完全禁止投资领域

根据《柬埔寨王国投资法修正案》（2005 年 9 月 27 日）的第 111 号次级法令附件 1 第 1 节所列，禁止所有外国和本地投资者从事下列投资活动：

- 精神药品和麻醉药品的生产或加工；
- 使用国际法规或世界卫生组织（简称 WHO）禁止的化学物质生产有毒化学品、农用农药 / 杀虫剂和其他影响公众健康和环境的商品；
- 利用从外国进口的废物进行加工和生产电力；
- 《森林法》禁止的林业开发经营活动。

外商投资受限领域

（1）不动产领域

禁止外国人在柬埔寨拥有土地所有权，柬埔寨土地只能由具有柬埔寨国籍的自然人或法人私人拥有。但《柬埔寨土地法》（2001 年）允许外国投资者通过特许权获得土地，或以永久租约（最短 15 年，最长 50 年，可续签 50 年）或有限的短期租约形式租赁土地。自 2010 年《关于共有建筑的外国所有权法》颁布以来，外国人可以在共有产权建筑的一楼以上拥有共管公寓或分层单元（最多占建筑面积的 70%）。

（2）商业和金融服务业

所有企业都必须在商务部（Ministry of Commerce，简称 MOC）和税务总局（General Department of Taxation，简称 GDT）注册。银行业相关的项目由柬埔寨国家银行（National Bank of Cambodia，简称 NBC）根据不同的立法进行监督和管理，具体取决于项目情况。

（3）其他行业

根据投资项目的类型，投资者还可能被要求取得其他相关部门的许可证，例如：

- “工业、科学、技术和创新部”颁发的工厂许可证（简称 MISTI）；

- 矿业和能源部颁发的采矿许可证（简称 MME）；
- “农业、林业和渔业部”颁发的农业许可证和特许权（简称 MAFF）；
- 获得环境部的环保许可（简称 MoE）；
- 旅游部颁发的施工许可证（简称 MOT）；
- 经济财政部颁发的房地产开发商许可证（简称 MEF）。

对特定行业领域是否有政府干股要求？

根据柬埔寨法律，针对外商直接投资，不存在政府干股要求。

对外商直接投资是否有任何本地化要求（例如本地雇员、本地采购的最低比例）？

柬埔寨法律对企业的本地员工没有最低比例的限制，但对雇佣外国员工有最高上限，一家公司雇佣的外国人最多占全部员工 10%。如果打算雇佣的外国人超过全部员工 10%，则必须向劳动和职业培训部（Ministry of Labour and Vocational Training，简称 MLVT）申请年度配额许可。根据《关于外国人就业特殊条件的第 277/20 号规定》（2020 年 8 月）（简称 PRAKAS 277/20），因技能或资格等原因不能雇用足够数量的柬埔寨国民的企业可以申请额外的外籍人名额，并且必须提供增加名额的理由。投资者在雇用外国人之前，必须优先考虑对现有本地员工的招聘和培训。无论是当地还是外国公民，就业或创业都需遵守《柬埔寨劳动法》。此外，外籍雇员要在柬埔寨工作，必须持有 MLVT 颁发的有效商务签证和工作许可证。

在汇出资金、利润和股息方面是否受到任何外汇管制限制？

柬埔寨外汇管理规则详见《外汇法》（1997 年 8 月 22 日）（Law on Foreign Exchange，简称 LFE）。在资本、利润和股息的汇出方面没有外汇管制限制，只要是通过授权机构，即持有 NBC 颁发的银行许可证的银行（LFE 第 5 条）操作即可。因此，要将资本和收益汇回国内，外国投资者须在 NBC 许可的银行开立账户。如果投资或清算金额大于或等于 100,000 美元，银行将向 NBC 报告此笔交易（LFE 第 17 条）。

此类交易也受到《反洗钱和打击资助恐怖主义法》（2020 年 6 月 27 日）（Law on Anti-Money Laundering and Combating the Financing of Terrorism，简称 AML Law）的约束。如现金交易金额大于或等于约 10,000 美元（the Reporting Threshold），银行必须向柬埔寨金融情报局（Cambodia Financial Intelligence Unit，简称 CAFIU）提交报告，包括进行多笔现金交易，且单笔交易的总额在一天内超过 10,000 美元（《反洗钱和打击资助恐怖主义法》（2008 年 3 月 30 日）第 28 条（简称 Prakas on AML）。如果银行怀疑或有合理理由怀疑这些资金是犯罪所得或与资助恐怖主义有关，其也必须向 CAFIU 报告（Prakas on AML 第 29 条）。

如果外国投资者打算将大于或等于 10,000 美元的本币或外币实物带入 / 带出柬埔寨，其必须在抵达或离开柬埔寨时向边境口岸的海关当局申报（LFE 第 13 条）。

外商直接投资设立的常见的法人实体类型有哪些？其内部治理结构如何？

外国投资者设立公司形式类型主要取决于其是否希望在柬埔寨境外登记为外国企业，或直接在柬埔寨开展业务。

在柬埔寨登记外国企业

外国企业是根据外国法律成立的法人实体，在柬埔寨设有营业地并开展业务。根据 LCE 第 272 条的规定，外国企业在柬埔寨境内有下列行为的，将被视为在柬埔寨境内营业：

- (1) 租用办公室或任何其他空间用于制造、加工或提供服务的时间超过一个月；
- (2) 雇用任何人为其工作一个月以上；
- (3) 开展其他任何柬埔寨法律允许外国自然人和法人开展的行为。

根据 LCE，外国企业可通过以下公司形式在柬埔寨开展业务：

- 代表处
- 分公司
- 根据柬埔寨法律在柬埔寨注册成立的子公司

代表处：

代表处不是最适合外国直接投资的形式，因为其不能在柬埔寨买卖商品、提供服务或从事制造、加工或建筑工作（LCE 第 274 条）。LCE 规定代表处只能进行市场调查、向母公司提供信息，或在柬埔寨营销和推广离岸母公司的产品和服务。

分公司：

在柬埔寨设立的分公司，只要不违反外国自然人或法人相关法律或规定，如拥有土地等，就可以买卖商品、提供服务和从事制造、加工和建筑工作（LCE 第 278 条）。分公司与外国母公司是同一实体，因此外国母公司将对分公司的义务、损失和债务承担法律责任（LCE 第 279 条）。

子公司：

子公司是由外国母公司在柬埔寨注册成立的公司，母公司至少持有其注册股本的 51%（LCE 第 283 条）。该子公司具有独立的法人资格，可以成立为合伙公司或有限责任公司，并可定期开展类似于当地公司的业务，但无法拥有土地。如果分公司打算拥有土地，必须由柬埔寨自然人或法人持有其至少 51% 的注册股本。

在柬埔寨直接经商

有限责任公司：

有限责任公司（简称 LLC）是在柬埔寨直接投资和开展业务的最常见的法人实体，通常作为投资者的离岸控股公司的子公司成立。由于柬埔寨对外资参与投资比例基本没有限制，投资者可以设立外商独资、柬埔寨股东全资，或柬埔寨及外国股东共同持股的公司。根据 LCE 第 101 条，一家公司只有在柬埔寨自然人或法人持有至少 51% 注册股本时，才被视为柬埔寨公司。

特定的投资项目要求公司具有一定的当地股权，例如：

- 拥有土地：如果公司打算拥有土地，外国人最多只能持有公司 49% 的股份；
- 国有企业：柬埔寨政府必须直接或间接持有国有企业 51% 以上的资本或投票权；
- 旅游经营商和旅行社：旅行社或国内旅行社经营的个人或实体必须是柬埔寨当地的个人或实体（《关于向旅行经营商、旅行社和分支机构发放旅游许可证》第 113 号（Prakas NO.113）第 4 条）。

有限责任公司可以是私人有限公司，也可以是公众有限公司。公众有限公司可以向公众发行证券，并必须至少有三名董事（LCE 第 118 条）。

私人有限公司是外商投资的首选实体形式。它的最低资本金要求为 400 万瑞尔（柬埔寨法定货币，根据瑞尔对美元汇率折算，约合 1 美元）。股东人数在 2 到 30 人之间，要求至少一名董事（LCE 第 86 条和 118 条）。公司不得向一般公众发行股票或其他证券，但可以提供给现有股东、家族成员和经理层以筹集资金（LCE 第 86(C) 条）。建议外国投资者考虑成立私人有限公司，在该种公司形式下，股东的责任将以其出资额为限。

外资公司的登记和设立程序是什么？

如上所述，在柬埔寨投资的外国人可以选择四种类型的企业：

- (1) 私人有限公司；
- (2) 代表处；
- (3) 外国分公司；
- (4) 子公司。

外资公司和内资公司的注册程序是相同的。根据规定，公司注册应通过以下步骤在线上（Online Single Portal Service）完成：

步骤	描述
在 MOC 注册	公司名称注册需要使用高棉语或英语，提交后将接受自动审查。在收到公司名称预留申请后，该名称将自批准之日起保留两周。在两周内未能完成公司注册，该名称将供其他申请者使用，如需保留，应申请延期。只能延期一次，延期后公司名称可再保留两周。注册后，MOC 将颁发注册证书。
税务登记	GDT 的申请表必须在 4 天内完成。注册后，GDT 将配备纳税人识别号，公司会收到纳税人识别号身份证明、增值税证书和专利税务证书（电子版）。

向 MLVT 申报	<p>凡员工人数在八人以上的公司，在开始经营前，必须向 MLVT 提交书面申报。</p> <p>公司须制定符合柬埔寨劳动法一般规定的内部规范，并应在公司成立后三个月内提交。</p>
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外国投资者需要准备哪些文件和材料？是否需要公证或认证？

公司类型	所需文件及信息
私人有限公司	<p>股东护照，如果股东是公司，则提供公司注册证书；英文和高棉文双语版本的公司章程（必须以纸质文件形式提交给 MOC）；注册办公地址证明；注册代理机构的详细信息；公司董事的详细资料和每位董事护照信息页的签字复印件。</p>
代表处 / 分公司 / 子公司	<p>外国母公司注册证和章程的复印件；外国母公司为授权人员签发的聘书；外国母公司每位董事的护照复印件、签名和住址；代表处获授权人员的护照复印件、签名和住址；在柬埔寨的主要业务活动；授权人员的白底近照（三个月内拍摄）；公司运营场所的详细信息。</p>

完成整个登记和设立流程一般需要多长时间？

如上一问中所述，公司的登记和注册应通过线上服务（Online Single Portal Service）进行，以便在 MOC 进行公司注册（Company registration）、在 GDT 进行税务登记（Tax Registration）及在 MLVT 进行企业开业登记（Announcement of the Opening of Enterprise）。申请批准期通常为 8 个工作日，但实际上，成立一家新公司可能需要 3-4 周的时间。

二、 并购法律法规及监管审批

适用于柬埔寨上市公司和非上市公司相关并购交易的主要法律法规有哪些？涉及哪些主要问题？

适用于柬埔寨并购交易的主要法律法规包括：

- 《竞争法》（2021 年 10 月 5 日）（Law on Competition, 简称 LOC）；

- 《商业企业法》（2005年6月19日）（Law on Commercial Enterprise, 简称LCE）；
- 《商业法规和商业注册法》（1995年6月26日）（Law on Commercial Rules and Register, 简称LCR）（根据《商业法规和商业注册法修正案》（1999年11月18日）修订）；
- 《投资法》（2021年10月15日）（Law on Investment, 简称LOI）；
- 《非政府证券发行和交易法》（2007年10月19日）（Law on Issuance and Trading of Non-Governmental Securities）；
- 《柬埔寨证券交易所上市规则》（2015年6月10日）（Listing Rules of the Cambodia Securities Exchange, 简称Listing Rules）；
- 《柬埔寨证券交易所证券市场操作规则》（2018年1月10日）（Operating Rules of Securities Market of the Cambodia Securities Exchange, 简称Operating Rules）；
- 《上市规则实施通告》（2011年5月3日）（Prakas on Implementation of Listing Rules）；
- 《关于执行证券市场操作规则的通告》（2011年5月3日）（Prakas on Implementation of Operating Rules）；
- 《关于公开发售股票证券的第005号通告》（2015年9月10日）（Prakas No. 005 on Public Offering of Equity Securities, 简称Prakas No. 005）；
- 《关于柬埔寨竞争委员会的组织和运作》的第37号ANKR.BK子法令（Sub-Decree No. 37 ANKR.BK on the Organization and Functioning of the Cambodia Competition Committee, 简称Sub-Decree No.37）。

LCE 主要规范公司并购的程序，包括董事会和股东的决议和批准程序，第 241 条允许两个或两个以上公司合并为一个公司，或合并成立一个新的公司。

企业合并，即合并或收购，在 LOC 第 3.3 条中被定义为（1）通过一个实体从另一个实体购买股份或资产来获得控制权或投票权；（2）两个或多个实体合并以获得现有法人实体的共同所有权或组建新的法人实体。LOC 主要规范具明显阻止、限制或扭曲市场竞争的反竞争性并购，将在下文予以详细阐述。

上市公司的并购应遵守柬埔寨证券交易监管机构（Securities and Exchange Regulator of Cambodia, 简称 SERC）或柬埔寨证券交易所（Cambodia Securities Exchange 简称 CSX）的法律法规，包括《非政府证券发行和交易法》及相关上市规则。

并购中是否存在针对外国买方的外商投资审查？如有，请简要介绍（例如触发条件、主管机关和时限要求）？

根据 LOI 规定，除了拥有土地和某些行业（如旅游业）的一些地方股权限制外，外国投资者通常与国内投资者享受同等待遇。除非双方希望进行尽职调查，外国投资者在并购交易中不需要经过任何具体的审查或监督程序。不同行业的企业并购可能需要相

应政府机构的批准，但此类批准同等适用于国内和外国买家。

应注意的是，如果合并或收购导致柬埔寨股东对实体的股权减少至低于 51%，则该实体将不再被归类为柬埔寨法律实体，将失去在柬埔寨拥有土地（或高层建筑的一楼）的资格。

并购中是否需要进行反垄断申报？如需要，请简要介绍（例如触发条件、主管机关和时限要求）？

根据 LOC 第 11 条，除非给予豁免（LOC 第 3 章），任何具有阻止、限制或扭曲竞争效果的反竞争企业合并是被禁止的。柬埔寨竞争委员会（Cambodian Competition Committee，简称 CCC）是主要监管机构，旨在审查任何企业合并对柬埔寨市场竞争的影响，并审查企业合并“显着阻止、限制或扭曲”竞争的程度（LOC 第 11 条）。

CCC 通过经济分析或其他分析方式确定对竞争的影响程度（LOC 第 3 条）。

QIP 并购

如果发生 QIP 合并、收购，或股权转让导致受让方持有 QIP 20% 或以上的股份，只有获得 CDC 或 PMIS 的书面批准，新实体才有资格获得 QIP 投资奖励，且必须在合并、收购或股权转让前 10 个工作日内提交审批申请。

LOC 条例下的豁免

如果公司认为其投资违反了 LOC 的条例，可在投资前向 CCC 申请豁免。如果该投资满足 LOC 第 12 条规定的以下四项要求，则可获得豁免：

- （1）具有可认证的重大技术、经济或社会效益；
- （2）如果没有这项投资，这些益处就会消失；
- （3）这些益处大大超过任何坚决阻止、限制或扭曲竞争所造成的影响；
- （4）该投资不会影响商品或服务重要方面的竞争。

CCC 有权确定是否满足上述四个条件，并可以确定豁免日期（LOC 第 13 条）。如果公司未申请豁免并且企业合并违反了 LOC 条例，将受到处罚。

并购中的外国买方是否还需要取得其他政府和监管审批？如需要，请简要介绍（例如触发条件、主管机关和时限要求）？

特定受监管行业的并购必须得到相关政府机构的批准，但没有专门针对外国买方的情况。

如电信行业公司的合并必须取得柬埔寨电信监管机构（Telecommunications Regulator of Cambodia，简称 TRC）的批准，NBC 应根据 B7-01-187 号《银行股份转让》（2001 年 11 月 8 日）条例处理银行业的任何合并或股份转让。保险业的合并受经济

和财政部（Ministry of Economy and Finance，简称 MEF）和柬埔寨保险监管机构的监管。

三、上市公司并购

收购上市公司的主要方式有哪些？

在柬埔寨的主要收购方法包括：

- 两家或多家公司合并为一家公司或独立成立一家新公司（由 LCE 监管）；
- 收购公司的全部或大部分现有股份 / 资产（LOC 第 3.3 条）。

在什么情况下会产生强制要约收购义务（如有）？

不适用。

要约是否有最低报价的要求？

柬埔寨的法律没有为 CSX 上市股票设定具体的最低发售价格，也没有任何关于强制收购要约的百分比条件的规定。

对于在 CSX 上市的股票，操作规则确定了交易条件，例如基本价格和每日价格限制。根据《操作规则》第十七条，权益性证券的每日涨跌停板应等于基础价格（通常为前一交易日收盘价）加减 10% 计算得出的金额；首次上市证券，应为首次公开发行价格的 90% 至 150%。发生增资 / 减资、股票分红或分拆时，需按照《操作规则》第十六条规定的公式确定底价。

投资者交易在 CSX 上市的证券无需经过任何资格评估程序或获得任何事先监管批准，但必须通过 CSX 许可的证券公司进行交易。

目标公司董事会对拟议收购的影响？

根据 LCE 第 119 条，公司董事会的权力包括向股东提议公司与任何其他人之间的合并（第 119 条第（6）款），以及向股东提议出售全部或主要公司资产（第 119 条第（7）款）。

除非公司章程另有规定，包括目标公司在内的每家提议合并的公司的董事会均应作出批准合并协议的决议，否则该决议应获得董事会法定人数的过半数通过（LCE 第 242 条）。

此外，在每家公司的董事会批准合并决议后，提议合并的每家公司的股东有权对合并进行投票（LCE 第 244 条），存续公司的股东应当将股东大会通知发送给对合并有表决权的每一位股东。合并必须获每家待合并公司三分之二股东的特别决议批准（LCE 第 245 条）才可通过，同时需向 MOC 提交合并登记申请（LCE 第 247 条）。

尽管 LCE 对收购交易没有相应规定，但有关董事会和股东批准的程序很可能适用于收购程序。

收购过程中需要哪些核心文件？

一般并购交易所需的关键文件包括但不限于：

- 保密协议（“NDA”）——买方在联系购买对象之前根据公开信息进行初步评估。然后，买方联系对象并表示有兴趣购买或认购股票。在开始尽职调查之前，各方签署一份 NDA，阐明他们在整个交易过程中对保密的承诺；
- 法律和财务尽职调查报告；
- 交易文件，例如合并协议、股份购买或认购协议以及资产转让协议。

收购文件在公布前是否需要任何监管机构的事先批准？

一般来说，收购文件在公布前不需要任何监管机构的预先批准。但是，视目标公司的行业和领域而定，该文件可能需要与主管部门的登记和批准申请一并提交。

四、非上市公司并购

相对于股权收购或资产收购，对业务转让是否有特殊的规定？

除了股权或资产收购外，没有关于业务转让的特殊规则。根据资产转让协议，业务的每一部分都将被归类为要转让的资产，因此柬埔寨法律法规在资产和业务转让上没有区别。

股权收购

股权转让后，股权所附带的所有权利和责任将有效地转移给新股东，包括获得股息的权利、出席股东会和会在股东会上投票的权利及提名任何董事会成员的权利等；且新股东以其出资额为限对目标公司所受损失而承担责任，目标公司的权利和义务不变。

原则上，公司股权变更（即通过股权收购或股权转让）需要在 MOC 批准和登记，并通知税务总局。如果目标公司开展任何符合条件的投资项目或任何特定监管机构监管的活动，股权变更还应获得 CDC、PMIS 和相关监管机构的批准。股权转让须缴纳所转让股份价值 0.1% 的印花税。

资产收购

与收购股权的收购方间接拥有目标公司的所有资产不同，收购资产可使收购方控制或拥有目标公司持有的特定资产，与此类资产有关的权利和责任将转移给买方。

与资产收购有关的要求因受让资产的类型不同而存在差异。

如资产为标的公司在任何协议下的权利，资产的转让以标的公司向购买人转让权利的方式进行。

如资产是动产，其所有权的转移原则上是由购买者占有资产，但具有登记号的动产（例如车辆）的转让需要进行所有者变更登记。如果是车辆，所有权转让需缴纳房产价值

4% 的印花税。在业务转让情况下收购资产无需缴纳 10% 的增值税（GDT 第 15301 号指令（2020 年 6 月 22 日））。

如果资产是不动产，所有权转让必须在土地管理、城市规划和建设部登记，并按交易价值或财产市场价值的 4% 缴纳印花税。

劳工组织、工会及其他利益相关方（目标公司的卖方除外）是否在并购中发挥作用？

柬埔寨劳动法没有对并购中企业与雇员协商或同意权予以规定。在股权转让中，无论目标公司的控制权是否发生变化，该转让均不影响企业用人单位与现有员工之间的雇佣关系。但是，在资产转移中，企业的员工不会自动转移给买方，此类雇员的雇佣合同必须先通过合同安排终止或转让。

此外，目标公司签订的某些协议可能对控制权变更存在限制，该等情况下导致控制权变更的股份转让需要事先获得该协议相对方的同意。

法律赋予少数股东的主要权利是什么？

对于私人有限公司，法律没有明确规定保护少数股东。但是，LCE 列举了适用于每位股东的权利，无论股东持有多少股份，都拥有如查阅公司记录、获得股东大会通知及获得公司发行的股票证书的权利。

尽管大股东因拥有更多的投票权而更具有控制公司的优势，但实际上，某些行政管理要求需要公司少数股东的配合。例如，对公司章程的任何修改，应提交全体股东签字的股东会书面决议，并向商务部申请登记。其中，需要修改公司章程的事项包括股份转让和公司资本结构的变化，此类行政管理要求为少数股东权利提供了保护。

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