



ANNUAL LAW REVIEW 2021

HBS

LAW | NOTARY | TAX

Tel: +855 85 555 777 / 16 555 777

Email: info@hbslaw.asia | Website: www.hbslaw.asia

GIA Tower, 37th Floor, Sopheap Mongkul Rd, Diamond
Island, Sangkat Tonle Basak, Khan Chamkar Mon,
Phnom Penh, Cambodia (P.O.120101)

Dear Clients and Readers,

I would like to take this opportunity to wish you a successful and prosperous 2022.

I am proud that our team has shown resilience during 2021 and has continued to adapt in response to unforeseen circumstances caused by the Covid-19 pandemic.

The pandemic has challenged us to reconsider the way in which we do business and to renew our practices in order to provide support to our clients in difficult and turbulent times. As we have a large base of international clients from across the globe, HBS Law has implemented technological solutions to facilitate contact with our clients.

In the past year, HBS has supported clients in key sectors, such as telecommunications, e-commerce, real estate and construction, banking and insurance, energy, and dispute resolution.

HBS has relocated to a new state-of-the-art office on Diamond Island (*Koh Pich*) - a Grade A building ([Garden in the Air Tower](#)).

Our office relocation is part of our expansion strategy and our commitment to support our clients over the long term. Although we will continue to take the necessary measures with regards to the evolution of the worldwide and local health situation, our team will continue to be mobilised in our new dedicated space so that we can respond to our clients' needs in a proactive way and to meet the new expectations of our clients in a safe and secure environment. To sustain our growth, we will strengthen our foundation through a people-centric human development approach, enrich our team with experienced and diverse profiles.

This law review is designed to provide a recap of significant legal updates made during 2021, and to provide our thoughts on what is likely to matter the most for 2022.

We are confident that, whatever challenges we may encounter, we will continue to gain momentum in the 17th year of our journey both in terms of our business and in delivering high-quality legal services to our clients.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Ly Tayseng', with a stylized flourish at the end.

Ly Tayseng
Managing Partner

TABLE CONTENTS

1. Commercial, Corporate & Investment	1
1.1 Corporate Registration	1
1.2 E-Commerce	1
1.3 Consumer Protection & Competition	1
1.4 Environmental, Social, and Governance (ESG)	1
1.5 Investment	2
1.6 Legal Focus for 2022	2
2 Labor and Industrial Relations	3
2.1 Labor Law Reform	3
2.2 Social Security	3
2.3 Workplace Diversity & Equal Opportunity	3
2.4 Labor Compliance	3
2.5 Legal Focus for 2022	3
3 Infrastructure, Construction and Real Estate	4
3.1 Construction Licensing & Standards	4
3.2 Infrastructure	4
3.3 Legal Focus for 2022	5
4. Intellectual Property Rights	5
4.1 Mark and Trade Name	5
4.2 Legal Focus for 2022	5
5 Customs and Tax	5
5.1 Tax	5
5.2 Customs	6
5.3 Legal Focus for 2022	6
6 Banking and Finance	7
7 Capital Markets and M&A	8
7.1 Capital Markets	8
7.2 Non-Banking Financial Services	8
7.3 Legal Focus for 2022	9
8 Dispute Resolution	9

8.1	Commercial Arbitration.....	9
8.2	Legal Focus for 2022.....	9



1. COMMERCIAL, CORPORATE & INVESTMENT

1.1 CORPORATE REGISTRATION

In order to avoid a disorganized proliferation of company names, the Ministry of Commerce (“MOC”) has provided clarification regarding the usage of the words and abbreviation for identifying the legal forms of the companies which are to be used at the end or below each company’s name by using the appropriate words or abbreviations listed in [Prakas No. 0169 on the Usage of Words to Identify the Legal Forms of Companies issued by the Ministry of Commerce on 12 August 2021](#).

1.2 E-COMMERCE

After having issued several notices ([Announcement No. 2194 on the Granting of E-commerce Permit or License Issued by the Ministry of Commerce on 15 September 2021](#); [Notification No. 1143 on the Granting of E-Commerce Permits or Licenses Issued by the Ministry of Commerce on 26 May 2021](#)) and having considered that a significant number of E-Commerce Service Providers and Intermediaries had not fulfilled their obligations to apply for an E-commerce Permit or License, the MOC announced the postponement for the enforcement of any penalty for non-compliance with the requirements to apply for an E-Commerce Permit or License ([New Announcement No. 2908 on the Extension of the Penalty to Apply for the E-Commerce Permit or License Issued by the Ministry of Commerce on 1 December 2021](#)).

1.3 CONSUMER PROTECTION & COMPETITION

In order to regulate any activity that prevents, restricts or distorts commercial competition, and to encourage fair and

honest business relations, increase economic efficiency, encourage new businesses, and help consumers to access high-quality, low-cost, diverse and versatile products and services, the [Law on Competition](#) was promulgated on 5 October 2021.

The Law on Consumer Protection was promulgated on 2 November 2019. After several months of dissemination to the general public, the MOC issued several implementing regulations, such as [the Implementation of Inter-Ministerial Prakas No. 338 MEF. PrK dated 3 June 2021 on the Provisional Fine Procedures for Violations of the Law on Consumer Protection](#). Furthermore, in order to set out the information standards on goods or services to ensure and enhance the protection of consumers' rights and interests and to promote fair competition through the disclosure of minimum information to consumers, the MOC issued Prakas No. 185 on Information Standards for Consumers on 31 August 2021. A specific dispute resolution procedure was set by Prakas No. 184 on the Procedure for Settlement through Negotiation on Crimes under the Law on Consumer Protection issued on 31 August 2021, under which persons covered by the Law on Consumer Protection may settle a dispute via negotiation between the person under investigation, the investigation officers and the National Commission for Consumer Protection in order to protect consumers’ rights and interests.

1.4 ENVIRONMENTAL, SOCIAL, AND GOVERNANCE (ESG)

In order to contribute to the country’s environmental policies, the Ministry of Environment issued its [Prakas on Procedures and Implementation Guidelines for Conducting](#)

[Initial Environmental and Social Impact Assessment for Fuel Stations and Fuel-gas Stations](#). Prior to implementing such projects, the operator is required to consult with people who may be impacted by the project and the relevant authorities within the area where the project is located, and when necessary, consultations are required to be made with other competent authorities at any relevant level.

1.5 INVESTMENT

After several months of consultations with relevant stakeholders, the Law on Investment was promulgated on 15 October 2021 (“New Investment Law”) and it abrogated the previous Laws on Investment. The New Investment Law consists of 12 Chapters and 42 Articles. The new provisions aim to foster a more open, transparent and predictable legal framework as an instrument to improve the attractiveness and raise the quality of the investment environment for Cambodian and foreign investors to better serve the socio-economic development goals in Cambodia. To achieve these aims, more investment incentives are provided for by the New Investment Law for investment activities and priority sectors, including innovative high-tech industries, electrical and electronic industries, small and medium enterprises, the tourism sector, digital industry, and investment in green energy. Also, the New Investment Law reforms the registration process and the modalities for issuance of a one-time Registration Certificate.

On 8 June 2021, the Royal Government of Cambodia issued a Sub-Decree on the Establishment of Provincial and Municipal Sub-Committees for Investment. Such sub-national organ is responsible for registering and approving incentives for investment projects which in respect of which the investment capital is less than US\$5 million.

1.6 LEGAL FOCUS FOR 2022

- **Promulgation of the Law on the Amendment of the Law on Commercial Enterprises.** [The Law on the Amendment of the Law on Commercial Enterprises, promulgated on 29 January 2022](#), amends some articles of the 2005 Law on Commercial Enterprises. The amendment aims to support the reform of the Royal Government of Cambodia with regards to providing public services, restoring economic growth, boosting the ease of doing business in Cambodia and providing transparency, consistency and

harmonization to comply with the global legal framework.

The amendments cover matters such as the nature (form) of the sole proprietorship, roles of the corporate secretary in private and public limited companies, dissolution and liquidation of sole proprietorships and general partnerships, nationality of private and public limited companies, appointment of shareholder representatives, and the legal status of local branches and foreign businesses doing business in Cambodia.

- **Promulgation of the Law on the Amendment of the Law on Commercial Regulations and the Commercial Register.** [The Law on the Amendment of the Law on Commercial Regulations and the Commercial Register](#), promulgated on 29 January 2022, amends some articles of the 1995 Law on Commercial Regulations and the Commercial Register and its amendment of 1999. The amendment aims to modernize the legal framework with regards to providing public services and to keeping up with the local and regional businesses made via the automation system. Further, the amendment was made to optimize the process through the automation system, contributing to the ease of doing business in Cambodia and increasing transparency, consistency and standards.
- **Implementing Regulations of the New Investment Law.** While the Law on Investment has been promulgated, its implementation will be framed by several implementing regulations, primarily by a *Sub-decree on the Implementation of the Law on Investment*.
- **E-Commerce Permit or License:** Although the MOC has issued a number of regulations on the procedures and required information and documents, business persons are still facing some issues with the application for an E-commerce Permit or License. Considering that the E-commerce is on a growing trend, additional clarification and guidelines may be issued by the relevant authorities to further facilitate the registration of E-Commerce Service Providers and Intermediaries.

2 LABOR AND INDUSTRIAL RELATIONS

2.1 LABOR LAW REFORM

[The Law on Amendment of Article 123, Article 138, Article 162, Article 300, Article 343, Article 350, Article 363 and Article 367 of the Labor Law](#) was promulgated by the Royal Kram NS/RKM/1021/011 dated 5 October 2021 (“Law on Amendment”). The Law on Amendment aims to clarify the implementation of working shifts, the monitoring of working hours during paid public holidays, as well as providing the possibility for individual disputes to be settled by arbitration administered by the Labor Arbitration Council.

2.2 SOCIAL SECURITY

During the past year, the Ministry of Labor and Vocational Training (MLVT) has issued critical implementing regulations regarding Social Security. Sub-Decree No. 32 on Social Security Scheme Pensions for Persons Defined by Provisions of the Labor Law was issued on 4 March 2021 with the purpose of establishing the mechanisms, conditions, formalities and procedures for registration, making contribution payments, contribution rates, accrual rates, claims and benefits necessary for the launch of the Social Security Scheme on Pensions. With this in mind, the MLVT issued Sub-Decree No. 144 on the Determination of Contributory Wages on 19 August 2021 to determine the rate of contributory wages for occupational risk scheme, health care scheme, pension scheme and unemployment scheme in accordance with the Law on Social Security Schemes.

2.3 WORKPLACE DIVERSITY & EQUAL OPPORTUNITY

On 26 August 2021, the Ministry of Social Affairs, Veterans and Youth Rehabilitation reminded private enterprises with 100 or more employees to register with the Ministry or Municipal/Provincial Department of Social Affairs, Veterans and Youth Rehabilitation in accordance with the Law on the Protection and Promotion of the Rights of Persons with Disabilities, as well as complying with the quota and formalities for recruitment of disabled persons ([Notification No. 008 on the Registration to Implement the Obligations of the Private Sectors under the Law on the Protection and Promotion of the Rights of Persons with Disabilities dated 26 August 2021](#)).

2.4 LABOR COMPLIANCE

The minimum wage for workers in textile, garment, footwear, travel goods and bag sectors for 2022 has been officially set at USD194 per month. Employers in that sectors are required to comply with Prakas No. 264 on the Determination of Minimum Wages for Workers/Employees in Textile, Garment, Footwear, Travel Goods and Bag Industries for 2022 issued on 28 September 2021.

On 21 January 2021, the Ministry of Labor and Vocational Training issued a Notification on Payment of Back Pay Seniority Indemnity before 2019 and Seniority Indemnity in 2020 and 2021 for Factories and Enterprises in the Manufacturing Sector to inform all factories and enterprises in the manufacturing sector that the payment of back pay of seniority indemnity before 2019 and seniority indemnity in 2020 and 2021, for those governed by Undetermined Duration Contracts. Therefore, employers in the aforementioned sectors are required to prepare their budgets for the upcoming year in order to comply with their annual legal obligations related to seniority payments.

For employers having recourse to foreign manpower, it is to be noted that upon the Notification No. 058/21 on the Extension of Quota Request for the Use of Foreign Labor Force for 2022 issued on 1 December 2021, the MLVT has decided to extend the deadline of quota request for 2022 to the end of January 2022.

2.5 LEGAL FOCUS FOR 2022

- For the purposes of modernizing the labor inspection system, the Labor Inspection Self-Declaration via Automation System for factories/enterprises in the textile, garment, footwear, travel goods and bag sectors was launched for testing from 1 October to 30 November 2021 through a governmental platform (<https://sicms.mlvt.gov.kh>). Following the pilot project, the MLVT generalized the Labor Inspection Self-Declaration via Automation System from 1 January 2022 through the same platform. Therefore, employers are required to complete the report online in June and December of each year via the Labor Inspection Self-Declaration platform.

3 INFRASTRUCTURE, CONSTRUCTION AND REAL ESTATE

3.1 CONSTRUCTION LICENSING & STANDARDS

The construction sector in Cambodia was lacking proper and detailed regulations until the promulgation of the Construction Law in 2019 (the “Construction Law”). The Construction Law has introduced the legal framework for the following key areas:

- The safety and technical standards for construction, repairs, and demolition work;
- The supervision of construction professionals;
- The standards for construction materials; and
- The occupancy of constructions.

Construction Certification

Pursuant to the Construction Law, on 30 December 2020, the Royal Government of Cambodia issued Sub-Decree No.225 (“Sub-Decree No. 225”) to provide conditions and procedures for construction certification. Under Sub-Decree No. 225, the following constructions and construction work require certification:

- (i) any design document used for construction or demolition work that requires a construction permit;
- (ii) any construction or demolition work that requires a construction permit;
- (iii) any new, repaired, renovated, or modified construction that requires a certificate of occupancy;
- (iv) any construction and construction equipment that requires regular safety and quality certification; and
- (v) any construction that may cause a risk to human, property, or security or public order.

Any construction that obtains construction certification will be issued a compliance certificate that is prerequisite for obtaining an occupancy certificate or temporary occupancy certificate.

For new construction projects, the certification is required on both the design documents such as the architectural and structural plans and the construction work itself including the

repair and demolition work to ensure their full compliance with the safety and technical regulations and/or standards.

For existing or completed construction, the certification is required on a periodic basis as follows:

- Every 10 years for residential buildings;
- Every 5 years for non-residential buildings;
- Every 2 years for fire prevention and extinguishing systems; and
- Every year for any hazardous construction equipment.

Construction Certifiers

Following three sub-decrees issued in 2020 on the construction permit, the conditions and formalities of construction certification, and the conditions and formalities for the issuance, suspension and revocation of certificates of occupancy, the Ministry of Land Management, Urban Planning and Construction, in 2021, issued three additional Prakas covering:

- (i) The issuance, renewal and expiration of construction certification licenses;
- (ii) The procedure for certification of the architectural and structural aspects of construction and demolition works; and
- (iii) The procedure for certification of the architectural and structural plans.

3.2 INFRASTRUCTURE

Initially scheduled to be promulgated by the end of 2019 or early 2020, the Law on Public Private Partnership (“Law on PPP”) was finally promulgated on 18 November 2021 after several rounds of public consultations. The Law on PPP abrogates the Law on Concessions, promulgated on 19 October 2007, and the provisions of other laws and regulations that are in conflict with the Law on PPP.

The Law on PPP is to be read in conjunction with the New Law on Investment, as discussed earlier in this newsletter, since a PPP Project may benefit from investment incentives in accordance with the conditions set forth in the Law on Investment of the Kingdom of Cambodia.

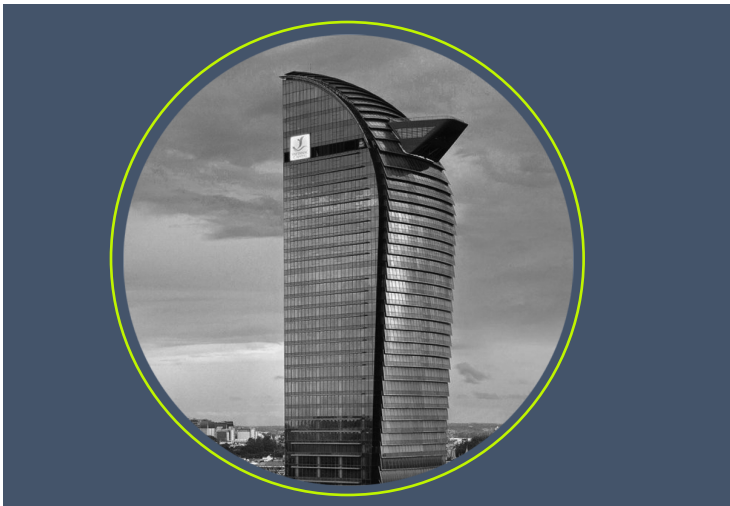
The Law on PPP governs PPP Contracts entered into between an Implementing Agency and a Private Partner for the provision of public infrastructure and/or services in eligible

sectors as listed in the Law on PPP. Under the Law on PPP, a PPP Contract may be awarded via a competitive bidding procedure or through direct negotiations. Furthermore, a significant difference with the Law on Concessions is that the parties to the PPP Contract may agree on step-in rights in favor of the lender(s) to the Project and/or the Government to takeover a PPP Project to ensure the continued performance of the Private Partner's obligations under the PPP Contract and/or loan documents related to the Project. The PPP Contract may include an arbitration agreement to settle any dispute between the Implementing Agency and the Private Partner.

As a matter of principle, the PPP Contract must be governed by the laws and regulations of the Kingdom of Cambodia. There are no restrictions regarding the choice of the governing law of any ancillary agreements related to implementation of the PPP Project, except for the case where a public entity of the Kingdom of Cambodia is a party to the agreement.

3.3 LEGAL FOCUS FOR 2022

- While the Law on PPP has been promulgated, implementing regulations are necessary for the implementation of several provisions, such as identification and selection criteria for PPP Projects, standard operating procedures for PPP Projects, the procedures for development and implementation of solicited projects, procedures for the selection of transaction advisors, as well as for the procedures for the selection of the private partner, procedures for negotiation, approval and finalization of PPP Contracts, and others.



4. INTELLECTUAL PROPERTY RIGHTS

4.1 MARK AND TRADE NAME

While registration with the MOC has been made mandatory for securing the legal rights of Media Operators (*Prakas No. 0256 dated 28 August 2020 on the Management of Business Registration and Protection of Mark and Trade Name for Information and Audiovisual Licensing*), the Ministry of Information has reiterated the call during the past year to Media Operators regarding the mandatory registration of their mark and trade name with the Ministry of Commerce.

4.2 LEGAL FOCUS FOR 2022

- **Accession by the Kingdom of Cambodia to the Berne Convention for the Protection of Literary and Artistic Works.** The Government of the Kingdom of Cambodia deposited, on December 9, 2021, its instrument of accession to the Berne Convention for the Protection of Literary and Artistic Works. The instrument contained two declarations regarding the application of some provisions of the Berne Convention. The Berne Convention will enter into force in Cambodia, on 9 March 2022, making Cambodia the 178th member of the Berne Union. With this accession, we are looking forward to further development on the protection of works and the rights of authors, which may contribute to better promote original works and protect creativity of authors, musicians, poets, painters in Cambodia. This also means better awareness on how authors can protect their works.

5 CUSTOMS AND TAX

5.1 TAX

The Ministry of Economy and Finance has provided clarification regarding the [Classification of Taxpayers under the Self-Assessment Regime](#), focusing on 4 sectors: agriculture, industry, service and commerce. Taxpayers are classified in three categories depending on their annual turnover or their form of incorporation.

The Ministry of Economy and Finance has also issued Prakas no.543 dated 8 September 2021 on Salary Tax. This Prakas repealed Prakas No.117 dated 31 December 2003 and

provides more clarification on various definitions, base for calculation of salary and fringe benefits, exemptions from salary tax, tax credit etc.

Apart from traditional sectors, the authorities are also trying to develop a tax legal framework for e-commerce activities. As we have discussed earlier in this newsletter, e-commerce activities are still new in Cambodia, but numerous regulations related to the implementation of VAT on e-commerce activities have been issued during the course of the year 2021. Therefore, E-Commerce Service Providers and Intermediaries should consider the various regulations on the modalities of implementation of VAT on e-commerce, such as:

- Sub-Decree No. 65 on the Implementation of VAT on E-commerce issued on 8 April 2021;
- Prakas No. 542 Rules and Procedure for Implementation of VAT on E-Commerce issued on 08 September 2021; and
- Instruction No. 20522 on the Implementation of VAT on E-Commerce Operations issued on 8 December 2021.

5.2 CUSTOMS

Since July 2021, [pharmaceutical import and export companies can register with the Ministry of Health and import World Health Organization-recognized COVID-19 vaccines for distribution](#) to legal private health care providers throughout Cambodia, provided that they comply with applicable standards for transporting and storing vaccines in warehouses to ensure high safety and efficacy.

As Cambodia is involved into a growing number of free trade areas, the certification of origin is becoming more crucial than ever to access markets and benefit from preferential treatment. To assist with this, the Ministry of Commerce has announced (*Notification MoC No. 0773 on the Use of Automated System for Certificate of Origin (CO) issued on 1 April 2021*) the transfer of data from the interim system to the permanent automated system to facilitate the issuance of preferential and non-preferential Certificates of Origin for exporters (<https://co.moc.gov.kh/>).

5.3 LEGAL FOCUS FOR 2022

- The Sub-Decree No. 65 on the Implementation of VAT on [E-commerce and its related implementing](#)

[instruments provides conditions and mechanisms to collect VAT on e-commerce activities offered in Cambodia by non-resident suppliers which do not have permanent establishments in Cambodia](#). With the digitalization of the Cambodian economy digital goods and services are consumed in Cambodia, we can expect that the new provisions will have an impact on how non-resident e-commerce service providers and intermediaries will provide digital goods and services in Cambodia. In order to provide the necessary time for compliance, the General Department of Taxation (GDT) issued, on 17 January 2022, [Notification No. 776 on the Extension for the Implementation of Prakas No. 542 dated 8 September 2021 related to Rules and Procedures for Implementation of VAT on E-Commerce](#), which provides an extension until 1 April 2022.



6 BANKING AND FINANCE

Compared to other countries, Cambodia has been fortunate to have had a strong and effective government dealing with the impact of the covid-19. Despite this, businesses have experienced great difficulties in 2021 and the need for a liquid and flexible banking sector has been paramount. Fortunately, the National Bank of Cambodia (the “NBC”) - the central bank and supervisory authority for banks and financial institutions (“BFIs”) in Cambodia - has been quick to implement effective measures aimed at increasing the liquidity of BFIs and allowing BFIs to restructure problem loans without the need to reclassify them as non-performing loans.

Cambodian BFIs have always been relatively well capitalized and it is notable that the measures implemented by the NBC did not involve any change to levels of regulatory capital required to be held or even an adjustment to the capital buffer or the countercyclical capital buffer. This has increased the supply of much needed credit during the year.

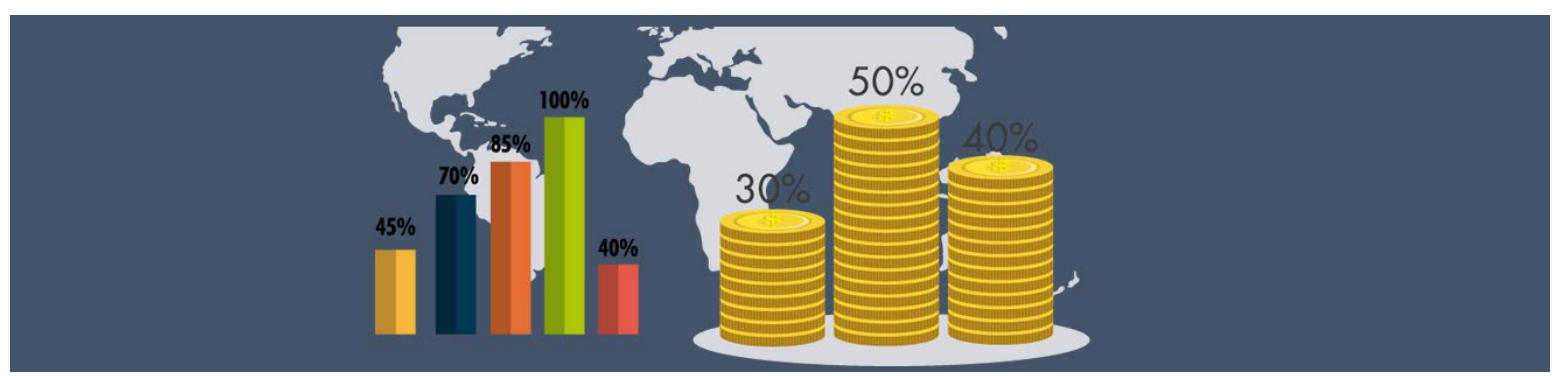
In terms of legislative developments, 2021 saw the introduction of only one new regulation by the NBC regarding bancassurance. At the end of the year, the new Competition Law was enacted but it remains to be seen what impact this will have on the banking and finance sector. It has otherwise been a relatively quiet year on the legislative front which has probably been welcomed by BFIs which have been focused on confronting issues raised by the pandemic.

Investor appetite in Cambodia has remained strong and our Banking and Finance Practice Group has been engaged on a number of high-profile facilities provided by International Financial Institutions to banks in Cambodia and domestic restructurings of loans. In addition, the Cambodian Financial Intelligence Unit (“CAIFU”) has been busy enforcing the provisions of the AMLCFT Law passed in 2020 and we have been assisting a number of BFIs with compliance issues. Nothing on the regulatory landscape has deterred investors from establishing - or seeking an investment in - BFIs in Cambodia. The number of licenses issued to BFIs continues to grow and we have been engaged on numerous acquisitions.

HBS Law has enjoyed a number of firsts this year. Notably, we were delighted to have been engaged by the International Swaps and Derivatives Association to provide a Cambodian law opinion for its members on OTC Derivatives. We have also been selected by Butterworths Journal of Banking and Financial Law to be the correspondent law firm for Cambodia.

We were fortunate that 2021 saw a return to business-as-usual and we expect that 2022 will see BFIs focus once again on issues that were put on hold during the pandemic, notably digitization of BFI services. There will of course be other developments in 2022. Our Innovations Committee (chaired by the Head of our Banking & Finance Practice Group) has identified a number of issues that will likely become more relevant to BFIs in 2022 and we look forward to holding webinars/seminars in 2022 to begin the discussion on such issues.





7 CAPITAL MARKETS AND M&A

7.1 CAPITAL MARKETS

On 26 December 2020, the new Law on Government Securities was promulgated in order to replace the Law on Government Securities, dated 12 January 2007. The new law aims to enhance the common framework for the management of issuance, trading, and the efficient, accountable and transparent management of government securities, demonstrating that the Cambodian government is paving the way for the issuance of government bonds on the CSX.

As of 2 February 2022, there are 15 companies listed on the Cambodia Securities Exchange ('CSX'), among which 7 are related to bonds issuance and 8 are related to share offerings.

Bonds

No.	Bond Issuers	Bond Type	Industry
1	Telcotech Ltd.	Corporate	Telecom
2	LOLC (Cambodia) Plc.	Corporate	Financial Institution
3	Phnom Penh Commercial Bank	Corporate	Financial Institution
4	Advanced Bank of Asia Limited	Corporate	Financial Institution
5	RMA(Cambodia)Plc.	Corporate	Import-Export
6	Prasac Microfinance Institution Plc	Corporate	Financial Institution
7	Hattha Bank Plc.	Corporate	Financial Institution

Securities

No.	Listed Companies	Type of Listed Shares	Industry
1	DBD Engineering Plc.	Voting Share	Construction and Engineering
2	Pestech (Cambodia) Plc	Voting Share	Power
3	ACLEDA Bank Plc.	Voting Share	Financial Institution
4	Sihanoukville Autonomous Port	Voting Share	Port Services
5	Phnom Penh SEZ Plc.	Voting Share	SEZ Developer
6	Phnom Penh Autonomous Port	Voting Share	Port Services
7	Grand Twins International (Cambodia) Plc.	Voting Share	Apparel Clothing
8	Phnom Penh Water Supply Authority	Voting Share	Water Utility

7.2 NON-BANKING FINANCIAL SERVICES

On 16 January 2021, the Law on Organization and Functioning of Non-Banking Financial Services Authority (the "Law on Non-Banking Financial Services Authority") was promulgated, which gave birth to the Non-Banking Financial Services Authority (the "Authority") in charge of regulating and supervising the non-banking financial sector in Cambodia.

The Authority is tasked with the following functions:

- (i) enhancing and ensuring the effective implementation of regulations relating to the non-banking financial sector;
- (ii) monitoring the development in the non-banking financial sector; and
- (iii) promoting the development and utilization of financial technology in the non-banking financial sector.

The non-banking financial sector includes, but is not limited to, insurance and private pension, securities, social security, trust, accounting and audit, real estate, pawnshop and transfer as security.

The scope and authority of the Ministry of Economy and Finance, the Securities and Exchange Commission of Cambodia ("SECC") and the National Accounting Council in relation to the non-banking sector have been transferred to the Authority.

The Law on Non-Banking Financial Services Authority also resulted in the change of the name of the former SECC to the current Securities and Exchange Regulator of Cambodia ("SERC").

7.3 LEGAL FOCUS FOR 2022

- The [National Bank of Cambodia announced on 6 December 2021 it would no longer issue new licenses for Microfinance Deposit-Taking Institutions](#). Following the COVID-19 pandemic, there is the prospect that financially affected MFI's, however having already obtained a license, could be increasingly subject to mergers and acquisitions with healthier financial institutions and/or new investors, wanting to enter this market.

8 DISPUTE RESOLUTION

8.1 COMMERCIAL ARBITRATION

While there were no amendments made to the Law on Commercial Arbitration, the National Commercial Arbitration Centre (NCAC) has adopted its new arbitration rules ("NCAC Arbitration Rules 2021"), effective from 28 June 2021, to replace its previous rules introduced in 2014. The NCAC Arbitration Rules 2021 introduced some key features, notably:

- permitting the NCAC to provide services under arbitration rules other than the NCAC Arbitration Rules 2021;
- allowing the parties to shorten the time limits applicable to arbitral proceedings if they agree to do so;
- providing the arbitral tribunal with powers to take any measure necessary to avoid a conflict of interest of an arbitrator arising from a change in party

representation after the constitution of the arbitral tribunal;

- granting official recognition of the use of videoconferencing or any similar communications technology in the arbitration proceedings; and
- providing for expedited procedures and the use of an emergency arbitrator.

8.2 LEGAL FOCUS FOR 2022

- **Commercial Court.** The Law on the Organization of the Courts provides for the establishment of specialized courts (Commercial Court of First Instance, Commercial Chamber of the Court of Appeals) for the adjudication of commercial cases. On 21 January 2021, the Ministry of Justice decided to establish the Commission for the Establishment of the Commercial Court (Decision No. 03). The establishment of a specialized court and chambers within the courts will probably have a significant impact on how future commercial cases will be adjudicated in Cambodia, including commercial arbitration.
- **Labor Court.** In the same manner, the Law on the Organization of the Courts provides for the establishment of specialized courts (Labor Court of First Instance, Labor Chamber of the Court of Appeals) for the adjudication of labor disputes. On the same day, 21 January 2021, the Ministry of Justice has decided to establish a Commission for the Establishment of the Labor Court (Decision No. 02).
- **Future of Individual Labor Dispute Settlement.** As discussed earlier in this newsletter, the latest amendment of several articles of the Labor Law provides for the first time the possibility for individual disputes to be settled by arbitration administered by the Labor Arbitration Council. While collective labor disputes may be brought to the Labor Arbitration Council for settlement, such amendment of the Labor Law has opened the door for extending the jurisdiction of the Arbitration Council to individual labor disputes. Notwithstanding, the related procedure has yet to be determined, pending the issuance of a *prakas* of the Minister in charge of Labor.
- **Future Accession to the Singapore Convention on Mediation.** Cambodia acceded to the 1958 Convention on the Recognition and Enforcement of

Foreign Arbitral Awards (also known as the “*New York Convention*”) in 1960 and ratified it in 2001 without any reservations. The Law on Commercial Arbitration promulgated in 2006 is based on the UNCITRAL Model Law on International Commercial Arbitration (1985, as amended in 2006), and commercial disputes may be settled by arbitration administered by the NCAC. The current developments in commercial arbitration shows the potential that other alternative dispute resolution mechanisms, such as conciliation and mediation, may play in resolving commercial disputes. Since several events have been jointly conducted with Singaporean officials and practitioners on commercial mediation, a special focus may be made on the possibility of accession by Cambodia to the United Nations Convention on International Settlement Agreements resulting from Mediation, (also known as the “*Singapore Convention on Mediation*”), adopted on 20 December 2018 and effective since 12 September 2020.



OUR PARTNERS



HAK Seakly
Chairman



LY Tayseng
Managing Partner



Patrick SMITH
Partner/Head of
Banking and Finance



Sadao Matsubara
Partner



Mustafa Kocadag
Partner/Head of
Capital Market and M&A



TAN Keattech
Attorney-at-Law
Partner/Head of Construction and
Real Estate



YIN Lyhout
Attorney-at-Law
Partner/Co-Head of
Corporate & Commercial



SOPHORN Pouvchannita
Attorney-at-Law
Partner/Head of
Intellectual Property Rights

HIGHLIGHTS: HBS Law is proud to welcome new talent to the team:



Mr. HORNBY Thomas

Partner/Co-Head of
Corporate & Commercial



Mr. SUN Vannak

Senior Associate



Mr. MENG Chou

Senior Associate



Ms. NOU Samon

Junior Associate



Ms. VANG Pisey

Junior Associate