

Cambodia Capital Market Guide

Overview

The development of the financial market has been growing in line with the development of the banking industry but at a slower pace. In 1996, the Law on Banking and Financial Institutions assigned the responsibility for establishing and overseeing financial markets to the National Bank of Cambodia (“NBC”). NBC has duties and functions to participate in the formation and supervision of the money and financial market but can also conduct securities operations to facilitate registration, distribution and trade of securities issued by the Royal Government of Cambodia (“RGC”).

The Law on Government Securities (“**Government Securities Law**”) and the Law on the Issuance and Trading of Non-Government Securities (“**Securities Law**”) were promulgated in 2007. They formed the basis for the establishment of a securities market in Cambodia. The development and operation of the securities market require additional implementing regulations for these laws. The RGC and the Securities and Exchange Commission of Cambodia (“SECC”) has regularly issued several regulations to support the operation of the securities market.

The Government Securities Law

The Government Securities Law was aimed at laying out the framework for the RGC to issue securities in case the RGC requires financing or payment of its obligations, and to contribute to the development of the securities market in the country. Under this law, the RGC may issue various types of securities such as Treasury bills, Treasury bonds, bonds on which yield is linked to the inflation rate, the exchange rate or other rate and non-marketable savings bonds.

The government securities shall be offered and issued by the Ministry of Economy and Finance (“MEF”), and the total amount of funds to be raised by issuing government securities shall be annually approved by the Parliament in accordance with the Law on Financial Management for the relevant year and the Law on Public Financial System (2008).

The Securities Law

Non-Government securities refer to securities that are issued by a public limited company or other legal entity permitted under the Enterprise Law to offer and issue securities to members of the public in Cambodia, including:

- (i) Ownership securities (i.e. equity securities/shares)
- (ii) Debt securities, such as bonds
- (iii) Interest in a Managed Investment Scheme
- (iv) Future instrument or derivative instrument related to securities based on (i), (ii) and (iii) above
- (v) Other financial instrument determined as securities.

The Securities Law regulates the securities exchange, clearing and settlement system, securities depositories and other operators who trade or provide the roles and responsibilities of the SECC, the issue and offer of securities, the conduct of securities market, the licensing requirements for securities market operators, the permissible and prohibited behaviour of issuers, officers and other related actors, dispute resolutions mechanism and sanctions.

Besides the Securities Law, MEF and the RGC have issued many complementary regulations to establish guidelines for the operation of the securities market and the issue and trading of securities.

SECC

Established under the Securities Law in 2007, the SECC is the RGC body that regulates and supervises the securities markets and securities transactions. The SECC assists the RGC on the strategic and regulatory aspects of the securities market in Cambodia and licenses all relevant securities-related operators, including securities market operators, clearance and settlement facility operators, securities depository operators, securities firms and securities representatives, including underwriters, securities dealers, and securities brokers, accounting and auditing firms, law firms, valuation companies, and translation companies.

The public offer of securities is also subject to approval from the SECC. To obtain such approval, the following two main conditions must be satisfied: (i) the issuing company can meet all requirements for listing and (ii) securities issued or sold in accordance with the public offer shall meet all requirements for setting the price of those securities to be traded in the securities market approved by the SECC.

CSX

The CSX is a market, exchange, or facility, which offers to acquire or dispose of securities. The CSX, licensed by SECC, was incorporated in 2010 as a market operator to facilitate securities transaction. The SECC also issued operating rules for other operators and members of the securities market.

The operating rules of the securities market issued by CSX prescribe matters necessary for the trading of securities, such as criteria for pricing, special quotation, purchase or sale of securities, placing order and cancellation of submitted order procedures, trading time and days, and securities transaction fees charged by CSX.

Public Offering and Private Placement

Offering securities to the market can be done by way of private placement/personal offering or by public offering.

Private Placement/Personal Offering

The private placement is a mode of offering securities to be subscribed by a total number of not more than 30 persons. The issuing company shall make a report and file the result of placement to SECC when the offer is completed. However, the regulations regarding the issuance of equity securities do not prescribe detailed process and other requirements for private placement or personal offering.

Public Offering

The public offer of securities means an invitation or offer to members of the public to subscribe for or purchase securities.

The public offer may be classified as an Initial Public Offering or Supplementary Public Offering. The Securities Law also allows the company to make an Exempt Offer, which does not fully comply with the requirements of the Securities Law, but it shall be made according to the provisions of government regulations.

Listing Rules of the CSX

Requirements of listing on the Main Board

Main Board is the original stock exchange market established and operating for the securities listing of companies, which do not fall under the category small and medium-size enterprises (“SME”). This market allows all companies to list and trade on the CSX’s platform. A company can be listed at the Main Board of the CSX by fulfilling the following conditions:

(i) Quantitative Requirements

Quantitative Requirements	
Shareholders' equity	≥ KHR 30 billion (≈ USD 7.5 million)
Net profit	≥ KHR 2 billion (≈ USD 500,000) for the latest year; and ≥ KHR 3 billion (≈ USD 750,000) for the latest 2 years
Minority shareholder	≥ 200 shareholders; and ≥ 7% of the total voting shares
Audited financial report	2 years

(ii) Non-quantitative Requirements

Non-quantitative Requirements	
Change of largest shareholder	The largest shareholder shall not be changed for 1 year until the official listing date.
Securities deposit	All the issued securities shall be deposited at the Operator of Securities Depository.
Lock up	<ul style="list-style-type: none">▪ For the period of 1 year counting from the official listing date, Controlling Interest Shareholder¹ shall not sell or transfer their shares for the first 6 months and is able to sell or transfer their shares up to 50% for the last 6 months; and▪ Shareholders holding voting shares of at least 15% and Strategic Shareholder² shall not sell or transfer their shares for a period of at least 6 months.

Requirements of listing on the Growth Board

This is a new board for SME’s has been initiated by the RGC to add another option of financing SME’s. A company can be listed at the Growth Board of the CSX by fulfilling the following conditions:

¹ Refers to shareholder or group of related persons holding the voting shares of at least 30% of the total voting shares, either directly or indirectly.

² Refers to shareholder who is director, senior official of listed entity and their close relatives.

(i) *Quantitative Requirements*

Quantitative Requirements	
Shareholders' equity	≥ KHR 2 billion (≈ USD 500,000)
Net profit	Positive net income for the latest year; or Positive operating cash flow & gross profit margin ≥ 10%
Minority shareholder	≥ 100 shareholders; and ≥ 10% of the total voting shares
Audited financial report	1 year

(ii) *Non-quantitative Requirements*

Non-quantitative Requirements	
Change of largest shareholder	The largest shareholder shall not be changed for 1 year until the official listing date.
Securities deposit	All the issued securities shall be deposited at the Operator of Securities Depository.
Lock up	<ul style="list-style-type: none">▪ For the period of 1 year counting from the official listing date, Controlling Interest Shareholder shall not sell or transfer their shares for the first 6 months and is able to sell or transfer their shares up to 50% for the last 6 months; and▪ Shareholders holding voting shares of at least 15% and Strategic Shareholder shall not sell or transfer their shares for a period of at least 6 months.

During the first three (3) years after promulgating of the amended Article 8 Prakas No.0109/18 SECC/Prk dated 19 December 2018 on the Implementation of Equity Listing Rules, CSX may decide to waive the requirements for the Growth Board as necessary.

Post Listing Compliance

The SECC and CSX require listed company or entity to continue to comply with the legal and listing requirements with them. The listed company may be delisted on the following events:

- (i) Listed company fails to submit its annual report for the latest fiscal years within 3 months after the submission deadline;
- (ii) The auditor's opinion in the audit report is adverse or disclaimed for 2 years;
- (iii) Decrease in equity for the last 2 consecutive years by 50%;
- (iv) Repetitive breach of disclosure obligations;
- (v) Inability to settle commercial paper, issued cheques; or transactions with commercial banks have been suspended;
- (vi) Subject to corporate dissolution.

Corporate Governance

The Prakas No.011/18 SECC/Prk dated 19 December 2018 on Corporate Governance for Listed Companies set out the requirements related to the implementation of corporate governance for companies listed under the Law and Anukret on Issuance and Trading of Non-Government Securities.

BoD

The BoD composition shall be that there are at least three members of the BoD if the company is applying to list at the Growth Board including one independent director. In case the company is qualified to list at the Main Board, the requirement of at least five members BoD, with 1/5 is an independent director shall apply. In case the company employed foreigner as Independent Directors, those directors shall have working experiences in Cambodia at least six (6) months before becoming Independent Director of the company. The BoD shall be elected by the vote of shareholders attending the General Shareholder Meeting.

Independent Director

An Independent Director shall have sufficient qualifications fulfilling proper criteria as follows:

- Has not been employed by the company during the last year;
- Is not a significant customer or supplier of the company;
- Has no personal service contracts with the company, or its Senior Officer;
- Is not affiliated with a non-profit organization that receives significant funding from the company;
- Is not a member of the family of an individual who is, or has been during the last year, a director of the company or employed by the company as CEO or Senior Officer;
- Is not, nor in the last year has been, employed by a present or former auditor of the company.

Independent Directors shall hold no interests that may hinder their independence. An Independent Director:

- (i) Shall not hold more than 1% of the company's shares.
- (ii) Shall submit a letter of confirmation on appointment indicating that he/she has no material interest with the company;

A person shall not qualify as an Independent Director if he or she, or his or her family member was:

- Employed by/as a Senior Officer of the company within the last 2 years;
- Employee of an internal or external auditor of the company;
- A current employee of an internal or external auditor of the company or he/she personally worked on the company's audit within the last 2 years;
- A current Senior Officer of the insurance company of the company;
- Employed by/as a Senior Officer of a company that has on the compensation committee of its board an Executive Officer of the company; and
- A Senior Officer of an entity who receives contributions from the company.

Corporate Secretary

Further, it is required that BoD appoints a Corporate Secretary to assist in their work. The Corporate Secretary must be Cambodian, is a Senior Officer of the company with good performance, loyalty and discipline.

The Corporate Secretary shall report to the BoD through the Chairman and have the following roles, duties and responsibility:

- Establish an effective working relationship with the BoD and Senior Officers of the company;
- Support the BoD and BoD committees;
- Keep up-to-date with the development of laws and regulation that might affect the BoD and the company's operations;

- Keep up-to-date with Corporate Governance and Corporate Social Responsibility (CSR) development;
- Facilitate effective communication between the BoD and Senior Officers in order to support the decision making process; and
- Arrange, manage, procedures and minutes taking and kept for BoD and shareholder meetings.

Committees

To ensure good corporate governance, the BoD shall constitute committees as follow:

- Audit Committee;
- Risk Management Committee, compulsory if the public listed company had asset more than KHR 200,000,000,000 (Two Hundred Billion Khmer Riel), equalling USD 50,000,000 (Fifty Million United States Dollars). If the assets are less than this amount, the public listed company may consider having Risk management committee if necessary.
- Nomination Committee and other committees as necessary according to the BoD and in case required by SECC.

The Audit Committee shall be composed of at least three (3) members and chaired by Independent Director. At least a member is a financial expert and others should be preferably with accounting and finance background.

Roles and duties of the Audit Committee shall be determined by the BoD, including the following:

- Review all financial reporting;
- Review internal control;
- Review internal auditing;
- Review external auditing; and
- Report the committee activities to the BoD.

In the case the company has opted to establish a Nomination Committee, the appointment of the members of the BoD shall be processed through this committee. The Nomination Committee must establish a procedure to allow minority shareholders to propose the BoD candidates. All directors shall be elected by shareholders. In case there is no Nomination Committee, the BoD shall be elected by the vote of shareholders attending the General Shareholder Meeting.

Disclosure and Transparency

The company shall disclose, in an efficient and timely way, information that is required by law and regulation and any other information the company should disclose that may influence the decision-making of shareholders and other stakeholders.

Material information concerning corporate governance to be disclosed includes:

1. The composition of the BoD, Executive Directors, Non-Executive Directors, Independent Directors, board structure, management structure. Incentive policies, policies regarding conflicts of interest and the Code of Conduct for Directors and Senior Officers.
2. Rights, roles and duties and activities of the BoD's committees.
3. Activities of directors and the BoD during the period covered by the disclosure.
4. The process for the system of cumulative voting, if adopted by shareholders.

The company shall prepare information for disclosure that may easily be understood, avoiding ambiguous and technical terms. Publicly disclosed information shall be accessible at a minimal cost. Complex information should provide explanations so that the general public may easily understand the information.

In any case, where the document to be disclosed is prepared in a foreign language, the company shall translate those documents into Khmer by an agent recognized by the SECC.

A listed entity shall nominate at least 1 (one) director or senior officer as a disclosure officer (“**Corporate Disclosure Officer**”) and may have one or more officers as assistant for disclosing corporate information and may be in charge of the Corporate Disclosure Officer when the disclosure office is absence. The Corporate Disclosure Officer shall be responsible for all the works of assistant on corporate disclosure. The Corporate Disclosure Officer and assistant shall attend training set by the SECC and permitted securities market.

The listed entity shall submit in writing of the identity of the Corporate Disclosure Officer and his/her assistants to the SECC and send the copy to permitted securities market at least ten (10) working days after listed on the permitted securities market.

Case of changing or absent of the Corporate Disclosure Officer or his/her assistant, the listed entity shall immediately submit in written to the SECC and permitted securities market. If the position of the Corporate Disclosure Officer is available, the listed entity shall recruit a new Corporate Disclosure Officer no later than five (5) working days since that position is vacant.

The Corporate Disclosure Officer shall be responsible for the disclosure of corporate information. The corporate information to be disclosed are (a) timely disclosure, (b) periodic report, (c) special disclosure, and (d) requested disclosure.

Ad (a) timely disclosure

A listed entity shall disclose timely disclosure to investors through permitted securities market in the form determined by the permitted securities market and send a copy (Carbon Copy) to the SECC at the same time when any following events occurred:

- Events related to business operations or production;
- Events related to capital, share, or debt;
- Events related to management;
- Events related to investment activities;
- Events related to gain or loss; and
- Events related to court, auditor, or others.

Ad (b) periodic report

A listed entity shall submit a periodic report to the SECC including the annual report and quarterly report in the form determined by the SECC. The Director-General of the SECC may request a listed entity to submit annual and quarterly report of financial result before audit or review. Each submitted report to the SECC as prescribed in the first paragraph above shall specify the date, and mention that “read and approved”, with the signature of Chairman or at least two (2) directors for quarterly report and signature of all directors for the annual report. The director may delegate power to any director to sign on the report by attached the power of attorney.

Ad (c) special disclosure

A listed entity shall submit special disclosure to the SECC in case having change a part or all part of the company’s structure such as share buy-back, merger and acquisition, takeover, and tender offer.

Ad (d) requested disclosure

A listed entity shall submit the following information immediately upon requested by permitted securities market or the Director-General of the SECC as follows:

- 1- Case where rumour, news or information that may affect the listed entity or the securities prices of the listed entity;
- 2- Case where unusual changes in the price or trading volume of the securities;
- 3- Other events which may affect investors' interests.

The Corporate Disclosure Officer shall keep in touch all the times directly with official in charge of corporate disclosure of the SECC and permitted securities market.

Further, the BoD shall approve a Code of Conduct for Directors and Senior Officers and disclose publicly.

HBS Law

The information provided is for information purposes only and is not intended to constitute legal advice.

HBS Law firm was the first law firm accredited by SECC to advise and assist clients on matters related to securities laws and regulations. Then, our firm has directly been involved in advising clients on several transactions involving the issuance of equity securities on Cambodia Securities Exchange and private placements of securities of Cambodian companies. Furthermore, we have been engaged to conduct several legal due diligences on Cambodian entities which are subsidiaries of overseas holding companies for their IPO on HKEX, TWSE and Korean Stock Exchange.

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Prior to joining HBS Law, Mr. Kocadağ served as an associate and partner for various firms in the Netherlands, Lao PDR and Indonesia. He has more than 12 years of experience and expertise in the areas concerning corporate and commercial matters, mergers and acquisitions, secured transactions, financing and real estate transactions, dispute settlements, mining, hydropower, telecommunication, banking, taxation and labour related issues. He has extensive experience in initial public offerings of equities and the issuance of debt securities.

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Prior to joining HBS Law, Mr. Sok practiced law in different institutions, including law firms, non-governmental organizations, and universities. He also worked as a consultant for international institutions such as the Asian Development Bank (ADB) and Pact World.

Mr. Sok has had more than 15 years of experience in the legal sector, including, but not limited to, law firm management, due diligence, project management, social impact assessment, dispute resolution, legal research, legal training, and teaching international law.

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Before joining HBS Law, Mr. Vareap has worked in the oil and gas unit of the government for the past 7 years. He has extensive knowledge in the field of legal and commercial matters within the energy sector, mergers and acquisitions and capital market. He has assisted companies on listing on various stock exchanges in the region regarding the issuance of equities and debt securities.

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