

Legal Brief: Recent Updates in Commercial Law after the Promulgation of the Law on the Amendment of the Law on Commercial Enterprises

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The Law on the Amendment of the Law on Commercial Enterprises, promulgated on 29 January 2022 (the “**Amendment**”), amends and abrogates some articles of the 2005 Law on Commercial Enterprises.

The Amendment is part of a governmental effort to bring up to date with the current practice the provisions of the main pieces of legislation governing commercial law. In a previous legal brief ([Promulgation of the Law on the Amendment of the Law on Commercial Rules and the Commercial Register](#)), we have highlighted the main provisions of the Law on the Amendment of the Law on Commercial Rules and Commercial Register promulgated simultaneously on 29 January 2022, which amends some articles of the 1995 Law on Commercial Rules and the Commercial Register and its amendment of 1999.

This Legal Brief will focus on the following key features of the Amendment:

1. Sole Proprietorship

The Amendment extends the scope of application of the Law on Commercial Enterprises (“LCE”) by introducing the provisions governing the Sole Proprietorship into the amended Chapter 2 of the LCE along with the provisions on the General Partnership. Until now, the regime of the Sole Proprietorship was governed by separate legislation, such as the Law on Taxation (the “LOT”), providing for a definition of the Sole proprietorship (LOT, art. 3 (6)).

The Sole Proprietorship is an enterprise established and wholly owned by one physical person (LCE, new Article 8-bis). The LOT provides that the expression “one physical person” shall be interpreted as including a husband and wife and their dependent children. Unlike companies, the Sole Proprietorship does not have a separated legal personality from the owner, and the obligations and liabilities of the Sole Proprietorship are the direct and unlimited responsibilities on the assets of the owner.

The owner of the Sole Proprietorship has the quality of a merchant, defined as any physical person who carry on business, being his/her regular occupation, and therefore it is understood that the regime on merchants shall apply. The Law on Commercial Rules and Commercial Register is the main instrument governing the regime on merchants. A Sole Proprietorship shall be registered in the commercial registry and with the tax authority in the classification of taxpayers under self-assessment regime.

On 12 August 2021, the Ministry of Commerce (the “MOC”) issued Prakas No. 0169 on the Usage of Words to Identify the Legal Forms of the Companies (“Prakas No. 0169”) ([Please refer to our previous legal alert in August 2021](#)). The Amendment integrates a requirement regarding the usage of the words to identify the legal forms of the Sole Proprietorship. While the Prakas No. 0169 requires that the name of a Sole Proprietorship shall have the words “*Sole Proprietorship*” before its name, the Amendment provides that the word “Sole Proprietorship” or a similar acronym shall

be used at the end or below its name. This matter may be subject to further clarification; however, it is a general principal of law that the provisions of a legislative norm takes precedence over a regulatory norm.

Another important distinction with the other legal entities is that the Sole Proprietorship is not required to establish Articles of Incorporation (the “AOI”) and By-Laws.

The owner may dissolve the Sole Proprietorship at any time, for any of the following reasons:

- Voluntary decision of the owner;
- Decease of the owner; or
- Judicial dissolution by a court.

The Amendment provides that the procedure of voluntary dissolution by the owner's decision or owner's death will be regulated by a Prakas of the MOC.

2. Number and value of shares

The Amendment has deleted the default capital requirement, under which in the event the AOI fails to provide the number and price attached to the shares, the company shall then issue a minimum of one thousand shares with a par value of not less than four thousand Riels per share.

The Amendment does not modify either the provisions regarding the class of shares, nor the provisions on the rights of the holders of these shares.

3. Company Secretary

The Amendment makes it compulsory for a company to appoint a "Company Secretary", which is defined as a physical person, having his/her permanent resident within the Kingdom of Cambodia, appointed by the company, and entrusted with the right to receive and keep any official documents related to the company's activities.

The duties of the Company Secretary include the maintenance of the corporate records and the execution, to some extent, of acts on behalf of the company.

4. Use of Khmer Name by a Sole Proprietorship, Partnership or Company

While the requirements regarding the use of Khmer name remains unchanged (i.e. Khmer name shall be placed above and shall be larger than the name in another language, prohibition of the translation in favour of a transliteration of the name), the Amendment clarifies the expression "*larger*", to be understood as having the font size being two times larger than other languages, if any.

5. Clarification on the dissolution of a General Partnership and a Company

The Amendment provides for clarification on the qualification of the person who may fulfil the function as a liquidator of a Company or a General Partnership, which applies to Limited Partnership as well (LCE, Art. 255-new; Art. 59-new). The liquidator shall be an accounting Firm and/or Auditing Firm licensed by the newly created Accounting and Auditing Regulator of Non-Banking Financial Services Authority.

The Amendment reduces the period for the accounting book, financial statement and record keeping after dissolution of a Company or Partnership from 10 to 5 years.

6. Shareholder Representative Contract

The Amendment introduces into the LCE a specific agreement, the "Shareholder Representative Contract" (LCE, new Article 147-bis).

Any shareholder of a company who do not wish to be identified in the AOI may appoint a representative. The appointment of a representative shall be made via a Shareholder Representative Contract between the shareholder and the representative, who is a physical or legal person. The information about the identity of the shareholder and the Shareholder Representative Contract shall be filed with the MOC.

The terms, the forms, and procedure of filling the required information and the Shareholder Representative Contract will be subject to a Sub-Decree.

7. Precedence of the AOI

The Amendment introduces a clarification regarding the criteria to consider the nationality of a company.

A company shall be deemed having Khmer Nationality only if the company has a place of business and registered office located in the Kingdom of Cambodia and more than fifty-one percent of the voting shares of the company are held by the physical or legal persons of Khmer nationality. The Amendment further clarifies that the later criteria shall be the percentage stated in the AOI of the company upon registration.

8. Domestic branch

In order to be in phase with the commercial registration practice, the Amendment introduces a critical distinction into the LCE between a domestic branch and a branch of a foreign business. A partnership or a company incorporated under the LCE may establish one or more domestic branch(es) (the “Domestic Company’s Branch”).

The company who established a branch is a “Parent Company”. The Domestic Company’s Branch is an agent of the Parent Company, and doesn’t have a separated legal personality from the Parent Company. The Domestic Company’s Branch may only perform the activities as stated in the business objective of the Parent Company. The assets of the Domestic Company’s Branch are the assets of the Parent Company. The Parent Company shall be liable on the activities and obligation of the Domestic Company’s Branch.

The Domestic Company’s Branch shall be represented by one or more manager(s) appointed and removed by the Parent Company. The name of the Domestic Company’s Branch shall be the same name of the Parent Company, and the word “Domestic Company’s Branch” shall be placed above or before the name of such Domestic Company’s Branch. Such requirement is in line with the above mentioned Prakas No. 0169 ([Please refer to our previous legal alert in August 2021](#)).

A Domestic Company’s Branch may be dissolved by the Parent Company’s resolution and the Parent Company shall request to the MOC the removal of the Domestic Company’s Branch from the business registry.

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