



ការិយាល័យមេធាវី សិទ្ធាល័យ
SETHALAY LAW OFFICE

ដើម្បីជំរុញនូវសេដ្ឋកិច្ច និងសេដ្ឋកិច្ច
Legal and Economic Empowerment

LEGAL REQUIREMENT AND PROCESS FOR THE MERGER AND ACQUISITION (M&A)

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I. GENERAL REQUIREMENT

1. 1 RELEVANT LAWS AND REGULATIONS

1. GENERAL REQUIREMENTS

1.1 RELEVANT LAWS AND REGULATIONS

- 1) Law on Commercial Enterprises 2005 (“**LCE**”);
- 2) Law on Competition 2021 (“**LoC**”)
- 3) Sub-Decree No. 60 on Conditions and Procedures for Mergers and Acquisition of Businesses dated 06 March 2023 (“**Sub-Decree No. 60**”);
- 4) Decision No. 095 dated 14 March 2023 (“**Decision No. 095**”);
- 5) Prakas No. 177 on the Requirement and Procedure of Registration of Business Combinations Requiring the Pre-Notification dated 14 June 2023 (“**Prakas No. 177**”).
- 6) Prakas No. 178 on the Post Notification of the Business Combination issued by the MOC dated 14 June 2023 (“**Prakas No. 178**”);
- 7) Decision No. 179 on the Procedure for the Issuance of Advance Certificate on the Business Combination issued by the MOC dated 14 June 2023 (“**Decision No. 179**”).

1. GENERAL REQUIREMENTS

1.1 RELEVANT LAWS AND REGULATIONS - LCE



1. GENERAL REQUIREMENTS

1.1 RELEVANT LAWS AND REGULATIONS - LoC

**Anti Competitive
Behavior**



An actions taken by a business or organization to limit, prevent, restrict, or distort competition for goods or services, usually in order to gain an unfair advantage or dominate the market.

1. GENERAL REQUIREMENTS

1.1 RELEVANT LAWS AND REGULATIONS - LoC

Horizontal Agreement

- Agreement which is made between persons who operate, or are likely to operate, at the same level in the production or distribution chain.
- Lead to Cartel.

Vertical Agreement

- Agreement which is made between persons who operate, or are likely to operate, at different levels in the production or distribution chain.

Abuse of Dominant Power in the Market

- A person with dominant power shall be restricted with certain activities under the Competition Law.
- Such activities can be exempted if there is a reasonable reason and the activity does not affect the market.

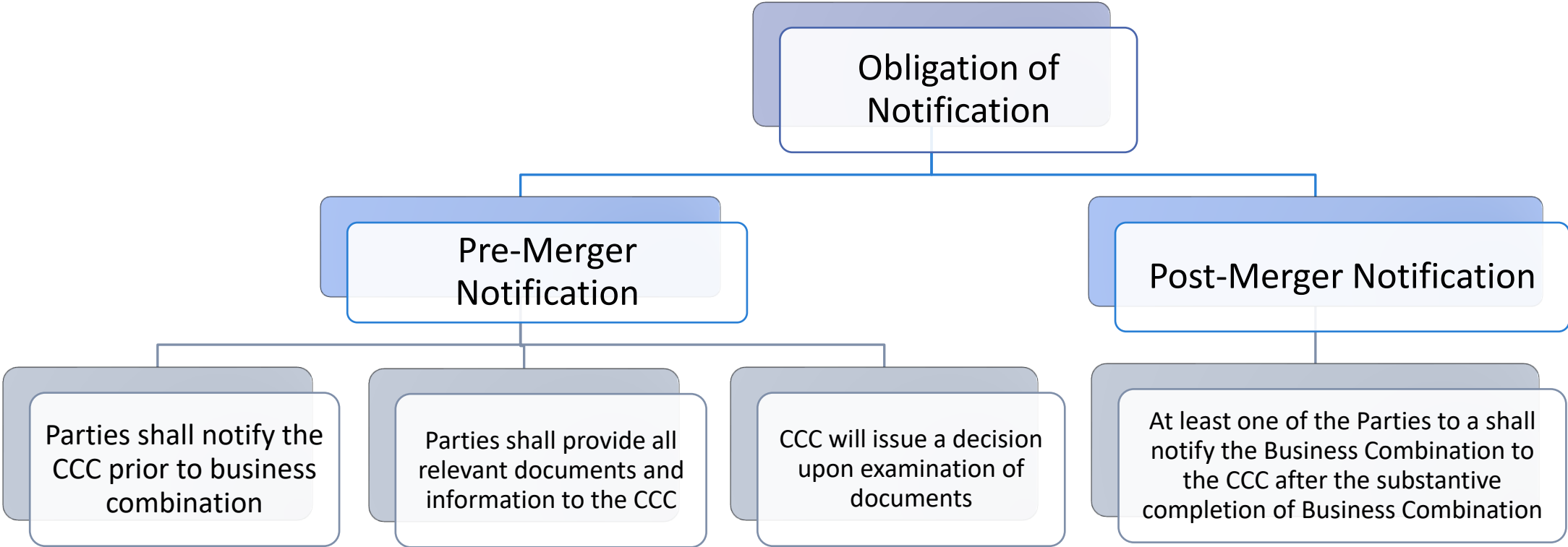
Business Combination

- A business merger where it affects the competition shall be prohibited.
- Any form of business merger shall be monitored and evaluated by the the Competition Commission of Cambodia (“CCC”).

1. GENERAL REQUIREMENTS

1.1 RELEVANT LAWS AND REGULATIONS - LoC

Business Combination





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I. GENERAL REQUIREMENT

1. 2 PRE NOTIFICATION

1. GENERAL REQUIREMENTS

1.2 PRE-NOTIFICATION

1.2.1 Limitation of Threshold (Ref. Decision No. 095)

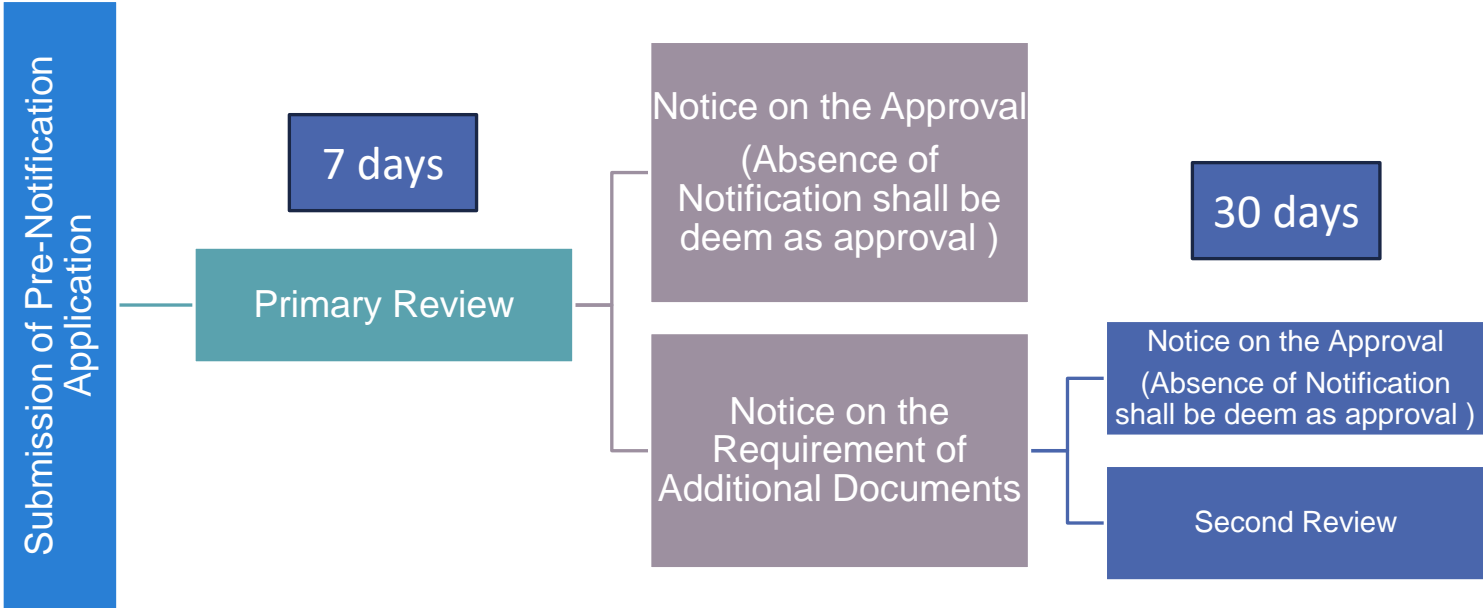
Sector	Total Assets for Previous Financial Year	Total Revenue for Previous Financial Year	Total Value of Parties' purchase orders for Previous financial year	Business Merger transaction value
General Business	At least USD85M (USD1=4,000 Riels)	At least USD67,5M	At least USD30M	At least 10,25M
BFI Sector	At least 1,125M	At least USD105M	At least USD950M	At least USD30M
Insurance and Securities Institution	At least USD250M	At least USD70M	At least USD205M	At least 15,25M

1. GENERAL REQUIREMENTS

1.2 PRE-NOTIFICATION

1.2.2 Primary Review

A. Process



1. GENERAL REQUIREMENTS

1.2 PRE-NOTIFICATION

1.2.2 Primary Review

B. Information and Documents Required

1. The notification form issued by the CCC;
2. The description of the key terms of the relevant(s) agreements in relation the proposed Business Combination as well as a current draft or executed copy of the agreement or memorandum of understanding with respect to the proposed Business Combination;
3. Documents and Information for each Party including:
 - Contact persons 'name, email and phone number;
 - Jurisdiction of incorporation and legal registration number;
 - Constating documents of each Party;
 - Registered address;
 - List of major shareholders of each Notifying Party, including ultimate parent company if applicable;
 - List of any affiliates or members of the same Group that may potentially be relevant to a review of the Business Combination.

1. GENERAL REQUIREMENTS

1.2 PRE-NOTIFICATION

1.2.2 Primary Review

B. Information and Documents Required

4. Financial statements of each Notifying Party for the year immediately preceding the year of notification as well as any more recent quarterly accounts of such Party;
5. Identification of each type of good or service in which each Notifying Party (including Persons in the same Group as a Party) directly or indirectly involved in the Business Combination is conducting business or the revenues of each Party for the two (2) years immediately preceding the year of notification and the year of notification in the relevant Market.

1. GENERAL REQUIREMENTS

1.2 PRE-NOTIFICATION

1.2.2 Primary Review

B. Information and Documents Required

Note : The documents and information listed above is required to be provided in Khmer language except:

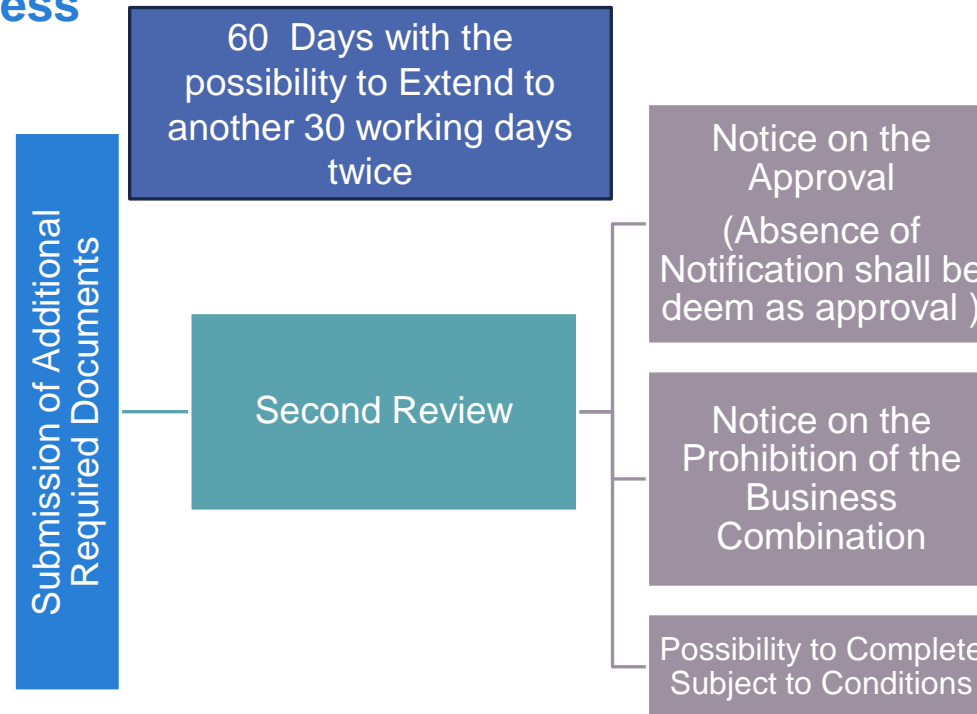
1. Any legal names of Persons or locations;
2. Any information expressed numerically;
3. Any final or draft legal documents, but the description of key terms must be provided in Khmer language;
4. Constating documents must be provided in English or Khmer language; and
5. Financial statements may be provided in either English or Khmer language.

1. GENERAL REQUIREMENTS

1.2 PRE-NOTIFICATION

1.2.3 Second Review

A. Process



1. GENERAL REQUIREMENTS

1.2 PRE-NOTIFICATION

1.2.3 Second Review

B. Exemption

Horizontal Business Combination

The aggregate market share of the Notifying Parties (and, where applicable, the relevant Groups) is less than 30(thirty) percent in each relevant Market;

The aggregate market share of the Notifying Parties (and, where applicable, the relevant Groups) is equal to or greater than 30 (thirty) percent in any relevant Market and the HHI in such relevant Market is less than 1,800 (one thousand eight hundred);

The aggregate market share of the Parties (and, where applicable, the relevant Groups) is equal to or greater than 30 (thirty) percent in any relevant Market and the HHI in such relevant Market is greater than 1,800 (one thousand eight hundred) and the increase in HHI in such relevant Market after completion of the proposed Business Combination is less than 150 (one hundred fifty).

1. GENERAL REQUIREMENTS

1.2 PRE-NOTIFICATION

1.2.3 Second Review

B. Exemption

<p>A Vertical Business Combination or Conglomerate Business Combination</p>	<p>market share of any Notifying Party (and, where applicable, the relevant Groups) is less than 30 (thirty) percent in each relevant Market.</p>
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1. GENERAL REQUIREMENTS

1.2 PRE-NOTIFICATION

1.2.3 Second Review

B. Exemption

Special Conditions of Secondary Review

1. A Party being acquired has failed or is likely to fail;
2. An acquisition of voting shares or of an interest in a joint venture is solely for the
3. purpose of underwriting the shares or the interest;
4. An acquisition of voting shares, an interest in a combination or assets that would result
5. from a statutory succession or testamentary succession;
6. An acquisition of collateral or receivables, or an acquisition resulting from a foreclosure or default or forming part of a debt work-out, made by a creditor in or pursuant to a credit transaction entered into in good faith in the ordinary course of business;

1. GENERAL REQUIREMENTS

1.2 PRE-NOTIFICATION

1.2.4 Registration Requirement

Article 12 of the Sub-Decree No. 60 and Article 3 of the Prakas No. 177 :

One of the Notifying Parties of the Business Combination Required for Pre-Notification shall submit a registration form within 30 (thirty) working days after substantive completion of the Business Combination to the Cambodia Competition Commission (“**CCC**”)

1. GENERAL REQUIREMENTS

1.2 PRE-NOTIFICATION

1.2.4 Registration Requirement

Registration Application shall consist of as follows :

1. a registration form for Business Combinations;
2. a copy of the certificate of tax compliance from the General Department of Taxation of the Ministry of Economic and Finance;
3. a copy of the business registration and any documents pertaining to alienation from Ministry of Commerce and relevant ministries and institutions;
4. a copy of documents from relevant sectoral regulators ministries, and institutions pertaining to the request for Business Combinations (if applicable);
5. a copy of the proof confirming the CCC's approval of the Business Combination; and
6. a copy of the receipt of the registration for Business Combinations.



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I. GENERAL REQUIREMENT

1. 3 POST NOTIFICATION

1. GENERAL REQUIREMENTS

1.3 POST NOTIFICATION

Who are required to submit post notification of business combination to the CCC?

- Parties to the business combination subject to Post-Notification pursuant to Article 4 of Prakas No. 178 shall notify the CCC within 30 (thirty) working days after substantive completion of the Business Combination as stipulated in Article 13 of the Sub-Decree No. 60 and Article 5 of Prakas No. 178.

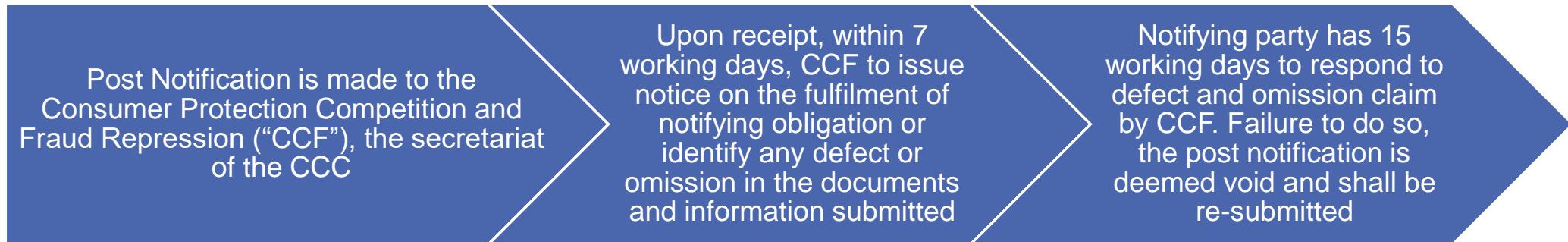
Any exception to the above?

- Businesses that are already subject to pre-notification required by the CCC under Chapter 2 of the Sub-Decree No. 60, in the event that the threshold meet or exceed 50 (percent of the threshold specified in Articles 3, 4 or 5 of the Decision No. 095.

1. GENERAL REQUIREMENTS

1.3 POST NOTIFICATION

Post Notification Timeframe





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Legal and Economic Empowerment

I. GENERAL REQUIREMENT

1. 4 ISSUANCE OF CERTIFICATE OF ADVANCE RULING

1. GENERAL REQUIREMENTS

1.4 Issuance of Certificate of Advance Ruling

The parties requesting for the Issuance of an Advance Ruling Certificate shall submit the application to the CCC prior to the substantive completion of the Business Combination. Regardless of whether the Business Combination is subject to pre or post notification, the requesting parties may request the Advance Ruling Certificate issued by the CCC in accordance with the requirements set forth in the application form for Issuance of an Advance Ruling Certificate.



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I. GENERAL REQUIREMENT

1. 5 SIMPLIFY NOTIFICATION AND EXEMPTION

1. GENERAL REQUIREMENTS

1.5 SIMPLIFIED NOTIFICATION AND EXEMPTION

Who can submit the simplified notification?

Certain business combinations are subject to only a simplified notification which include application form and general information of parties of transaction to the CCC such as:

- Notified parties of business combination are from the same corporate group;
- Business combination have been approved by the RGC; and
- Other transaction as issued by the CCC.

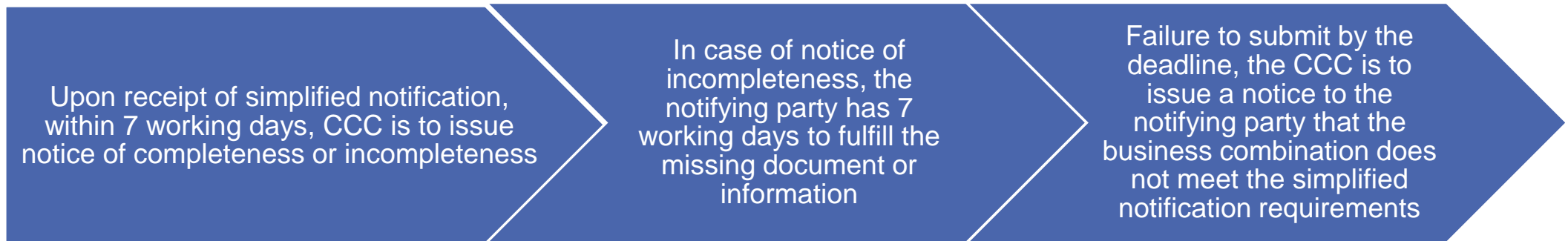
Within what timeframe?

Within 7 working days upon the receipt of simplified notification, the CCC will determine whether such notification is valid and complete or should require additional documents or information or should such notification fulfil criteria for simplified notification or not.

1. GENERAL REQUIREMENTS

1.5 SIMPLIFIED NOTIFICATION AND EXEMPTION

Within what timeframe?



1. GENERAL REQUIREMENTS

1.5 SIMPLIFIED NOTIFICATION AND EXEMPTION

What business combination is exempted?

Certain business combination that is normally prohibited may be exempted if:

- Sufficient technology, economic or social benefits resulting from such business combination;
- Without such combination, such benefit would happen;
- Benefit significantly outweighs the anti-competitive effects; and
- Such combination does not eliminate competition in relevant goods and services.



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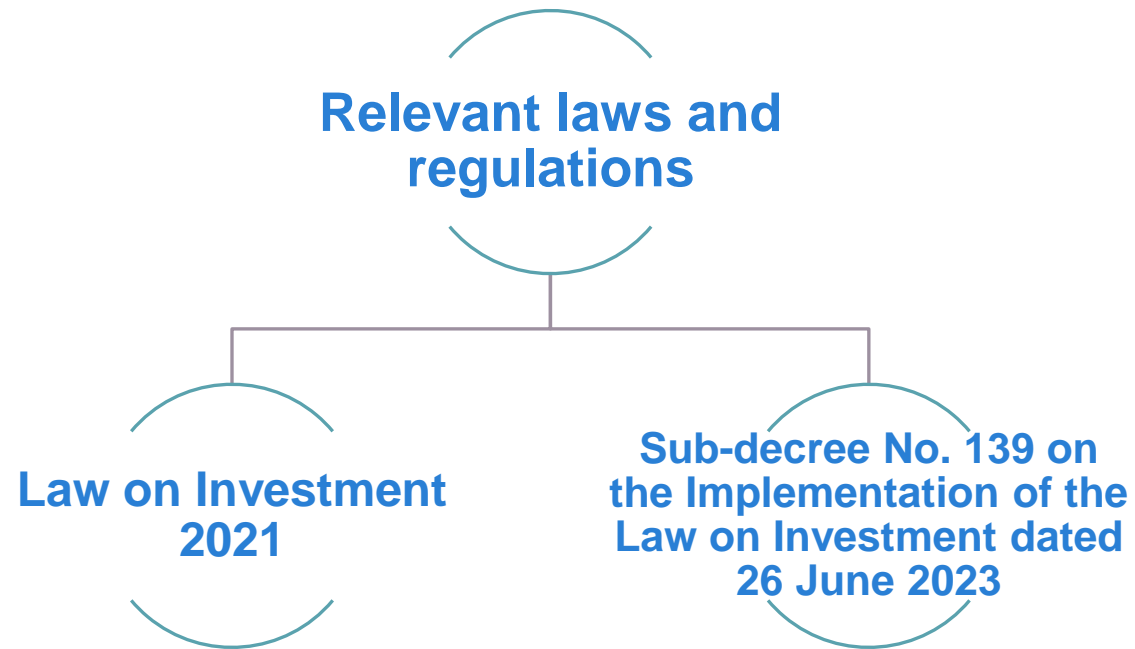
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SPECIFIC REQUIREMENT FOR EACH REGULATED SECTOR

2. SPECIFIC REQUIREMENTS

2.1 QUALIFIED INVESTMENT PROJECT (“QIP”)

2.1.1 Relevant Laws and Regulations



2. SPECIFIC REQUIREMENTS

2.1 QIP

2.1.2 Conditions and Requirements

Mergeable Person

- Two or more QIP's may be merged into one QIP by retaining any of the QIP's names or creating an entirely new name;
- Those who are yet to be qualified as investors may also make a written request to sell, purchase or merge a QIP to the Council for the Development of Cambodia (CDC) or Municipal-Provincial Investment Sub-Committee (MPISC)

Transfer or Existence of Incentives, Guarantees and Protection

- Sale, purchased or merged QIP business can retain its incentives, guarantees and protection on investments, and other obligations in accordance with the Law on Investment and this Sub-decree should such sale, purchase or merger is not prohibited by the existing laws and regulations or restricted by the registration certificate or other concession contracts
- Purchasers who are behind the sale, purchase or merger of one or more QIP's that are not registered with the CDC or MPISC shall lose their incentives, guarantees, and protection on investments.

Existence of Legal Personality

- The merger does not forfeit legal personality of the investors unless such investors are legal entities that have been dissolved in accordance with the existing laws and regulations

2. SPECIFIC REQUIREMENTS

2.1 QIP

2.1.2 Conditions and Requirements



**Written Request to CDC or
MPISC**

- Any person who wishes to sell, purchase or merge the QIP shall provide a written request to the CDC or MPISC

2. SPECIFIC REQUIREMENTS

2.1 QIP

2.1.2 Conditions and Requirements

**Application
for Written
Approval
from CDC or
MPISC**

1. Shareholder's or board of directors' resolution attached with a copy of articles of incorporation of the foreign parent company translated into Khmer language or English, attaching with company stamp certified by lawyer or notary in the event that the shareholder is a foreign legal entity.
2. Name of the investor who is to implement the QIP after the merger.
3. Merger agreement.
4. Valid articles of incorporation of the legal entity who is to implement the merged QIP.
5. Clearance certificate on tax and other debts.
6. Certificate on the handover-receipt of inventory list granted incentives by the CDC or MPISC.
7. Khmer identity card or foreign passport (new member).

2. SPECIFIC REQUIREMENTS

2.1 QIP

2.1.2 Conditions and Requirements

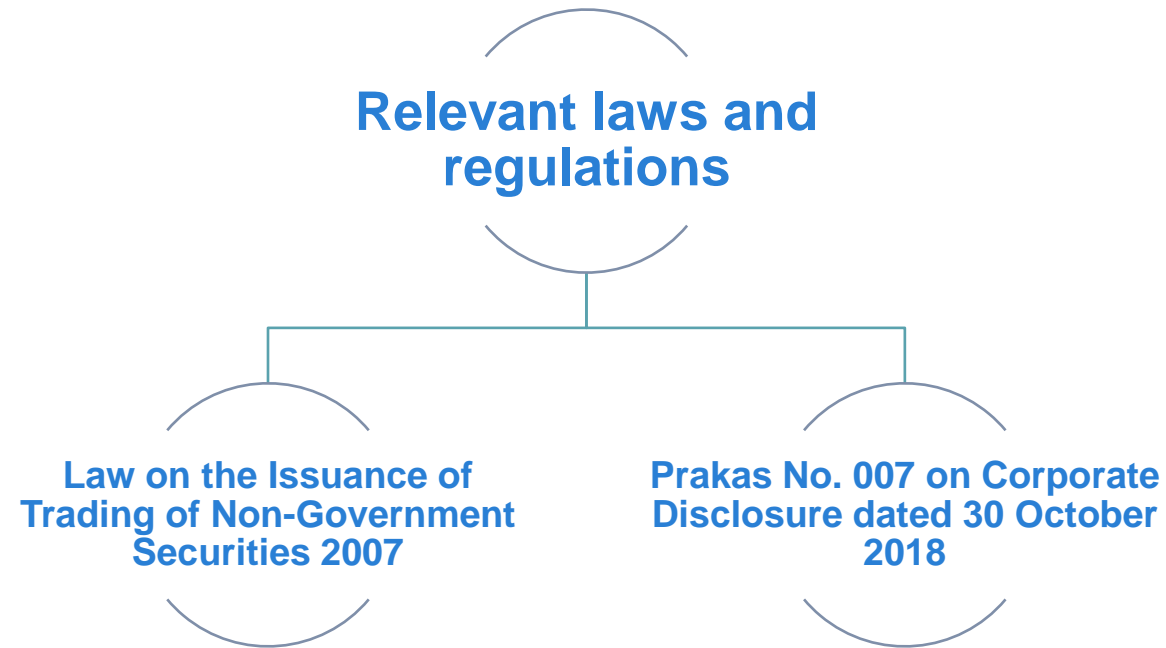
Completion of Merger

1. The QIP shall be deemed merged upon the receipt of official approval and recognition on the new articles of incorporation of the legal entity who is to implement the QIP from the CDC or MPISC.
2. Investors who are to implement the merged QIP shall be subject to all existing rights and obligations towards the QIP.

2. SPECIFIC REQUIREMENTS

2.2 LISTED ENTITIES

2.2.1 Relevant Laws and Regulations



2. SPECIFIC REQUIREMENTS

2.2 LISTED ENTITIES

2.2.2 Conditions and Requirements

Written Notification Obligation to the SECC

- **Prior Notification** : Any merger of listed entities shall be subject to the written notification to the Securities and Exchange Commission of Cambodia (SECC) immediately and such merger can only proceed upon the receipt of the pre-approval from the General Director of the SECC.
- **Post Notification** : Upon the completion of the merger transaction, listed entities shall notify the result of such transaction to the SECC within 3 working days.

2. SPECIFIC REQUIREMENT

2.2 LISTED ENTITIES

2.2.2 Conditions and Requirement



2. SPECIFIC REQUIREMENTS

2.2 LISTED ENTITIES

2.2.2 Conditions and Requirements

Information Disclosure Obligations

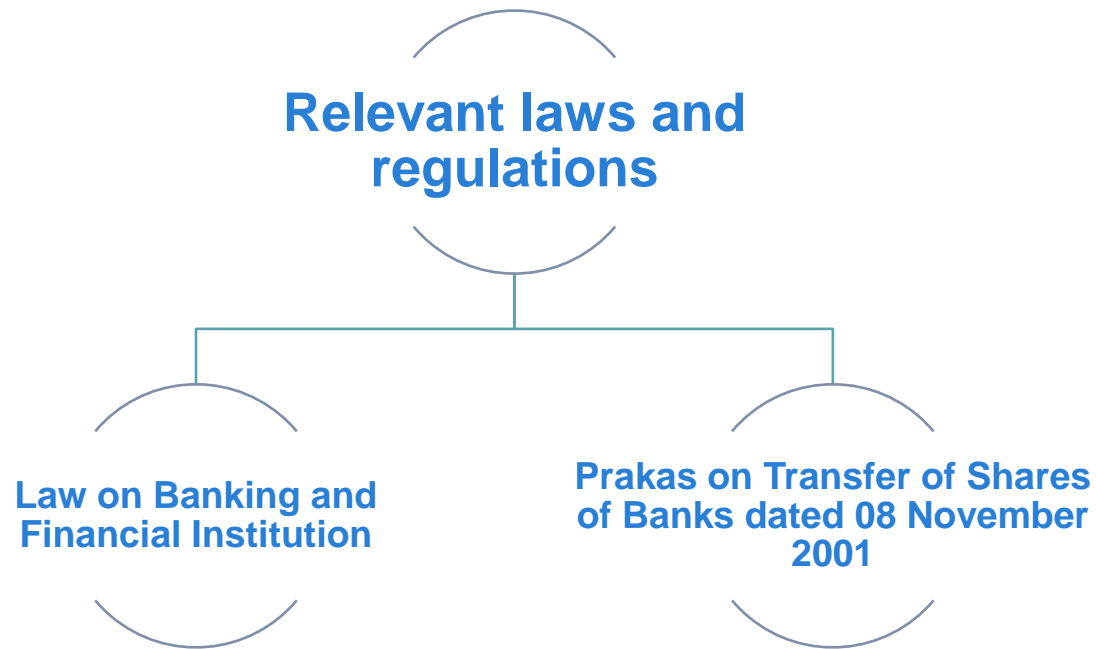
Any merger of listed company shall be subject to the disclosure of information to the SECC. Such disclosure of Information shall consist of any and all information as follows :

1. Board of directors or shareholder's resolution;
2. Purpose of merger and acquisition;
3. Information of the entity that is the subject of the merger and acquisition;
4. Detailed information on the merger and acquisition; and
5. Other information as required by the General Director of SECC.

2. SPECIFIC REQUIREMENTS

2.3 BANKING AND FINANCIAL INSTITUTIONS

2.3.1 Relevant Laws and Regulations



2. SPECIFIC REQUIREMENTS

2.3 BANKING AND FINANCIAL INSTITUTIONS

2.3.2 Conditions and Requirements

The following acts shall be subject to prior authorization from the National Bank of Cambodia

any transfer enabling any shareholder or group of shareholders to acquire or lose a half, a third, or a fifth or a tenth of their voting rights in the bank

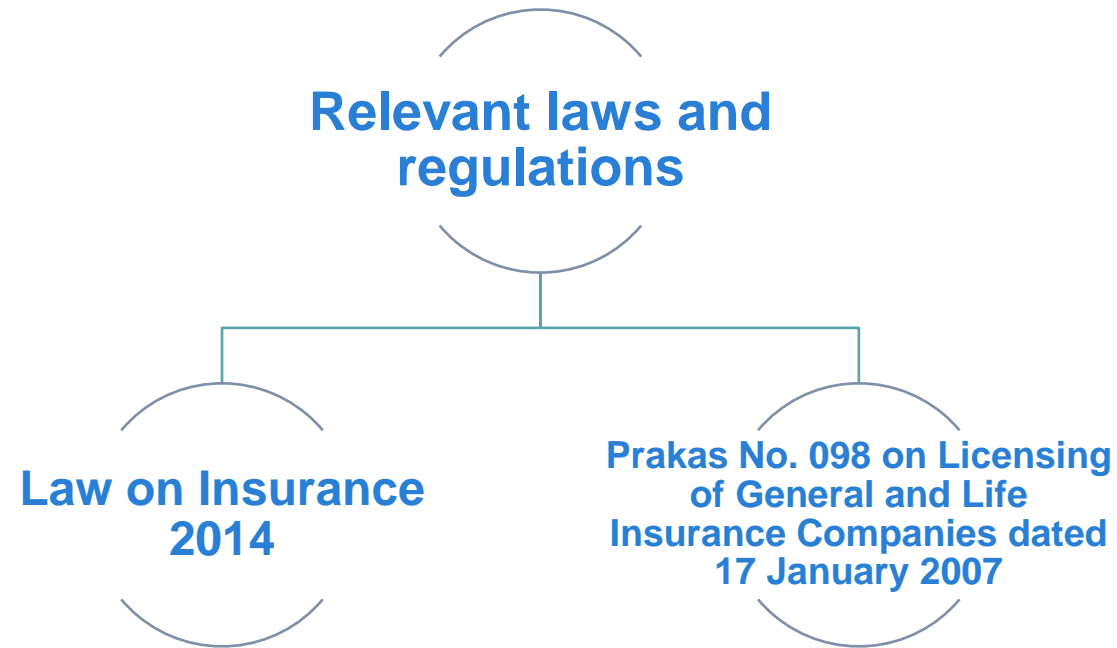
any transfer which results in the change of control power over the management of the bank

any transfer of shares resulting in an increase or decrease equal or superior to 5% and inferior to 10% of the voting rights possessed by any shareholder of the bank

2. SPECIFIC REQUIREMENTS

2.4 INSURANCE

2.4.1 Relevant Laws and Regulations



2. SPECIFIC REQUIREMENTS

2.4 INSURANCE

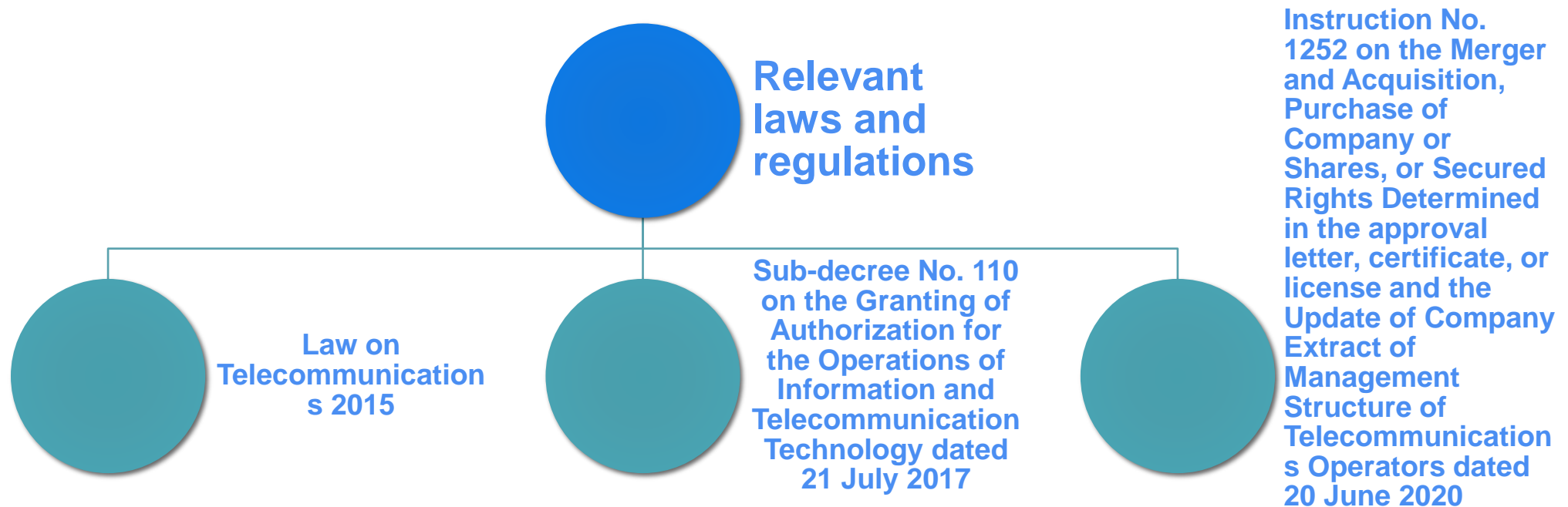
2.4.2 Conditions and Requirements

1. Any acquisition of shares in an insurance company resulting in shareholder having, directly or indirectly, 10% or more of the company's shares must be filed with the Financial Industry Department of the Ministry of Economy and Finance including the source of funds for the acquisition.
2. Shares acquired without the prior approval do not possess rights, powers or acknowledgement until the approval is obtained.

2. SPECIFIC REQUIREMENTS

2.5 TELECOMMUNICATIONS

2.5.1 Relevant Laws and Regulations



2. SPECIFIC REQUIREMENTS

2.5 TELECOMMUNICATIONS

2.5.2 Conditions and Requirements

General Principle

All telecommunication operations shall be made to abide by the principles of fair, free, equal, and effective competition.

2. SPECIFIC REQUIREMENTS

2.5 TELECOMMUNICATIONS

2.5.2 Conditions and Requirements

A merger between telecommunication operators and persons involved with telecommunication sectors is considered to be against the general principles when it is in nature:

hinders or limits rights on telecommunication market competition of telecommunication operators or persons involved with telecommunication sector;

constrains free tariffs which may lead to rise or decrease the fee arbitrarily;

limits partial or whole rights on managing telecommunication operations, investment, or technical development; or divides telecommunication market or supply sources.

2. SPECIFIC REQUIREMENTS

2.5 TELECOMMUNICATIONS

2.5.2 Conditions and Requirements

Process for Transfer of License and Certificate

Transfer through contract, succession, merger or security of rights defined under the permit, certificate or license shall be in accordance with legal procedures and applicable laws and follow the same procedure of granting permit, certificate or license.

2. SPECIFIC REQUIREMENTS

2.5 TELECOMMUNICATIONS

2.5.2 Conditions and Requirements





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THANK YOU!

