

LEGAL ISSUES IN M&A DEALS

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Agenda

- Part 1: Relevant Framework for M&A
- Part 2: Steps in an M&A Deal

A top-down view of a wooden desk with a person writing in a notebook on the left and another person typing on a laptop on the right. An open book is in the center background. The image is semi-transparent.

PART 1

Relevant Framework for M&A

Acquisitions, but no Mergers

- Law on Commercial Enterprises; Law on Investment
- No framework for mergers
- Pre-structuring considerations:
 - Transfer of business as a going concern
 - Offshore holding companies
 - Share purchase and subscription
 - Governing law

Treaties

- Double Taxation Treaties: Macau SAR, Hong Kong SAR, China, Korea, Malaysia, Brunei, Vietnam, Indonesia, Thailand and Singapore.
 - Lower taxes for offshore holding companies
 - Cambodian taxes covered: income tax, WHT, capital gains, tax on salary.
 - Dividends
 - Royalties

Treaties (cont.)

- **Bilateral Investment Treaties (in force): UAE, Hungary, Russia, Belarus, Czechia, Japan, Netherlands, Vietnam, Croatia, France, Germany, Korea, Singapore, Switzerland, China and Thailand.**
 - Protection from expropriation
 - Dispute resolution, arbitration or conciliation

A top-down view of a wooden desk with a laptop, a notebook, and a document. A person's hand is writing in the notebook, another is typing on the laptop, and a third is holding a document. The scene is overlaid with a semi-transparent white filter.

PART 2

Steps in an M&A Deal



Overview of the M&A Process

1. Target selection
2. NDAs
3. Due Diligence
4. Contract negotiations
5. Filing with Cambodia Competition Commission (if applicable)
6. Closing



M&A Process

1. Target selection and evaluation
2. Signing NDAs
 - Legal counsel and advisors must have access to information.

3. Due Diligence

- DD Checklist and customization for target industry
- Public Searches:
 - Land title searches
 - Trademark / IP / Domain searches
 - Secured Transactions Filing Office
 - Arbitration Council
 - Litigation / court searches (not possible)
- Non-Public Searches (seller to provide): company extract and MLVT search.

3. Due Diligence (cont.)

- Due incorporation
 - Capital structure and registration with MoC, GDT
 - Shareholding structure
- Licensing and permits
 - Compliance of employees with necessary licenses
 - Construction permits and certificate of compliance
 - Sector-specific licenses

3. Due Diligence (cont.)

- Insurance
 - Mandatory: motor vehicle third party liability; construction; transportation
 - Sector-specific insurance
- Environmental compliance:
 - Environmental Impact Assessment
 - Contract on Environmental Protection
 - Environmental Management Plan

3. Due Diligence (cont.)

- Movable and Immovable Property
 - Land ownership: soft vs. hard titles
 - Leases
 - Construction permits and compliance certificate
- Material assets and contracts
 - Restrictive clauses
 - Consent requirements

3. Due Diligence (cont.)

- Financial indebtedness:
 - Transfer pricing rules between related parties (arm's length)
 - Loans between related parties
 - Notification to GDT of non-related party loans
 - Change of control clauses and potential events of default
- Tax compliance
 - GDT Clearance Certificate

3. Due Diligence (cont.)

- Employment:
 - Workbooks
 - Self-declaration
 - NSSF obligations
 - Other compliance

3. Due Diligence (cont.)

- Compliance with the Law on Issuance and Trading of Non-Government Securities
 - Limited to 30 investors (non-public offering)
 - Over the limit – deemed public offering and approval by SECC required

3. Contract Negotiation

- Share Purchase Agreement (to purchase existing shares)
- Share Subscription Agreement (to subscribe to newly-issued shares)
- Issues:
 - Dilution of shares
 - Taxation of SSA and SPA
 - Representations and Warranties

3. Contract Negotiation (cont.)

- Issues:
 - Conditions Precedent
 - ◆ Covers non-compliant areas from DD report (e.g. licenses, lease agreements, shareholding structure, shareholders loans)
 - ◆ Transfer of employees and new employment contracts;
 - ◆ Notarization of documents
 - ◆ Escrow accounts
 - Conditions Subsequent
 - ◆ Areas that cannot be resolved prior to completion (e.g. registration of lease agreements)
 - ◆ Re-application for licenses

5. Filing with CCC; 6. Closing

5. Filing with Cambodian Competition Commission (if applicable)

- Filing thresholds and fines for non-compliance

6. Closing

- Registration of share transfer and issuance with the MoC (separate)
- CPs: tax, construction, labor compliance, etc.
- CSs: environmental impact assessment, registering long-term lease, etc.
- Signing ceremony and in-person review of documents (company stamps, witnesses, wet-inks).
- Timing of closing process



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