



INTRODUCTORY GUIDE

Initial Public Offerings in Cambodia

In collaboration with

Rahmat Lim & Partners

In association with Allen & Gledhill LLP (Singapore)

* This guide is part of our publication series introducing the development of securities market in Cambodia. Subsequent publications can be subscribed for at [**info@bun-associates.com**](mailto:info@bun-associates.com)

INTRODUCTION

This guide sets out a brief introduction to the upcoming Cambodian capital market and the structuring preparations that business owners may need to make before they may proceed with an initial public offering (IPO) and listing in Cambodia.

OVERVIEW OF THE DEVELOPMENT OF CAMBODIAN CAPITAL MARKET

The Cambodian economy is performing well. The Asian Development Bank estimates that the GDP growth for 2011 and 2012 is projected at 6.5 per cent and 6.8 per cent respectively. Cambodians are becoming successful entrepreneurs and they are keen to secure sources of capital that the banks cannot or will not provide. While banks have traditionally been the main source of funding for businesses, the launch of the capital market will create tremendous opportunity to commercial ventures to overcome the current challenges in relation to the access to credit in Cambodia mainly due to two reasons:

- a. with commercial lending rates that can range from 9 per cent to 15 per cent per annum, access to capital is often costly; and
- b. access to bank loan largely depends on the availability of collateral in the form of immovable properties and loans granted are usually limited to 50 per cent of the value of the secured properties. The opening of the capital market is also expected to encourage more foreign investment into

Cambodia generally, as an IPO on the Cambodia Securities Exchange (CSX) will become an exit option for venture capital and other investors.

Cambodia's securities market is scheduled to open later this year in 2011. The Securities and Exchange Commission of Cambodia (SECC) has been established as the market regulator while the CSX has been licensed as the securities exchange operator. The CSX is a joint venture between the Cambodian Ministry of Economy and Finance, which controls 55 per cent, and the Korea Exchange (KRX), which holds 45 per cent. Fifteen securities firms have been authorized to act as intermediaries including seven securities underwriters, two securities dealers, four securities brokers, and two investment advisers.

In order to regulate the capital market, the Royal Government of Cambodia (RGC) has introduced a number of important laws and regulations including the Law on the Issuance and Trading of Non-Governmental

Securities and its implementing Sub-Decree. The SECC has already issued other key operational rules necessary for the functioning of the market including membership rules, listing rules, operating rules of securities market, operating rules of securities depository and operating rules of securities clearance and settlement.

The RGC has also recently introduced some measures to promote IPOs and listings on the CSX. This includes a tax incentive during the first three years of listing enabling the listed companies to enjoy reduction of tax on profit by 10 per cent of the profit tax to be paid meaning that rate of tax on profit would reduce to 18 per cent instead of 20 per cent. Such incentive is intended to help the listed companies, within the initial phase of listing, to counterbalance the costs in connection with the compliance of applicable

regulations post-listing. In addition, public investors would also enjoy the reduction by 50 per cent on withholding taxes on interest or/and dividends to be withheld by withholding tax agent.

Cambodia's capital market is expected to grow considering the number of profitable local businesses suitable for listing and to draw attention of foreign investors.

Cambodia generally has potential and strengths compared to certain other countries in the region. The country has a good geographical location, has an open, liberal and globalized policy for foreign investment, does not discriminate against foreign investors (other than the main exception of land ownership), and does not impose exchange control on its dollarized economy.

BENEFITS OF IPOs

Obtaining a listing on the CSX enables a company to improve its standing and profile in the business community. Partners may take additional comfort in the fact that the listed company has gone through rigorous legal and financial due diligence - all of which are required for the successful completion of an IPO. The listed company will also be perceived as having high standards of corporate governance and receive financial market coverage through updates and announcements for publicly traded companies.

One of the most common reasons for going public is to raise capital, for purposes such as to fund growth or acquisitions, or to repay debt. Often, existing shareholders of the company will partially exit their share positions and receive IPO proceeds for their shares, and the shareholders will have a stock exchange listing on which they can publicly trade their remaining shares.

Once the company is public, it has access to an entirely new source of capital for any

future needs. The company can use its shares to acquire other businesses in conjunction with, or instead of, raising additional capital. Adding equity to the company's capital-raising options can help the company to achieve optimal capital structure.

If a company is listed, employee stock incentive and benefit plans may also be established based on listed securities. Stock-based compensation aligns employees' interests with those of the company. By allowing employees to benefit alongside the company's financial success, these plans can increase productivity and loyalty to the company and can be used to attract and recruit top talent.

LISTING REQUIREMENTS

A public limited company (PLC) or permitted entity (PE) that intends to list securities on the securities market shall fulfill the following prerequisites:

- The shareholders' equity shall not be less than approximately USD\$1.25 million;
- The issue size shall not be less than 20 per cent of the shareholders' equity as at the latest balance sheet (where the shareholder's equity is below USD\$5 million) and the issue size shall not be less than 15 per cent of the shareholders' equity as at the latest balance sheet (where the shareholder's equity is USD\$5 million or more);
- Net profit shall not be less than approximately USD\$125,000 for the latest full financial year prior to the date of the filing application and the aggregate of net profit shall not be less than USD\$250,000 for the latest three financial years prior to the date of the filing application;
- Submission of disclosure documents as required by the market regulator;
- Obtaining prior approval from the permitted securities market (CSX) on listing ability and securities pricing.

Permitted entities are entities whose structures enable them to offer shares to the public but are not strictly public limited companies as defined by Cambodian law. The SECC has the authority to permit qualified entities to become permitted entities for the purpose of listing in the Cambodian market.

In addition to the above-mentioned prerequisites, the SECC also considers the following points:

- Quality of corporate governance and financial history of the listing company;
- Likelihood of success of IPO by taking into consideration the existence of firm commitment in underwriting arrangements to ensure that all shares will be taken up;
- Actual needs and development of the securities market; and
- Protection of public interest.

PRE-IPO RESTRUCTURING AND REORGANISATION

Often, a profitable business or company, taken on its own, may not immediately be suitable for an IPO nor meet the requirements of the SECC and CSX. For many reasons, the business may first need to be combined with other businesses and other companies be included into the listing group, or certain assets may need to be disposed of and carved-out. Depending on the particular circumstances, the pre-IPO company may restructure by utilizing the following methods: merger, liquidation, sale of assets, capital contribution, reincorporation, conversion, exchange offering, or a combination of all these methods. The process may need to commence more

than a year before the actual IPO process depending on the complexity of the restructuring that is required.

To make a public offer of securities in Cambodia, the securities to which the offer relates shall be of a PLC incorporated in Cambodia or a PE that is prescribed in accordance with SECC laws and regulation. If the business is held by an entity of different form such as a private limited company, a transformation needs to be organized. Under certain circumstances, the business may be transferred to a newly incorporated PLC, or the entity transferred to the newly incorporated PLC as its subsidiary. A transformation

into a PLC must be registered and its corporate documents must be filed with the Ministry of Commerce.

When transforming into a PLC or a PE, the rules on corporate governance of listed companies need to be complied with. In particular, the public listed company must be headed by an effective board which is composed of at least five and not more than fifteen members, and at least one-fifth independent directors who are capable of exercising judgment independent of the views of management, political interests or inappropriate outside interests. In addition, for the sake of ensuring good corporate governance, the board must constitute an Audit Committee and, for certain public listed companies, a Risk Management Committee. Restructuring the corporate governance prior to going public is necessary for listing approval by SECC and building trust and confidence among prospective investors.

Using a newly incorporated PLC to be the listed entity and holding company can be advantageous. That company itself, at the holding company level, will not be bound by historical issues or liabilities which may otherwise affect a company that has been in business for a long period of time.

The group of companies to be listed must have the correct and most efficient group structure. It may be useful to support future business plans for new subsidiaries to be incorporated. Conversely, it may be advisable to wind-up or dispose of dormant subsidiaries. The same applies for loss-making subsidiaries or businesses to avoid negatively affecting the consolidated financial position of the listing group.

A business taken on its own may not yet meet the profit requirement for listing. A merger of a number of smaller businesses may be considered for the enlarged group to propose an IPO and listing on CSX.

The business to be listed may include transactions with related parties, such as shareholders or directors of the company. Key assets required may be owned by a related party, or contracts may have been entered into with them. A close review should be conducted as to whether such related parties can be included within the listing group, to minimise related party issues post-IPO.

SPECIFIC CONSIDERATIONS IN RESTRUCTURING

Regulatory licences and approvals and third party consents are relevant to be reviewed for restructuring proposals. Proper legal due diligence must be conducted to ensure the proposed restructuring is legally feasible. The main purposes of the legal due diligence are to perform an independent review of all legal issues that impact on the business, its value and its ability to list on CSX, and to assess legal implications associated with the proposed restructuring as well as the intended future IPO.

In a restructuring, there are tax and costs applicable on transfers. Tax advice must be sought to ensure that the group's tax position is optimised. Tax implications relating to transactions between the group companies, any accumulated losses, and distributions by subsidiaries to the holding company post-restructuring, should be reviewed.

In certain jurisdictions, it is possible to explore with the regulators for disclosure to be based on pro-forma future financial information, without historical information being prepared and disclosed. This need may arise from circumstances such as lack of operating history, loss or destruction of records, or historical information otherwise not being available. Although this is not catered for in present rules in Cambodia, parties can consider exploring this with regulators in the course of development of the capital market.

The reporting accountants should review the restructuring proposal to ensure that the proposed restructuring allows preparation of the company's accounts on an appropriate basis for inclusion in the disclosure document. In particular, public listed companies are required to comply with Cambodian accounting standards which fully adopt the International Financial Reporting Standards (IFRS), including International Accounting Standards (IAS).

CONTACT

For any enquiries, please contact:

Bun Youdy

Partner | Bun & Associates

T +855 (0) 23 999 567

F +855 (0) 23 999 566

bun@bun-associates.com

#29, Street 294,

Phnom Penh, Cambodia, P.O. Box 2326

www.bun-associates.com



Youdy is an attorney-at-law and former Secretary-General of the Bar Association of the Kingdom of Cambodia. He is a graduate of prestigious universities in Cambodia, France, and the United States. Before joining the firm, he gained extensive experience through working in different capacities for both Cambodian and international law firms. He is currently a panel lawyer of numerous foreign banks operating in Cambodia including the largest bank in terms of assets and loan portfolio. Recently, he was commissioned to advise the 5th largest financial institution in Southeast Asia and another leading Asian securities firm relating to their entry strategies into the country. He also

lately advised one of the largest Cambodian conglomerates involving an acquisition of a USD 60 million turn-key brewery plant. He recently assisted a foreign fund in a partial debt assignment transaction of the largest loan ever granted in the telecommunications' sector.

Youdy has been ranked as a leading lawyer in Cambodia by Chambers and Partners Asia Pacific 2011 and is praised as a “detail and meticulous” lawyer who specializes in foreign investment, banking, corporate and commercial litigation. He is fluent in Khmer (Cambodian), English and French.

ACKNOWLEDGEMENTS

This guide is prepared in collaboration with and with contributions from:

Wan Kai Chee

Partner | Rahmat Lim & Partners
(in association with Allen & Gledhill LLP Singapore)

T +603 2299 3858

F +603 2287 1616

wan.kaichee@rahmatlim.com

Suite 33.01 Level 33, The Gardens North Tower,
Mid Valley City, Lingkaran Syed Putra,
59200 Kuala Lumpur, Malaysia
www.rahmatlim.com



Kai Chee is a Partner in Rahmat Lim & Partners' Financial Services practice. He has been involved in mergers, restructurings, schemes of arrangement and vestings, capital reductions, initial public offerings, takeovers, acquisitions, and other corporate exercises. He has experience in cross-border and domestic transactions, and also advises on foreign direct investment into Malaysia, incorporations, immigration, regulatory applications, joint venture/shareholder arrangements, various commercial contracts, acquisition of loan assets, private debt securities, company and securities laws, and insurance laws. Listings he has worked on include establishment of real estate investment trusts (REITs), listings in Malaysia, Singapore, Hong Kong and London and the first dual primary listing in Malaysia and Hong Kong of Media Chinese International Limited in

2008 which was a transaction that received multiple awards.

Kai Chee is recognised for his expertise in Corporate and M&A in publications including The Legal 500 (2010) and IFLR1000 (2010). The Legal 500 (2010) described him as a "first-class practitioner".

Kai Chee graduated with an LL.B. (Honours) degree from King's College London in 1996. He is admitted as a Barrister with Lincoln's Inn, and an Advocate & Solicitor of the High Court of Malaya and an Advocate & Solicitor of Singapore. He practised in K M Chye & Murad in Kuala Lumpur until 2003 and in Zaid Ibrahim & Co in Kuala Lumpur where was a partner in the Corporate and Commercial practice group until 2010.

DIRECTORY

- Securities and Exchange Commission of Cambodia (SECC)
T +855 (0) 23 885 611
F +855 (0) 23 885 622
info@secc.gov.kh
#99, Street 598, Phnom Penh, Cambodia
www.secc.gov.kh
- Cambodia Securities Exchange (CSX)
T +855 (0) 23 939 072
#315, Preah Monivong Blvd.,
Canada Tower, Phnom Penh, Cambodia

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Bun & Associates

#29, St. 294, P.O. Box 2326

Phnom Penh, Cambodia

Phone: +855 (0)23 999 567

Fax: +855 (0)23 999 566

Email: info@bun-associates.com

www.bun-associates.com