

Cambodia



Country Guides: Securities and Banking

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The banking system in Cambodia still remains at a rudimentary stage as compared to other countries in the region. However, participation in the banking sector is quite promising. As of May 2011, the number of banking institutions reached 35, including 28 commercial banks and 7 specialized banks. Three foreign banks maintain representative offices in Cambodia. The locally incorporated banks dominate the sector in terms of number but some banks are owned by foreign investors. Growing participation in the banking sector is a symbol of trust and confidence which has resulted from continued restructuring and essential initiatives as part of the supervisory authority's development strategy. Apart from the banking sector, capital market development has also been progressing substantially. The legal and institutional frameworks of the sector have been actively developed toward the commencement of market operations sometime in the near future. At the current practice, Cambodia does not adopt a universal banking system, whereby any banking institution which intends to conduct other related financial services such as securities business or insurance will have to operate under separate entities and governed by different supervisory authorities.

Banking Sector

The banking system in Cambodia consists of commercial banks, specialized banks, and microfinance institutions. Specialized banks feature in the same way as finance companies since they are not allowed to collect deposits but are permitted to provide credit facilities. Microfinance institutions generally have been regarded as banking for the poor. These institutions play a very important role in providing financial support largely to rural households with concession terms.

Governing Law

The main governing laws include the following:

- Law on the Organization and Functioning of the National Bank of Cambodia promulgated in 1996 and as amended in 2006 ("the NBC Law");
- Law on Banking and Financial Institutions promulgated in 1999 ("the Banking Law");
- Law on Negotiable Instruments and Payments Transactions promulgated in 2005 ("the Payments Law");
- Law on Anti-money Laundering and Combating the Financing of Terrorism promulgated in 2007 ("AML/CFT Law");
- Law on Foreign Exchange promulgated in 1997 ("the Foreign Exchange Law").

National Bank of Cambodia ("NBC")

The NBC, which is the central bank, is an autonomous public entity of a commercial and industrial nature. The principle mission of the central bank is to determine and direct the monetary policy aimed at maintaining price stability in order to facilitate economic development within the framework of the country's economic and financial policy. The central bank is, therefore, empowered to issue decisions, regulations and other instructions. Key functions and duties of the central bank include the following:

- To determine monetary objectives in consultation with the Royal Government of Cambodia and consideration of the economic and financial policy framework of the country.
To formulate, implement and monitor monetary and exchange policies aimed at a determined objective.
- To license, de-license, regulate and supervise banks and financial institutions and other relevant establishment such as auditors and liquidators.
- To oversee the payment system in the country and to enhance inter-bank payments.
- To establish the balance of payments.
- To participate in the formulation and supervision of the money and inter-bank market.
- To set interest rates.

The central bank is required to submit a report of implementation and results of its mission to the National Assembly and the government. In order to maintain its autonomy in the operation, the central bank has a separate governing structure from the government as well as income allocation and budget. In this regard, the central bank may not extend credit directly or indirectly to the government. However, the central bank may temporarily extend credit to the National Treasury, provided that its maturity date does not exceed a period of three months. The NBC Law was amended in December 2006 to improve the governing structure and transparency of the central bank.

Banking Operation

Banks are defined by the Banking Law as institutions collecting non-earmarked deposits, providing credit operations including leasing, guarantees and commitment under signature, and extending means of payment to customers and the processing of said means of payment in national or foreign exchange. In addition to these primary activities, banks are also allowed to engage in securities transactions, foreign exchange operations, money market intermediation, derivative transactions, and other services subject to the consent of the supervisory authority.

The Banking Law also sets out the legal form of banks as a public limited company which can either be a locally incorporated or be a branch of foreign banks. Liaison or representative office of foreign banks may be established for a period of two years and renewal with prior approval from the supervisory authority; however such offices may not undertake banking businesses. The Banking Law briefly highlights the requirements for banking license which primarily focuses on qualification and responsibility of the shareholders, the minimum capital requirement, and the capacity of the executive management. In addition, a number of regulations were issued to support the licensing processes. The regulation on new capital requirement raises the minimum capital requirement approximately to \$36m for commercial bank and approximately \$7m for specialized banks. Banks which have rated investment grade shareholder(s) as a bank or financial institution may maintain the minimum capital approximately at \$12m and approximately \$2.3m respectively. The regulation on governance of banks which was adopted in 2008 sets new additional standards in term of organizing structure while the regulation on fit and proper test was introduced with the purpose of bringing qualified shareholders and management into the banking system.

As the supervisory and regulatory authority, NBC is empowered to adopt prudential measures in order to enhance stability in the banking sector. Those key prudential measures involve the areas of banking operation, accounting, solvency, liquidity, assets quality, risk management, and internal control and compliance of banks. The Banking Law is under amendment process to improve the NBC's supervisory power, especially with regards to consolidated supervision, cross border supervision, and consumer protection.

Foreign Exchange

There is no restriction on foreign exchange operations through book entry including purchases and sales of foreign exchange on the foreign exchange market, transfer of all kinds of international settlements, and capital flows in foreign or domestic currency, between Cambodia and the rest of the world or between residents and non-residents. However, such operations can be conducted only through authorized intermediaries (banks permanently established in Cambodia). Authorized intermediaries are required to provide the central bank on a regular basis with periodic statements by

type of transfers or settlements and of out flows and in flows of capital between Cambodia and the rest of the world. Any exports of cash in foreign currency by authorized intermediaries are requested for prior declaration to the central bank. In case of foreign exchange crisis, the central bank may impose temporary restriction for a period up to three months on the activities of the authorized intermediaries particularly with regard to the export of cash in foreign currency, foreign exchange position, and credit to non-residents. Payment of the export and import of goods and services are required to conduct through authorized intermediaries. Similarly, export or import of the means of payments equalling or exceeding \$10,000 in foreign exchange or domestic currency are advised for declaration to the custom office. Loans and borrowing including trade credits may be freely contracted between residents and non-residents provided that the loans disbursement and payment are made through authorized intermediaries.

Payment System

The Payment Law governs negotiable instruments, payments transactions and also covers bank accounts and operation of the payment system. Negotiable instruments specified by the Law consist of check, bill of exchange, and promissory note. It specifically details the process for designing the instruments, the terms and conditions sets out for operating the instruments, and the settlement scheme of each instruments. The Law also addresses the process of making payment transactions starting from payment order until completion of the payment. Liabilities, damage, and restitution of the payment are also covered by the Law. However, the Law fails to address the electronic transfer scheme which is an essential component of the payment system. The NBC is, therefore, drafting a Law on National Payment System and the Regulation on Third Party Processors to cope with the fast changing of the banking industry especially with regard to the mobile banking business.

Anti-money laundering

The AMLCFT Law which was adopted in 2007 defines the entities subject to it and outlines their obligations to prevent money laundering and financing of terrorism. The covered entities are vaguely enumerated from banking to non-banking institutions, professionals and non-governmental organizations. The Law also addresses the organization and powers of an enforcement agency (named as Financial Intelligence Unit which is led by NBC but is comprised of representatives from various relevant ministries) including the right to impose applicable sanctions. Additional general provisions are also provided in the newly adopted Criminal Code, the relevant part of which entered into force since the end of 2010.

Securities Business

Legal Infrastructure

The following are the legal texts issued covering the sector:

- Law on Government Securities promulgated on January 10, 2007("Law on Government Securities");
- Law on the Issuance and Trading of Non-Government Securities promulgated on October 19, 2007 ("Law on Non-Government Securities");
- Anukret on the Implementation of the Law on the Issuance and Trading of Non-Governmental Securities adopted on April 08, 2009 (Anukret on Non-Government Securities");
- Anukret on the Conduct and Organization of the Securities and Exchange Commission of Cambodia adopted on July 23, 2008 (Anukret on SECC);
- Prakas on Licensing of Securities Firms and Securities Representatives adopted on November 18, 2009 ("Prakas on Securities Firms Licensing");
- Prakas on Corporate Governance for Listed Companies adopted on January 15, 2010 ("Prakas on Corporate Governance");

- Prakas on the Accreditation of Securities Register, Securities Transfer Agent and Paying Agent adopted on May 12, 2010 (Prakas on Securities Register, Securities Transfer Agent and Paying Agent);
- Prakas on the Prime Principle of the Operating Rules of a Securities Market, a Clearance and Settlement facility and a Securities Depository adopted on March 18, 2010 (“Prakas on the Prime Principle of the Operating Rules”);
- Prakas on the Public Issuance of Equity Securities adopted on January 15, 2010 (“Prakas on the Public Issuance of Equity Securities”);
- Prakas on the Grant of Approval to the Operator of a Securities Market, the Operator of a Clearance and Settlement Facility and the Operator of a Securities Depository adopted on December 01, 2009 (“Prakas on the Securities Market Operator”);
- Prakas on the Accreditation of Accounting Firm Operating in the Securities Business adopted on March 18, 2010 (“Prakas on the Accounting Firm”);
- Prakas on the Accreditation of Cash Settlement Agent adopted on May 12, 2010 (“Prakas on Cash Settlement Agent”);
- Prakas on Accreditation of Valuation Company Providing Services in Securities Sector adopted on December 15, 2010 (“Prakas on Valuation Company”);
- Prakas on Corporate Governance for the Listed Public Enterprise adopted on December 15, 2010 (“Prakas on Corporate Governance for Public Enterprise”); and
- Prakas on Promulgation of Standard Financial Report for Listed Company adopted on February 24, 2011 (“Prakas of Financial Report”).

Other key regulations and rules are being finalized, including “Rules on Securities Market Operations, Securities Depository Operations, Listing and Membership”, and “Prakas on Code of Conduct of Securities Firms and Securities Representatives”.

Definition of Public Offering

Public Offering is defined as an invitation or offer to the public to subscribe for, purchase or sale of securities to (a) any section of the public, however selected, (b) individual members of the public selected at random, (c) a person who has become known to the person or entity making the offer as a result of an advertisement that was intended to promote the offer or invite the person to seek information or advice about investment in securities generally; and (d) the distribution of an advertisement, disclosure document or application form in relation to the subscription, purchase or sale of securities.

The Law on Non-Government Securities provides some exceptions including (a) a personal offer of securities for subscription, purchase or sale that is made only to a related entity or associate; (b) a personal offer that is made to no more than 30 persons; or (c) an invitation to a person to enter into an underwriting or sub-underwriting agreement with respect to an issue of securities.

Listing requirements

A public limited company or permitted entity¹ who intends to list equity securities on the stock market shall fulfil the following requirements:

- The shareholders' equity shall not be less than approximately \$1.25m; The issue size shall not be less than 20 per cent of the shareholders' equity at the latest balance sheet in case the shareholder's equity is below \$5m and the issue size shall not be less than 15 per cent of the shareholders' equity at the latest balance sheet in case the

¹Permitted entities are entities whose structures enable them to offer shares to public but are not strictly public limited companies (Plc.) as defined by Cambodian law. Securities and Exchange Commission of Cambodia has the authority to permit qualified entities to become permitted entities for the purpose of listing in Cambodian market.

shareholder's equity is \$5m or more;

- Net profit shall not be less than approximately \$125,000 for the latest full financial year prior to the date of filing application and the aggregate of net profit shall not be less than \$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 by permitted securities market for listing ability and securities pricing.

In addition, the corporate governance of the listed companies shall be in compliance with additional conditions comparing to regular public companies including the required minimum number of independent directors (one-fifth) and the compulsory setup of at least an Audit Committee and Risk Management Committee. The listed companies are also required to adhere to all international accounting standard put forward by International Accounting Standard Board (IASB).

When a listed company is a state-owned enterprise, there is a separate corporate governance rule to be complied with. Such rule is similar to those of regular listed companies except the composition of the Board of Director.

The Market Regulator: Securities and Exchange Commission of Cambodia (SECC)

The SECC is chaired by the Minister of Economy and Finance and composed of representatives from various ministries including the Ministry of Economy and Finance, the NBC, Ministry of Commerce, Ministry of Justice, Council of Ministers, Director General of SECC and experts.

The SECC has the following principal roles:

- to regulate and supervise securities markets;
- to enforce policy with respect to securities market;
- to formulate conditions for granting approvals to the operators of a securities market, clearance and settlement facility, and securities depository;
- to formulate conditions for granting license to securities companies and securities company representatives;
- to promote and encourage legal compliance; and
- to play a role as an institution to examine and solve complaints against licensed legal entities' decision affecting the benefits of participants or investors;

The essential power of the SECC is actually exercised by its Director General.

The Market Operator: Cambodian Securities Exchange

The Cambodian Securities Exchange (CSX), a joint venture between Cambodian government and Korea Exchange, obtained license from the SECC in February 28, 2011. The CSX is setting up its infrastructure for the first upcoming IPO planned at this end of this year.

Securities Intermediaries

The securities intermediaries are classified into four business categories regulated under separate licenses providing permissions to carry out different level of activities (a) Securities underwriting; (b) Securities dealing; (c) Securities brokerage; and (d) Investment advisory. For licensing purposes, different capital, legal, logistic, corporate and human resources requirements are imposed by relevant regulation. It is noted however that, subject to human resources requirements, only firm licensed to operate as securities underwriter is automatically allowed to carry out all securities business without requiring additional or separate license. All licenses have an initial validity of two years and then renewal for every three years.

Securities Underwriting

Securities underwriter business includes to (a) provide advice relating to the issuance of securities such as pricing, number of securities to be issued and distribution timeline, (b) acquire from an issuer all or a part of securities with a view to distributing or reselling, (c) acquire of the unsold portion of securities in a public offering with a view to ensuring the success of issuance, (d) arrange for a public offering on behalf of an issuer or participate directly or indirectly in a public offering. The minimum capital of a securities underwriter firm is set for approximately \$10m. Seven securities underwriters are currently licensed by the SECC.

Securities Dealing

Securities dealing are defined as a trading in securities for their own account and risk. A securities dealing firm is required to have a minimum capital of approximately \$6.25m. SECC gave licenses to two firms to conduct securities dealing business.

Securities Brokerage

A licensed brokerage firm is allowed to buy & sell the securities on behalf of and by orders of its clients for a commission fee. The minimum capital of a securities brokerage firm is approximately \$1.5m. There are currently four authorized securities brokers.

Investment Advisory

Investment advisory activities include (1) advising on investment in securities to public investors for a fee, (2) publishing investment analysis on securities investment to public investors. An advisory firm is required to meet the minimum capital requirements of approximately \$1m. Any individual person who wishes to provide investment advisory services needs to be sponsored by an investment advisory firm and be a resident of Cambodia. Only two firms have obtained license as the investment advisors.

Cash Settlement Agent

The cash settlement agent shall be a commercial bank licensed by the NBC. There are three accredited cash settlement agents.

Valuation Company

Accredited valuation company shall be a property valuation company with minimum capital of \$125,000 that is established in Cambodia and engage in business activities in Cambodia for at least three years. It shall also possess valuation license issued by Ministry of Economy and Finance.



Mr. Youdy Bun, LLM, is a partner and co-founder of Bun & Associates, a law firm duly registered in the Kingdom of Cambodia. He is the former Secretary-General of the Bar Association of the Kingdom of Cambodia and one of the first arbitrators selected to Cambodia's National Arbitration Center. Youdy has particular expertise in investment and market entry advice to international companies.