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It is hard to overstate the importance of insurance in personal and commercial life. It is the key means by which individuals and businesses are able to reduce the financial impact of a risk occurring. Reinsurance is equally significant; it protects insurers against very large claims and helps to obtain an international spread of risk. Insurance and reinsurance play an important role in the world economy. It is an increasingly global industry, with emerging markets in Asia and Latin America developing apace.

Given the expanding reach of the industry, there is a need for a source of reference that analyses recent developments in the key jurisdictions on a comparative basis. This volume, to which leading insurance and reinsurance practitioners around the world have made valuable contributions, seeks to fulfil that need. I would like to thank all of the contributors for their work in compiling this volume.

Insured losses in 2018 have been estimated at between US$79 billion and US$90 billion, a 40 per cent reduction from the disastrous 2017, but still above the 10-year average. While no single event stands out, the aggregation of losses from hurricanes Michael and Florence in the United States, and typhoons Jebi, Trami and Mangkhut in the Asia-Pacific region, along with earthquake losses and the California fires has been significant. Also noteworthy in 2018 were the number and scale of cyber events, including the huge data breaches of Facebook and Marriott International, which may be a portent of things to come. Events such as these test not only insurers and reinsurers but also the rigour of the law. Insurance and reinsurance disputes provide a never-ending array of complex legal issues, and new points for the courts and arbitral tribunals to consider.

Looking ahead, 2019 is likely to see new developments and new legal issues. In particular, the impact of insurtech on the way in which insurance is underwritten, serviced and distributed will present challenges around the world. To reflect this, we have added a new chapter on artificial intelligence.

I hope that you find this seventh edition of The Insurance and Reinsurance Law Review of use in seeking to understand today’s legal challenges, and I would like once again to thank all the contributors.

Peter Rogan
Ince Gordon Dadds LLP
London
April 2019
Chapter 8

CAMBODIA

Antoine Fontaine

I INTRODUCTION

Although the insurance market in Cambodia is in its sixth stage of development, it can still be considered relatively new.

The first stage began in 1992 with the introduction of the Law on Insurance, which can be viewed as the rebirth of the insurance industry after many years of war. Three companies obtained licences within the subsequent three years. However, most of the business consisted of acting as insurance brokers and no risks were retained in the country. The Law on Insurance was abrogated in 2000 and again in 2014. The new Law was promulgated on 4 August 2014. Any references to the Law on Insurance in this chapter refer to the 2014 version.

The second stage required the government to strengthen the industry by the design of two main tools: a new law in 2000 to increase the solvency and capital requirements, and the establishment of a state-owned reinsurance company. The latter also had the purpose of retaining part of the reinsurance premium in Cambodia and to offer a local reinsurance option to the Cambodian insurers. Following this new law, two general insurance companies obtained their licences in 2007 and in 2015.

In the third stage, banks’ affiliated insurance companies entered the market from 2007 to 2009, as the fast-growing banking industry required insurance to cover the assets provided as collateral. This stage has been reinvigorated as a result of three financial groups proposing bank, general insurance and life insurance services.

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Until 2010, the market was limited to non-life insurance businesses (i.e., general insurance and reinsurance), but continued to maintain low retention rates.

The fourth stage occurred in 2011. General insurance companies could have satisfied themselves in playing a limited role, providing standardised and limited insurance policies to the urban middle class while still getting a profit at the level of their investments. However, the government considered it a priority to offer access to insurance to the rest of the population. Without waiting for a new law, and based on non-governmental organisations’ experiences and comparative studies, it passed one temporary ministerial order to start micro-insurance in Cambodia. After the Ministry of Economy and Finance (MEF) granted the first micro-insurance licence, seven others followed in quick succession from 2014 to 2017, which were mainly in health and life, often in partnership with microfinance institutions. The first micro-life insurers played a very strong role in promoting insurance. A micro-insurance business is sustainable only by selling products to the mass market; micro-insurers have opted to use the three best methods available to promote their insurance policies to those in Cambodia who can afford to pay a small amount of premium: by using networks of micro-finance institutions (MFIs), selling to companies and factories, and retailing through mobile technology.

The first method consists of using the very wide MFI networks to propose credit-life insurance by paving the way to the bancassurance activity. This approach was fruitful, but was jeopardised by a series of new regulations that mainly originated from the National Bank of Cambodia (see Section II.iii).

This strategy also generated a new business opportunity for the non-bank affiliated general insurance companies, which found risks that they were financially able to underwrite by themselves. This unexpected competition in their own market (the indigent population) led micro-insurers to the second method, which was to start competing with general insurers in the general insurers’ own market by selling group personal accident and group health insurance policies to companies and factories to cover their employees. The viability of this last segment was threatened by the National Social Security Fund (NSSF). Until the end of 2015, the NSSF only covered work-related accidents, but in January 2016, the government adopted a sub-decree to establish a healthcare scheme to cover those persons defined by the provisions of the Labour Law, and to be executed and managed by the NSSF. As of the end of 2017, it is compulsory for every employer to contribute to the NSSF for both accident and health schemes.

The third method used by micro-insurers to target the poor is to work with telecommunication operators to sell insurance products using mobile technology. Even with one of the worldwide leaders in micro-insurance products operating in Cambodia (Milvik operating the newly set up Dara Insurance Plc (2018), Sovannaphum Life Assurance Plc (2015) and Cambodia Post Bank, affiliated to Canadia Bank Plc; and Maybank’s group (Equita, Maybank’s affiliate) is about to obtain both life and general licences.

12 Mainly the GRET, through its SKY project (Sokopheap Krousar Yeung).
(Cambodia) Micro Insurance Plc (BIMA), which uses mobile technology for insurance distribution, micro-insurers are facing competition from other general and life insurance companies in this area.

The fifth stage began in 2012 and led to the introduction of the life insurance industry, which was a significant move in the market and recognised by the government as necessary. In order to introduce life insurance, the government relied on two main pillars: the new regulation (passed in 2014), and the establishment of a state-owned life insurance company.15

While non-life insurance companies, like other industries in Cambodia, remain mainly regional in their shareholding (including companies from Singapore, Indonesia, Thailand, Malaysia, Hong Kong and Vietnam), leading worldwide life insurance companies entered into the Cambodian market soon after life insurance was introduced in 2012 and the flow of companies has been steady since then. The MEF granted licences to Manulife,16 Prudential,17 AIA,18 and Dai-Ichi Life,19 and four life insurers from the Association of Southeast Asian Nations (ASEAN) obtained their own licences.20

Life insurers have undoubtedly become the main players in the insurance industry; by investing a lot, through the mounting of large advertising campaigns, they have generated new interest for insurance in the general population. Since 2013, life insurers have experienced exponential growth,21 with endowment accounting for 93 per cent of the market share. 22

The sixth stage of development started in 2017 and is concomitant with the massive Chinese investments in Cambodia and the will of several local tycoons involved in the finance industry to diversify their investments in insurance concerning both general23 and life activities.24

Insurance intermediation has grown very slowly. Until 2007,25 only one insurance agent and one insurance broker were duly registered. In recent years, however, there has been an unstoppable flow of new brokers.26 Although bancassurance suffers from an inconsistency

15 Cambodian Life Insurance Company Plc (2012), which were eventually privatised and purchased by the Royal Group of companies.
16 Manulife (Cambodia) Plc (2012).
17 Prudential (Cambodia) Life Assurance Plc (2013).
22 However, term life has increased by 266.4 per cent since 2016.
23 EverCare Insurance Plc (2017), a member of Chinese AIBO group; East Insurance Plc (2017), a member of Guangzhou Yuetai Group; and Ly Hour Insurance Plc (2017).
26 MGA Insurance Brokers Co Ltd (2014); Gras Savoye (Cambodia) Insurance Brokers Plc (Willis) (2015); Bassac Insurance Broker Co Ltd (2015); Hong Kong TeamYoun (Cambodia) Insurance Brokers Co Ltd; Branch of Toyota Tsuicho Insurance Management Corporation; Insurance Broker Solutions (Cambodia), Ltd (2016); Icon Insurance Brokers Co Ltd (2016); Provita Insurance Broker Co Ltd (2017);
between banking and insurance regulations and practices; many banks, MFIs, financial leasing companies and telecommunication operators have been granted insurance agent licences. However, the number of insurance agents operating as a main activity remains very low, and has even decreased owing to aversive legal requirements.

With the exception of the General Insurance Association of Cambodia, which was established in 2005 and became the Insurance Association of Cambodia in 2013 (to include life insurers), brokers have also established an association to protect the interests of their profession.

Despite the fact that the insurance market is still nascent, Cambodia has many assets, even if pitfalls exist. The key assets are as follows:

a. an insurance penetration rate of only 5% per cent of the population, with a middle class that is the fastest growing among the ASEAN Member States;

b. a very fast premium growth rate of 20 per cent per year during the past 15 years, which nevertheless should be minimised because of the very low amount of premium (US$143 million in 2017 compared to US$113.6 million in 2016) largely boosted by the life insurance segment;

c. very few businesses purchase insurance policies to cover their risks, and when it happens, it is generally through a fire insurance policy that the banks require for granting loans;

d. while some foreign businesses are covered in Cambodia through their worldwide policies, any risk in Cambodia must be underwritten by a duly authorised insurance company (sanctions drastically increased with the Law on Insurance); and

e. more generally, the existing legal framework offers notable incentives that foreign investors might not be entitled to in neighbouring countries, including no restriction on foreign ownership, no local joint-venture requirement, free repatriation of benefits, no exchange control and minimum currency risk owing to a highly dollarised economy.

II REGULATION

i. Insurance regulator

The MEF is competent to issue regulations, and to manage and control the conduct of insurance businesses. An insurance business is not clearly defined by the law, but the term is widely interpreted. Insurance supervision is delegated to the Insurance and Pension Division

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27 Banks: Cambodian Public Bank Plc (Lonpac-2006 and AIA's agents-2017); ACLEDA Bank Plc (Prudential's-2013 and Forte's-2016 agent); Maybank (Cambodia) Plc (Manulife's agent-2016); ANZ Royal Bank (Cambodia) Ltd (Manulife's agent-2016), CIMB Bank Plc (Manulife's agent-2016), Foreign Trade Bank of Cambodia Plc (Manulife's agent-2016); and Advanced Bank of Asia Limited (Manulife's agent-2016). MFIs: Angkor Mikroheranhvatho (Kampuchea) Co Ltd (Forte agent-2014). Telecoms: SMART Axiata Co Ltd (Forte's and BIMA's agents-2014); and Amret (2018). Other: Infinity Financial Solutions (Cambodia) Ltd; Samic Plc; Asiaone Insurance Agency (Cambodia) Co Ltd; Cover Link Insurance Agent Co Ltd (Forte Agent 2018); and Safetynet Insurance Services (Cambodia) Co Ltd (Forte Agent 2018).

28 0.5 per cent for life insurance as at the beginning of 2016.

29 Overall insurance coverage only amounted to 0.35 per cent of gross domestic product in 2016.
of the General Department of Financial Industry. It also manages an Insurance Industry Development Fund for promoting, supporting and encouraging the dissemination of interests in insurance to the public.

The Insurance Strategic Plan 2011–2020 foresees the establishment of an independent insurance commission by 2020. However, there is no plan to merge the regulatory bodies of the insurance business (i.e., the MEF), the securities market (i.e., the Securities and Exchange Commission of Cambodia) and the banking sector (i.e., the National Bank of Cambodia) under only one supervising authority.

ii Non-admitted insurers

Any entity that carries out an insurance activity, except a reinsurance activity, is required to operate through a licence granted by the MEF. This rule applies to insurance companies, micro-insurance companies, insurance agents and brokers, and loss adjusters. The Law on Insurance created two important rules. First, to combat illegal insurance activities the Law drastically increased its related sanctions; underwriting insurance businesses without a licence will result in a fine of between 50 million and 100 million riels. Recidivism by an entity is sanctioned at four times this rate. Recidivism by a natural person is sanctioned at two times this rate, one to five years’ imprisonment, or both. Second, the Law allows for further sub-decrees to provide exceptions for licensing, although none currently exist.

The MEF requires a reinsurance company to have an equivalent Standard & Poor’s rating of at least AA+. Since this requirement is no longer practical, the MEF accepts a rating of BBB-.

iii Distribution of products

According to the law, there are only two ways to distribute insurance products: through a duly licensed insurance agent or through a broker. The law does not mention the possibility of an insurance company’s staff distributing products, but the MEF has permitted it, and a ministerial order even provides a specific authorisation for life insurance companies’ staff to be sellers. Even if the regulation does not mention group insurance policies, the MEF considers that a compulsory group insurance policy is an insurance policy in itself; therefore, the policyholder, acting for a group of insureds, is not considered to be an insurance intermediary. The MEF also understands that a pure referrer does not require a licence as it does not act on behalf of the insurance contract parties.

However, distribution of insurance through a third party is particularly difficult owing to the requested minimum capital deposit of US$10,000 for an agent and US$50,000 for a broker, which will double with the long-expected draft sub-decree on insurance to be adopted soon. Therefore, life insurers that used to distribute through a wide network of individual agents have no choice but to recruit employees as consultants. The employment relationship must be genuine, otherwise the insurer may be heavily sanctioned under the insurance, tax and the labour regulations.

Furthermore, bancassurance, which is essential for micro-insurers, life insurers and, to some extent, general insurers, is generally not permitted, owing to the National Bank of Cambodia’s position stating that financial institutions can only refer insurers and cannot act on their behalf. While it may seem that these establishments (acting as referrers only) should not be required to obtain a licence from the MEF, surprisingly, they are obligated to obtain an agent licence. Therefore, insurance companies must have their own staff (not agents) in the banks and MFIs’ premises, which drastically increases the acquisition cost.

There are no restrictions on outsourcing activities that are not subject to licensing.
iv Authorisations

According to the Law on Insurance, there are four kinds of insurance companies: life insurance, general insurance, micro-insurance and reinsurance. Both general and life insurance companies may conduct health and micro-insurance business. However, this provision requires urgent clarification, as it appears to exclude micro-insurers from offering micro-health insurance, and further appears to indicate that a life insurance company can provide any micro-general insurance business, and vice versa. According to a temporary ministerial order that will be amended by a future sub-decree, a micro-insurance company is not permitted to cover risks exceeding US$5,000 and exceeding a period of 12 months.\(^{30}\)

The Law on Insurance provides limited information on obtaining an insurance licence. It states that insurance companies are required to obtain a licence from the MEF, and imposes a three-month time limit on the MEF to decide on an application following the deposit of the required application form and supporting documents. In practice, it generally takes longer than three months. In addition, it is likely that the MEF will not grant many other life insurance licences in order to maintain a sustainable market. A sub-decree will provide further details for obtaining a licence. The former sub-decree and related ministerial order remain valid in the meantime.\(^{31}\) Currently, the MEF exercises a two-step approach where, after obtaining an approval in principle from the MEF, an applicant must complete its set-up within six months, including by incorporating the company at the Ministry of Commerce. Otherwise, the licence granted will automatically become null and void. Brokers, agents and loss adjusters are required to have a licence to operate.

The MEF is drafting a new ministerial order on the licensing of insurance agents and insurance brokers, which is expected to be adopted in 2019, including through the bancassurance channel.

Licences issued are not alienable under any circumstances. However, a change of control (greater than 10 per cent) is still possible, although the regulator must be properly notified. Furthermore, the portfolio may be partially or totally transferred, subject to prior approval by the regulator.

A licence is valid for the following periods:

- a insurance company: five years for both the initial licence and renewed licences;
- b micro-insurance company: one year;
- c insurance agent: one year for both the initial licence and renewed licences;
- d insurance broker: one year for both the initial licence and renewed licences; and
- e loss adjuster: one year for both the initial licence and renewed licences.\(^{32}\)

v Compulsory insurance

The former regulation mentioned three types of compulsory insurance (construction insurance, motor vehicle third-party liability insurance for vehicles used for commercial purposes and

---

31 Article 113, Law on Insurance.
32 A ministerial order dated 15 September 2015 provides a duration of five years for general and life insurance licences, while a former ministerial order dated 17 January 2007 provided a duration of three years. However, for agent and loss adjuster licences the same 2015 ministerial order provides a duration of one year while, in practice, these licences are granted for three years, in compliance with a former ministerial order dated 23 November 2001, which should be abrogated.
passenger transportation liability insurance whatever the means of transportation). However, as these requirements were not systematically implemented, the Law on Insurance increased fines for non-compliance to an amount of up to 150 million riels. However, the MEF has not put in place any system in the event of refusal by an insurance company to provide coverage.

In addition to the above-mentioned compulsory insurance, the Law on Insurance requires owners of motor vehicles (on roads or waterways) to purchase motor vehicle liability insurance. A sub-decree will determine the conditions. This compulsory insurance is not likely to be implemented soon for many reasons, including challenges in determining an affordable premium for the poorest owners of vehicles (which will sociologically appear as a tax) and collecting premiums throughout Cambodia. This may also leave the illusion of sufficient insurance while the maximum coverage will in fact be very limited. There will also be challenges in organising the insurance industry to ensure proper claim adjustments and payment in a timely and reasonable manner.

With the exception of the Law on Insurance, the Sub-Decree on Insurance dated 22 October 2001 adds one more type of compulsory insurance: insurance brokers are required to purchase professional liability insurance of US$500,000.33

**vi Taxation**

*Tax on insurance companies and their intermediaries*

Like many other countries, because of the economic specificity of insurance in Cambodia, tax on income (TOI) (corporate income tax in other countries) is imposed at a flat rate of 5 per cent on gross premiums. The fact that the scope of this tax also covers the savings part of the premiums clearly jeopardises the development of life insurance companies’ activities and bancassurance activities. The Law on Financial Management 2017 (LFM17) substantially changed the tax regime of the insurance industry by imposing tax depending on type of insurance. As opposed to life insurance, general insurance on risk and property is still subject to the tax of 5 per cent on gross premiums, while life insurance, which has a savings part and other activities (that are not property or risk insurance, or reinsurance), shall be subject to the TOI at a rate of 20 per cent.

Essentially, this change is far from an adequate solution. Life insurers do not necessarily offer endowment policies only; they can also offer term life, bodily injury and healthcare policies that are not substantially saving products. Under the LFM17, it was unclear whether the latest insurance policies would be deemed as risk and property insurance, which would then be subject to TOI at the flat rate of 5 per cent on gross premiums. However, the MEF released Ministerial Order No. 490 on 30 April 2018 to remove this ambiguity by concluding that premiums of life insurance policies regardless of either endowment, term life, bodily injury or healthcare policies will be subject to TOI at a rate of 20 per cent, and general insurance will be subject to the flat rate of 5 per cent on gross premiums.

Under the LFM17, insurance intermediaries (insurance agents or insurance brokers), important actors in the insurance industry, do not seem to have been treated as part of the insurance industry although the nature of their business activities is important for industry development and promotion. For example, for insurance companies, income from the sale of products and policies is not subject to value added tax (VAT) owing to the fact that it is not treated as taxable supplies for VAT purposes (for a short notice, under Cambodian tax
laws, insurance activity is not subject to VAT). However, under current practice, Cambodian tax officials tend to interpret that an insurance intermediary’s income from its activities (i.e., commission) does not count as insurance activity and thus is subject to 10 per cent VAT.

Moreover, the tax administration has not put in place any set-off system when the payment to an insurance intermediary originates from a prepayment subject to other tax (1 per cent minimum tax on income, VAT or specific tax applicable on certain merchandise and service), and in addition to the 5 per cent tax on gross premiums, insurance companies must pay the 0.5 per cent contribution to the MEF Insurance Industry Development Fund. These kinds of issues have resulted in the cost of doing business with insurance industries to become unnecessarily high for the policyholder, and also discourages intermediaries and insurance companies from investing in the Cambodian market.

**Tax on reinsurance companies**

Formerly, reinsurance premiums paid abroad were generally not subject to the 14 per cent withholding tax. This rule was welcomed and was justified because of the fact that the reinsurance premium (as a part of the insurance premium) was subject to 5 per cent taxation. However, Ministerial Order No. 490 has brought in new requirements. The payment of life reinsurance abroad will be subject to withholding tax of 14 per cent on the net reinsurance premium, although the payment of general reinsurance abroad remains not subject to the withholding tax.

**vii Ownership**

There is no restriction on foreigners investing in insurance businesses; there is only one form of entity available. An insurance company must be registered in the form of a public limited liability company. However, while an insurance company must have at least three shareholders, this minimum is not required for banks or MFIs, and is not generally required for a public limited company. The Law on Commercial Enterprise only requires a minimum of three directors.34

For other insurance businesses (i.e., insurance intermediaries and loss adjusters), the form can be a branch of a foreign company, a private limited company or a public limited company.

**viii Transfer of portfolio**

A Cambodian insurance company may apply to the insurance regulator for approval to transfer all or part of its insurance business to another Cambodian insurance company. The transfer will come into effect following an agreement between the transferor and the transferee once the MEF’s approval is given.

As far as we are aware, no portfolio transfer has ever been carried out. The draft sub-decree on insurance will develop details of the process that are in the best interests of policyholders.

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Capital
The law on insurance provides a minimum capital of 5 million special drawing rights (SDRs)\(^{35}\) for general and life insurance companies, and reinsurance companies. The draft sub-decree on insurance will provide rules to determine the amount of capital to be maintained to ensure an insurance company's solvency. According to the current rules, the minimum capital requirements are as follows:

\(a\) micro-insurance company (life or non-life): one-quarter of the amount of the underwritten premium with a minimum of 600 million riels;

\(b\) insurance brokers: 200 million riels; and

\(c\) insurance agent and loss adjusters: 20 million riels.

The draft sub-decree on insurance intends to double the capital of insurance intermediaries and loss adjusters.

Solvency requirements
There are two kinds of solvency requirement.\(^{36}\) First, insurance companies and intermediaries must maintain a deposit with the National Treasury (i.e., the MEF’s account at the National Bank of Cambodia (this account does not generate interest)) as follows:

\(a\) insurance company: 10 per cent of the registered capital;

\(b\) insurance broker: US$50,000 (equivalent to the minimum capital); and

\(c\) insurance agent and loss adjustor: US$10,000.

Second, insurance companies must maintain a solvency margin. For the first year of operation, the solvency margin is 50 per cent of the registered capital. Thereafter, each case is assessed on the previous year’s premiums:

\(a\) 13.3 billion riels where net premiums are less than or equal to 66.5 billion riels;

\(b\) 20 per cent of the total premium where net premiums are between 66.5 billion riels and 332.5 billion riels; and

\(c\) 66.5 billion riels plus 10 per cent of the insurance surplus from the previous year where the net premium is greater than 332.5 billion riels.

In addition to the 50 per cent solvency margin, the MEF requires micro-insurance and life insurance companies to maintain their assets (cash or property) equal to their minimum capital in order to guarantee that they have sufficient capital in accordance with the law. This requirement means that life insurance companies must have an initial minimum capital of US$7 million invested in assets, which cannot be used to pay expenses.

The new sub-decree on insurance and additional ministerial orders should be passed in 2019 that could change both capital and solvency requirements. The MEF has been implementing part of the drafted regulation since the second half of 2017.

\(^{35}\) International Monetary Fund SDRs. As of 1 January 2019, 1 SDR = US$1.39. The MEF practically considers the minimum capital required for life and general insurance companies to be equivalent to US$7 million.

\(^{36}\) These requirements could be modified under the Law on Insurance as they originate from a previous regulation.
xi Control

The MEF maintains three kinds of control: financial, legal and economic. Financial control is exerted over, *inter alia*, licence applications and yearly financial statement requirements (e.g., financial audits, business plan approvals and approvals for distributions of dividends).

Legal control generally consists of obtaining MEF approval for almost all activities, including changes in memoranda and articles of association (e.g., change of address, change of representative shareholders, change of directors, increase of capital), products approval (understanding that each rider is considered as one product), advertisement campaigns, and organisation of the distribution network. This approach was generally successful, but the huge increase of insurer players (with over 31 new licences in less than 18 months) has made it very difficult for the Insurance and Pension Division of the MEF to cope with the amount of requests. It is not rare to wait six months for a simple approval of a change of directors. The MEF has also limited the number of polices insurance companies can submit to two at a time. In addition, some of the above actions require authorisation from other ministries, particularly the Ministry of Commerce, which further lengthens the process.

Economic control over the industry involves, *inter alia*, gathering data, issuing and renewing licences, maintaining fair competition and approving any transfer of shares exceeding 10 per cent of the capital. The MEF may organise inspections, and has wide powers to do so. Measures undertaken during an insurance inspection may be challenged by bringing a complaint within 45 days to the MEF. The MEF then has two months to make a decision. However, this delay may vary depending on the MEF’s internal rules. This results in insurance institutions being delayed in requiring prior approval, which is sometimes not practicable when unexpected – for example, the resignation of a director or the transfer of a portfolio, which requires the parties to act fast to maintain the economic interests of the transactions. The fine imposed for not obtaining prior approval, and the frequency with which it was imposed, increased drastically in the past year.

The Law on Insurance considerably reinforced both the MEF’s control and procedures in cases where an insurance company is facing a serious financial crisis. In such a case, the MEF may appoint a provisional director to recover the insurance company for a period of no longer than three months. This mandate may be extended for another three months if necessary. After this period, if the evaluation of the company has shown that it may be sufficiently solvent and can comply with the law and all cautious measures, the provisional director will send a report to the MEF to cancel any cautious measure taken against the company and the provisional governance will be terminated. However, if the evaluation has shown that the company is sufficiently solvent but cannot comply with the law and cautious measures within three months, the company’s licence will be temporarily revoked by the MEF and the provisional governance will be changed to a voluntary dissolution of the company. Moreover, if it is shown that the company is insolvent, the company’s licence will be revoked by the MEF and the provisional governance will be changed to liquidation through a court proceeding.

Unless the insurance company is in a solvent condition, the company may initiate voluntary liquidation and dissolution processes. An insolvent company may submit to the MEF a request to liquidate voluntarily in cases where the company reaches its due duration period, or by a resolution of a general or extraordinary assembly of the shareholders in accordance with the memorandum and articles of association. Upon receiving a statement of intent from the company to voluntarily liquidate, the MEF will issue a certificate of authorisation provided that the company has appropriate grounds. After receiving the
certificate of authorisation from the MEF, the company must cease making new insurance contracts and must transfer existing contracts to other insurance companies before the start of the voluntary liquidation and dissolution of the company.

If a company becomes insolvent, the MEF must submit a complaint to a court to initiate the liquidation through court proceedings. A liquidator is selected by the court from the MEF’s permitted list of liquidators. A court order may also select a provisional director as a liquidator.

The liquidator has the obligation to liquidate all assets and repay all the liabilities of the insurance company under the supervision of the court.

III INSURANCE AND REINSURANCE LAW

i Sources of law
The MEF launched an important reform in 2000 and 2001,37 which consisted of an increase in the minimum capital held by insurance companies to 5 million SDRs, as well as a classification of insurance companies into three categories. These categories were general insurance companies, life insurance companies and reinsurance companies. This was followed in 2011 by the introduction of a fourth category: micro-insurance companies.

As mentioned in Section I, the National Assembly of Cambodia adopted the new Law on Insurance, which was promulgated on 4 August 2014 and entered into force on 4 February 2015. The Law maintains all former regulations. Three sub-decrees are expected to be adopted in the near future, which will be followed by many ministerial orders. The most important and notable changes will cover the following areas:

a general and life insurance contracts;
b insurance companies’ liquidation and dissolution processes;
c the micro-insurance legal framework;
d insurance control; and

e dispute resolution and disciplinary measures.

ii Making the contract
Generally, Cambodian regulations do not differ from other countries’ regulations in terms of contract formation. The policy must be written and must indicate:

a both parties’ names and addresses;
b the subject matter to be insured;
c the type of covered risks;
d the commencement date and location of risks;
e the insured value;
f the insurance premium and method of payment;
g the method and conditions for declaration of risks;
h the term of contract and period of coverage;
i the terms and conditions of nullification and forfeiture of rights; and
j the conditions for early termination.

For life insurance, it must also indicate the name of the beneficiary, and the event and conditions for refund of the insured amount.

The above-mentioned standard requirements are not always economically or practically adapted to some forms of insurance distribution networks. This is especially true for micro-insurance products, which should be easily executed. The draft sub-decree on insurance maintains that a written agreement with signatures is required; however, after discussions with the private sector, the MEF now accepts paperless insurance policies.

In addition, the Law on Insurance provides specificities that are sometimes difficult to understand. At first, it may appear normal that insurance policies are required to be written in the Khmer language with clear terms and conditions, but the Law does not provide for any exception, especially for major risks and for international risks.

Further, the Law on Insurance seems to indicate that no insurance policy can enter into force prior to the payment of the premium. Put another way, the payment is a condition for the enforceability of the insurance policy. This rule seems to be mandatory.

The Law on Insurance foresees only three parties to an insurance contract: the insurer (or its representative), the insured and the beneficiary (the latter in the case of life insurance contracts). There is also a definition of a policyholder,38 however, it is not the usual definition of a policyholder as it is commonly understood. In addition, the Law does not mention the possibility of underwriting a group insurance policy even if, in practice, group insurance policies are widely spread out and accepted by the MEF, which even distinguishes between compulsory and facultative group insurance policies.

The Law on Insurance states that an insurance contract is a commercial contract, to which it can be objected that, while the insurer may always be a merchant, the policyholder may not be one.

Finally, the insurance regulation may contradict other regulations, which can be problematic. For instance, a regulation applicable to general insurance companies (but interpreted as applicable to any institution) prohibits the chairman of the board from holding an executive role. However, the Ministry of Labour and Vocational Training and the Ministry of Interior require them to hold a working permit in order to get a business visa allowing them to lawfully remain in Cambodia. The working permit requires an employment contract, which must not include a fake salary as the General Department of Taxation could reassess it.

### iii Interpreting the contract

**General rules of interpretation**

There is no rule of interpretation clearly stated in the Law on Insurance and no law on consumer protection. Furthermore, there are very few rules of interpretation in the Civil Code.

However, because every insurance product must be approved by the MEF, this means that the MEF has its own interpretation that may be used as a benchmark for policyholders and insureds that are under the same insurance policy.

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38 In accordance with the Law on Insurance, a policyholder refers to a natural person or legal entity that has a legal right over the insurance policy.
Type of terms in insurance contracts

The MEF is also very cautious regarding the Khmer language terminology that is used. A sub-decree on insurance contracts should be adopted detailing, *inter alia*, rules regarding conditions and interpretation.

The Law on Insurance adds two important details regarding the interpretation of a contract. First, and naturally, it provides for nullification in cases where the insured (policyholder) has concealed the truth or wilfully misrepresented material facts leading to any change of the insured subject of risk. However, negligence does not necessarily lead to nullification. Second, it provides that for property insurance, the indemnity made by the insurance company must be the same amount as the declared property, unless agreed otherwise. This rule seems contradictory to the indemnification principle, although the reasons behind it are understandable. The Cambodian population is not familiar with insurance policies, and may not understand that insurers provide an amount lower than the declared or insured value of the property. This rule obliges insurers to either assess the real value before covering the property, or to clearly state that it will not pay the declared value if it exceeds the actual one.

iv Intermediaries and the role of the broker

In addition to the descriptions in Sections I, II.iii and III.ii regarding the distribution of products, there remain very few active insurance brokers and most of them received their licence relatively recently, with an uptick in July 2018 of four new licensed brokers. However, with an insurance penetration rate of 5 per cent among the population, the lack of knowledge of many businesspeople (especially local tycoons), the growing interest in insurance and stronger protections for duly licensed insurance companies are all factors that will contribute to an increase in the number of brokers.

Brokage is typically defined as acting on behalf of the policyholder. Although the brokers are organising themselves (a draft ethical code is circulating and an association is being developed), the legal relationship between insurance companies and brokers falls broadly under the Civil Code and more specifically under the regulation applicable to agency agreement.39

Brokers are not specifically protected when bringing business to insurance companies, even if insurance companies generally comply with general standards in these situations.

v Claims

The Law on Insurance provides only a few rules regarding claims, and the former regulation, which is still applicable, is useless in this regard. Therefore, claims must follow the common rules as provided for in the Civil Procedure Code.

The Law only states that the insurer may complain before the court in order to void its responsibility if a risk occurred because of a fraudulent act of the insured.

The Law also provides a subrogation mechanism to claim reimbursement of a duly paid insurance indemnity from the third party that caused the damage. However, subrogation is not possible against relatives, managers, etc., except in the case of malicious acts caused by any one of them. In addition, the Law on Insurance provides the victim with a direct payment mechanism against the insurance company for liability insurance.

39 Article 637 et seq. Civil Code.
The law provides no payment of life insurance if the insured committed suicide.
All the procedures for dispute resolution will be determined by sub-decree. In 2017,
the net rate ratio of claims was 30.7 per cent for non-life activity.40

IV DISPUTE RESOLUTION

i Jurisdiction, choice of law and arbitration clauses
Arbitration clauses are commonly provided in insurance policies in cases of a dispute between
the policyholder or insured and the insurer, except notably for micro-insurance policies.
However, there is generally no reference to any arbitration forum and no indication of the
arbitration procedure to be followed (e.g., designation of arbitrators).
As compulsory liability insurance does not really exist, there is no set-off of mutual
debts between insurance companies.41
There is no compensation fund or warranty fund in place, except the NSSF.

ii Litigation
If a dispute is brought before a court, parties will follow the rules as provided in the
Civil Procedure Code. However, when an arbitration clause exists, there is generally no
description of the claim procedure and the use of loss adjusters, nor any explanation on how
to challenge an insurer’s decisions. Until recently, there was no commercial arbitration centre
in Cambodia.

iii Arbitration
Even though a commercial arbitration centre has been established, it is unlikely that it will
be used for small claims, and large insurance claims are quite rare. However, the Law on
Insurance suggests that the MEF will establish an insurance arbitration centre.

iv Alternative dispute resolution
With regard to the Law on Insurance and sub-decree regarding mediation, the first mediation
case was brought before the MEF at the very beginning of 2019 involving a micro-insurer.

V YEAR IN REVIEW
Several large life insurers entered the Cambodian insurance market, while some other
insurance institutions left the country.
During 2017, the total gross premium of general insurance rose to US$75.3 million,
representing a 7.1 per cent year-on-year increase. This is clearly a slowdown as the average
yearly growth was 16 per cent for the past five years. This 7.1 per cent growth follows that of
gross domestic product, while the life insurance sector continues to grow significantly with
56.5 per cent year-on-year growth in premiums, according to the Insurance Association of
Cambodia.

General%20Industry%20in%20Q17_Press.pdf.
41 However, set-off is legally possible by application of Article 464 et seq. Civil Code.
VI OUTLOOK AND CONCLUSIONS

Although there are still a lot of opportunities in the general insurance market, the life insurance market is becoming overloaded and highly competitive. The micro-insurance industry has stalled in anticipation of a sub-decree on micro-insurance.

With regard to human resources and the MEF’s availability, dealing with the increase in players is the main challenge, which has already resulted in the MEF being very delayed in granting authorisations. Since the decision to increase the average salary in the public sector, the administration is very restricted when recruiting civil servants. In addition, owing to a lack of skilled human resources, entities in the public and private sectors tend to poach staff from each other, causing salaries to rise to an unaffordable level for the ministries.

With regard to claims, fraud has become a major issue, especially with a small number of loss adjusters.42 In addition, the tax regime applicable to life insurance activities and the double taxation of brokers and agents may cause frustration.

In terms of investing capital and premium, the options are incredibly limited. An insurance company must use at least 75 per cent of its reserve funds created from insurance premiums for reinvestment in Cambodia. The new draft regulation pertaining to the use of the minimum capital and solvency margin drastically limits the number of possibilities. It is even worse in practice, despite the new tax incentives, as the stock exchange is still in its infancy (although the first private bonds have recently been issued); investment in real estate is generally forbidden to foreign entities; investment in government bonds is not currently available; and investment in the private sector is not sufficiently reliable. Therefore, insurance companies try to repatriate their premiums through a reinsurance scheme or make a deposit in a bank that provides a relatively good interest rate.

Finally, regarding distribution, we do not envisage any improvement in the conditions to become an independent insurance agent and insurers are still waiting for a more clement bancassurance framework.

42 There are only three insurance loss adjusters: Mclarens Cambodia Ltd, MSM International Adjuster (Cambodia) Limited (2011) and Branch of AJAX Adjusters & Surveyors Pte (2017).
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Antoine Fontaine is Bun & Associates’ practice leader for the insurance, labour, tax and regulatory reform practice groups. He holds a PhD in insurance law and has developed unmatched expertise in Cambodia’s insurance sector, providing comprehensive advice to multinational companies on their insurance portfolio and counselling to foreign insurance companies on their market entry. He notably advised the first insurance broker, the first insurance agent, the first and the latest fully privately owned life insurance company, the latest general insurance company and the first three micro-insurance companies on their market entry.

He has worked in Cambodia for 18 years. He co-founded Bun & Associates after working for AXA Insurance as legal research expert, the French Embassy in Cambodia and leading French law firm, Gide Loyrette Nouel. Since 1999, he has been lecturing in universities around South East Asia and has published several articles on South East Asian legal systems. He still lectures on insurance law at the Royal University of Law and Economics in Phnom Penh.

Mr Fontaine is described by Chambers and Partners Asia-Pacific 2017 as continuing to be a key name for work in the insurance sector. He is a member of the Paris Bar and the former chair of the French Cambodian Chamber of Commerce, and has been appointed as the French Foreign Trade Adviser by the French prime minister and legal counsel of the French Embassy in Cambodia. He is fluent in French and English, and conversant in Khmer.

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