

**Legal Highlight**

**Business Combination: Advance Ruling Certificate, Post-Notification and Registration**

Business combination is one of the four actions stipulated in the Law on Competition that may have the effect of restricting, preventing, or distorting competition in a market. Therefore, a business combination within a determined threshold is required to be pre-notified to the Cambodia Competition Commission (“CCC”) before substantive completion of the business combination in order to have its impact on the competition evaluated and monitored. Forms of business combination include, but are not limited to, share acquisitions, joint ventures, and mergers. On 06 March 2023, the Sub-Decree No. 60 on Requirements and Procedures for Business Combination (the “Sub-Decree No. 60”) was issued, followed by Decision No. 095 on Pre-Notification Thresholds for Business Combinations (the “Decision No. 095”) dated 14 March 2023.

The Pre-notification obligation may sound like parties to a proposed business combination only need to inform CCC of the intended business combination. Nevertheless, pursuant to paragraph 2 of Article 4 of Sub-Decree No. 60, which states that "any business combination subject to Pre-Notification under paragraph 1 above shall be prohibited from completion unless permitted in accordance with Article 6 of this Sub-Decree", the Pre-notification is not only information but also a request for approval from the CCC in order to complete the business combination.

In addition, a business combination is also subject to Post-notification and registration, depending on their respective conditions. As a result, on 14 June 2023, the Ministry of Commerce issued Prakas No. 178 on Procedures for the Post-Notification of Business Combinations (the "Prakas on Post-Notification"), Prakas No. 177 on Requirements and Procedures of Registration of Completion of Business Combinations Subject to Pre-Notification (the "Prakas on Registration), and Decision No. 179 on Requirements and Procedures for Issuance of an Advance Ruling Certificate (the "Decision on ARC").

**Advance Ruling Certificate**

Parties in the business combination, regardless of whether it is subject to the Pre-notification or Post-notification obligation or not, may apply for an Advance Ruling Certificate. The Decision on ARC states requirements and procedures for applying for the Advance Ruling Certificate.

Pursuant to Article 14 of Sub-Decree No. 60, CCC may issue an Advance Ruling Certificate to parties to a business combination upon their application if CCC does not have reasons stated in Article 11 of the Law on Competition to reject or start a proceeding to prohibit the business combination. According to Article 6 of Sub-Decree No. 60, a business combination that is subject to pre-notification can be completed upon the issue of the Advance Ruling Certificate.

Parties who wish to apply for the Advance Ruling Certificate shall apply for the Certificate before substantive completion of the business combination through an application form that will be designated by the CCC.

The Advance Ruling Certificate is valid for one year, which means that from the date of issuance of the Certificate, CCC cannot reject the business combination simply based on the same documents and information the parties have submitted to CCC when applying for the Advance Ruling Certificate.

Nevertheless, CCC may also suspend an issued Advance Ruling Certificate if CCC can prove that the supporting documents and information provided by parties when applying for the Advance Ruling Certificate were

insufficient or false. In this case, the CCF Directorate-General shall notify the parties of the suspension with reasonable reason. It should be noted here that the CCF Directorate-General will notify the parties through the contact information filled in the application form for the Advance Ruling Certificate, so it is important that the information be updated and correct and that the parties have access to the contact information all the time. The parties will have seven (seven) working days upon receipt of the notification of suspension to prove that the documents and information that they have provided to CCC were sufficient and correct in order to revoke the suspension. If the parties fail to receive the notification through their provided contact information or prove that they have submitted sufficient and correct information within the 7 (seven) working days or other period of time specified in the notification letter, the issued Advance Ruling Certificate shall be null and void.

In the event that CCC rejects the application for an advance ruling certificate, CCC shall issue a No Action Letter on Termination of the Procedures for Issuance of an Advance Ruling Certificate with an indication that CCC does not have the intention to reject the proposed business combination. Despite the indication, CCC may still reject the business combination. After the rejection from the CCC, if the proposed business combination is within the threshold for Pre-notification, the parties to the proposed business combination shall complete the pre-notification obligation in accordance with the simplified notification procedures stipulated in Article 10 of Sub-Decree No. 60.

### **Post-notification Obligation**

Prakas on Post-notification sets out procedures for notifying the Post-notification and determines the threshold for the Post-Notification.

The Post-notification obligation is imposed on any parties to the proposed business combination that do not meet the threshold for the Pre-Notification obligation but instead have a threshold equivalent to 50% (fifty percent) or more of the threshold for the Pre-Notification.

For instance, one of the thresholds for general business combinations is based on the amount of the transaction. If the transaction has a value of KHR 41,000,000,000 (fourty-one billion riel), equivalent to around USD 10 million (ten million United States dollars), it shall be subject to pre-notification. However, if the transaction only values USD 5 million or more, it is subject to post-notification.

The Post-notification shall be notified to CCC within 30 (thirty) working days after substantive completion of the business combination with several required documents, including but not limited to a copy of the certificate of tax compliance issued by the General Department of Taxation.

The CCF Directorate-General will notify the parties whether the Post-notification is complete or whether further documents or information are required from them within 7 (seven) working days of receiving the Post-notification. Parties will have 15 working days to submit documents and information, or the Post-notification will become null and void. In this case, parties will have to re-notify the Post-notification to the CCC.

### **Registration of Business Combination**

Prakas on Registration stipulates procedures for the registration of a business combination. Pursuant to article 12 of Sub-Decree No. 60, parties to a business combination that has been approved by the CCC in accordance with articles 6 and 10 of the Sub-Decree shall report and register the business combination after substantive completion. This means that not only parties who have a pre-notification obligation will have to register the business combination, but also parties who have obtained the Advance Ruling certificate will have to do the registration because article 6 also includes the approval of the business combination through obtaining the Advance Ruling Certificate.

This business combination shall be registered within 30 (thirty) working days upon substantive completion of the business combination. Parties who wish to register the business combination shall submit an application form with a copy of a document certifying the approval of the business combination issued by the CCC and other supporting documents.

The timeframe that the CCF Directorate-General will respond to the parties and the timeframe that parties have to respond back are the same as those of the post-notification obligation as mentioned above.

**Note: This Legal Highlight is only general information of the subject matter and not intended to be a legal advice.**