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- Insurance in Cambodia

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INTRODUCTION

Beginning in 1956 with some private insurance companies, then monopolized by state owned enterprise (Société Nationale d'Assurance-SNA) from 1964 to 1975, the Cambodian insurance sector resumed activity from 1990s when the government issued Sub-decree 24 RNK dated 20 September 1990 on the organization and functioning of Ministry of Finance, containing a provision related to the establishment of the Cambodian National Insurance Company with the rank of department. Thereafter, on 30 January 1992, the National Assembly adopted the Law on Insurance Business Establishment placing the insurance sector under the supervision and regulation of the state. Derivative regulations have been issued and applied in the sector till the promulgation of the Law on Insurance in 2000. The insurance sector keeps growing since there are the needs of securing the risks. For instance, the revenue in this sector in 2014 was increased 26.7 percent compared to 2013 and the total income was USD 53 million. In detail, USD 18 million is fire premiums, whereas the remaining are those of engineering, health, motor-vehicle, personal-accident and miscellaneous premiums. The development of the sector is also under the Royal Government's Financial Sector Development Strategy 2011-2020. Until January 2015, there are 6 general insurance companies, 3 life-insurance companies, 2 micro insurance companies and one re-insurance company. Most of the insurance companies are joint venture companies with varying amounts of foreign equity participation.

Insurance business is not only a domestic issue, but also regional, especially for the upcoming ASEAN Economic Community (AEC) at the end of 2015. The ASEAN Insurance Council (AIC) is planning to execute a two-year master plan to drive the industry's growth in the region by

introducing a strategic quality control framework and the need for benchmarked standards are among the strategies needed to be implemented to encourage the development of highly competent ASEAN talent in the sector. The dialogue is being processed regularly to develop the sector. In this regard, Cambodia will host the 41st ASEAN Insurance Council meeting and the 18th ASEAN Insurance Regulators' meeting, at Phnom Penh, on 26-28 October 2015.

In order to respond to the constant growth of the sector as well as its coming regional integration and to regulate the market effectively, the Law on Insurance dated 04 August 2014 has been adopted and promulgated. This new Law aims to develop the industry in order to serve the public interest, that of the insured, and to ensure confidence in the insurance sector, with regards to the consistency with international fundamental principles of insurance. Therefore, it is important to enforce the supervision of insurance business, and to promote its competitiveness, honesty, and transparency.

The Law entrusts the Ministry of Economy and Finance ("MEF") as the competent authority in supervising and inspecting the insurance business. In fulfilling this function, MEF is also empowered to create and manage the Insurance Development Fund for promoting, supporting and induce the public awareness on the benefit of insurance. MEF is responsible for issuing licenses, revoking licenses, and controlling and supervising the insurance industry in Cambodia.

This report aims to covers the major aspects of insurance business and insurance contract in Cambodia in light with relevant laws and regulations. This report should NOT be construed as legal advice, guidance or counsel.

PART I - INSURANCE BUSINESS

1. Main Laws and Regulations Governing Insurance Sector

As insurance is included as one of the business activities under the Law on Commercial Rules and Register 1995 amended in 1999, therefore, the insurance sector is not only under the specific laws and regulations on insurance, but also other general laws and regulations such as:

- Civil Code, dated 8 December 2007;
- Law on Insurance dated 04 August 2014;



- Law on Implementation of the 2007 Civil Code, dated 31 May 2011;
- Law on Commercial Enterprises, dated 19 June 2005;
- Law on Insurance, dated 25 July 2000;
- Law on Taxation, dated 24 February 1999;
- Sub-decree on Insurance, dated 22 October 2001;
- Prakas on Licensing of General or Life Insurance Company, dated 17 January 2007;
- Prakas on Licensing of Insurance Agent, Insurance Broker and Loss Adjuster, dated 23 November 2001.
- Instructive Circular No 009 On Issuance of Temporary Micro-Insurance License dated 29 June 2011
- Prakas No 549 on The Accounting Instructive Principle for General Insurance Business dated 30 July 2008
- Prakas No 608 on The Life Insurance Business dated 12 August 2008
- Prakas No 470 on The Premium Rate of Fire Insurance dated 14 June 2007
- Prakas No 186 on Solvency Margin for General Insurance Business dated 20 March 2007
- Prakas No 002 on The Obligation to Vehicle Insurance Stamp dated 03 January 2006
- Prakas No 403 on Modification of Prakas No 193 dated April 01, 2005 regarding the Solvency of Insurance Companies, dated 02 August 2005
- Prakas No 193 on The Solvency of Insurance Companies dated 01 April 2005
- Circular No 001 on The Enforcement of the Obligation for Vehicle or Third Party and Passenger Transport Insurance dated 09 September 2004
- Inter-Ministerial Prakas No 653 on Compulsory Motor Vehicle Third Party Liability Insurance dated 16 October 2002
- Sub-Decree No 07 on The Creation of the Cambodian Reinsurance Company dated 24 January 2002
- Prakas No 176 on the Provision to Be Implemented to the Insurance Agency and Insurance Commissions dated 24 January 2002
- Instructive Circular No 009 on the Issuance of Temporary Insurance License dated 09 December 2002
- Inter-Ministerial Prakas No 655 on the Compulsory Insurance for Construction Site dated 16 October 2002
- Decision No 029 on Opening of Insurance Market in the Kingdom of Cambodia dated 20 December 2001
- Prakas No 933 on Utilization of Logo of Insurance Company, Insurance Agent and Insurance Broker date 17 December 2001
- Prakas No 934 on General Requirements for Insurance Operators dated 17 December

2001

It is important to note that the Law on Insurance will be implemented after 6 months from the date of its entering into force. All regulations issued under the umbrella of the old law continue their effect, unless there is new replacing regulation. Insurance business licenses, granted to all insurance institution, remain valid until its expiration date. But after the date of the effective implementation of the new law, all insurance companies shall regulate its capital to be in compliance with the minimum capital requirement as mentioned in the new law.

2. Definition and Types of Insurance

Insurance is a means of risk management. We transfer the potential risk to other persons by paying a premium as a consideration. The Law on Insurance defines the insurance as an insurance contract in which the insured pays premiums to insurance company and insurance company compensates for damage or loss of property caused by accident or make compensation when the insured is dead, injured, disabled, ill, or when such person reaches the determined time which both parties agreed upon as stipulated in the insurance contract .

Article 2 of the Law on Insurance defines an insurance company as a life insurance company, general insurance company, small insurance company and re-insurance company. There are three types of insurance:

- General insurance is an insurance contract covering the risk related to property, liability and health. Therefore, the general insurance products are:
 1. Property insurance,
 2. Liability insurance and
 3. Health insurance .
- Life insurance is an insurance contract covering the risk related to the death or the survival, including personal accident, serious illness or general illness. The life insurance products include
 1. Term life insurance,
 2. Whole life insurance,
 3. Endowment life insurance,
 4. Life annuity insurance .
- Re-insurance is insurance operation where a principal insurance company is insured by another insurance company (called re-insurance company) for a part or a whole risk under an insurance contract it signed.

The use of re-insurance does not exempt the principal insurance company regarding its insured.

- Micro-insurance is a kind of insurance for low income person. It can be a micro insurance on property, life, or personal injury.

3. Types of Compulsory Insurance

As we have seen earlier, the compulsory insurances required by law are Motor vehicle third party liability insurance, Liability Insurance at Work Sites, and Insurance for Transporting the Passengers.

3.1. Liability Insurance on Vehicles or Third Parties

Liability Insurance on Vehicles or Third Parties is for natural persons or legal entities owning and operating a commercial motor vehicle business on the road. The insurance covers the third party liability for any damage to third party caused by the motor vehicle including its trailer. The insurance law required that the insurance policy needs to cover not only the vehicle itself, but also the vehicle driver and maintainer.

The purpose of this insurance is to compensate any damage resulted from the activities of vehicle including all types of trailing carriage caused to a third person. The damage may be a physical injury, disability, and death or property damage caused by all types of motor vehicles. After the contract is signed, the insurer shall provide to the insured an insurance certificate and the relevant sticker.

3.1.1. Scope of Application

A natural person or legal person who is the owner of any vehicle for conducting a business for fees on land in the Kingdom of Cambodia must have insurance for his/her vehicle from an insurance company.

The types of motor vehicles will be determined in the sub-decree.

3.1.2. Effect

This insurance is not only valid for the vehicle owner but also valid for the driver and possessor of the vehicle.

3.2. Liability Insurance at Work Sites

Liability Insurance at Work Sites covers responsibility of construction owner. The construction owner need to have proof that he/she has signed an insurance contract therefore with any insurance company.

This compulsory insurance is imposed by the Law on Insurance in order to manage the risk inherent to the work sites. The owner of the work sites, whether physical or legal person must have liability insurance when opening the work site. The particularity of this type of insurance is that liability insurance contract must contain conditions on insurance for a period after the work site is completed. This insurance protects the interests of any third party living around the construction site or passing through or nearby the construction site. Therefore, the insurer shall be

liable to all accident regardless of physical injury or property damage of a third party caused by construction activities.

- Covered construction includes:
 1. all buildings, repairing, and erection under a responsibility of entrepreneur, contractor or sub-contractor save for legal entity under public law in charge of construction,
 2. Repair or erection work for public interests.

3.3. Insurance for Transporting the Passengers

Insurance for Transporting the Passengers is applied whether the transportation service is by road, sea, river, air or railroad. A natural or legal person providing passenger transportation business is imposed to have an insurance contract for any liability related the passenger using that service.

Physical or legal persons conducting business of transporting passengers by conveyance must have liability insurance on passengers riding on his conveyance, whether such conveyance is operating on the road, waterway, air, or railway.

- Beneficiary: The protection of rights and interests of passengers being transported by various transport means.
- Scope: All types of transport means holding licenses to operate the transport business in the Kingdom of Cambodia shall have liability insurance for passengers being transported on their own means of transport.

The particularity of this insurance is that upon an occurrence of an accident pertaining to passengers who are getting on, travelling on or getting off the transport means, the driver or owner of the transport means shall immediately inform his/her insurance company. Furthermore, he/she shall seek all means to save the victim.

4. Types of Insurance Business and Institutions

Upon the provision of the Article 43 of the Law on Insurance, the insurance businesses cover: the life insurance business, the general insurance business, the re-insurance business and the micro-insurance business.

In this regard, the insurance company is referred to:

- a life insurance company,
- a general insurance company,
- a micro insurance company or
- a re-insurance company .

Anyway, talking from bigger view, the “insurance institution” can be:

- an insurance company,
- an insurance agent ,
- an insurance broker , or
- an insurance risk assessment company .

In order to conduct any insurance business as an insurance institution, the interested person needs to apply for license to the supervisory authority, Ministry of Economy and Finance .

5. Competent Authority: Ministry of Economy and Finance (“MEF”)

The license is compulsory either for doing life insurance business, general insurance business, re-insurance business or micro insurance business. The licensed general insurance company, as well as Life Insurance Company can also conduct automatically the health insurance and micro insurance business. Therefore, all insurance companies must have the license granted by MEF which is the supervisory authority in this sector. MEF is entrusted the rights in granting or rejecting to grant the license within 90 (ninety) days upon the reception of completed application documents. In fulfilling its missions, the MEF is empowered to send its insurance inspection officials for monitoring, researching, controlling and promoting the implementation of the insurance law and regulations, as well as conducting investigation of any offense in insurance sector . Protected by law, the inspection officials are entrusted the rights and privileges as a judicial police officers. MEF may also impose relevant disciplinary measure on the insurance establishment.

6. Insurance Business Licensing

Obtaining an insurance license involves several steps and a significant amount of information and documentation. Upon the old insurance law, MEF has issued various regulations that govern license approval, timeframe, its official fee and license validity. Upon the provision of the article 44 and 47 of the Law on Insurance, the detail requirement and procedure to grant the license to the insurance institution will be defined in a specific sub-decree.

The Law on Insurance set three important conditions related to the legal business form, the capital requirement and the qualification of the director of the applicant for license as an insurance company:

- All insurance companies, whether state-owned, private, or jointly owned, may be permitted to operate in the Kingdom of Cambodia only in the legal form of a public limited company .
- The minimum capital requirement will be set in a specific sub-decree which shall not less than the 5,000,000 (five million) SDR rate at the date of grant of license. Anyway, the minimum capital requirement for a micro

insurance business will be fixed in a sub-decree .

- The direction, management or settlement power must not be entrusted to any person used to be imprisoned for any misdemeanor or crime .

Anyway, for other required conditions and procedures for licensing, either as for an insurance company or insurance agent, insurance broker or insurance risk assessment company, will be defined in a sub-decree .

In according to the legal framework issued under the old Law on Insurance, the minimum registered capital in riels for a life insurance company or general insurance company is at least equivalent to 5,000,000 (five million) SDRs considered at the rate the license is issued. If the company wishes to be a life and general insurance company, the required capital in riels is at least equivalent to 10,000,000 (ten million) SDRs considered at the rate the license is issued. The insurance company must make a deposit equivalent to 10 (ten) percent of registered capital at the National Treasury of the Kingdom of Cambodia. The process requires the submission of application form for license to the MEF. The validity of license varies upon the types of the insurance institution .

7. Financial Reports of Insurance Institution

In insurance operation, the insurance companies, agents, and brokers shall observe the fair competition principle. Anyway, physical and legal persons that receive mandate to conduct insurance activities shall comply with the provisions and laws of the Kingdom of Cambodia.

It is clearly provided in the Law on Insurance that the insurance company must submitted to MEF within 3 (three) months after the end of a financial year, its Financial reports, made in compliance with the International Financial Reporting Standards (IFRS), and audited by a certified auditor . Anyway, for the other insurance institutions, the financial reports and other documents will be submitted to MEF upon request.

8. Dispute Resolution Method

In accordance to the Law on Insurance, there are some available dispute resolution methods, except criminal offence, offered to the insured and the insurer:

- Conciliation by the MEF before
- Arbitration or
- Competent Court .

The compromise as the result of the conciliation by the MEF has an immediate enforceable effect.

The rights of the any parties to any arbitration or competent court are extinguished once the compromise is certified by the MEF.

9. Taxation for Insurance Companies

In accordance with the law on taxation, the profit of the insurance company is subject to a special rate 5% of the gross insurance premium, whereas the general profit tax of Cambodia is 20%. If the insurance company has other activities than the insurance, the profit gained from those activities is subject to the normal rate.

10. Dissolution of an Insurance Company

The dissolution and/or liquidation process of the a legal person is regulated under the Civil Code, the Law on Commercial Enterprises, the Law on Insolvency, the Law on Banking and Financial Institutions, as well as the securities related-laws and regulations. This means that generally, the insolvency proceeding is governed by the Law on Insolvency. Article 6 of that law clearly provides that the Law on Insolvency is not applicable to any company under the Law on Banking and Financial Institution, the Law on Issuance and Trading of Non-government Securities and the Law on Insurance, unless those laws refer back to the Law on Insolvency.

The Law on Insurance provides, in its chapter 8, very detailed conditions and procedures for a dissolution and liquidation of an insurance company.

Priority of debt repayment: The Article 86 of the Law on Insurance sets a special priority of debt repayment in liquidation of an insurance company:

1. The remuneration and costs related to the provisional administration and the liquidation,
2. Claims of the insurance compensation claimer,
3. Claims of the insurance policy owner,
4. Salaries of the personnel and employees, administrative services, court fees and related tax,
5. Secured claims,
6. State taxes without the deposit of notification,
7. Other unsecured claims.

10.1. Voluntary Dissolution and Liquidation

Voluntary dissolution and liquidation is only available for any company with sufficient solvency, and that, following the arrival of the company term or the decision of the shareholder general assembly. Upon the application with reasonable ground from the company, MEF will issue an authorization certificate for voluntary dissolution and liquidation to the company . In this case, the company shall immediately stop its business by rejecting new insurance contract and by transferring the current insurance contracts to other company.

MEF will then nominate a liquidator with

professional qualification from the certified list of the MEF . Under the monitoring and supervision of the MEF, the liquidator will arrange the liquidation process such as the inventory, the liquidation of asset and liability etc. . Anyway, MEF or any interested person may summon the court for processing the judicial liquidation of the insurance company.

After the end of the liquidation process, follow the revocation of insurance license by MEF and the issuance of the certification of dissolution of the company by the Ministry of Commerce (MoC), upon the request of the company's director.

10.2. Insurance company with serious financial difficulty: Provisional Administration

In case of any insurance company with serious financial difficulty, MEF may appoint a provisional administrator, from its certified list, for an initial 3 months for the rehabilitation purpose. This period may be extended to the other 3 months . In this case, the provisions of the Chapter 4 of the Law on Insolvency apply Mutatis mutandis thereto.

The outcome of the provisional administration may be variable:

- The company becomes solvent and is able to abide by laws and regulations and all prudential measures: MEF will remove that provisional administration status upon the report of the provisional administrator;
- The company may be solvent, but can not abide by laws and regulations, and all prudential measures: MEF will revoke the insurance license and convert the provisional administration status to voluntary liquidation;
- The company is insolvent: MEF must revoke insurance license and convert the provisional administration to the judicial liquidation.

10.3. Judicial liquidation

As above mentioned, in case the company remains insolvent, MEF must summon the court for starting the judicial liquidation. The Court must nominate the liquidator in the certified list by MEF.

The proceeding and the rights of the liquidator are in accordance with the Law on Insurance and the Law on Insolvency.

PART II - INSURANCE CONTRACT

11. Definition of an insurance contract

The relation between the insured and the insurance company is materialized in a form of a contract. "Insurance that benefits physical or legal person who is insured for the risks, life or non-life, shall enter into contract only with insurance company that has license to operate in the Kingdom of Cambodia. Insurance contract, primarily in Khmer, is thereby an agreement that stipulates the relationship between rights and duties of the insured and insurer.

12. Definition of an insurance contract

As insurance contract is a contract, therefore the provisions of Civil Code applies also all its stages. In addition to this, the Law on Insurance provides some special considerations.

12.1. General Conditions

12.1.1. Parties

The contract is made between two persons: the insured and the insurer. The insured can be a physical or legal person, whereas the insurer must be an insurance company with relevant insurance license . The insurance company is bound by the duty of information to the insured. It is compulsory that the insurance company clearly informs the insured of the conditions about the insurance contract and the insurance policy attached to the insurance certificate .

12.1.2. Consent

When entering to the contract, both parties shall follow the principle of honesty with mutual benefits and accorded through negotiation, that without harming the public interest. The insurance contract is considered as agreed in the contents when there are the offer and acceptance.

12.1.3. Subject Matter

The insurance contract shall not affect the public interest . In fact, this notion is quite difficult to define; it may be referred to morality, the customs and relevant laws and regulations. The subject matter can be any property, interest relating to property, life, or body of a person.

The insured must have consideration in entering into an insurance contract. This consideration consists in the compensation upon the subject matter.

12.2. Formality

When a physical or legal person applies for insurance and the insurance company agrees to accept it and consents with the terms of the contract, the insurance contract is considered to have been agreed upon.

Subsequently, the insurance company shall issue the insurance policy attached with insurance certificate to the insurance applicant. The policy attached with insurance certificate shall stipulate and determine important general terms previously agreed upon between both parties .

As above mentioned, the insurance contract must be in writing and primarily in Khmer. The issued insurance certificate must contain minimum elements such as names and address of the parties or insured property, type of insured risk, effective date and place of insured risk, insured amount, detail of premium, formality and condition of accident notification, duration of contract and insurance, and conditions affecting the validity of the agreement and waivers of rights.

12.3. Evidence

Only insurance policy or proof of evidence records mutual insurance between insurance company and the insured. Insurance application has no insurance value to both parties.

12.4. Cause affecting the validity of the insurance contract

In according to the Article 19 of Law on Insurance, an insurance contract is considered void when the insurance company found out that the insured was concealing information or making false declaration intentionally that causes the change of subject of risk.

Forgetting or making unclear declaration unintentionally by the insured shall not lead to voiding of the insurance.

13. Legal Effects of an Insurance Contract

The insured has duties to pay premiums. The insurer has duties to pay compensation and/or benefits. The Law on Insurance provides that Insurance is valid from the date the insured pay the premium as stated in the contract. The insured shall make the payment of premium within 30 (thirty) days upon signing of the contract.

The insured has a benefit from insurance which is the object to be insured. Therefore, the insured has the right to receive benefit which is the object to be insured.

ABOUT US

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We differentiate ourselves by coupling a deep understanding of the local business environment with international professionalism and integrity.

We facilitate business, investment and trade between Cambodia, Myanmar, and the rest of the world through innovative and cost-effective legal services.

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cambodianlaw.wordpress.com

BNG Legal believes expanding access to legal information is crucial to rule of law. To that end, several of our legal professionals write a blog discussing recent developments in the legal landscape.

LEGAL DATABASE

The laws and regulations in our database are based upon the Official Gazettes, law compendiums and other collections from the ministries and institutions of the Royal Government of Cambodia. These are available to the public through our partner site, www.bnglaw.net.

13.1 Breach of duties by insured and the rights to cancel the contract by the insurer

The insured shall pay the insurance premium and provide full co-operation with the insurer such as giving notice to the insurance company immediately after occurrence of any risk and provide the information and documents relating to the risks upon the requirement of the insurer. The failure to that obligation raise a nullification cause to the insured contract; Forgetfulness or unintentional and unclear declaration of the insured shall not give rise to a nullification of the insurance.

The Law on Insurance provides expressly that failure to pay any premium according to the stated time, validity of the insurance contract may not be suspended longer than 30 (thirty) days counting from the date of signing the insurance contract. Twenty days after signing the insurance contract, the insurance company shall send a notification by registered mail or notification letter with the clear proof of acknowledgement to the insured or a person obligated to pay premium to make a payment at the place agreed upon. After receiving a notification, if the insured still fails to make payment of premium within 10 (ten) days, the insurance company has the right to cancel the contract.

All points relating to any rights of the insured stated in general conditions of insurance certificate shall be considered void when the mediator certifies that the insured is at fault and the insured recognized that.

13.2 Fulfillment of obligations by the insurance company

The insurance company shall indemnify for any loss or damage upon the occurrence of the risk which is caused by coincidence, natural disasters, and any reasons which are not intentionally created by the insured and timely paying the claim according to the degree of damage and the sum of the insured money. Therefore, should there be any loss or damage caused by risks stated in insurance policy, the insurance company to compensate. The insurance company also insures the loss and damage caused by persons under the responsibility of the insured without taking into account the type and severity of such fault. This duty extends also to the third party. The liability insurance, if the insured caused any loss or damage to the third party, the insurance company shall directly indemnified such third party victim. The indemnity shall be immediately settled to enable the victim to fix such damage or to be treated the physical injury such victim suffered .

Anyway, the insurer may not compensate for any loss or damage caused by intentional wrong or

fraud of the insured.

If the danger caused by intentional act of the insured, whether the insurance company has already paid compensation or not, in the event that the insurance company found out the fraudulent act or fabrication of accident with clear proof, the company has the right to lodge complaint to the court to deny responsibility or recover compensation.

Furthermore, both parties shall respect the principles of fairness, mutual benefits, and unanimity through negotiation and shall not harm the public interest.

13.2.1 Case of liabilities insurance

In liability insurance if the insured causes damage or loss to a third party, the insurance company shall pay compensation directly to such third party injured. Liability insurance is a type of insurance in which liability compensation shall be made directly to the third party that is the subject of insurance.

13.2.2 Case of re-insurance

In the event of reinsurance, the original insurance company is still liable to the insured. Reinsurance is the insurance operation which the original insurance company is insured by another insurance company which is a company that reinsures the risks in whole or in part that it enters into contract to insure.

14. Renewal or Termination of the Contract

The term of the insurance contract is stated in the insurance policy and certificate. Anyway, the Law on Insurance allows each party to terminate the contract before the time determined by sending prior notification through registered mail or notification letter with the clear proof of acknowledgement.

If the insured wishes to continue, amend, or reactivate an insurance contract suspended, it must submit an application for that purpose. The application is considered to have been agreed upon in the event that the insurance company does not reject such application within 15 (fifteen) days .

Any addition or revision to the original policy shall be made through additional contract and shall be signed by both parties.