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- Initial Public Offering of Equity Securities in Cambodia

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Introduction

Cambodia has become one of the most attractive places in South East Asia for investors. Because of this, companies, aiming to grow may use the initial public offering (IPO) process to increase their financial capacity and grow larger.

This presentation aims to provide a clear and understandable guide to processing an Initial Public offering. With this information, a business owner can evaluate his company's growth plan and have enough information about the process to confirm whether proceeding with an IPO is a viable option for his company.

Advantages of the IPO

Conducting an initial public offer means to offer shares of stock to the public through a public offering for the first time. This process is sometimes referred to as "going public". The most viable prospects for considering going public are companies who are seeking additional growth capital. In order to be approved as an IPO, the company have be mature and be willing to change their ownership structure.

The main purpose and effect of going public is to transform an evolving business from a privately owned and operated entity into one which is owned by public stockholders.

Furthermore an IPO brings to the company a new way of financing their investments by having the opportunity to sell their equity by issuing shares in the new company. Besides getting new capital quickly, after an IPO, the company also has the opportunity to offer their stock in the market for future equity based financing strategies.

Launching a successful IPO also brings a higher level of prestige to the company. In fact, the process inherently builds the notoriety of the company due to the publicity an IPO receives



during the registration process. Another byproduct of conducting an IPO is that it may cause the company to receive better terms with banks, suppliers and other third party vendors in the future.

According to the Cambodian law, an IPO issuer can only be a public limited company or permitted entity.¹

Additionally, conducting an IPO in Cambodia has great tax incentives for both the issuing company and the new shareholders.²

To get a complete understanding of IPO's in Cambodia, it is necessary to be familiar with a few IPO terms.

Basic definitions

Equity securities

This refers to any legal interest in or right to share in the capital of a public limited company. Furthermore, these shares include voting, non-voting, partly paid and preference.

- Public limited company or permitted entity

A public limited company is a limited company which is incorporated in accordance with the Law on Commercial Enterprises for the purpose of issuing securities to members of the public. A permitted entity means a legal entity, other than a public limited company which is allowed to offer and issue securities to members of the public in Cambodia.

Public offer:

A public offer means an invitation or offer to members of the public to subscribe for or purchase securities. There are four different modes:

- an offer of securities for subscription, purchase or sale made to any section of the public, however selected;

- an offer of securities for subscription, purchase or sale made to individual members of the public selected at random;

- an offer of securities for subscription, purchase or sale made to a person who has become known to the person or entity making the offer as a result of an advertisement that was

¹ Law No. NS/RKM/1007/028 on the issuance and trading of non-government securities

² Anukret No. 70 ANKR BK on Tax Incentives in Securities Sector Article 4&5_Tax Incentive on Profit Tax for Equity and/or Debt Securities Issuing Company

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intended to promote the offer or invite the person to seek information or advice about investment in securities generally; and

- the distribution of an advertisement, disclosure document or application form in relation to the subscription, purchase or sale of securities

Minimum requirements for an IPO in Cambodia

Any company wishing to conduct an IPO in Cambodia must complete a few requirements, according to the Cambodian law.³

First, any company wishing to register as an IPO must register their company as a public limited company, within the competent public authorities. There are also size obligations for the issuer. Not all companies can go public in Cambodia. They must first reach a certain size and strength. The size and strength components consists of: the amount of shareholder's equity, the percentage of equities issued, the minimum net profits of the company, a national priority for shareholder subscription (a minimum of 20% of the shareholders must be Cambodian nationals) and two prior approvals merged into the application.

The CSEC (the Cambodia Securities and Exchange Commission)

The principal authority in Cambodia for non-government securities transactions is the CSEC. They are the sole public authority mandated by the government, under the law on non-governmental securities to regulate, supervise, develop policies, grant licenses, formulate administrative conditions and examine complaints about securities market in Cambodia.

The CSEC is composed of nine people: one chairperson and eight members. The eight members are from the different ministries which are closely tied to the securities market. The chairperson is the minister of economy and Finance. Other members come from different ministries and government organizations. All CSEC members must hold specific qualifications and competences to hold their office and they must have legitimate expertise on the securities markets.

The main figure inside the CSEC is the general director of the institution. As the general director, he holds the final decision making powers and dictates the functions of the institution. Besides supervising the administration of the institution, he oversees the proposal of the IPO issuance and gives the final approval.

Some of his other duties are examining applications of the demanding entities, gathering information from the operating entities monitoring the compliance, check and review the applications for IPO, check and review any amendment to the

operating rules, investigate and take appropriate enforcement actions.

The director conducts a constant surveillance on the securities market and can revoke or suspend an approval granted by the CSEC at any time. He is also responsible for publishing a list of violators of the rules. For illustration of the broader power of the CSEC, the CSEC officers are granted of a genuine judicial police power explained in Article 56 of the criminal code that makes the CSEC, the securities market police.

Article 56 of the criminal code. "Mission of the Judicial Police: the judicial police act as an auxiliary of the judiciary's power. The judicial police shall have the duty to watch felony, misdemeanor and petty crime, identify and arrest offenders and collect evidence."

The process of going public: prior procedure form and disclosure document obligations

The administrative process of going public consists of these distinct steps:

- submission of the application form, the disclosures documents and attached documents

- Approval and registration of the disclosure document: the disclosure documents must contain all the relevant information on the company, its health, its structure and precise information on the securities the company would like to issue. The CSEC may ask any documents in order to decide whether or not, the company can go public.

- Decision of the CSEC: it can refuse the IPO application, based on listed reasons in the law or approval. In case of approval, the operator can issue authorized securities on the market and conduct the IPO, but stayed under the control of the CSEC authority.

IPO performance

If the IPO is registered successfully, the issuer of the new securities must satisfy publicity requirements: "any advertisements, announcement, statements related directly or indirectly to issuing and offering shall be done in compliance with the law⁴ and permitted by the director of the CSEC". Some administrative fees must be paid also, as stated in the law.

The issuer shall continue to send any relevant information to the CSEC which shall then examine and review the processing of the Initial Public Offering.

In case of violation of law, regulations or infringements to the CSEC requirements, the default issues may face heavy administrative sanctions and transactional fine.

³ Prakas , dated December 31st, 2009 on Public Issuance of Equity Securities

⁴ Article 14 Anukret No. 54/ANKr/BK on 8 April 2008 on the implementation of the law on issuance and trading

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If there is a conflict, the CSEC can also offer mediation. An operator, who wishes to dispute a decision from the CSEC, may file a complaint with the competent court with the support of registered attorney.

Conducting an Initial Public Offering in Cambodia is a highly regulated matter. The law provides a strong protected framework for the investor and the securities market protection.

The Cambodian Stock Exchange and the listing procedures are relatively new. Only five companies are currently on the Cambodia's nascent stock exchange. Because of this, the government is encouraging companies and individuals to participate in their country's investment market by offering substantial investment advantages and incentive.