

ABOUT US

BNG Legal is a leading Cambodian law firm providing comprehensive legal services to foreign and local clients.

Registered with the Bar Association of the Kingdom of Cambodia, our legal professionals combine international standards with local expertise.

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 and the rest of the world through innovative and cost-effective legal services.

Superior knowledge of local protocol, local procedure, and local people is necessary for any business to succeed in Cambodia.

Conducting daily business in Cambodia, BNG Legal is up to date with the newest procedures and requirements, helping clients efficiently and successfully complete any project.

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Cambodian Stock Exchange to Launch Soon

The last three years have seen a surge of anticipation for a fully functioning stock exchange in Cambodia. Expected to be established in CamKo City, hopefully by the end of the year, the Cambodian Stock Exchange (CSX) will be a joint-venture between the Korean Exchange and Cambodia's Ministry of Economy and Finance (MEF). Proponents of the exchange point out the potential benefits of raising much needed capital and thereby facilitating growth in local companies. A less publicized benefit of a well functioning stock exchange in Cambodia may be that it will encourage a more rational allocation of resources, given the current propensity of Cambodian investors to park their money in land for long periods of time.

Until March 1st, the Stock Exchange Commission of Cambodia (SECC) accepted license applications from firms seeking to participate in the future stock exchange. According to press reports, twenty-two national and international firms applied. A qualifying firm must comply with rigorous standards. The legislation states that along with having a sound corporate structure, firms seeking a securities license must have a minimum capital between USD 96,000 to 9.52 million. Prospective firms must also pay a license fee ranging from roughly USD 100,000 to 10 million. The minimum capital requirements and license fees vary depending on the type of securities license sought.

The SECC is currently reviewing its twenty-two license applications and is expected to reveal very soon which firms qualified for and will receive licenses. With only three state owned companies announced to list on the stock market—Sihanouk



CamKo City, future home of the Cambodian Stock Exchange

Autonomous Port, Phnom Penh Water Supply Authority, and Telecom Cambodia—experts believe that the SECC should grant licenses to fewer than half of the applicant firms, or risk oversaturation of the fledgling stock market.

Although the SECC's receipt of so many securities license applications was a relative success in the journey to open the CSX, numerous obstructions in the path still exist. Such obstacles include the unfinished CSX premises, of which construction has yet to commence and disagreement over which currency to use. Some argue that the CSX should be used as a vehicle for promoting the local Riel while their opponents point out the value of sticking to the more stable US Dollar.

Another considerable obstacle is the lack of private companies interested in listing or able to list on the CSX. Although one private company, Cambodia Air Traffic Services, has publicly expressed interest in listing, many companies distrust the proposition of going public through the CSX. It is probable that many companies are adopting a wait and see approach while other companies simply cannot meet the revenue and transparency/accounting standards necessary to list. Further, the three state-owned companies that have already announced their intention to list have yet to court investors and the SECC has yet to issue the legislation necessary to transform the companies into public entities.

Despite the fact that there is still a lack of necessary legislation to enable the CSX in some areas, the advent of the stock exchange has already prompted the creation of other key legislation. For instance, 2009 saw a much needed fillip to Cambodian corporate governance legislation



BNG Legal believes expanding access to legal information is crucial to rule of law. To that end, several of our legal professionals will be writing a blog discussing recent developments in the legal landscape. Several of our recent posts cover:

- Overtime Rules under the Labor Law
- Pitfalls to Avoid in Setting Up a Business
- Foreign Corrupt Practices Act
- Special Economic Zones
- Changes to Internet Structure

with a strengthening of standards of internal auditing for public enterprises and the creation of an Internal Auditing Department through the Ministry of National Defense. Most recently, the SECC released a Prakas stipulating corporate governance requirements for companies to list on the CSX.

Even with these legislative in-roads, and the SECC's success in receiving abundant securities license applications, experts still predict that the CSX will not open until the second quarter of 2011 or even until 2015. Whatever the case with the eventual start date, it is better to have the commencement of the exchange delayed until it is truly ready to ensure some measure of investor confidence rather than open early because of some arbitrary deadline.

New Chief Accountant

MARIA LOURDES LAUREA

Ms. Maria Lourdes Laurea is the Chief Accountant of BNG Legal. She grew up in Manila, Philippines and received her Bachelor's Degree in Accountancy from Polytechnic University of the Philippines. Maria Lourdes came to Cambodia in 2008. Before working at BNG Legal, she worked at Bizzcom Cambodia as the Operations and Marketing Manager. Her current practice and expertise are accounting and taxation. Maria Lourdes speaks Tagalog and English.

BNG Legal Welcomes Three Summer Associates

KEN MCLEOD

Ken McLeod grew up in Seattle, Washington. He completed his undergraduate studies at Pomona College in Claremont, CA in 2007 with a Bachelor's in Philosophy, Politics and Economics (PPE). After two years of working for law and legal services firms he enrolled at William and Mary Law School. His interests include rugby, international business and hiking.

WILLIAM NAPIER

William Napier grew up in Layton, Utah. He graduated from Brigham Young University in 2009 with a BA in Political Science, and a minor in Latin American Studies. He is fluent in Portuguese and Spanish, and is working on French and Italian. He currently attends William and Mary Law School.

ADAM GIBBONS

Adam Gibbons grew up in Thatcher, Utah. He graduated from Utah State University in 2009 with a BA in International Studies. He has previously lived and worked in Cambodia as a volunteer and speaks the Khmer language. He currently attends Brooklyn Law School.

Monthly Legal Updates

The following is a selection of the most important business-related laws promulgated since our last newsletter. For a complete list and summary of recent laws, please refer to our website:

<http://www.bnglegal.com/our-library.html>

Prakas No. 906 (MoEF) dated October 09, 2009 on the Establishment and Functioning of the Customs-Private Sector Partnership (L&R/CIE/2009/Khm) (Ogs, Year 09, No. 77, October 19, 2009)

Prakas No.906 establishes a partnership between customs authorities and the private sector. The aim is to provide coordination between the customs administration and the private sector regarding the procedure and timeframe for fulfilling the customs application form. This partnership will coordinate the contributions of relevant companies in the private sector in the establishment and adjustment of any customs regulation.

Prakas No. B7.09-216 (NBC) dated September 15, 2009 on Reporting of the Biggest Exposures and Surveillance of Credit Risk Concentration (L&R/Bnk/2009/Khm&Eng)

This Prakas creates an obligation for banks and financial institutions to establish a comprehensive review of their fifty biggest borrowers on a quarterly basis. If an institution cannot comply with the requirements then that they are required to adapt and upgrade their information management system in order to be able to comply.

Institutions are allowed to determine their own level of exposure and concentration of risk, but should be aware that concentrated credit risks might severely impact their financial situation. This Prakas therefore requires quarterly reports in order to assess potential impacts of the deterioration of big borrowers under adverse economic circumstances. Institutions must provide their Board Members or Members of their Executive Body with a list of the 50 largest individual or group borrowers and a summary assessment of the borrowers' overall financial condition. Such report must, at a minimum, include all the data and information required by

LEGISLATION TRACKER

cambodianlaw.wordpress.com/legislation-tracker/

Cambodia is rapidly filling in the gaps in its legal system, passing important legislation all the time. To keep abreast of these developments, this tracker will monitor drafts as they progress through the legislative process. Only laws and the most important sub-decrees and regulations will be reported.

the National Bank of Cambodia (NBC).

The Prakas provides for sanctions if institutions are not compliant with its requirements. It does not apply to microfinance institutions.

Royal Kram NS/RKT/0809/017 dated August 29, 2009 promulgating the law on the Ratification of the Agreement on ASEAN Merchandise Trade (L&R/Bsn/2009/Khm&Eng).

This law was adopted to implement the ASEAN Trade In Goods Agreement (ATIGA) done at Cham Thailand on February 26, 2009 by and between all Member States of ASEAN.

The objective of this Agreement is to achieve the free flow of goods within ASEAN as one of the principal means of establishing a single market and production base for the deeper economic integration of the region towards the realization of the ASEAN Economic Community (AEC) by 2015.

The following are important features of this Agreement:

- Comprehensive coverage - this agreement covers trade-related rules and regulations, including tariff liberalization, non-tariff barrier liberalization, rules of origin, trade facilitation, customs procedures, standards and conformance, and Sanitary and Phytosanitary (SPS) measures.

- Consolidated and streamlined rights and obligations - this agreement consolidates all of ASEAN's existing initiatives, obligations and commitments made with regard to intra-ASEAN trade-in-goods into one comprehensive document in order to be more user-friendly for traders.

- Most-favored nation treatment - if a Member State enters into any agreement with a non-Member State where commitments are more favorable than those accorded under this Agreement, the other Member States have the right to request negotiations with that Member State for treatment no less favorable than is provided under the aforesaid agreement. The decision to extend such tariff preference will be on a unilateral basis. The extension of such tariff preference must be accorded to all Member States.

- Full tariff reduction schedules - Member States must eliminate import duties on all products traded between the Member States by 2010 for ASEAN-6 and by 2015, for Cambodia, Laos, Myanmar, and Vietnam (CLMV) with flexibility until 2018.

- Streamlined and unified provisions on modification of concessions and trade remedies
- In exceptional circumstances where a Member State faces unforeseen difficulties in implementing its tariff commitments, that Member State may temporarily modify or suspend a concession

contained in its Schedules.

- Trade facilitation and related chapters - The ATIGA has taken into account and has dedicated chapters on Trade Facilitation for relevant sectors, i.e. (i) customs, (ii) standards, technical regulations and conformity assessment procedures; and (iii) SPS Measures. The ATIGA details disciplines in these areas to ensure clear and consistent application of trade procedures and establishes formalized contact points for customs authorities to facilitate the resolution of customs-related issues that arise during the import/export of goods.

- Trade repository - An ASEAN Trade Repository containing trade and customs laws and procedures of all Member States must be established and made accessible to the public through the internet. The ASEAN Trade Repository must contain trade related information such as (i) tariff nomenclature; (ii) MFN tariffs, preferential tariffs offered under this Agreement, and other Agreements of ASEAN with its Dialogue Partners; (iii) Rules of Origin; (iv) non-tariff measures; (v) national trade and customs laws and rules; (vi) procedures and documentary requirements; (vii) administrative rulings; (viii) best practices in trade facilitation applied by each Member State; and (ix) a list of authorized traders of Member States.

- Issuance of Legal Enactments:

ATIGA provides for the issuance of a single legal enactment for the whole tariff reduction schedule by each Member State.

No later than 90 days for ASEAN-6 and six months after entry into force for CLMV.

Such enactment will have retroactive effect from 1 January of the year of its entry into force.

In case a single legal enactment cannot be issued, individual legal enactments will be issued 3 months before any tariff reduction takes effect.

On the horizon...

The following draft laws were recently proposed or debated in the National Assembly. For the most current status of any of these bills, check the Legislation Tracker at

<http://cambodianlaw.wordpress.com/legislation-tracker/>

AMENDMENTS TO CIVIL PROCEDURE CODE

Approved by National Assembly, goes to Senate for debate before signing by King. [6/2010]
Amends the 2005 Civil Procedure Code to deal with proceedings that do not result in a law suit.

BNGLaw

www.bnglaw.net

BNGLaw is a legal database website developed by the expertise of the Legal Research and Documentation Department (LRD) of BNG Legal. It is a complete database containing the existing laws and regulations of Cambodia from 1920 to the present, as well as international instruments applied in the Kingdom of Cambodia.

LRD continuously updates the information to stay current with the law. This website was created to provide wider access to Cambodian law and to serve as a global resource so that all may have a deeper understanding of the legal system in Cambodia.

As a service to our clients, we offer access to our legal database free of charge. Please contact us at info@bnglegal.com for more information.

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TRADE UNION LAW

Working group has formalized a first draft and invited public comment, aiming to finalize proposal to Government by end of 2010. [5/2010]
Would supplement and/or replace the Labor Law's provisions relating to unionization.

FAMILY DISPUTE LAW

Draft approved by National Assembly on 4/26/2010, goes to Senate for debate. [4/2010]
Sets procedures for divorces, child-support obligations, and related matters.

WATER TRAFFIC LAW

Draft circulating for discussion, intended submission to Council of Ministers by end of 2010. [4/2010]

Regulates ship registration and safety.

ACID CONTROL LAW

Technical committee is drafting a bill, will then be forwarded to Council of Ministers for consideration [3/2010]

Regulates acids and requires licensing of vendors.

PRAKAS ON SECC ACCREDITATION FOR CASH SETTLEMENT INSTITUTIONS

Draft published by Securities and Exchange Commission of Cambodia, public comment sought. [3/2010]

Specifies accreditation requirements for financial institutions providing cash settlement in securities trading.

PRAKAS ON SECC ACCREDITATION FOR LAWYERS

Draft published by Securities and Exchange Commission of Cambodia, public comment sought. [3/2010]

Specifies accreditation requirements for lawyers providing services in the securities sector.

AMENDMENT TO TRAFFIC LAWS

Drafting of proposal by Ministries [3/2010]
Changes various provisions to traffic laws, including mandatory insurance requirement.

NGO LAW

Draft approved by Council of Ministers, goes to National Assembly for debate. [2/2010]
Establishes new registration, institutional structure, and reporting obligations for local associations and non-governmental organizations.

PROPERTY TAX

Government has announced formation of a body to study proposals. [2/2010]

Establishes an annual tax of 0.1 percent on properties valued at over \$25,000.

PHARMACY REGULATORY BOARD

Draft approved by Council of Ministers, goes to National Assembly for debate. [2/2010]

Creates body to oversee and regulate pharmacies.