

**GLOBALISING YOUR PRACTICE -
OPPORTUNITIES AND CHALLENGES**

Raising Capital in International Markets – How the Local Legal Advisor Became Global

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NEGRI & PUEYRREDON ABOGADOS

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Siem Reap, Cambodia

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Securities and Exchange
Commission of Cambodia

Outline of Presentation

- Cambodia Securities Market Development
- Legal and economic considerations
- Capital markets
- Where to raise capital
- Types of financing options
- Equity investments
- Investors and their rights
- Corporate control
- Role of lawyers
- Conclusion



Cambodia Securities Market Development and Legal Advisor Business

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Introduction



In Cambodia, the Securities industry is regulated by the **Securities and Exchange Commission of Cambodia (SECC)** which is established in **2008** under the Law on the Issuance and Trading of Non-Government Securities.



SECC Board of Directors



H.E Dr. **Aun Pornmoniroth**
Deputy Prime Minister, Minister of Economy and Finance,
Chairman of SECC



H.E **Nguon Sokha**
Secretary of State, Ministry of Economy and Finance, Member



H.E **Neav Chanthana**
Deputy Governor, National Bank of Cambodia, Member



H.E. **TEK Rethkamrang**
Secretary of State, Ministry of Commerce, Member



H.E **Keut Rith**
Secretary of State, Ministry of Justice, Member



H.E **Kim Rothviseth**
Secretary of State, Council of Ministers, Member



H.E **Sou Socheat**
Director General of SECC, Member



Prof. **Sam Ganty**
Expert in Securities Sector, Member



Prof. **Sam Sokhom**
Expert in Securities Sector, Member

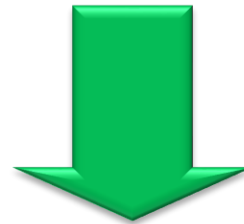
The SECC chaired by **Minister of Economy and Finance** and **8 Members** with the mandate of **5 years**, consists of the following:

- One Representative from the Ministry of Economy and Finance
- One Representative from the National Bank of Cambodia
- One Representative from the Ministry of Commerce
- One Representative from the Ministry of Justice
- One Representative from the Cabinet of Council of Ministers
- The Director General of SECC
- Two Experts in Securities sector

Steps of Development

2001: Financial Sector Blueprint 2001-2010

2006: Financial Sector Development Strategy 2006-2015



Jan. 2007: Law on Government Securities

Oct. 2007: Law on the Issuance and Trading of Non-Government Securities

Steps of Development



"Cambodia needs to find new ways to attract international capital besides international aid and bank loans"

Sources: Yahoo Finance, 2007

Sept. 2007: Samdech Techo Hun Sen, Prime Minister of the Royal Government of Cambodia hosted an international conference and proclaimed to launch of the Cambodia Securities Market project

Steps of Development



29 April 2009 Launching of the SECC by Deputy Prime Minister Keat Chhon

Jul. 2008: Anukret on the Conduct and Organization of SECC

2008-Present: Other supporting regulations, rules, guidelines **60 +**

Cambodia Securities Exchange

ផ្សារមូលបត្រកម្ពុជា

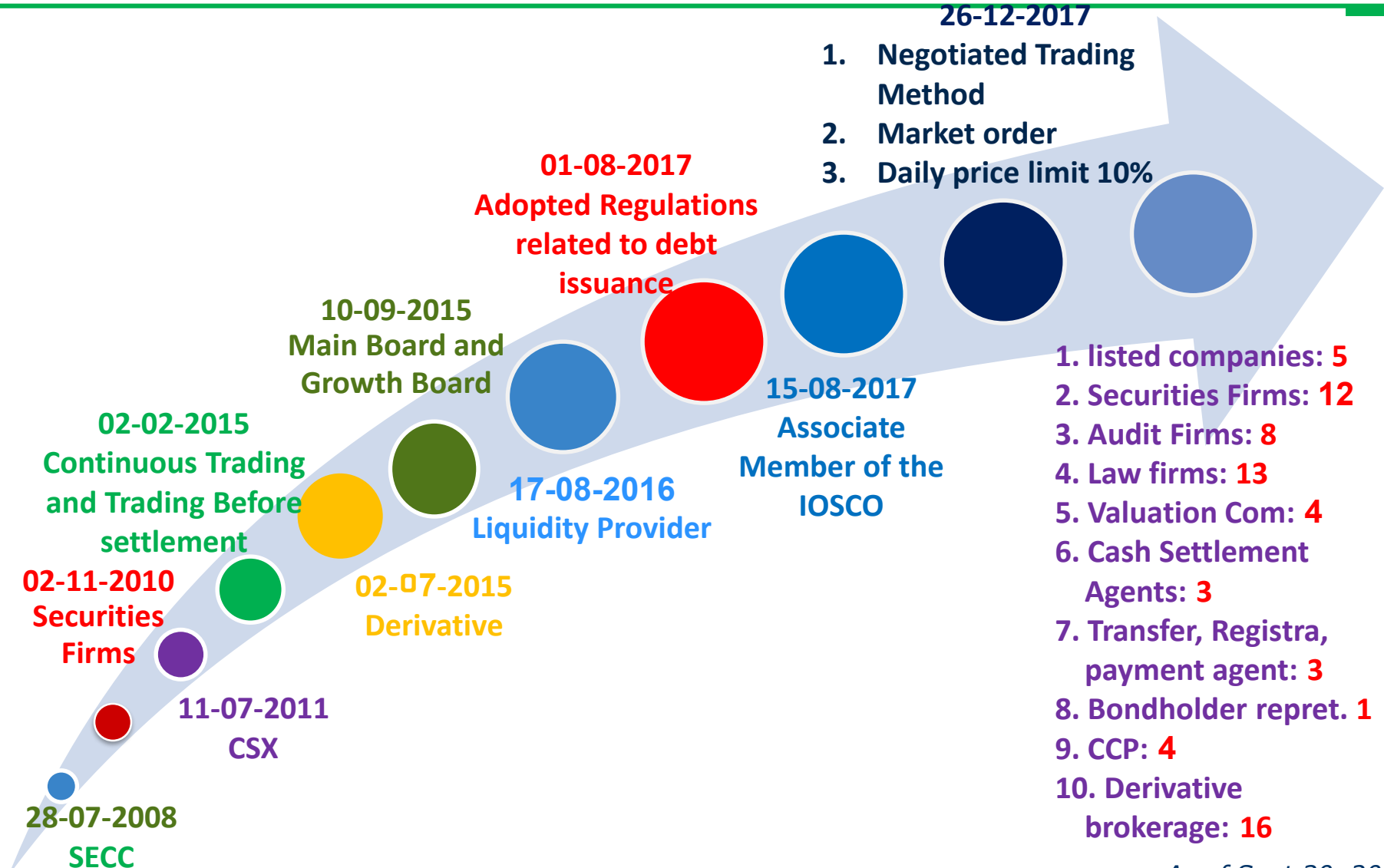


Cambodia Securities Exchange



- MEF holds a 55 percent, Korea Exchange has a 45 percent share.
- CSX had been granted approval to function as market operator, clearing and settlement facility operator and depository operator.
- April 18, 2012: Launching Ceremony of the Securities First Trading Day

Achievements



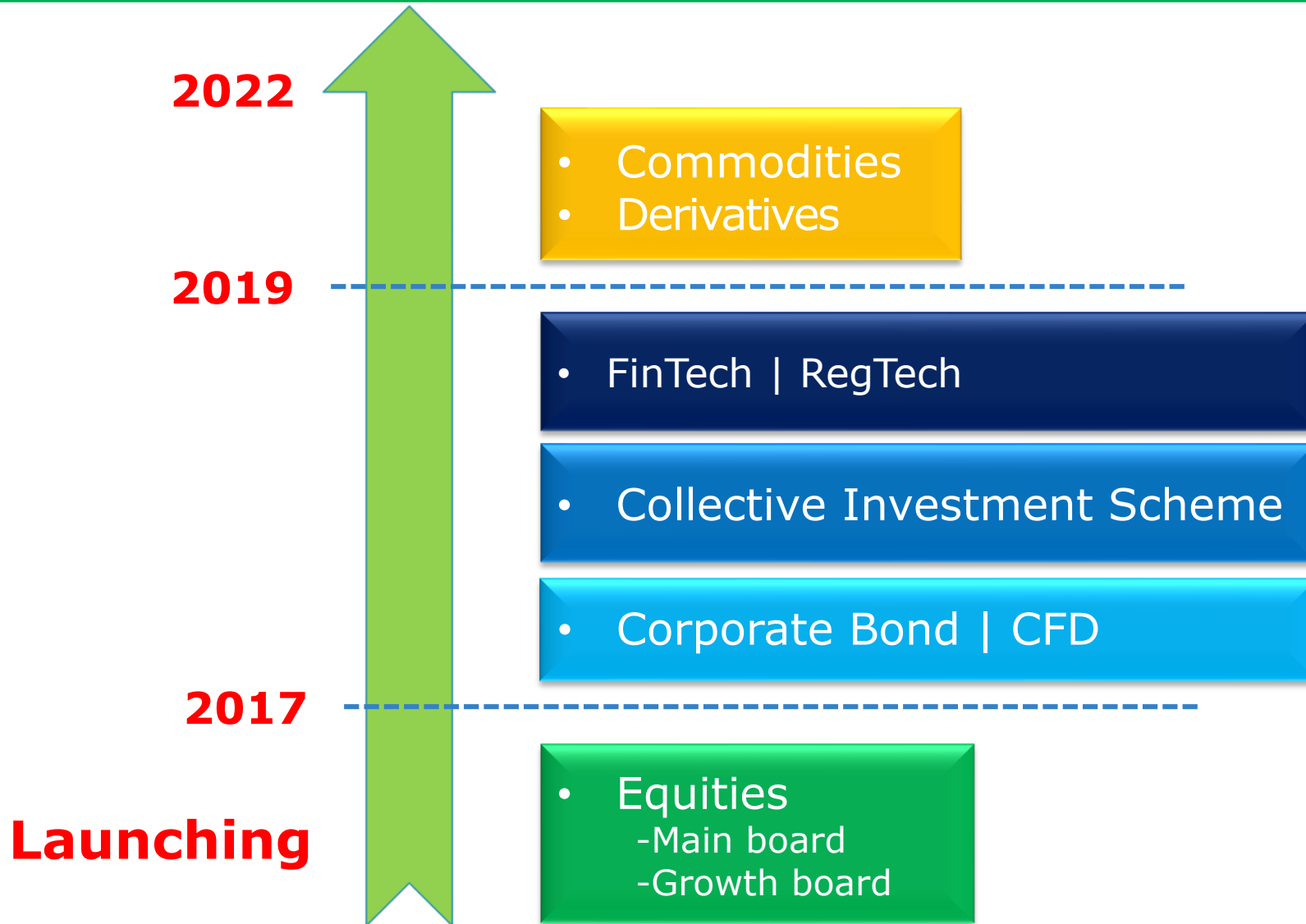


ACCREDITED LAW FIRMS IN CAMBODIA SECURITIES SECTOR

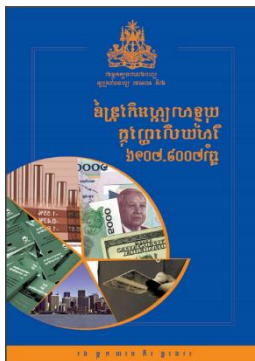
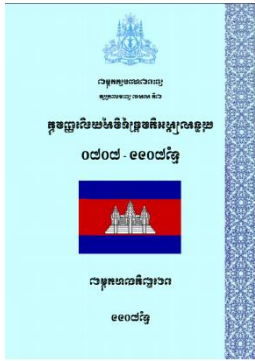
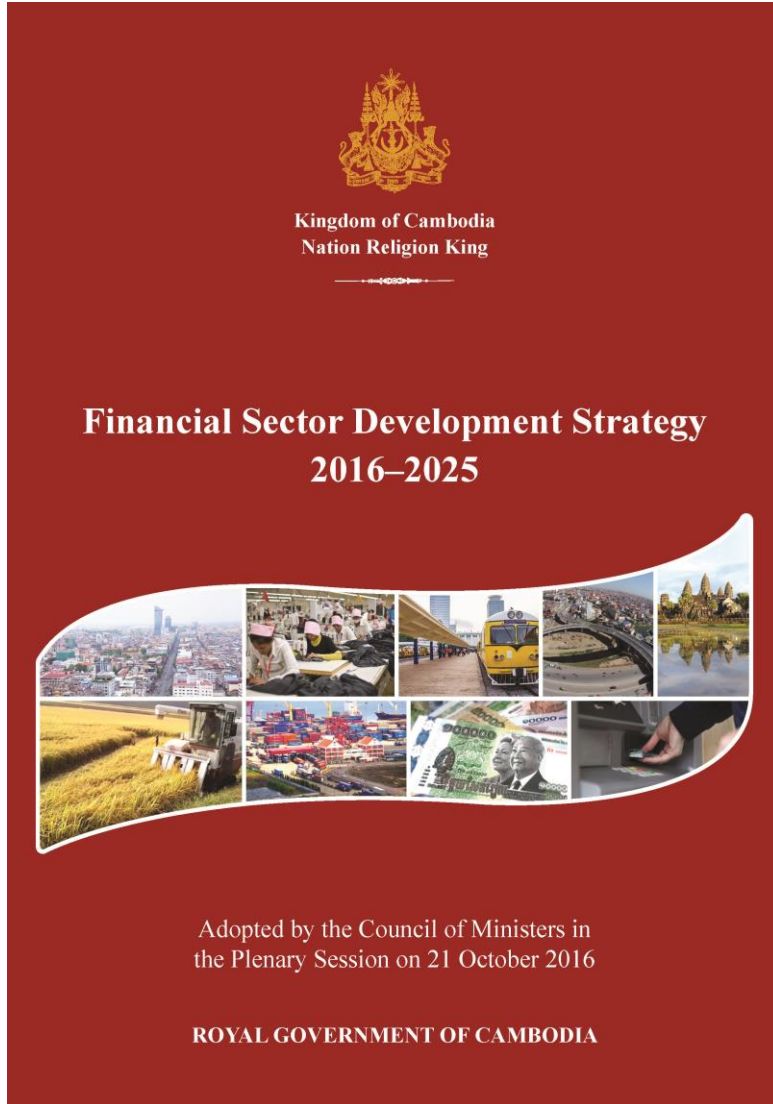


Law Firms	Website
HBS LAW FIRM	www.hbs.com.kh
R&T SOK & HENG LAW OFFICE	http://kh.rajahtannasia.com
SokSiphana&associates, a member of ZICOlaw	www.soksiphana.com
SITHISAK LAW OFFICE	www.sithisak-lawoffice.com
ASIA CAMBODIA LAW GROUP	www.aclf.com.kh
BUN & ASSOCATES	www.bun-associates.com
PYT & Associates LAW OFFICE	www.vdb-loi.kh
CSL & ASSOCIATES LAW OFFICE	www.cslassociates.net
HML LAW GROUP & CONSULTANTS	www.hml.com.kh
P & A Asia Law Office	www.pa-asia.net
SIN & Partners Law Office	www.sin-partners.com
CAMBODIA BAYON LAW GROUP	www.cbllegal.com
Mekong Law Group	www.mekonglaw.net
More Applicants...	

Market Segment Development



Blueprint for Securities Sector Development

Kingdom of Cambodia
Nation Religion King

Financial Sector Development Strategy 2016–2025

Adopted by the Council of Ministers in
the Plenary Session on 21 October 2016

ROYAL GOVERNMENT OF CAMBODIA

❖ Financial Sector Development Strategy 2016-2025

❖ Sub-decree on Tax Incentives in Securities Sector

- Listed companies will be granted tax incentive by reducing **50%** of total amount of tax on profit for three (3) years.
- **50%** reduction on Withholding Tax for Securities Investors for three (3) years.
- Listed companies which have granted tax incentives in securities sectors are allowed to temporarily suspend the payment of **monthly prepayment tax**.



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Bar Association of the
Kingdom of Cambodia



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Capital Markets

Global and local capital markets are engaged in raising long-term capital through shares, bonds, and other long-term investments

• Types of Capital markets:

- **Primary market/New issue market** – where securities are first issued and issuer receives funds – IPO, bond issuance
- **Secondary market/After issue market** – where previously issued securities trade between investors;

What is a “security”?

Any financial instrument representing a claim and which can be traded
e.g Shares/stock, debt securities, bonds

Securities in capital markets

Two main securities in the global capital markets:

Equity (shares)	Debt (e.g bond)
Ownership	Credit
Voting rights and pre-emptive rights	Coupon payment at agreed rates
Dividends (share in profitability)	Interest (lending benefits)
Ownership control	Usually no voting rights
Residual value in liquidation	Rank higher than shares

Why clients may use capital markets?

- Alternative source of financing other than bank based lending
- Better pricing, longer maturities and wider investor base
- Funding for riskier investments not supported by banks
- Exit route for investors such as venture capital and private equity funds
- Price discovery through listing and trading of such securities
- More efficient allocation of capital across industries.
- Wealth generation for savers and investors – attractive investment opportunities with better returns than banks can offer
- Investors can manage risks by investing in a diversified portfolio

Domestic or foreign capital?

- **Challenges of raising funds domestically**
 - Capital requirements too big for domestic market
 - No local appetite to invest in equity seeking capital
- **Why need foreign capital**
 - Larger pool of capital and lower costs due to potential segmentation and saturation of domestic markets
 - Diversification of country risks and associated economic risks
 - Potential to hedge foreign exchange risk
 - Increased global recognition
 - Tax reduction or avoidance and lower interest rates

Where to raise capital

- **Market and legal considerations**
 - Industry knowledge and best practices
 - Rule of law
 - Laws applicable and level of regulation
 - Track record: expropriations, enforcement, discrimination
 - Financing structuring requirements eg accessing shariah financing
 - Market liquidity for securities
 - Pricing standards (international or domestic)

Types of financing options

- Equity financing
 - Issuing securities locally or through a subsidiary in a foreign market
 - Cross/dual listing
 - Global depository receipts
 - Euro-equity market
- Debt financing
 - Foreign bank loans
 - Foreign bonds
 - Euromarket bonds

Foreign Bonds or Euro Bonds?

Foreign bonds:

Issued by an overseas entity into a domestic market and
denominated in the domestic currency

Eurobonds:

Issued in a currency different from that of the financial centre
where they are issued

Often do not provide any underlying collateral or security to
bond holders

Almost always rated by a credit rating agency

Advantages of euro bonds over domestic bonds

- Choice of innovative products to meet issuer's needs or market expectations
- Ability to tap potential lenders internationally rather than domestically
- Anonymity to investors as issues are made in bearer form
- Gross interest payments to investors
- Lower funding costs due to competitive nature and greater market liquidity
- Ability to make bond issues at short notice
- Less regulation and disclosure

Equity investments

- Partner / Shareholder: not a creditor; rather a (partial) owner of the company
 - What is the extent of its rights?
(or how much power will it enjoy?)
 - Where is this stated?

Different possible transactions: Private transactions

- Stock purchase agreement (foreign investor acquires stock in a domestic corporation)
- Incorporation of a new domestic company (with foreign investor as a shareholder)

Public transactions:

- Initial public offering
- Open market acquisitions
- Takeovers and mergers

Practical Questions

- Foreign bond or Euro Bond?
- How is money brought in?
- ...and how does it leave?
- What are the costs involved?
(exchange controls)
- Why not raise money locally?
- Tax implications at exit or on cash flows?
- Cross listing allowed? Implications?

Purchase of shares in a new company

- Are there several corporate types?
- Are there particular benefits in the selection outcome?
- Do all types grant limited liability to partners/shareholders?
- Are they all similar as to tax consequences?

In an existing entity

- Which way to ensure against contingencies?

A legal analysis of the investor

- Who will be investing?
- Are all foreigners alike?
- Individuals or corporate entities?
- Need for registration of the investment?
- Need for registration of the investor?
- Physical presence?
- Taxation

Different legal nature of equity transactions:

- New shares to be issued
- Existing shares to be bought
- Which corporate activity is required?
 - Limits?
 - Types of shares
 - Classes of stock

Corporate control

- How is it exercised?
- How can be limited
 - By-laws restrictions?
 - Shareholders agreements?
- Control restrictions?
 - Antitrust legislation?
 - Public (state) participation?
- How to maintain control?

Management

- Directors (locals? expats?)
- Directors
- Directors standards
- Ultra activities
- Fees

Auditors
Governance considerations
Compliance

Divestiture (Which way out?)

- Tag along / Bring along (Piggy back)
- Put options
- Call options

Which role to the lawyers?

Breaching the cultural gap.

- Representatives / agents?
- Directors?
- Advisors?
- Counsel to shareholders? / To company? / To bondholders? To banks?

Structuring the deal

- Lawyers must consider, identify and explain (!)
 - Institutional and regulatory differences
 - Different tax laws across countries
 - Regulatory requirements
 - Coverage for political risks, different market risks etc
- Legal strategy should minimize cost of structuring the transaction and provide means to maintain legal risks within acceptable levels

If capital needs require a global legal market, determine how you can be part of a global service

Market legal requirements

- Due diligence
- Regulatory framework
- Possible pitfalls
- Registration of securities
- Identification of exemptions
- Disclosure requirements
- Legal costs

Due Diligence

- Statutory and exchange market requirements
- Other things to consider:
 - Continuing obligations
 - Disclosures and level of disclosures
 - Investor expectations
 - Dividend/coupon payments
 - Transparent corporate strategy
 - Corporate governance
 - Financial reporting (auditing)
 - Prospectus preparation (legal aspects of business plan detailing information about the company and the securities being issued)

Disclosures and Investor Protection

Policy rationale for disclosure

- Transparency (including both issuer and market transparency)
- Market efficiency (in re securities pricing)
- Investor protection and confidence
- Good (corporate) governance

Liability for –

Inadequate or defective disclosure, deceit, misrepresentation by
action/omission

Conclusion

Issuers have wide choice relating to capital raising.

Lawyers' advise is critical, regarding

- What type of securities – equity/debt
- Where to raise the capital – domestic or global markets
- When to raise the capital – timing

Legal advisors/lawyers play a substantial role in the entire capital raising process to ensure success



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Thanks for Your Attention!

