LEGAL, TAX & IP

Cambodia Startup Handbook

Practical Advice for Founders & Investors

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Foreword

The Cambodia Startup Handbook provides the reader with a succinct and practical overview of the major legal, tax, and intellectual property issues faced by technology businesses in the Kingdom of Cambodia.

Obtaining accurate, up-to-date and actionable information on such topics in Cambodia is a challenge for many startups. By combining a summary and analysis of the applicable law with advice on actual practice, this guide should serve startups as a reference in running their daily business.

As a complete overview of all areas of law applicable to startups would be impractical, the handbook focuses on the areas most relevant to startups in general - namely corporate, finance, employment, tax, real estate, and intellectual property law. The guide is written for a general, business-savvy audience with no prior knowledge of legal issues necessary.

As the information herein is necessarily incomplete and will become out-of-date as new laws are passed and practice changes, readers are advised to seek professional legal counsel on specific issues.

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Starting a Startup

Benefits of Incorporation

While it is possible to run a startup without incorporating, doing so confers a number of significant advantages in Cambodia. Almost every business of a certain scale and success will incorporate in order to access these benefits.

First and foremost, operating through a private limited company limits the liability of the shareholders to their capital contributions. In other words, the worst that can happen if the startup fails is that the shareholders lose the money they put into it – and no more. Of course, no founders go into a venture hoping for this worst-case scenario, but it could be even worse.

Without incorporation, a startup would be operating as an unregistered sole proprietorship (if one founder) or general partnership (if two or more founders), where the founder(s) are personally liable for all the obligations of the business. If the business is sued – for instance a loan has not been repaid, or an employee terminated improperly – the founder(s) can be forced by a court to pay from their personal assets. With personal bankruptcy not an easy or routine practice in Cambodia, these business debts can follow failed-founders around indefinitely.

Given the relatively high rate of failure for technology startups, founders often need several tries before finding the winning formula. Thus, the concept of "serial entrepreneurs" and the "fail fast, fail often" idea. Limited liability is crucial to the ability to shut-down a failing startup and moving on to a new idea. Without a limited liability company, the founders' new venture would be at risk from the creditors from the failed business. Better to incorporate, limit one's losses to what one has put in, and have the option to shut it down and move on.

Second, incorporating improves a business's access to financing. Whether in the form of a loan from a bank or individual, or an equity stake, having an incorporated company makes obtaining finance easier and more likely. A company can issue shares in stock, and banks often prefer handling loans with incorporated borrowers.

Third, operating under a registered company can greatly enhance a business's credibility and profile. Suppliers, customers and business partners often perceive companies as more stable and trustworthy, to the point that some will only work with registered companies. Banks, for instance, will only open a business account for an incorporated firm. A business bank account makes it easier to separate business from personal funds. Further, other businesses prefer to purchase from a registered company subject to VAT, as it allows them to reduce their VAT expenses.

In short, incorporating as a private limited company is strongly recommended for a startup in Cambodia.

Types of Companies

In launching a startup, one of the first considerations faced by founders is the choice of legal form. In Cambodia, the Law on Commercial Enterprises provides for the following types of business organization forms:

Private Limited Company

The private limited company is the most common business form in Cambodia, and generally a suitable form for most startups. As the name implies, it limits the liability of its shareholders and directors (see below for an explanation of this importance).

If there is only one shareholder, then this form is known as a **single-member private limited company**, otherwise simply as a private limited company. The maximum number of shareholders is thirty, and there must be at least one director. The shareholders can, with certain restrictions, be entirely Cambodian, entirely foreign, or any combination in between. The minimum startup capital is KHR 4,000,000 (approximately USD 1,000).

Incorporating as a private limited company automatically classifies the business as either a medium or large taxpayer, depending on income (once a certain threshold of revenue is met; see Chapter 5 for more on taxation). This form is suitable for a wide range of business activities, with the notable exception of banking, insurance and financing - which are specifically excluded by law.

Public Limited Company

Whereas a private limited company is privately held by a maximum of 30 shareholders, a public limited company can issue shares to the public in order to raise financing, and thus have an unlimited number of shareholders. This is done through an **initial public offering** (IPO) to list on a stock exchange. Whereas a private limited company can be formed even before a startup begins operations, an IPO and the formation of a public limited company is only for businesses of significant scale and stability.

As a public company can regularly tap the capital markets by selling new shares to the public, it offers the possibility of much greater financing than typically available to a private limited company. An IPO is often one of several exit possibilities for startup founders, as it allows them to cash out their stake in the business and to step back from management, if they so wish.

Branch Office

A branch office is a form of business organization that is essentially a division of another company (whether foreign or local). A branch office does not have a separate legal personality, meaning that the principal company is responsible for all the debts and liabilities of its branches, and owns all their assets. The main reason to create a branch is to simplify and organize the internal accounting and management structure, and is often used by banks. A branch's managers are appointed by the principal.

Representative Office

A representative office is a commercial entity form suitable for some foreign businesses, despite being very limited in its activities. Whereas a foreign-owned subsidiary (meaning a private limited company owned by a foreign company) or a branch of the foreign company can conduct a wide range of activities, a representative office is constrained in what it can do.

A representative office is used for the most part to source local goods and services, promotion, marketing, and obtaining business information, on behalf of its foreign owner. It cannot provide services or sell goods itself, but rather these must be contracted for and invoiced in the name of its owner. As they are not engaged in taxable activities in Cambodia, it is a non-taxable entity. It must, however, pay withholding taxes on services and rental, salary tax for its employees and the annual patent tax (See Chapter 5). As with a branch, a representative office does not have a separate legal personality under Cambodian law.

Subsidiary Company

A subsidiary company is a company controlled by another company called a "parent," which owns a majority of the subsidiary's voting shares.

General Partnership

A general partnership is a business form based on an agreement (whether written or implied) between two or more persons to combine their property, knowledge or activities to carry on a business in common with a view to profit.

As a general partnership can be implied by a court based on a pattern of behaviour, even without any partnership agreement being discussed or signed, startup founders can unwittingly find themselves in a general partnership. For instance, this could be the case where two friends develop an app together and split the royalty payments.

A general partnership, while arising at the moment of even an implied agreement, only obtains legal personality when it registers in accordance with the law. The registration grants the partnership the right to own property, carry on business, contract and to sue and be sued, all in the name of the partnership rather than in the names of its partners.

Under a general partnership, each partner is jointly and severally liable for all the debts and liabilities of the business. This means that the entire personal assets of each partner can be used to settle the debts and liabilities of the partnership. Until the partnership has revenue over $62,500 annually, no corporate income tax is due (see Chapter 5). Further information on running a general partnership is provided below.

Limited Partnership

A limited partnership is essentially a combination of one or more general partners, who are jointly and severally liable for the partnership's obligations – and one or more limited partners, who are liable only to the extent of their capital contribution. The general partners are solely authorized to administer and legally bind the limited partnership.

A limited partnership must be registered, otherwise it is considered a general partnership without legal personality and the partners who had hoped to limit their liability, are instead general partners with joint and several liability.

Sole Proprietorship

A sole proprietorship is essentially a general partnership with only one partner. The proprietor is personally liable for all the obligations of the business. Sole proprietorships can be registered with the Ministry of Commerce under the personal name of the owner. All of the profits of the business belong to the owner, who is allowed complete control and decision-making power. Until the business has revenue over $62,500 annually, no corporate income tax is due (see Chapter 5).

Setting up a Limited Company

To get a business up and running requires a number of administrative steps:

- Registration with the Ministry of Commerce
- Opening a bank account
- Tax registration
- Declaration of Opening with the Ministry of Labour
- Licensing

Registration with the Ministry of Commerce

Businesses are registered with the Department of Registration within the Ministry of Commerce. Under current practice, the process must be done through the ministry's online platform.[1]

Before starting the process, the incorporators will need to prepare the **Memorandum and Articles of Association**. This document is essential to the formation of the company, and will govern how it functions throughout the life of the business. It can be thought of as the constitution of the company.

[1] https://www.businessregistration.moc.gov.kh/

According to the law, the Articles must contain at a minimum:

- Name of the company
- Registered office address in Cambodia
- Objectives of the company, including any restrictions (see below for more information)
- Authorized capital in Cambodian Riel
- Share classes and any maximum number of shares, including the par value (see below for more information). If there are more than one class of shares, and potentially also share series, the Articles must specify the rights, privileges, restrictions and conditions attached to each.
- A description of any restrictions on share issue, transfer, or ownership, if applicable.
- Name and address of each initial shareholder, all of whom must sign the Articles.
- The specific number of directors, or a minimum and maximum range of directors.

While those are the minimum requirements, the Articles may go far beyond these basics. The law only states that the provisions must be "necessary".

Standard articles acceptable to the Ministry of Commerce are available from a number of sources, however these provide for limited customization. A startup may wish to issue different classes of shares, restrict the transferability of shares, or set forth voting rules for director meetings, amongst other deviations. These would need to be specified in the Articles and ensured that they are in compliance with the law so as to be acceptable to the Ministry of Commerce.

Once the Articles are finalized, to register online the first step is to simply create a user account. This just requires a name, personal information and contact details, and is free of charge.

Following log-in, the user is brought to a dashboard where they can select the type of business to setup. As laid forth above, the following types of companies may be registered through the online portal:

- Private limited company
- Public limited company
- Foreign company (branch or representative office)
- General partnership
- Limited partnership
- Sole proprietorship

Second, the business name has to be validated and reserved. After selecting the entity type, the user is prompted to enter the proposed name in both Khmer and English. For each language, the name can be automatically validated – meaning checked against prior registered company names to ensure it is available.

It should be noted that the company name is distinct from a trademark, which is maintained on a separate registry and affords different, though related rights (refer to Chapter 4 on trademark search). Ideally, the business name can also be registered as a trademark - though this is not strictly necessary. As the trademark registration should be made in the name of the company, the application should best be submitted following incorporation. The company name cannot be misleading, offensive or confusing.

The fee for reserving a name is KHR 40,000 (approximately USD 10), and can be paid online through an ACLEDA bank account, or offline in person at the payment kiosk on the ground floor of the Ministry of Commerce in Phnom Penh.[2]

Once submitted and paid for, assuming it is approved by the reviewing official, the business name will be set aside for three months, allowing the founders to complete incorporation.

The next step is to actually register the business with the Ministry of Commerce. This can only begin once the name has been approved, and must be completed within fifteen days of starting the application.

For incorporating a limited company, the first required information is the **business activities**. A business is only allowed to act in accordance with its stated business activities, which also serves as the basis for its tax obligations. The user is presented with a long list of possible business objectives, each with sub-categorized business activities, which are based on the Standard Industrial Classification ("SIC Codes"). As the list is quite extensive, and deciding exactly which business activity or activities best apply to the startup can be time-consuming, it is recommended to determine in advance which will be selected.

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[2] https://www.businessregistration.moc.gov.kh/fees-and-penalties/how-to-pay-fees/

Next, the **share par value** must be inputted, in Cambodian Riels and optionally in US dollar equivalent. The par value of a share sets a minimum price at which the company may sell shares. The default is 1,000 shares at a par value of KHR 4,000 (approximately USD 1), though this may be modified in the Articles.

For businesses that already have employees, the breakdown of male/female and Cambodian/foreign employees must be entered, together with position details (name, position, employee identification) and supporting documents such as work permits. As most businesses are incorporating before hiring, this step would not be applicable.

The **registered office address** is often overlooked, but is important in terms of notifying the public where the business can be contacted. The articles of incorporation, accounts and other records must be kept at the registered office address, and any changes thereof must be recorded with the Ministry of Commerce.

In registering the business, proof of address must be submitted. In most cases a copy of a lease agreement is submitted, though a utility bill or land title are usually also acceptable. This requirement does present founders with somewhat of a timing coordination challenge, as often times a lease agreement in the name of the company has not been signed at the time of incorporation. Assuming that a startup has decided on an office space, one solution would be to sign the lease in the personal name of the founder(s), with a provision transferring the lease to the company upon incorporation.

Regarding **company directors**, a private limited company must have at least one, and a public limited company at least three. Complete contact information, together with a copy of each director's identification card or passport and a consent form, must be submitted. According to the consent form, directors must not have been convicted of a crime and cannot be a government official in Cambodia.

Finally, complete information regarding the company's initial **shareholders** must be submitted. This includes their contact information, shareholding, proof of identity (for individual shareholders) or power of attorney (for legal entities). The nationality of the majority of shareholders must also be specified, an important requirement regarding land-ownership, as only majority-Cambodian businesses may hold land in the country.

Finally, the information is presented for final review and approval before payment can be made. For applicants with an ACLEDA bank account, they can directly submit the application and then pay the registration fee online. Otherwise, payment can be made in cash to the Ministry of Commerce's bank account with either the Foreign Trade Bank of Cambodia, Canadia Bank, or ACLEDA. Upon payment, the bank will issue a receipt, which must be brought to the Ministry of Commerce's Department of Accounting and Finance.

Thereafter the online application can be submitted and will be processed in the order received. If there are any issues to be resolved, or the application is simply approved, an automated email will be sent to the address registered with the account.

Once approved, a digital **certificate of incorporation** will be made available on the registration dashboard; a hard-copy can also be obtained through the Department of Registration. This is needed in order to open a bank account and register with the tax authorities, the next steps in setting up a startup.

Opening a Bank Account

Opening a business bank account with a domestic bank is required before the tax registration process. The initial **investment capital** will need to be deposited and proof thereof submitted to the Tax Department. For a private limited company, the investment capital is KHR 4 million (approximately USD 1,000).

Tax Registration

Once the company is finally registered with the Ministry of Commerce (meaning the certificate of incorporation is in hand) and the bank account opened, an application for tax registration must be submitted within two weeks to the General Department of Taxation. The Memorandum and Articles of Association, together with the original certificate of incorporation and bank statement will need to be submitted. The registration can be done in person at the GDT office, or online through its e-Tax service.[3]

The GDT will register the business for **value added tax**, and will issue a **taxpayer identification number**, which identifies the company to the tax authorities and must be included on every invoice. The **patent tax** will also need to be paid at this time.

At the end of the process, the company will receive a taxpayer identification card, VAT certificate and patent tax certificate for the current year.

[3] https://owp.tax.gov.kh

Declaration of Opening with the Ministry of Labour

The final step is to submit a declaration of opening to the Ministry of Labour, assuming the company has employees. If there are no employees at the time of incorporation, this can in practice wait until the first hiring.

For companies with eight or more employees, the declaration must be made prior to opening for business; for those with fewer, it can wait until after opening so long as it is done within the first thirty days. As part of the declaration, a number of documents need to be established and maintained – including the establishment register, payroll ledger, and internal regulations. More information can be found in Chapter 3. The declaration of opening takes place in conjunction with an inspection from the Labour Inspector, who will verify the premises and documentation.

Finally, for businesses with eight or more employees (and those that reach this threshold later on), they will need to register with the National Social Security Fund.

Licensing

In addition to registration with the business, tax and labour authorities, startups will need to determine whether any additional licenses, approvals and permits need to be obtained in order to carry out their business activities. While an exhaustive and current list is beyond the scope of this publication, they cover activities in banking, construction, insurance, manufacturing, telecommunications, agriculture, amongst others. The specific scope and requirements of each, as well as the timing of the applications, should be considered prior to launching of the business.

Directors, Officers & Decision-Making

Directors & Officers

The company's Memorandum and Articles of Association will set forth the number of directors, as well as the names of the initial directors. A private limited company can have as few as one director and as many as it wants (though in practice there are rarely more than ten). In order to avoid tie-votes, in most cases there will be an odd-number of directors.

The initial directors serve their term until the **Initial Shareholder Organizational Meeting**, which must be called within one year of incorporation. The meeting must be called by any of the directors or incorporators, by giving 20-day advanced written notice with the date, place and agenda of the meeting. At this meeting, a resolution electing directors should be put forth – which in most cases is simply a formality to re-elect the initial directors to serve a normal term. Unless the Articles specifies otherwise, the normal term of a director is for two years, and may be re-elected indefinitely.

Anyone over the age of 18, so long as legally competent, may serve as a director or officer. Unless otherwise specified in the Articles or for certain business activities, directors or officers are not required to be shareholders or meet any other qualification.

It is possible within the Articles to allot director seats to different classes of shareholders. Creating a second class of shares could allow for a founder to retain control of the company even as they sell off their equity and only retain a minority shareholding.

Directors can be removed by a majority of shareholders entitled to vote, with or without cause. They can of course resign their position, by giving written notice to the company. If, however, they are the last director and resign before another is appointed, they become liable for any ensuing damages to the company.

The **Chairman of the Board** is elected from among the directors by the directors. They can be removed from their chairmanship by majority vote of the directors, though not from their position as director altogether.

Company Officers - such as Chief Executive Officer, Chief Financial Officer, or Chief Technical Officer – can be designated by the board. The directors must specify the officer's duties and delegate them the necessary powers, all subject to the Articles. Directors can themselves be appointed to an officer post. In practice it is a common for the CEO to also have a seat on the board, or even to serve as Chairman of the Board. Multiple officer-posts can be held by the same person.

Powers of Directors

The directors are the managers of the business of a company, with powers set forth in the Articles as follows:

- Appoint and remove officers and determine their specific rights
- Set salary and compensation for company officers
- Set the salary and compensation for company directors, subject to shareholder approval
- Issue company debt
- Propose to shareholders amendments and annulments to the Articles

- Propose to shareholders merger or consolidation agreements between the company and any other

- Propose to the shareholders the sale of all or a major part of the company's assets

- Propose to the shareholders the dissolution of the company

- Declare dividends

- Issue shares in the company, so long as allowed in the Articles

- Borrow money on behalf of the company

- Issue, reissue or sell security of the company

- Give a guarantee on behalf of the company

- Create a security interest in company property to secure an obligation, including a mortgage, hypothecate, or pledge

- Close the annual accounting books, and propose the annual profits for submission to the shareholders at the general meeting.

As can be deduced from the above-listed powers, directors may undertake certain actions on their own (such as hiring and firing of officers, or borrowing money), but other, more significant acts need shareholder approval of the director's proposal (such as for selling the company or setting the director's own salary).

Board of Director Meetings

Board meetings are to be held at least once every three months, in Cambodia unless otherwise specified in the Articles. A Board of Director Meeting can be called either by the Chairman alone, or by a third of the serving directors.

Ordinary board resolutions are approved by a majority vote of the directors present at a meeting, unless otherwise stated in the Articles. They can decide to vote on resolutions in writing, by circulating the text of the resolution, any background information, and a voting ballot on the matter.

In order to be able to pass a valid resolution, a majority of the directors must be present at the board meeting, unless the Articles specifies a greater quorum requirement. Each director is entitled to one vote, which can be delegated by proxy to another director in writing.

The board must appoint a **Company Secretary**, who is to prepare, distribute and retain the minutes of the board meetings.

If a director is present at a board meeting, they are deemed to have consented to a resolution passed or action taken unless they expressly request their dissent to be entered in the minutes, or send their written dissent to the secretary before adjournment. If a director was *not* present at the meeting, they have fifteen days to register their dissent in an appropriate form.

Board Committees

Once a company reaches a certain size, it becomes impractical for the full board of directors to attend to every matter. They therefore can divide the work amongst committees, which handle a specific business area, such as finance or human resources. Committees are formed by an ordinary board resolution, which should spell out its powers and rights. A committee can have any number of directors, even just a single one. While the delegated powers of a committee can be very broad and flexible, the law prohibits the delegation of the following acts, which remain up to the full board:

- Propose to shareholders amendments to the Articles
- Propose to shareholders merger or consolidation agreements between the company and any other
- Propose to the shareholders the sale of all or a major part of the company's assets
- Propose to the shareholders the dissolution of the company
- Declare dividends
- Issue shares in the company, so long as allowed in the Articles

Conflicts of Interest

Officers and directors need to take care when doing business with the company. Specifically, they must disclose the nature and extent of their interest if they are a party to a contract or proposed contract. This also applies if they have a material interest (ex. shareholding) in another company that is contracting with the company. The disclosure may be made in writing to the company, or by having a statement entered in the board minutes.

Directors with an interest are prohibited from voting on resolutions approving the contract, unless it is:

- An arrangement by way of security for money lent to or obligations undertaken by them for the benefit of the company or an affiliate
- One relating primarily to their remuneration as a director, officer, employee or agent of the company or an affiliate
- One for indemnity or insurance
- One with an affiliate.

Operating a Partnership

To recall, a general partnership is an agreement between two or more persons to combine their property, knowledge or activities to carry on business in common with a view to profit.

The crucial distinction between a general partnership and a limited company is that general partners are personally liable for all the business's obligations. A limited partnership combines general partners (with unlimited liability who manage the business) and passive limited partners (who are liable only up to the amount of their contribution).

A general partnership agreement need not be written, it can also be verbal and therefore deduced from a pattern of behaviour. If, however, it is in writing, all partners need to sign the agreement.

A general partnership can choose to register itself with the Ministry of Commerce and thereby acquire legal personality separate from that of its partners. This grants the partnership the right to own property, carry on business, contract and sue and be sued in its own name. Until the registration is carried out, all of this is done in the personal names of the partners.

Partners are free to agree to contribute whatever amount of cash, property and time to the business. Once a contribution is promised, the partner thereby has an obligation to the partnership to actually make the contribution. Founders operating as a partnership should be careful to specifically identify the contributions (time, knowledge, capital and/or property) they are making in the agreement.

By law, if a partner promises to contribute their time to the startup, but then decides they won't, but wish to remain a partner, they are liable to the partnership. Another scenario where this plays a role is if a partner agrees to host the business in their home office. Technically this would be a contribution of usage rights to the real property. If the partner decides to kick the others out, but remain partner, the partnership would be able to block this. One solution would be to clearly state in the agreement that the partner's contribution of the home office is at the partner's discretion and terminable at will.

While the law generally respects the partners' freedom to contract, it does provide certain limitations. For instance, all general partners must share in the profits and losses. Though the shares might differ, an agreement that excludes one from any profits or exempts them from liability, is ineffective. The agreement also cannot exclude a partner from decision making completely, though certain limitations may be agreed.

Unless specified in the contract, all general partners will share in profits and losses equally. A general partner receives their compensation directly through disbursement of the business's profits, and is not entitled to wages for employment.

Partners are also accountable to the partnership for any profits or benefits they receive connected to the business. This prevents a partner from concluding side-deals when really the partnership should be benefiting. Such arrangements are only permitted if all partners consent.

In the fluid world of startups, it is common for partners to come and go. If operating as a partnership, all partners need to agree to bring on a new partner. The new partner becomes liable for even the obligations incurred before they joined. However, these cannot be satisfied out of their personal property unless agreed. Similarly, a partner can only transfer their interest with unanimous consent.

A partner can of course leave the partnership, either voluntarily (by withdrawing or transferring their interest) or involuntarily (through expulsion, a court order, or death). When this happens, the partnership is not automatically dissolved, but may continue with the unanimous consent of all remaining partners. If there is only one left, the partnership will continue if a new partner can be brought on board within 120 days. Continuing a partnership after a departure requires amending the agreement and registering the change with the Ministry of Commerce.

Voluntary withdrawal of a partner should be provided for in the partnership agreement, and address such issues as timing of notice, pay-out of profits and accounting for liabilities. Except in limited circumstances, a departing partner must be bought out by the remaining partners.

If the partnership was created with a fixed term, withdrawal requires the unanimous consent of all partners. Otherwise, a partner can withdraw by serving notice in good faith.

Expelling a partner is never pleasant, but possible. Unless stated otherwise in the partnership agreement, a majority of partners may expel a partner on the basis that they have not performed their obligations or are hindering the business. If the partner facing expulsion objects, they may apply to court to withdraw from the partnership.

In terms of the day-to-day operations of a partnership, each partner has the power to manage the affairs of the business, unless otherwise agreed. The partnership agreement can divide the areas of competency amongst the partners, or name one (or several) to be the manager(s) of the business. They are also allowed to hire an outside, non-partner, as a manager. Each general partner has the right to participate in decisions, to obtain information and consult the records of the business. Unless agreed otherwise, regular decisions are taken by majority vote, with each partner having an equal vote. Decisions that would amend the partnership contract require unanimity.

When dealing with third parties, general partners are acting as agents of the partnership, with full authority to bind the business, so long as acting in good faith and in the ordinary course of business. While a registered partnership can (and should) sign contracts in its own name, it is still possible for a partner to personally sign and still bind the business, so long as the obligation is within the scope of business or when it deals with property used by the partnership.

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