

Dividend under the Law of Cambodia

It is very common that shareholders expect dividends from the companies in which they have invested. This article briefly discusses rules on payments of dividends.

The Law on Commercial Enterprises (LCE) does not define “dividend”. Meanwhile, for the purpose of tax collection, Law on Taxation, in particular Article 3 (new), defines “dividend” as any distribution of money or property that a legal person distributes to a shareholder with respect to the shareholder’s equity interest in such legal person, with the exception of distribution of fund or capital in liquidation of the company. In addition to payment of dividend in money or property, a company may also pay a dividend by issuing shares of the company to the shareholders. (Article 159, LCE)

The distribution or payment of dividend to the shareholders has been decided by shareholders through the shareholders’ agreement or articles of the incorporation of company and subject to restrictions under the laws. For example, Article 158 of LCE provides that the company must not declare or pay a dividend if there are reasonable grounds for believing that (a) the company is, or after the payment would be, unable to pay its liabilities as they become due; or (b) the realizable value of the company’s assets would be less than the aggregate of its liabilities and stated capital of all classes. Furthermore, Prakas on Payments of Dividends in Advance issued by the National Bank of Cambodia dated 14 January 2004, Article 1, provides that distribution of dividend to shareholders of a bank is only allowed if the annual profit is absolutely certain; and Article 2 of the same Prakas stipulates that annual profit is absolute certain, once annual accounts have been approved by external auditors. Banks cannot pay dividends before this approval.

The above legal restrictions have been imposed to ensure the financial sustainability of the company as well as to secure the performance of company’s obligations and/or liabilities. It is of importance to note that the company has distinct or separate legal personality from its shareholders and therefore may acquire rights and assume obligations/liabilities at its own name (Articles 98 & 99, LCE) and that shareholder’s liability to the company is limited to the price of the shareholder’s subscription (Article 147, LCE).

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