

Pre-incorporation contract under the law of Cambodia

Can a company enter into a contract before it comes into existence? Pursuant to Law on Commercial Enterprises, a company comes into existence and acquires legal personality on the date shown in the certificate of incorporation. (Article 98) A company has the capacity, rights and privileges of a natural person; and it may carry on business throughout the Kingdom of Cambodia. (Article 99)

Accordingly, if a company does not come into existence, the contract that is signed by any person on behalf of the company does not bind the obligations of such company. Article 139 of the same law provides that a person who enters into a written contract in the name of or on behalf of a company before it comes into existence is personally bound by the contract and is entitled to benefits thereof. Therefore, for example, in the case where a shareholder who signs lease agreement or sale-purchase agreement on behalf of the company before the company is registered (comes into existence), must be personally bound by this agreement and also be entitled to benefits of the lease or sale-purchase transaction.

The above said contract will bind obligations of the company only after such company, within the reasonable time after the contract has been made, adopts the said contract through any action or conduct signifying the company's intention to be bound to the contract. In practice, the company adopts the contract or agree to be bound by the contract by issuance of the board resolution or shareholders resolution confirming its intention. Consequently, the company is bound by the contract and is entitled to the benefits of the contract as if the company had been in existence at the date of the contract and had been a party thereto. A person who claimed to act in the name of or on behalf of the company ceases to be bound by or entitled to the benefits of the contract, unless otherwise ordered by court. (Article 139)

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