

PUBLICATION

COMPETITION IN CAMBODIA:LEGAL ASPECTS OF BUSINESS COMBINATIONS

OVERVIEW

Business Combinations is one of the major aspects set out in the Law on Competition which was promulgated on 05 October 2021. This law prohibits any business combinations which could significantly prevent, restrict, or distort competition in Cambodian market. Under the competition law, business combinations refer to “the acquisition of the right of control or voting rights through the purchase of shares or assets by one person from other person; or the combination of two or more persons to acquire joint ownership of an existing legal person or a new legal person” (“M&A”).

The followings are the sources for the legal aspects of M&A in the area of competition:

- Law on Competition dated 05 October 2021 (“Competition Law”);
- Sub-decree no. 60 on Conditions and Procedures for Business Combinations (M&A) dated 06 March 2023 (“Sub-decree No. 60”);
- Decision no. 095 on the Limitation of Thresholds of the Pre-Notification on Business Combinations dated 14 March 2023 (“Decision No. 095”);
- Prakas no. 177 on the Requirements and Procedures for the Registration of Business Combinations Requiring the Pre-Notification dated 14 June 2023 (“Prakas No. 177”);
- Prakas no. 178 on the Post-Notification of Business Combination dated 14 June 2023 (“Prakas No. 178”); and
- Decision no. 179 on the Procedures for the Issuance of Advanced Ruling Certificate on the Business Combination dated 14 June 2023 (“Decision No. 179”).



Although the Competition Law has entered into force since the late 2021, its supporting regulations for the enforcement of M&A provision had just been issued in the first half of 2023. Sub-decree No. 60, which is an important regulation governing the conditions and procedures for M&A, was issued on 06 March 2023. However, this sub-decree and its supporting regulations, including Decision No. 095, Prakas No. 177, Prakas No. 178, and Decision No. 179 will enter into force in 06 (six) months commencing from the effective date of Sub-decree No. 60.

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Other than Competition Law and its supporting regulations, Cambodian Law on Commercial Enterprises 2005 also set outs the basic legal aspects of M&A, including the proposal of board of directors and shareholder approval of M&A, voting criteria, notice period to shareholders, M&A agreement criteria, filling the amendment of M&A, and the effect of M&A.

Based on the Competition Law and its supporting regulations, legal aspects of M&A may include the followings: pre-and post- notification obligation, primary and second review, exception, advanced ruling certificate, and M&A registration.

PRE-NOTIFICATION OBLIGATION

THRESHOLD LIMITATIONS

Party request for M&A which fall into any condition of the thresholds determined by the Competition Commission of Cambodia (“CCC”) shall subject to the pre-notification obligation to the CCC prior to the closing of the M&A.

Table 1: Threshold Limitations for Pre-Notification Obligation

(The exchange rate under this table is USD 1 equals 4,000 Riel)

Conditions	General Business	Banking and Financial Institutions	Insurance and Securities Institutions
Total assets for previous financial year	At least USD 85 millions	At least USD 1,125 millions	At least USD 250 millions
Total revenue for previous financial year	At least USD 67.5 millions	At least USD 105 millions	At least USD 70 millions
Total value of parties’ purchase orders for previous financial year	At least USD 30 millions	At least USD 950 millions	At least USD 205 millions
Value of the request M&A transaction	At least USD 10.25 millions	At least USD 30 millions	At least USD 15.25 millions

Source: Decision No. 095.

PRE-NOTIFICATION PROCEDURES

The Pre-Notification shall subject to the following procedures:

Step 1: Application Submission:

Party request for M&A shall submit the pre-notification application to the CCC. The followings are the contents for the applications:

- The notification form issued by the CCC;
- The description of key terms of the agreements in relation to the request M&A along with the final draft or the copy of the agreement or memorandum of understanding in relation to the request M&A;

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- Documents and information of the notifying party;
- Financial report of the notice party for the previous year and the year of the notification along with the account in the last quarter of the notifying party; and
- Identification of goods or services which the notifying party (along with the person in the same group with the notifying party) has direct or indirect relation to the M&A is conducting business or the identification of the revenue for the last two years and the year of notification in related market.

Step 2: Application Check

The CCC shall issue notification within 07 (seven) working days on the completeness or incompleteness of the documents and information submitted to the CCC by the applicant.

- The application shall be considered as complete and valid in the absence of notification.
- The applicant is required to prepare the additional documents and/or information within 30 (thirty) working days upon the receipt of the notification requires more documents and/or information by the CCC.

Step 3: Application Review

Primary Review: the application shall be subject to primary review.

- Upon the receipt of the complete application, the CCC shall issue the notification on its primary review no later than 30 (thirty) working days.
- This notification shall determine the approval of the M&A or the requirement for the second review. In the case that the CCC fails to issue the notification, it is considered as the CCC's approval for the M&A.

Second Review: the application may be subject to the second review as follows:

- Review Processes and Deadlines: For the second review, the CCC may request more documents and information from the applicants and the deadline for the submission to the CCC. The review shall be completed within 60 (sixty) working days upon the receipt of the full required documents and information. This deadline may be subject to extension for 30 (thirty) working days for two times. During the second review, the deadline for the decision can be postponed when the CCC request for more documents and/or information until the applicant submits the required document and/or information to the CCC. The CCC has the rights to request more information from the request party or the related party in the line of its roles and duties with respect to the Competition Law and the regulations in force.

- Decision on Second Review: Within the deadline, the CCC shall issue one of the following decisions:
 - The request M&A can be completed (the same applied when there is no decision within the deadline);
 - The request M&A can be completed with conditions; or
 - The request M&A is prohibited.

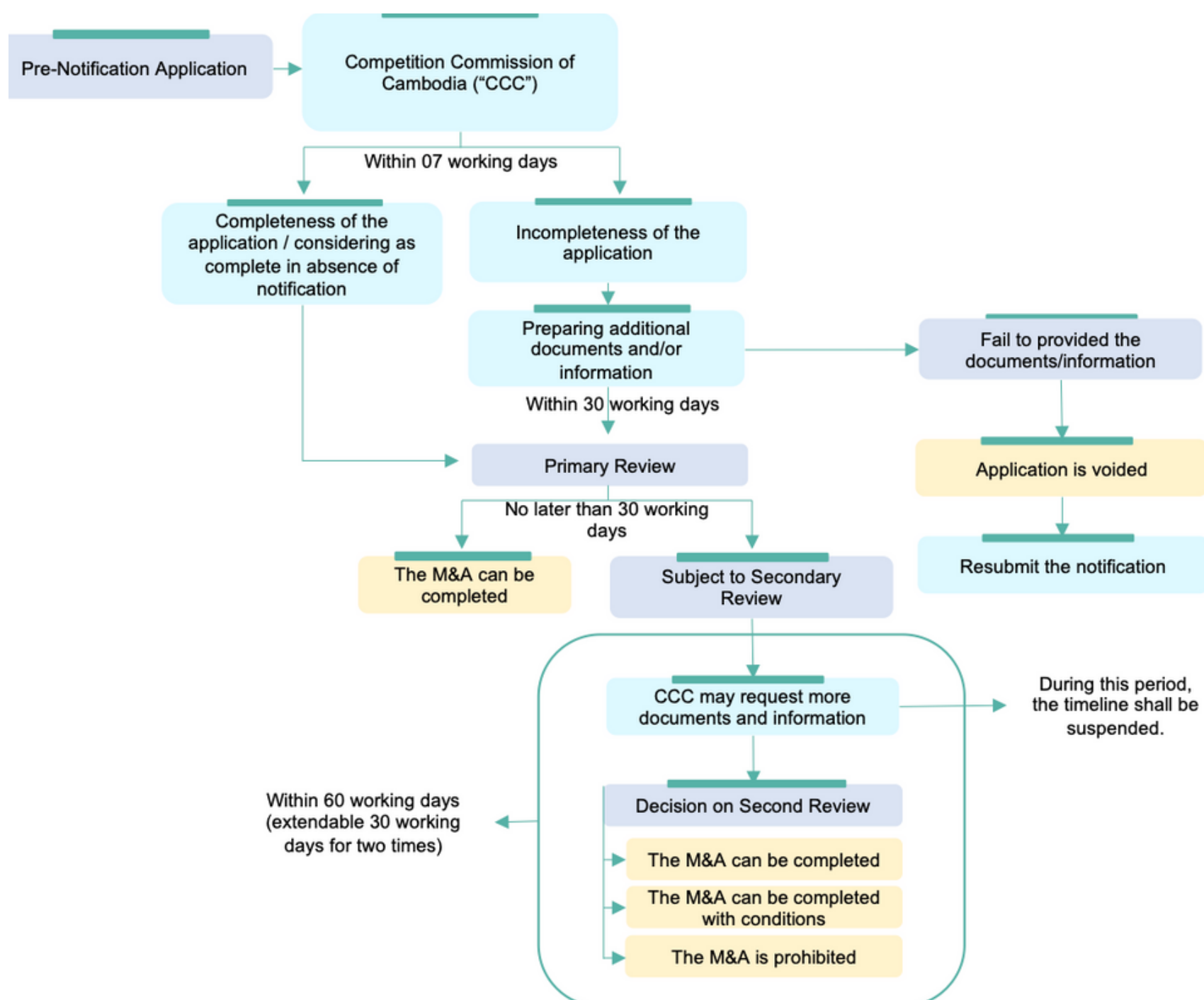
Exception of Second Review: the request M&A may not be subject to the second review in the following cases:

- Horizontal M&A is subject to an exception in any of the following case:
 - The aggregate market share of all notifying parties (and relevant group if any) less than 30 (thirty) percent of the relevant market;
 - The aggregate market share of all notifying party (and relevant group if any) equal or more than 30 (thirty) percent of all relevant market and the HHI in that market is less than 1800 (one thousand and eight hundred); or
 - The aggregate market of all notifying party (and relevant group if any) equal or more than 30 (thirty) percent of the relevant market and the HHI in that related market is more than 1800 (one thousand right hundred) and the growth HHI in that relevant market after the completion of the request M&A is less than 150 (one hundred fifty).
- Vertical M&A or conglomerate M&A shall subject to an exception if the aggregate market share of any notifying party (and related group if any) is less than 30 (thirty) percent of the relevant market.
- Special Conditions: The request M&A may also subject to the exception provided that it satisfies any of the following special conditions and the decision of the CCC upon the receipt of documents and information from the notifying party on such special condition:
 - The seller bankrupts or may bankrupt;
 - The acquisition of voting share or the acquisition of dividend of any joint venture which is made solely for the purpose to underwrite the share or dividend;



- The acquisition of voting share, the dividend in a combination, or property which may arise through succession with respect to statutory succession or testamentary succession; or
- The acquisition of collateral or receivable or the acquisition resulting from foreclose or default or forming part of a debt workout made by the creditor with respect to a credit transaction entered into in good faith in the ordinary course of business.

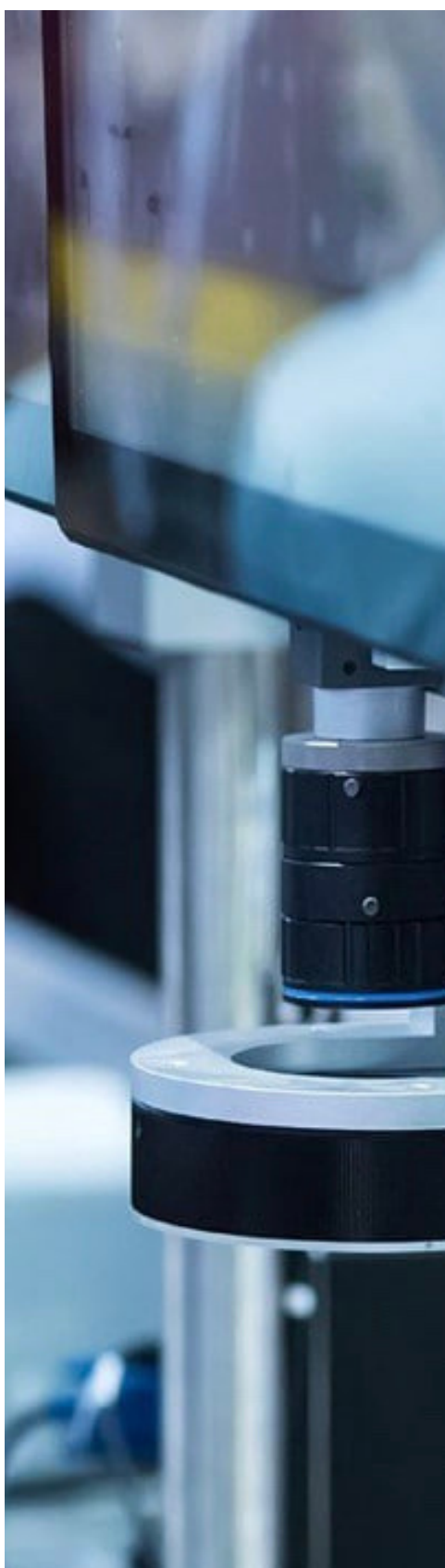
Figure 1: Pre-notification Procedures



SIMPLIFIED NOTIFICATION

Any M&A which fall into the threshold of pre-notification obligation and fall into any of the following cases is subject to the simplified notification:

- All notifying parties of the request M&A are in the same corporate group;
- The request M&A has received the approval from the Royal Government of Cambodia and must notify to the CCC within 30 (thirty) working days after such approval; or
- Other transactions determined by the CCC.



This simplified notification only requires the submission of the following documents and information:

- The brief notification form issued by the CCC;
- Documents and information of the notifying party; and
- Documents and information confirming the satisfaction to the above simplified notification condition.

After the receipt of the notification, the CCC shall issue a notification within 07 (seven) working days to confirm the completeness, incompleteness, or the failure to fulfil the criteria of simplified notification. The notifying party shall submit the additional documents or information to the CCC within 07 (seven) working days after the receipt of the notification of incompleteness. The simplified notification criteria is deemed unfulfilled if the notifying party fail to meet the deadline. Upon the receipt of all additional required documents and information, the CCC shall issue a notification to clarify the completeness of the notification or the failure to meet the criteria of simplified notification.

REGISTRATION OF M&A SUBJECT TO PRE-NOTIFICATION OBLIGATION

One of the notifying parties of the CCC's approved M&A must submit the application for M&A registration within 30 days after the closing of M&A to the CCC in accordance with the application form issued by the CCC.

Consumer Protection Competition and Fraud Repression Directorate-General (“CCF”) is the secretariat of the CCC for the receipt of M&A registration application. The party request for M&A registration must submit the following documents and information:

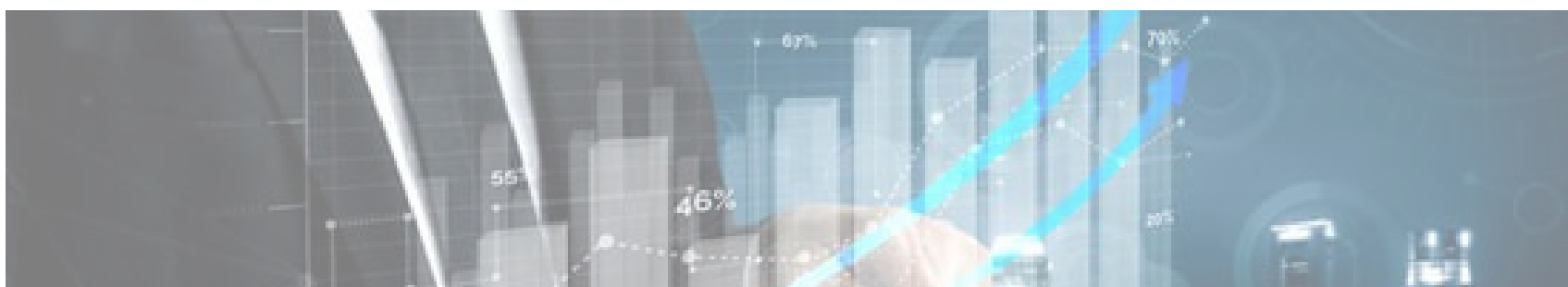
- Application form for M&A registration;
- A copy of certificate of tax compliance from General Department of Taxation;
- A copy of the documents confirming business registration and documents related to the change of ownership with Ministry of Commerce and related ministries and entities;
- A copy of the documents from sectoral regulator, ministry or institution pertaining to the request M&A;
- A copy of the proof confirming the CCC’s approval for the M&A; and
- A copy of receipt for the M&A registration.

Upon the receipt of application for the M&A registration, the CCF is required to issue a notification to the applicant confirming the completion of M&A registration obligation or confirming the completeness of documents and information submitted to the CCC. In the case that the application is incomplete, the applicant is required to submit the additional documents or information within 15 (fifteen) working days (subject to extension). The applicant is required to resubmit the application if the deadline is not met.

ADVANCED RULING CERTIFICATE

Parties to an M&A may voluntarily apply to the CCC for an advanced ruling certificate, including those who are required to pre-notify or post-notify. Similar to the pre-notification, the advanced ruling certificate application must be submitted prior to the M&A's substantive completion and must submit a registration application once the M&A is completely finished. The advanced ruling certificate, however, may come with or without condition and the certificate with conditions shall be valid only after the conditions are met.

The benefits of the advanced ruling certificate are that it substitutes the pre-notification and provides a one-year guarantee that the CCC will not deny or obstruct the combination process because of documents or information submitted during the certificate application unless the CCC later finds that the documents or information is counterfeit. In that event, the certificate will be suspended and eventually voided if the applicant fails to produce evidence of its validity.



POST-NOTIFICATION OBLIGATION

THRESHOLD LIMITATION

Certain businesses which are not required to file a pre-notification might be subject to an obligation of post-notification. According to Prakas No. 178, any party to the M&A which meets at least 50 (fifty) percent of the limitations of threshold as stated in Decision No. 095 subject to pre-notification shall file a post-notification to the CCC within 30 working days after the substantive completion of the M&A.

Table 2: Threshold Limitation for Post-Notification Obligation
(The exchange rate under this table is USD 1 equals 4,000 Riel)

Conditions	General Business	Banks and Financial Institutions	Insurance and Securities Institution
Total assets for previous financial year in Cambodia	At least KHR 170 billion (approx. USD 42.5 million)	At least KHR 2,250 billion (approx. USD 562.5 million)	At least KHR 500 billion (approx. USD 125 million)
Total revenue for previous financial year in Cambodia	At least KHR 135 billion (approx. USD 33.75 million)	At least KHR 210 billion (approx. USD 52.5 million)	At least KHR 140 billion (approx. USD 35 million)
Total value of purchase for previous financial year in Cambodia	At least KHR 60 billion (approx. USD 15 million)	At least KHR 1,900 billion (approx. USD 475 million)	At least KHR 410 billion (approx. USD 102.5 million)
M&A transaction value	At least KHR 20.5 billion (approx. USD 5.125 million)	At least KHR 60 billion (approx. USD 15 million)	At least KHR 30.5 billion (approx. USD 7.625 million)

Source: Prakas No. 178.

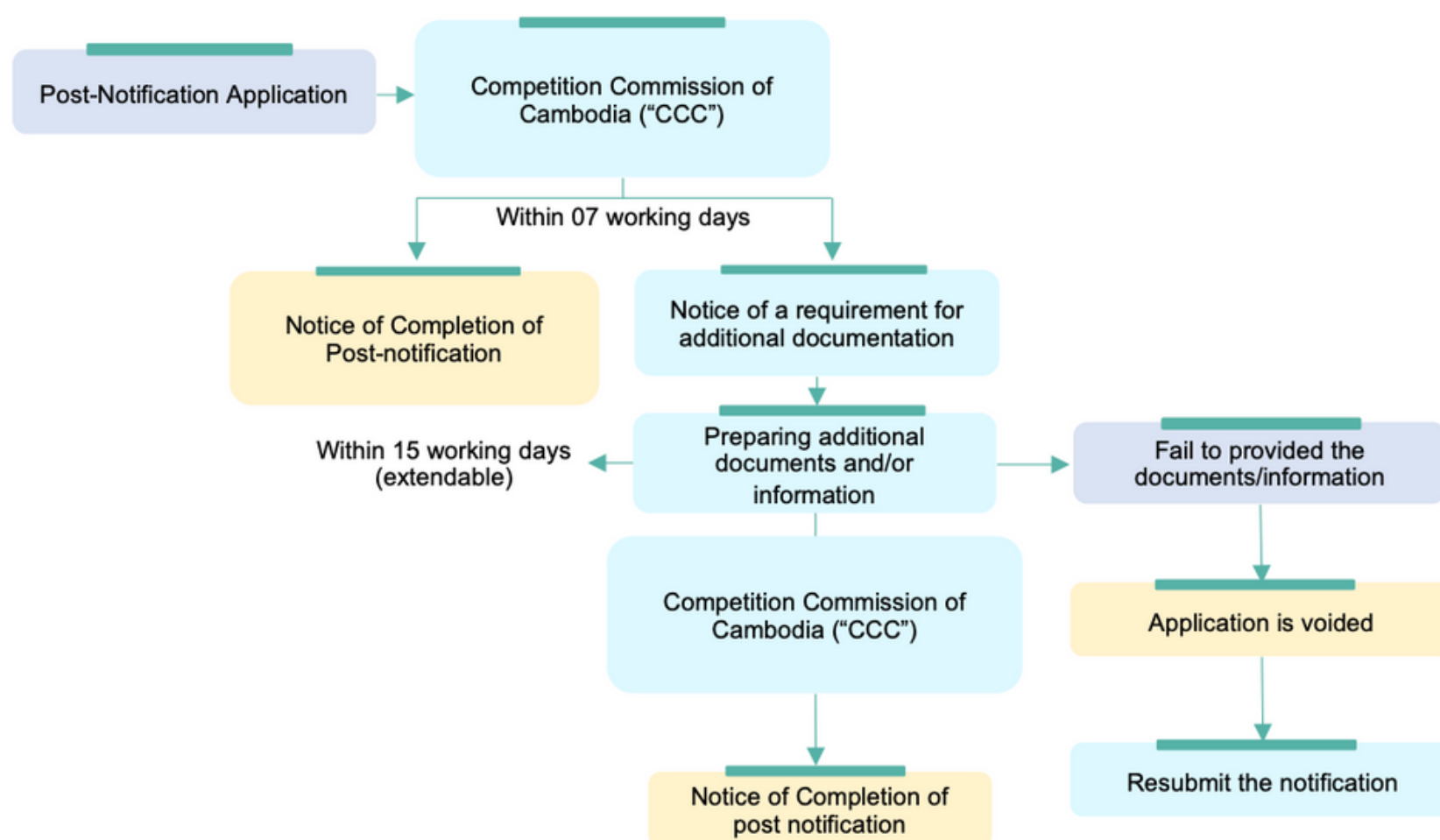
POST-NOTIFICATION PROCEDURES

M&A transaction subjected to the post-notification shall file a notification to the CCC within 30 (thirty) working days from the date of substantive completion of the M&A. The application must consist of:

- Application form for post-notification;
- A copy of certificate of tax compliance from General Department of Taxation;
- A copy of the documents confirming business registration and documents related to the change of ownership with Ministry of Commerce and related ministries and entities;
- A copy of the documents from sectoral regulator, ministry or institution pertaining to the request M&A (if any);
- A copy of payment receipt for the post-notification of the M&A; and
- Authorization Letter (if the applicant is a company's representative).

Within 7 (seven) working days from the date of submission, the CCC will notify the applicant on the completeness or incompleteness of the application and require additional documents or information, if necessary. The applicant has 15 (fifteen) working days to submit the additional documents or information to the CCC upon receiving the notice of a requirement additional documentation. If the applicant fails to provide documents or information as required, the CCC will void the application and the applicant must resubmit the post-notification. However, Prakas 178 allows the CCC to notify the applicant of the deadline extension for submission of additional documents with valid reason.

Figure 2: Post-notification Procedures



EXCEPTION

Any M&A which could lead to the prevention, restriction or distortion of the competition may be allowed in the case that the agreement offers significant identifiable technological, economic, or social benefits that significantly outweigh the anticompetitive effect, would not eliminate competition in any substantial part of a market, and could not have arisen without such agreements or activities. The CCC shall conduct the review on the information and documents submitted by the applicant with respect to the exception provision in the Law on Competition.

*This publication is a general information only and is not considered as legal advice or opinion. If you require any further information or have any questions, please contact **Mr. HOUN Vannak**, managing partner of **RHTLaw Cambodia**.*

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