

# Technical Update

Apr 2022



## Law on the Amendment of the Law on Commercial Enterprise

The Royal Kram No. NS/RKM/0122/003 on the Law on the Amendment of the Law on Commercial Enterprise was promulgated on 29 January 2022 (“Amendment on the LCE”).

The Amendment on the LCE has abrogated Articles 166, 175, 182, 183, 184, 185, 186, 187, 188, 189, 190, and 196 and amended Articles 1, 2, 3, 4, 5, 59, 62, 87, 101, 106, 110, 114, 115, 137, 144, 161, 174, 192, 195, 225, 234, 255, 262, 270, and 271 as well as added Article 8 Duplicate, 53 Duplicate, and 147 Duplicate.

Below are our remarks on the significant changes to the Law on Commercial Enterprise:

### 1. Sole proprietorship

Under the Amendment on the LCE, a sole proprietorship has been added as one of the forms of commercial enterprise in addition to the partnership and company forms. Sole proprietorships shall be established by an individual and the assets of such individual are the capital of the sole proprietorship.

A sole proprietorship classified as a taxpayer under the self-declaration tax regime shall be obliged to register in the commercial list and its name shall include the words “sole proprietorship” or abbreviated suffix at the end or below.

The obligations and responsibilities of a sole proprietorship are direct and unlimited on the assets of the owner of such sole proprietorship. The sole proprietorship is not required to have a memorandum and articles of association (M&A) and internal regulations. Sole proprietorships shall not have separate natures from the business owner.

The liquidation and dissolution of the sole proprietorship and general partnership have been mentioned under Chapter Two (New), point E (New) of the Amendment on the LCE.

Note that sole proprietorships, partnerships, and companies shall all have a permanent address in Cambodia.

### 2. Company secretary

The Amendment on the LCE has replaced the term “agent” in all relevant articles to “company secretary”, where the company secretary refers to a person appointed by the company and is entitled to receive and maintain the company’s documents.

Any enterprise registered as company form shall have their company secretary with a permanent address in Cambodia and he/she shall be the individual who is fit and competent to fulfil this work.

### 3. De-registration and Liquidation

Under the Amendment on the LCE, we understand that the liquidator shall be an accounting and/or auditing firm licensed by the accounting and auditing regulator of the non-banking financial services authority. Such liquidator shall maintain the accounting record, financial statements, and other records on behalf of the de-registered entity for five (5) years after the liquidation is finished. However, the liquidator is also required to maintain the accounting record, financial statements, and other records for a longer period than the above-mentioned period if those documents are required to maintain as evidence.

## 4. Disclosure of the shareholder's identity

The shareholder of the company who does not intend to disclose their identity in the Memorandum and Articles of Association may appoint a nominee to represent them. We understand that the appointment of a nominee shall be formed under an agreement between the shareholder and their nominee (either individual or legal entity). The information of the identity of the shareholder and the Shareholder's Nominee Agreement shall be recorded with the Ministry of Commerce. Conditions, formality, and procedure to record the information and the Shareholder's Nominee Agreement shall be determined by a Sub-Decree. Please note that such a sub-decree has not been issued yet.

### Commentary:

The Law on the Amendment of the Law on Commercial Enterprise introduces some significant changes as outlined above, in particular, the requirement for a company secretary, the new requirement to appoint a liquidator for the de-registration process, and the option not to disclose the shareholders' identities. We understand that there will be subsequent Sub-Decrees and Prakas issued by the government to provide additional information and guidance on the appointment of a licensed accounting and/or auditing firm as a liquidator. In the interim, based on our experience, the de-registration process has been continuing as per the previous practice. However, this may be expected to change at short notice once further guidance on the requirement to appoint a liquidator is released. Therefore, we encourage enterprises that are considering to undertake a de-registration process to pay close attention to any developments in this area.

Should you require any support with the registration application with the Ministry of Commerce, please contact us.

## Contact us

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