Energy Development in the Greater Mekong Subregion

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Accessing Lower GMS Energy Markets

FINDING A LOCAL PARTNER OR DISTRIBUTOR

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Where to Look?

- Industry or Trade Publications
- Ministry of Commerce, or Investment Board
- Local Business Associations
- International Business Associations
  - Can be useful even if hiring local company
- Local Embassy or Consulate:
  - Economic attaché
  - Commercial attaché

I. Who Do You Want to Appoint or Partner With?

- Local Company.
  - Knows the local market, local business practices;
  - But: may not be international standard in manner of doing business.
- International Company.
  - Local knowledge? Depends upon longevity in the market place
  - An international company that is well-established in Cambodia may already have the local connections (directors, senior officers, partners, etc.) that a local company might have.
  - Better able to understand and adhere to international standard
- Cambodian Option: 100% foreign owned company
  - Substantial start-up costs to create a distribution system
  - Lack of local knowledge, contacts, familiarity with business practices

II. Who to Appoint or Partner With?

- Background in Energy Field
  - will have a better understanding of the products;
  - would have a knowledge of the legal and regulatory environment
  - Conflict of interest? (if already marketing energy products of a similar nature)
- No Background
  - may not understand energy related products, limiting the ability to market them;
  - but if the company is educable, and has a good distribution network and proven marketing ability, then lack of initial knowledge can be overcome.

Definition of Objectives

Once a potential agent, distributor, joint venture partner is identified:

- Define what you want out of the relationship
- Be sure everyone is clear on expectations – discuss and agree on key performance measurements. (This will bring out cultural issues.)
- Be sure everyone has same commitment. For example, it would be a shame to have your agent or re take the line of products, just to prevent one of his competitors from having it.
- If you have a profile of your best distributor from another developing countries, be sure to share that with the people you speak to in Cambodia.

Agency or Partnership?

- Due Diligence issues are similar
- Company registration (whether subsidiary or joint venture)
- Tax liability:
  - Company or JVA: range of tax issues
  - Representative Office: some tax issues
  - Agency or Distribution Agreement: limited tax issues.

Due Diligence

- **Problems for Investors Interested in Having a Local Partner or Agent :**
  - **Lack of Substantial Public Records**
    - Ministry of Commerce
    - Tax Department
    - Cadastral Office
  - **Licenses**
  - **No Credit Agency**
  - **No Court Records available in a systematic and transparent manner.**
  - **Newspapers?**
  - **Annual Reports**
    - Previously, only fully licensed commercial banks and insurance companies required to have annual reports
    - MEF Prakas 643 (2007) - Annual Audits for Companies of certain size.

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DUE DILIGENCE Cont'd
Encumbrances on Movable Property

- There is no official registry of encumbrance on movable properties in Cambodia. Such encumbrances are a matter of private contract between the chargor, mortgagor or pledgor and the person to whom the assets are charged, mortgaged or pledged. It is possible under the Law on Secured Transactions (2007) to file a notice on collaterals at the Secured Transactions Filing Office of the MOC (STFO). However, not all encumbrances are filed at the STFO and in any case the STFO does not assess the validity of encumbrances filed. Hence, a search on the STFO's website will only give an incomplete view of a company's encumbrances.

Agency/Distribution Agreements :

- How to handle confidential information of the principal and its clients
- Conduct of business in line with the principal's business objectives and the agent's liability and indemnification in cases of misconduct or negligence
- Terms for assignment of the agency status and sub-agents
- Terms of payments to and by the agent (agency fee)
- Prohibition to be an agent of a competitor (exclusivity clause)
- Reporting obligations on the part of the agent
- Types of costs to be assumed by the principal and by the agent
- Terms for termination of the agency agreement by either party
- Security to be deposited by the agent
- Dispute resolution options
- Governing law of the agency agreement
- Duration of agency agreement

Importance of Legal Documentation: Avoiding Common (and Uncommon) Pitfalls

- Shareholder Agreements & Contracts:
  - well written and clear but simple language – it does not need to be a New York lawyered document!
  - comprehensive – do not leave wiggle room!
  - Make sure key documents are signed in both English & the local language; avoid problems of interpretation
- Trademark Registration: to avoid confusion about who has the proprietary rights, do not have your agent or distributor do the registration.
- Licensing, permits & approvals: do it the legal way!

Thank you for your attention!

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