

V INVESTMENT

V-1 Policies toward FDI

Laws and regulations governing FDI in Cambodia are basically designed to encourage investments. As the Law on Investment stipulates, FDIs are treated in a non-discriminatory manner except for land-ownership, which is stated in the Constitution, and allowed to invest freely in many areas. Under the current Law on Investment, the investors, who are given Final Registration Certificates, will be entitled to various incentives.

In addition, the Cambodian government has been improving their investment facilitation services. For example, the Government decided in 2005 to establish the Cambodian Special Economic Zone Board (the CSEZB) under the CDC to promote the special economic zone (SEZ) scheme in Cambodia. Administered by the CSEZB, the Special Economic Zone Administration is to be established in authorized SEZ and expected to provide one-stop service to zone investors from the registration of investment projects to routine export-import approvals.

V-2 Regulatory Framework for Investment

In Cambodia, the FDI is free to be implemented except in those areas listed in Section 1 of ANNEX 1 (Negative List) of the Sub-Decree No. 111 on the Implementation of the Law on the Amendment to the Law on Investment, which are prohibited for both Cambodian and Foreign investors. It has to only be registered at the Ministry of Commerce and obtain relevant operating permits. However, if the foreign investors seek investment guarantee and/or incentives, they have to apply for the investment project registration which would be approved by the CDC or the Provincial-Municipal Investment Sub-Committee (PMIS). The application for the investment project registration can be made either before or after the incorporation (or a registration within the MOC).

The investment license scheme was originally regulated by the “Law on Investment”, which was promulgated in August 1994. In March 2003, in order to make the licensing schemes to be simpler and more transparent, predictable, automatic and non-discretionary, the original Law on Investment was amended substantially by the current “Law on the Amendment to the Law on Investment (Amended Law on Investment)”. In addition, the “Sub-Decree on the Establishment of the Sub-Committee on Investment of the Provinces-Municipalities of the Kingdom of Cambodia” was issued in February 2005 to regulate the licensing scheme for investment less than two million US Dollars. The “Sub-Decree No. 111 on the Implementation of the Law on the Amendment to the Law on Investment” was also issued in September 2005. (The provisions of three laws and sub-decrees are shown in Appendix II, III and IV respectively.)

V-3 Outline of Investment Approval Scheme

- “Amended Law on Investment” of 2003 was made to adopt the automatic approval system of the investment projects, which must be completed within 31 working days after the receipt by the CDC or PMIS of the investment proposal, unless they are among the fields prohibited in the negative list or investment project related to the national interest/ environmental sensitivity.
- An investment approval will be issued not to an investor or investing enterprise but to a project. A project which receives the investment approval is called a Qualified Investment Project (or “QIP”).
- “Amended Law on Investment” governs all QIPs and defines the procedures by which any person establishes a QIP.
- The investment incentives are granted automatically to a QIP.

- The CDC is expected to act as One-Stop Shop and obtain all of necessary licenses required from relevant ministries entities listed in the Conditional Registration Certificate (CRC) for investment on behalf of the investment applicant.
- A QIP may be in the form of a joint venture. A joint venture may be formed between Cambodian entities, between Cambodian entities and foreign entities or between foreign entities. There is no limitation based on nationality or the share-holding proportion of each shareholder, except in the case a joint venture owns or intends to own land or an interest in land in Cambodia. In such a case, the maximum combined share-holding of all foreign parties must not exceed 49%.

V-4 Responsible Organization

The CDC is the sole and One-Stop Service organization responsible for the rehabilitation, development and oversight of investment activities. The CDC is responsible for the evaluation and the decision-making on all rehabilitation, development and investment project activities (Article 3, “Amended Law on Investment”).

However, the CDC shall submit for the approval of the Council of Ministers any of the following investment projects (Article 11, “Sub-Decree No.147 on the Organization and Functioning of the Council for the Development of Cambodia”).

- Capital investment of US\$ 50 million and above
- Politically sensitive issues
- Exploration and the exploitation of mineral and natural resources
- Possible negative impact on the environment
- Long-term development strategy

Infrastructure projects such as projects on the basis of Build-Own-Transfer (BOT), Build-Own-Operate-Transfer (BOOT), Build-Own-Operate (BOO) or Build-Lease-Transfer (BLT)

V-5 Qualified Investment Project

To be admitted as a QIP, the investor has to register the investment project with the CDC or PMIS and receive a Final Registration Certificate (FRC) under the Law on Investment (Article 2 and 6, “Amended Law on Investment”).

V-6 Investment Incentive

Investment incentives granted to a QIP

QIPs are entitled to the following investment incentives (Chapter 5, “Amended Law on Investment”):

- QIPs may elect to receive a profit tax exemption or use special depreciation.
- Profit tax exemption (Selective): A tax holiday period is composed of “Trigger period + 3 years + Priority Period” (Maximum total 9 years)
 - Trigger Period (Maximum 3 years): Commencing on the issuance of the Final Registration Certificate and ending on the last day of the taxation year immediately preceding the earlier of:
 - (a) if the QIP derives a profit, the taxation year that the profit is first derived; and
 - (b) if the QIP derives income from the Investment Activity in respect of the sale of goods or services, the third taxation year after the taxation year in which the income is first derived.
 - Priority Period (Maximum 3 years): To be determined according to the type of project and investment capital in the Financial Management Law.

Table V-6-1 Priority Period

<p>A. Investment Project in Light Industry:</p> <ul style="list-style-type: none"> - Investment capital amount below US\$5million: 0 year - Investment capital amount between US\$5million and US\$20million: 1 year - Investment capital amount more than US\$20million: 2 years <p>B. Investment Project in Heavy Industry</p> <ul style="list-style-type: none"> - Investment capital amount below US\$50million: 2 years - Investment capital more than US\$50million: 3 years <p>C. Investment Project in Tourism Industry</p> <ul style="list-style-type: none"> - Investment capital amount below US\$10million: 0 years - Investment capital more than US\$10million: 1 year <p>D. Investment Project in Agriculture and Agro-industry</p> <ul style="list-style-type: none"> - Short cycle agriculture project: 1 year - Long cycle agriculture project; 2 years <p>E. Investment Project in Backbone Infrastructure</p> <ul style="list-style-type: none"> - Investment capital amount below US\$10million: 1 year - Investment capital amount between US\$10million and US\$30million: 2 years - Investment capital amount more than US\$30million: 3 years
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Source: Chapter 2, Royal Kram NS/RKM/1205/140 on the Promulgation of the Law on the Financial Management in the year 2006

- An annual Certificate of Obligation Satisfaction (or “Certificate of Compliance”) has to be obtained by the QIP to be entitled “Profit Tax Exemption”.
- A QIP shall be subject to a profit tax rate after its tax exemption period as determined in the Law on Taxation
- Special depreciation (Selective): 40% special depreciation allowance on the value of the new or used tangible properties used in the production or processing.
- Duty free import of production equipment, construction materials, etc. as shown in Table V-6-2:
- A QIP located in a designated SPZ or EPZ: To be entitled to the same incentives and privileges as other QIP stipulated in the Amendment to the LOI.
- A QIP shall be entitled to 100% exemption of export tax, except for activities as stipulated in laws in effect.
- The rights, privileges and entitlements of a QIP can be transferred or assigned to a person who has acquired or merged a QIP subject to the approval of the CDC or PMIS.

Projects not eligible for the incentives

The investment projects listed in Section 2 (Investment Activities Not Eligible for Incentives) of Annex 1 of the Sub-Decree No.111 are not eligible for investment incentives. Those investment projects include the following:

- All kinds of commercial activity, import, export, wholesale, and retails, including duty free shops
- Any transportation services by waterway, by road, by air except investment in the railway sector
- Restaurants, karaoke parlors, bars, nightclubs, massage parlor, fitness, etc.
- Tourism service
- Casino and gambling business
- Currency and financial business and services such as banks, financial institutions, and insurance companies
- Activities related to newspaper and media, including radio, television, press, magazine, etc.
- Professional services
- Production and processing of wood products using wood from natural forest with a legal domestic supply source for raw materials
- Complex resort, including hotel, theme park, sport facilities, zoo with less than 50 hectares
- Hotel below 3-star grade
- Real estate development, warehouses facilities

Projects eligible for the incentives

Section 2 of Annex 1 of the Sub-Decree No.111 also sets the minimum amount or other conditions of investment projects in various fields, which are required for granting the incentives. Some of those requirements are shown in Table V-6-3.

V-7 Investment Guarantee

The Law on Investment guarantees the investment as follows (Article 8 to Article 11 of “Amended Law on Investment”):

- A foreign investor shall not be treated in any discriminatory way by reason only of the investor being a foreign investor, except in respect of ownership of land.
- The Royal Government shall not undertake a nationalization policy that would adversely affect private properties of investors in Cambodia.
- The Royal Government shall not fix the price or fee of the products or services of a QIP.
- The Cambodian Government shall permit investors to purchase foreign currencies through the banking system and to remit abroad these currencies for the following purposes:

Table V-6-2 Duty-Free Import for QIPs

Type of QIP	Commodities to be imported free of duty
Domestically oriented QIPs	Production equipment, construction materials and production input to be used in the production of exports goods
Export oriented QIPs (except those which elect or which have elected to use the Customs Manufacturing Bonded Warehouse mechanism)	Production equipment, construction materials, raw materials, intermediate goods and accessories
Supporting Industry QIPs	Production equipment, construction materials, raw materials, intermediate goods and production input accessories. In the case where the Supporting Industry QIP fails to supply 100% of its manufactured products to the export industry or directly export its products, the QIP shall pay the customs duties and taxes on production inputs for the quantity that has not been supplied to the export industry or directly exported

Table V-6-3 Minimum Conditions Required for the Provision of Incentives

Fields of Investment	Requirement for Investment
Supporting industry, which has its entire production (100%) supplying export industry	US\$100,000- or more
Production of animal feed	US\$200,000- or more
Production of leather products and related products Production of all kinds of metal products Production of electrical and electronic appliances and office materials Production of toys and sporting goods Production of motor vehicles, parts and accessories Production of ceramic products	US\$300,000- or more
Production of food products and beverages Production of products for textile industry Production of garments, textiles, footwear and hats Production of furniture and fixtures that do not use natural wood Production of paper and paper products Production of rubber products and plastic product Clean water supplies Production of traditional medicines Freezing and processing of aquatic product for export Processing of any kind of cereals and crop products for export	US\$500, 000- or more
Production of chemicals, cement, agriculture fertilizer and petrochemicals Production of modern medicines	US\$1,000,000- or more
Construction of modern market or trade center	US\$2,000,000- or more More than 10,000 square meters Adequate space for car park
Training and educational institutes that provide training for skill development, technology or poly technology that serves industries, agriculture, tourism, infrastructure, environment, engineering, sciences and other services.	US\$4,000,000- or more
International trade exhibition center and convention halls	US\$8,000,000- or more

- 1- Payment for imports and repayment of principle and interest on international loans
- 2- Payment of royalties and management fees
- 3- Remittance of profits
- 4- Repatriation of invested capital

V-8 Limitation on Foreign Investment

Although there is no sector closed only to foreign investment, the activities listed in Section 1 of ANNEX 1 (“Negative List”) of the “The Sub-Decree No. 111 on the Implementation of the Law on the Amendment to the Law on Investment” are prohibited for the investment of both Cambodian and foreign entities. Those investment activities are as follows:

- Production/processing of psychotropic substances and narcotic substances
- Production of poisonous chemicals, agriculture pesticide/insecticide and other goods by using chemical substances prohibited by international regulations or the World Health Organization, that affect the public health and environment
- Processing and production of electrical power by using any waste imported from a foreign country
- Forestry exploitation business prohibited by Forestry Law
- Investment activities prohibited by law: Deleted by Sub-Decree # 34 (RGC) on Adjustment to Sub-Decree No. 111 of April 23, 2007

In addition, “investment activities not eligible for incentives” are listed in Section 2 and the “investment activities with specific characteristics which shall be eligible for Custom Duties Exemption, but not eligible for the Profit Tax Exemption,” are listed in Section 3 of ANNEX 1.

V-9 Restrictions on Foreign Citizenship

Some restrictions on foreign citizenship in terms of investment activities are described below.

Ownership and use of land

Ownership of land by investors for the purpose of carrying on a QIP shall be vested only in natural persons holding Cambodian citizenship or in Cambodian entities but the use of land shall be permitted to investor, including concessions, perpetual lease (min.15 years and max. 50year. renewable for 50 years) or limited short-term leases that are renewable. The investor is also admitted to have the right to own and pledge as security the real and personal property on the land (Article 16, “Amended Law on Investment”).

Employment of foreigners

A QIP is entitled to obtain visas and work permits for the employment in Cambodia of foreign citizens as managers, technicians and skilled workers, if the qualification and expertise are not available in Cambodia (Article 18, “Amended Law on Investment”).

V-10 QIP Approval Procedures

The QIP application process from submission of Investment Proposal until obtaining a Final Registration Certificate (FRC) is shown in Table V-10-1 below (Article 7, “Amended Law on Investment”).

Details of procedures of QIP application and investment-related registration/ permit for the light industry are summarized in Table V-10-2.

V-11 Incentives entitled to Specific Fields

Despite the provisions regarding the investment incentives for QIPs under Chapter 5 of the Amended Law on Investment, the industry-specific or additional incentives have been introduced by the RGC in forms of Prakas or other regulations.

- Import duty reduction or exemption and the government-borne VAT scheme (VAT exemption) have been introduced on various agricultural materials such seeds, breeds or residues and agricultural machines including tractors: Prakas No.390 (MEF) on Adjustment to Customs Duty and Imposition of VAT borne by the State.
- QIPs in the area of agriculture and agro-industry may obtain incentives in the form of a priority period of tax exemption on profit for three (3) years. Investment activities in the area of agriculture and agro-industry shall receive such incentives according to the Sub-Decree relating to the Implementation of the Law on Investment.: Royal Kram NS/RKM/0609/009 on Promulgation of the Law on the Adjustment to the Law on Financial Management for the Year 2009 of June 20, 2009
- VAT on the imported production input by garment factories is exempted as long as the final products are exported. : The Letter No.110 SCN.CS of the Council of Ministers of January 27, 1999

- VAT on the imported production input and equipment of supporting industry, which serves to the export of garment, textile or footwear, shall be exempted. The supply of the products or services for the export of the garment by the supporting industry or contractor shall be exempted. : Prakas No.298 (MEF) on the Implementation of VAT for Supporting Industry or Contractor who Supplies Products for the Exports of Garment, Textile and Footwear.

Table V-10-1 QIP Application Process

Party to Take Action	Process	Condition/ Remarks
Applicant	Submission of an Investment Proposal to the CDC or PMIS	Use a completed Application Form* Payment of Application Fee of 7,000,000 Riels
The CDC or PMIS	1) Issuance of "Conditional Registration Certificate" (CRC) - if the Investment Proposal contains all the information required, and - if the proposed activity is not in the Negative List or not related to national interest/ environmental sensitivity	To be Issued within 3 working days after submission of the Investment Proposal The CRC specifies the approvals, authorizations, clearances, licenses, permits or registrations required for the QIP to operate, as well as the government entities responsible to issue such approvals, etc.
	2) Issuance of "Letter of Non-Compliance" - - If the Investment Proposal does not satisfy the above condition	The CRC confirms the incentives to which the QIP is entitled and recognize the statutes of the legal entity. Letter of Non-Compliance shall clearly state the reasons why the Investment Proposal was not acceptable and the additional information required for enabling the CDC or PMIS to issue a CRC.
	If a CRC or Letter of Non-Compliance is not issued within 3 working days, the CRC shall be considered automatically approved.	
The CDC or PMIS	Obtains all of the licenses from relevant ministries-entities listed in the CRC on behalf of the Applicant	All government entities responsible for issuing an authorization, clearance, license, permit or registration listed on the CRC shall issue those no later than the 28th working day from the date of the CRC. Any government official who, without proper reason, fails to respond to an Applicant's request by this deadline shall be punished by law.
The CDC or PMIS	Issuance of a "Final Registration Certificate" (FRC)	To be issued within 28 working days of the issuance of the CRC. The date of issuance of the FRC shall be the date of QIP commencement.

Note: A sample of "Application Form" is shown in ANNEX 2 of "Sub-Decree No.111 on the Implementation of the Amendment to the Law on Investment" attached in APPENDIX III herein.

Table V-10-2 Procedures of QIP Application and Investment-related Registration/Permits

Step	Application/Permit	Description/Contents
1	Submission of Draft QIP Application Form	To submit the Draft QIP Application Form (written in English) with the following documents to CDC: - Original Contract for Perpetual Lease of Land or Rental Factory (Legal notary should be needed) - Location Map of the Factory - Company Registration or Company Statute of the Parent Company (Translation Certificate should be needed) - Letter of Appointment from the legal person of parent company to all directors of the company in Cambodia - Passport Copies of all directors - Photographs of all directors - Police Certificate (Non Criminal Record) of all directors - Production Line Flowchart (to check Environmental Impact)
2	Submission of Official and Signed QIP Application Form	To submit the Official and Signed QIP Application Form (written in Khmer) with following the documents (written in Khmer) to CDC: - Feasibility Study (according to the format of Royal Government of Cambodia) - Company Statute (according to the format of Royal Government of Cambodia)
3	Payment of QIP Application Fee	To pay the application fee of 7,000,000 Riels to CDC
4	Issuance of Conditional Registration Certificate (CRC)	To be issued by CDC within 3 days after submission of the official QIP Application
5	Submission of Commercial Bank Statement	To submit Bank Statement for 25% of the amount of the registered capital of the company to CDC
6	Submission of VAT Registration Application Form	To submit VAT Registration Application Form to Tax Office, Ministry of Economic and Finance via CDC
7	Issuance of Final Registration Certificate (FRC)	To be issued by CDC within 28 days after issue of CRC with following documents. - Company Registration Certificate (Ministry of Commerce) with Company Stamp - Patent Tax Registration Certificate (Tax Office, Ministry of Economic and Finance) - VAT Registration Certificate (Tax Office, Ministry of Economic and Finance)
8	Submission of Import Tax Exemption Application ("Master List")	To submit Import Tax Exemption Application ("Master List") for building materials, production equipment and raw materials to General Department of Custom and Excises (GDCE), Ministry of Economic and Finance via CDC.
9	Submission of Factory Operation Application	To submit Factory Operation Application to Ministry of Industry, Mining and Energy (MIME) via CDC
10	Submission of Construction Permit Application	To submit Construction Permit Application to Ministry of Land Management, Urban Development and Construction (MLMUDC) via CDC
11	Submission of Environment Assessment Declaration	To submit Environment Assessment Declaration to Ministry of Environment (MOE) via CDC
12	Submission of Labor Registration	To submit Labor Registration to Ministry of Labor and Vocational Training (MLVT) via CDC

Source: Japan Desk, CDC

QIP Application in Practice

Although Article 7 of "Amended Law on Investment" stipulates the QIP application process as explained above, there are some discrepancies between the provisions of the "Amended Law on Investment" (the Law) and those of "Sub-Decree No.111 on the Implementation of the Amendment to the Law on Investment" (the Sub-Decree). In practice, the provisions of such Sub-Decree are being applied to the QIP application process by the CDC. The major discrepancies are as follows.

1. 1) Although the Law stipulates a CRC shall be issued within 3 working days after submission of Investment Proposal, the Sub-Decree stipulates under Article 6.1 (d) that "the CDC or the PMIS has the right to postpone the registration of specific Investment Projects related to the national interest or are environmentally sensitive which required to be processed through the one-stop mechanism of the Council and the Provincial/Municipal Investment Sub-committee who shall notify the specific grounds to the applicant within 3 (three) Working Days of the submission of the Investment Proposal. In fact, a CRC is seldom issued within 3 working days and most of the investment projects, except those in garment and footwear which are considered as routine projects or those to locate in the SEZ, will be processed in One-Stop Meeting of the CDC. Therefore, it takes longer time to obtain a CRC. The investment projects to locate in the SEZ will not be processed in One-Stop Meeting of the CDC.
2. 2) The Law stipulates that the CDC shall obtain all of necessary licenses from relevant ministries/entities listed in the CRC on behalf of the Applicant within 28 working days after issuance of a CRC. The Sub-Decree provides under Article 7.1, nevertheless, that "after issuing the CRC, the CDC or the PMIS, on behalf of the Applicant, assist with the issuance of the approvals, authorizations, licenses, permits or registrations listed in a CRC by the relevant ministries, departments, authorities, entities of the provinces/municipalities or agencies of the Royal Government. In practice, the QIP applicant is expected to obtain such authorizations, license or registrations.