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INVESTMENT IN CAMBODIA**INTRODUCTION**

Cambodia has emerged as a high economic growth attracting large number of investors from the world. It offers a long term growth opportunities among various sectors and industries. A free economy country with liberal FDI policy has always been the reason for this newly emerged under developing country to grow at a faster rate. In spite of the global slowdown in 2010 the country has been developing rapidly with an annual GDP growth of 7.2 % in 2014 and an expected growth rate of 7.5 %, 7.2% and 7.0% in 2015, 2016 and 2017 respectively as mentioned in the World Bank report (<http://data.worldbank.org/country/cambodia>).

Cambodia is strategically located in the heart of Southeast Asia and as a member of Association of South Asian Nations (ASEAN) it benefits from lower traffic on most good traded within its neighbors. Further, as Cambodia is ensuring that its legal system integrates successfully with the other members of ASEAN. The investment in Cambodia is straightforward, direct and open process with a simplified process of setting up a company and various investment incentives granted by the local authority i.e. The Ministry of Commerce and the Council for the Development of Cambodia (CDC).

Currently, the available forms of business entities that can be establish in Cambodia are mentioned below:

1. Sole Proprietorship

A sole proprietorship is an enterprise established and operated by a single natural person who owns all of its capital and is responsible for all the obligations and liabilities related to the business operations sole and exclusively.

**2. Partnership**

The partnership is the favored method of business organization for many professionals like doctors, lawyers, and accountants. According a partnership can consist of a general partnership and/or a limited partnership.

3. Private Limited Company

For most types of businesses, "Private limited company" is the most suitable corporate form. Under the law on commercial enterprises, Private Limited Company is a form of a limited company that has 2 to 30 shareholders. A private company can have minimum one or more directors and will be managed by a chairman of board. The company cannot offer its share to the public but only to its shareholders. A private limited company has restriction on transfer of shares. The company shall issue a minimum of one thousand shares with a par value of not less than KHR 4,000 per share. That is, the minimum share capital for setting up is KHR 4,000,000 (approximately US \$1,000). The company may not offer its shares or other securities to the public generally, but may offer them to shareholders, family members and manager as there is restriction on transfer of each class of shares.

Foreigner may profit the company owner (100%) in establishing any business activities in Cambodia. The right and the benefit of a locally-owned will be provided to foreign-owned. However, the foreign-owned cannot own the land.

4. Single Member Private Limited Company

A natural person can establish a Single Member Private Limited Company and can converted into private limited company after having approval of the shareholder's to include one or more additional persons or legal entity as shareholders of the company.

5. Public Limited Company

A Public Limited Company (PLC) is a form of limited company that the law authorizes to issue securities to the public. Unlike private limited companies, it may have more than 30 shareholders. In Cambodia, banks are the only type of companies that can register as PLCs. Once the Stock Exchange has been established, this rule will change.

ABOUT US

BNG Legal is a leading regional law firm providing comprehensive legal services to foreign and local clients in Cambodia and Myanmar.

Registered with the Bar Association of the Kingdom of Cambodia, our legal professionals combine international standards with local expertise.

We differentiate ourselves by coupling a deep understanding of the local business environment with international professionalism and integrity.

We facilitate business, investment and trade between Cambodia, Myanmar, and the rest of the world through innovative and cost-effective legal services.

Superior knowledge of local protocol, local procedure, and local people is necessary for any business to succeed.

Conducting daily business in Cambodia and Myanmar, BNG Legal is up to date with the newest procedures and requirements, helping clients efficiently and successfully complete any project.

CAMBODIAN LAW BLOG

cambodianlaw.wordpress.com

BNG Legal believes expanding access to legal information is crucial to rule of law. To that end, several of our legal professionals write a blog discussing recent developments in the legal landscape.

LEGAL DATABASE

The laws and regulations in our database are based upon the Official Gazettes, law compendiums and other collections from the ministries and institutions of the Royal Government of Cambodia. These are available to the public through our partner site, www.bnglaw.net.

6. Foreign Business in Cambodia

According to the Law on Commercial Enterprises, a foreign business is a legal person formed under the laws of a foreign country, which has a place of business and conducts business in the Kingdom of Cambodia. It is subject to registration at the Ministry of Commerce. The three main forms of a foreign business are a representative office, a branch and a subsidiary.

6.1. Representative Office

An eligible foreign investor need to establish a Representative Office (RO) to facilitate the operation of local goods and services on behalf of its parent company. The ROs is responsible for promoting and marketing the parent company products and services. Further the RO is not subject to tax under the Cambodia Tax laws as it is cost center and does not derive any income from its activities but is responsible for withholding tax on salaries, patent tax and an annual business operation tax.

6.2. Branch Office

Foreign companies can also work through a branch and can undertake the same business activities as Cambodian-owned companies, with the notable exception of land ownership.

However, the foreign parent company will be liable for the losses and debts of a branch as its assets shall be the assets of the parent company. A branch shall be managed by one or more managers appointed and removed and also may be closed by the decision of its parent company. There is no minimum capital requirement applicable to a branch. Branch cannot hold qualified investment projects (QIPs) and cannot executed contracts with the government.

6.3. Subsidiary

A subsidiary is a company that incorporated by the foreign company with at least fifty one (51) percent of its capital that held by the foreign company. A subsidiary has legal personality separate from their parent company from the dated of its registration pursuant to the law on commercial rules and register. In addition, it may be incorporated in the form of partnership or limited company that may regularly carry on business same as the local company.

INVESTMENT INCENTIVES AND PROCEDURES

The Council for Development of Cambodia (CDC) is the sole and One-Stop Service organization responsible for the rehabilitation, development and oversight of investment activities and for the evaluation and the decision-making on all rehabilitation, development and investment project activities. The investment projects shall be submitted for approval of Council of Minister by

CDC:

- 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).

Under the Council for Development of Cambodia (CDC), there are two boards related to investment, the Cambodian Investment Board (CIB) and Cambodian Special Economic Zones Board (CSEZB).

1. Cambodian Investment Board (CIB)

The roles and responsibilities of CIB is to Coordinate and implement the “One-stop Service mechanism” for evaluating and approving application for QIPs:

- Strategic planning and coordination for the promotion of overall private investment;
- Marketing and promotion for potential investors;
- Policy advocacy for the improvement of the legal framework for investment promotion; and
- Coordination and reporting for relevant people both inside and outside the government.

2. Cambodian Special Economic Zones Board (CSEZB)

The CSEZB is responsible for the “One-stop Service” of the development, management, and supervision of the operations of special economic zones.

The following is the application procedure involved with CDC :

Application Process of QIP outside of SEZ

A Qualified Investment Project (QIP), an investor has to register the investment project with the CDC or PMIS and receive a Conditional Registration Certificate (CRC) and then a Final Registration Certificate (FRC), under the Law on Investment. The QIP application process from submission of Investment Proposal until obtaining a Final Registration Certificate (FRC) is summarize as follows, the Applicant to submit an Investment proposal to CDC or PMIS with a complete application and fees. The CDC or PMIS (full form of PMIS) will issue a “conditional registration certificate” and “Letter of non-compliance” within three working days after receiving the investment

proposal. If not issues within the three working days then it is considered as automatically approved. The CDC or PMIS shall obtain all the licenses from relevant ministries/entities listed in the CRC and the license, permit or registration listed should be issued no later than 28 working days from the date of CRC. After receiving the relevant approvals "final registration certificate" will be issued within 28 working days which shall be the date of commencement.

Registration Process of QIP of Investment Project in the SEZ

The Zone Investor who starts its activity of production or services in the fields permitted by related Laws and Sub-Decrees in any SEZ shall complete the formalities based on the procedure by preparing all the required documents and submit to the office of the SEZ Administration in the SEZ for registering investment proposals during working hours and before the office of the SEZ Administration.

The SEZ Administration has a duty to decide on the registration of the investment proposal based on the legal, administrative and technical aspects and on the issuance of the FRC. Any incentive provided to the Zone Investor shall be decided by the SEZ Administration through the "One-Stop Service" mechanism located on the site and in accordance to the relevant laws and regulations. On all other requests in the investment process of Zone Investors, the SEZ Administration shall play the role of facilitator to address issues of the Zone Investor with the relevant ministries/institutions.

Profit of qualification of investment project

QIPs can select between a profit-tax holiday or a depreciation allowance. The tax holiday cuts the profit tax from 20% to 0% for a specific number of years. The tax exemption period is composed of a Trigger Period + 3 years + Priority Period.

The depreciation allowance can give a generous tax break for investor that need to import large amounts of machinery or other capital goods. In addition, all QIPs are exempted from import duties on construction materials and input materials, production equipment, and input materials. With certain exceptions, any goods manufactured by the QIP are also exempted from export taxes. The projects over a certain size can apply for QIP incentives. Specific activities are also excluded such as a restaurants, casinos, and professional services.

TAXATION

The tax system in Cambodia is more lenient tax regimes. Further the companies are taxable under the Self-Assessment System (Real Regime Tax System), regardless of the type of business activity or the level of annual revenue. All the business in Cambodia depending on their registered office

must register with the Ministry of Commerce it much then be register at the local branch or province for tax identification number (TIN). The company complying with one of the following conditions, the registration shall go to the Large Tax Payer Bureau of General Tax Department:

- A qualified investment project;
- A branch of a foreign enterprise or multinational company; or
- An enterprise with annual turnover of over KHR 1 billion (approximately USD 250,000).

If the above conditions are not complied or met, the registration shall go to the local Tax Branch.

Patent Tax

While registering for the Taxpayer Identification Number (TIN), the company is required to apply and pay a Patent Tax which is an annual chargeable tax at a fixed amount of KHR 1,140,000 (approximately USD 285) and the government fiscal year is (1 July – 31 December) and must be paid within 15 days of business registration. The Patent Tax is payable annually thereafter for each business activity and each location of the business. A company must apply and pay to renew its patent tax before 31 March each year.

Value Added Tax (VAT) Registration

Enterprises providing taxable supplies of goods and services are required to register for VAT if they fit the criteria specified below:

- Companies, importers, exporters and investment companies
- Taxpayers with taxable turnover with respect to goods sold exceeding KHR 125 million for the preceding three consecutive months or in the next three consecutive months
- Taxpayers with taxable turnover with respect to services provided exceeding KHR 60 million for the preceding three consecutive months or in the next three consecutive months
- Taxpayers undertaking government contracts with a total taxable turnover exceeding KHR 30 million

Businesses must register for VAT before the commencement of business operations for investment and import-export businesses, or within 30 days from when the taxpayer becomes a taxable person. Normally, businesses register for VAT at the same time as the business registration. If a company does not have a VAT certificate, it cannot import goods.

Stamp Duty and Tax Rate

A newly established company, branch or representative office is required to register with the Tax Department's local tax branch office and pay the stamp duty (registration tax) within 15 days after obtaining the principal approval and the

business certificate at the Ministry of Commerce. The stamp duty is levied on 3 types of legal documents at a fixed amount of KHR 1,000,000 (approximately \$250): a Newly Established Company, a Merger Company and a Dissolved Company. Additionally, the Stamp Duty is imposed at the rate of 0.1% of share value for the transfer of shares or at 0.1% of contract value for the contract of supply of goods or services which is used to state the budget.

SECTORS

Real Estate

This new era of political stability and economic growth has given the Royal Government an opportunity to implement new policies of land administration and management. The 2001 Land Law reflected Cambodia's focus on domestic land issues, addressing the following topics:

- Private ownership for both residential and agricultural holdings;
- Creation of a land registry and systems for registering titles and encumbrances;
- Mechanisms for identifying the boundaries of state land;
- Mechanisms for distribution of state land ("social concessions");
- Communal tenure for indigenous communities and religious sites; and
- A cap on industrial agricultural concessions (10,000 hectare)

During these last few years, a number of significant changes were introduced by the new Civil Code and new laws, sub-decrees, inter-ministerial Prakas on the implementation of the Civil Code and other types of regulations. It is important for investors to perform due diligence before acquiring any property interests in land.

Land in Cambodia may be privately owned by individuals with Cambodian citizenship or by legal entities having Cambodian nationality. A legal entity has Cambodian nationality if 51% or more of its voting shares are held by Cambodian citizens or by another legal entity. Land can also be owned by public Cambodian communities or associations. The state owns a significant portion of the land, and state property is used for public purposes and services. The Land Law (2001) established natural reserve boundaries and immovable royal properties.

Foreigners cannot own land in Cambodia, however, the investors are permitted to use and develop land, and to sign long-term lease agreements, which will be referred to as "perpetual leases". However, a recent law allows foreigners to purchase individual apartments within a building creating a form of co-ownership. Foreigners can exercise their right to use the buildings or

structures they develop on leased land or on land owned by a locally incorporated company and can also take advantage of the significant incentives and tax breaks that the Cambodian government grants to Qualified Investment Projects ("QIP"), as long as a majority ownership of land is vested in legal entities of Cambodian citizenship.

Mining

Mineral resource license permit is granted by a competent institution to the holder for conducting activities of mining operations. A legal entity or a natural person cannot conduct mineral resources exploration or exploitation without obtaining relevant license except private owners of the land. The only license that be issued is for a consideration, technical and financial capability and commercial registration for natural person or legal entity. In case of privately owned land a written agreement need to be obtained by holder of a license with non-interference and non-infringement upon the property. In case of State owned land a written permission need to be obtained from the competent authority or inter-ministerial institution for conduction exploration or mining. The activated like conducting the prospecting, exploration and mining is not permitted on national cultural, historical and heritage sites owned by the state. In case of license issued to another holder a written permission of existing license holder or an approval form Minister in charge of mineral resources is necessary. There are six categories under which a license can be issued after satisfying the relevant conditions as prescribed:

- An artisan mining license
- A pit and quarries mining license
- A gem stone mining license.
- A mineral transforming license.
- An Exploration License.
- An Industrial Mining License

Special Economic Zone

The Special Economic Zone may be established by the State, private enterprise or joint venture between State and private enterprise. SEZ refers to the special area for the development of the economic sectors which brings together all industrial and other related activities and may include General Industrial Zones and/or Export Processing Zones. Each Special Economic Zone shall have a Production Area which may have a Free Trade Area, Service Area, Residential Area and Tourist Area and must have a land of more than 50 hectares with management office building and Zone Administration offices and all necessary infrastructures must be provided. The CSEZB under the CDC is the "One-Stop Service" organization in charge of the development, management and supervision of operations of the SEZ.

OUR LIBRARY

BNG Legal prides itself on maintaining up-to-date with the latest laws and regulations. Our Legal Research Department devotes significant time and resources to finding, compiling, and translating all available laws, which we make available to our clients, free of charge.

For the benefit of our clients and the general public, we regularly publish timely and succinct guides to major topics in Cambodian law.



Intellectual Property Rights (IPR)

IPR is an important issue for companies or firm doing business in Cambodia. Cambodia accession to World Trade Organization (WTO) in 2004 promoted the adoption of several laws regulating intellectual property rights. It may take few years before Cambodia comes into full compliance with WTO but the investors or the companies doing business here can take the advantage of the developing regulatory framework and seek out protection for their inventions, trademarks, industrial designs and other creative products. In addition to the progress Cambodia has enacted the following IPR laws:

- Law on Marks, Trade Names and Act of Unfair Competition (2002), procedural Sub-Decree (2006)
- Laws on Patent, Utility Model Certificates and Industrial Designs (2003), procedural Prakas (2006).
- Laws on Copyright and Related Rights (2003)
- Law on Seed Management and Plant Breeder's Right (2008)
- Law on Geographical Indications (2014)
- Prakas on the Registration of Integrated Circuit Layout Design (2011)

ASEAN

Cambodia is a member of various international and regional organizations that facilitate trade. Among these are the World Trade Organization (WTO), Association of Southeast Asian Nations (ASEAN) and ASEAN-China Free Trade Area (ACFTA), in which Cambodia enjoys duty-free privileges for exports and Most Favored Nation (MFN) treatment. Cambodia also accedes to the ASEAN Free Trade Area, ASEAN-China Comprehensive Economic Cooperation Agreement, ASEAN-Japan Comprehensive Economic Partnership, ASEAN-Korea Comprehensive Economic Cooperation Agreement and a dozen other multilateral agreements. Through this regional integration, there is the potential for investors to reach billions of customers; the population of ASEAN alone is roughly 560 million, while the population of ACFTA consists of approximately 1.7 billion people.

LAW UPDATE

Prakas No. 533 (MEF) dated 07 May 2015 on the Oversea and Domestic Mission Allowances for the Officials of Securities and Exchange Commission of Cambodia (SECC)

This Prakas aims to set out the allowances in both domestic and oversea mission for the SECC's officials based on the article 25 of the Sub Decree No. 97 dated July 23, 2008 on the organization and

functioning of SECC.

The Prakas defines the mission as the performance of the functions and duties in both domestic and oversea. The mission allowance includes pocket money, food, accommodation, transportation, souvenirs, and other expenses.

The mission allowance in both domestic and oversea of the SECC's officials is incompliance with the allowances set out in Sub Decree No. 216 dated July 22, 2014 concerning with the mission fee in domestic and oversea mission for administration national and under national level. This Prakas will come into force at the same date of the enforcement of the Sub Decree No. 216 dated July 22, 2014.

This Prakas will amends the Prakas No. 010/12 dated December 25, 2012 on the determination of the allowances for domestic and oversea mission of the SECC's officials.

Press Release dated 28 April 2015 on the Celebration of World IP Day and the workshop on the Mark Registration for SMEs

On April 28, 2015, the National Committee for Intellectual Property Rights (NCIPR) of the Ministry of Commerce celebrated and organized the World Intellectual Property Day and the workshop of Mark Registration for SMEs. World IP Day is celebrated to raise awareness about patents, copyright, trademarks and designs impact on daily life" and "to celebrate creativity, and the contribution made by creators and innovators to the development of societies across the globe, and April 26 was chosen as the date for World Intellectual Property Day because it is the date on which the Convention Establishing the World Intellectual Property Organization entered into force.

For the progress in IP development in ASEAN under IP Action Plan 2011-2015, all ASEAN Member States formulated common Guidelines of ASEAN for the substantive examination of applications for mark registration in the IP offices of all ASEAN Member States. These Guidelines are very important tools for trademark examiner in harmonizing their decisions and reduce the duration of a trademark's registration to six months for the sake of the business community.

Recently, Cambodia acceded to the "Madrid Protocol Concerning International Registration of Marks" so that applicants can apply through the Ministry of Commerce for the registration of their trademarks to 111 countries.