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AUTHORS

- Darwin Hem
Principal Partner
- Mr. San Vattanakisal
Legal Associate

Introduction

In recent years, Cambodia has noticeable experiences in socioeconomic development and political stability. Such environment allows Cambodia to get fabulous opportunities among various sectors and industries to attract a large number of investors around the world. A free economy and liberal foreign direct investment (FDI) policy have always been reasons for this economically emerged country to grow at a faster rate. Cambodia has experienced a strong macroeconomic growth for more than two decades thereby it was offered the lower-middle-income status in 2015.¹ Likewise, in line with resilient performance across the region, the economic growth of Cambodia is projected to reach 7.0 percent according to World Bank Report.² As well in 2017 and 2018, this economic growth is supposed to sustain its high growth at 6.9 percent.³

Cambodia is strategically located in the heart of Southeast Asia and as a member of Association of South Asian Nations (ASEAN). While it benefits from lower traffic on most good traded within its neighbors as well as its legal system to integrate successfully with the other members of ASEAN, the investment in Cambodia is very favorable for three main reasons:

1. Preferential Market Access

As one of WTO member states since October 2014, Cambodia has benefits from preferential access to a number of developed markets around the world. Besides, Cambodia has also benefited a very low tariff on most goods traded with its neighbors as it is one of the members of the Association of South East Asian Nations (ASEAN) as well as stated in the AFTA (ASEAN Free Trade Area) Agreement. Cambodia has also concluded a dozen of multilateral agreements and bilateral investment protection 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.

2. Open Economy

Cambodia offers investors one of the most liberal incentive schemes in Southeast Asia, low tax rates, tax incentives, a one-stop-service for investment applications, and the ability to develop new businesses within Special Economic Zones.

3. Competitive Assets

Tourism has traditionally attracted the most foreign investment. Led by the world class destination of Angkor Vat, Cambodia draws millions of international visitors a year. While temple tourism has already drawn significant foreign investment, significant potential remains in eco-tourism and other areas.

Furthermore, the Cambodian labor office offers a competitive advantage for many firms. With low labor costs and rapidly increased education levels, the country can offer lucrative returns for investors in labor-intensive manufacturing.

THE ESTABLISHMENT OF COMPANY

Cambodian law allows the 100% foreign invested company. However, there are very few restrictions on foreign investment. The first restriction is land ownership. Foreign investors cannot own land in Cambodia but there are some options for them to enjoy the control over the land for example through land holding company.

Secondly, foreign investment is prohibited for the purpose of public interest to some industries such as production/processing of psychotropic substances and narcotic substances, production of



1. [<http://www.worldbank.org/en/country/cambodia/overview#1>], dated November 18th, 2016

2. World Bank Report, "Enhancing Export Competitiveness: The key to Cambodia's Future Economic Success", Cambodia Economic Update October 2016, page 1

3. World Bank Report, "Enhancing Export Competitiveness: The key to Cambodia's Future Economic Success", Cambodia Economic Update October 2016, page 1 poisonous chemicals, agricultural pesticides/

A No 65B, St 111
PO Box 172
Phnom Penh
Cambodia

T +855 23 217 510
+855 23 967 450

F +855 23 212 840

E cambodia@bnglegal.com

W www.bnglegal.com

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insecticides and other goods using chemical substances prohibited by the World Health Organization, processing and production of electric power by using waste imported from a foreign country and forestry exploitation business prohibited by the Forestry Law.

To encourage foreign investments, some investment projects can be registered as Qualified Investment Project (QIP) with the Council of Development for Cambodia (CDC). QIP is recognized by taking into consideration of the size and value of the company in terms of job creation and income generation.

QIP entitles investors a number of incentives such as one-stop service for the swift of process of investment applications, tax and customs duty exemptions, employment allowances and other SEZ related incentives.

Local or foreigner investor who is doing business in Cambodia must register its business with competent authority having the jurisdiction over the place of business. The registration office shall be at provincial or city trade office, or other place as determined by the Ministry of Commerce (MOC)⁴. At present, in order to facilitate or ease the efficient interaction of the procedure, the MOC has modernized its registration system, which is able to allow the merchants register their company by online.

The available forms of business entities that can be established 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 solely and exclusively.

2. Partnership

The partnership is the favored method of business organization for many professionals like doctors, lawyers, and accountants. The partnership is composed 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 from 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 must have more than 30 shareholders.

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 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 representative office, branch office and 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, in actuality, 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 office 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

4. Article 14 new of Law on Commercial Rules and Register

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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 date of its registration. 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.

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 or General Tax Department for tax identification number (TIN) according to the size of the companies.

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

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.

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.

REAL ESTATE BUSINESS

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.

Foreigners cannot own land in Cambodia. However, the investors are permitted to use and develop land through long-term lease agreement, which will be referred as "perpetual leases". 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. A recent law also allows foreign to purchase individual apartments within a building creating a form of co-ownership.

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. 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

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permission need to be obtained from the competent authority or inter-ministerial institution for conducting exploration or mining. The activities like conducting prospect and exploration and mining are 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 from Minister in charge of mineral resources is necessary.

INTELLECTUAL PROPERTY RIGHT (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. There are three types of Intellectual Property licenses protected by Cambodian law. Patent license is issued by the Ministry of Industry, Mines and Energy to protect the invention deemed to be new and industrially applicable. Trademark is registered with the Ministry of Commerce. Copyright is registered with the Ministry of Culture and Fine Arts.