IV INVESTMENT

IV-1 Policies toward FDI

In the Second Socio-Economic Development Plan 2001-2005, the Cambodian government regards foreign direct investment (FDI) as a major engine for economic development. From the viewpoint of the legal framework in Cambodia, 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 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 Council for the Development of Cambodia (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 SEZs and provide one-stop service to zone investors from the registration of investment projects to routine export-import approvals.

IV-2 Regulatory Framework for Investment

In Cambodia, the FDI is free to implement, except in those areas prohibited or restricted for foreigners. It has to only be registered at the Ministry of Commerce and obtain relevant operating permits. However, if the foreign investors seek investment incentives, they have to apply for the investment registration which can be obtained through the CDC or the Provincial-Municipal Investment Sub-Committee (PMIS). The application for the investment registration can be made either before or after the incorporation (or a registration within the Ministry of Commerce).

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-discretional, the original Law on Investment was amended substantially by the "Law on the Amendment to the 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.)

IV-3 Outline of Investment Licensing Scheme

- "The Law on the Amendment to the 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 application, unless they are among the fields prohibited in the negative list or investment project related to the national interest/ environmental sensitivity.
- An investment license or approval will be issued not to an investor or investing enterprise but to a project. A project which receives the investment license is called a Qualified Investment Project (or "QIP").
- The Law governs all Qualified Investment Projects (or "QIPs") and defines the procedures by which any person establishes a QIP.
- The investment incentives are granted automatically.
- 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 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%.

IV-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, the Law on Investment).

However, the CDC shall submit for the approval of the Council of Ministers any of the following investment projects involving the following (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)

IV-5 Qualified Investment Project

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

IV-6 Investment Incentive

Investment incentives granted to a QIP

QIPs are entitled to the following investment incentives (Chapter 5, the 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 Trigger Period: To be the first year of profit or 3 years after the QIP earns its first revenue, whichever sooner
- Priority Period: To be determined by the Financial Management Law

- An annual Certificate of Obligation Satisfaction 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 IV-1:
- 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.

Table IV-1 Duty-Free import for QIPs

Type of QIP	Commodities to be imported free of duty
Domestically oriented QIPs	Production equipment, production input and construction materials
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

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
- 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 in various fields, which are required for the provision of the incentives. Some of those requirements are shown in Table IV-2 below.

IV-7 Investment Guarantee

Although the investment guarantee agreement has not been concluded between Cambodia and Japan, the Law on Investment guarantees the investment as follows (Article 8 to Article 11 of the "Law on Investment" shown in Appendix II) :

Table IV-2 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

- 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 :
  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

IV-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:

1. Production/processing of psychotropic substances and narcotic substances;
2. 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;
3. Processing and production of electrical power by using any waste imported from a foreign country;
4. Forestry exploitation business prohibited by Forestry Law;
5. Investment activities prohibited by law.

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.

IV-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, unlimited long-term leases and 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, the 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, the Law on Investment).

IV-10 Investment Licensing Procedures

The investment license application process until obtaining a Final Registration Certificate (FRC) is shown in Table IV-3 below (Article 7, the Law on Investment).

Table IV-3 Application Process for Investment License

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. 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.
	2) Issuance of "Letter of Non-Compliance" - If the Investment Proposal does not satisfy the above condition	
	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.