

APPENDIX III : SUB-DECREE NO.111 ON THE IMPLEMENTATION OF THE AMENDMENT TO THE LAW ON INVESTMENT

**Kingdom of Cambodia
NATION RELIGION KING**

**SUB-DECREE
ON THE IMPLEMENTATION OF THE LAW ON
THE AMENDMENT TO THE LAW ON INVESTMENT
OF THE KINGDOM OF CAMBODIA
No 111 ANK/BK DATED SEPTEMBER 27, 2005**

The Royal Government of Cambodia

- Having seen the Constitution of the Kingdom of Cambodia
- Having seen the Royal Decree NS/RKT/0704/124 dated July 15, 2004 on the formation of the Royal Government of Cambodia
- Having seen the Royal Kram No. 02/NS/94 dated July 20, 1994 promulgating the Law on the Organization and Functioning of the Council of Ministers;
- Having seen the Royal Kram No. 03/NS/94 dated August 5, 1994 regarding the Law on Investment of the Kingdom of Cambodia and Royal Kram No. NS/RKM/0303/009 dated March 24, 2003 promulgating the Amendment to the Law on Investment of the Kingdom of Cambodia
- Having seen the Royal Kram No. NS/RKM/0297/03 dated February 24, 1997 promulgating the Law on Taxation and the Royal Kram No. NS/RKM/0303/010 dated March 31, 2003 promulgating the Amendment to the Law on Taxation
- Having seen the Sub-Decree No. 88/ANK/BK dated December 29, 1997 on the implementation of the Law on Investment of the Kingdom of Cambodia and the amended Sub-Decree No. 53/ANK/BK dated June 11, 1999 regarding the amendment to the Sub-Decree on the implementation of the Law on Investment of the Kingdom of Cambodia and No. 130/ANK/BK dated December 26, 2001 regarding the amendment to the Sub-Decree No 53/ANK/BK dated June 11, 1999
- Having seen the Sub-Decree No. 70/ANK/BK dated July 27, 2001 on the Organizations and Functioning of the Council for the Development of Cambodia and the amending Sub-Decree No. 112/ANK/BK dated November 12, 2002 and No. 35/ANK/BK dated August 04, 2004 on the amendment on the Sub-Decree No 70/ANK/BK dated July 27, 2001
- With the approval of the Council of Ministers during the Cabinet Meeting of September 02, 2005

IT IS HEREBY DECIDED

CHAPTER 1 GENERAL PROVISIONS

Article 1: Coverage of the Sub-Decree

- 1.1 Objective: This Sub-Decree supplements and governs the application and implementation of the Law on Investment and is intended to encourage and regulate investments in the Kingdom of Cambodia by Cambodian entities and foreign entities.
- 1.2 Application: This Sub-Decree applies to every QIP registered at the Council and provincial/municipal investment sub-committee.

Article 2: Scope of Investment

Investment Activity: This Sub-Decree applies to all investment activities other than those activities set out in the Negative List in Schedule 1, Part 1 of this Sub-decree as provided in Article 7 of the Law on Investment.

Article 3: Foreign and Cambodian Investment

- 3.1 Foreign and Cambodian Investment: The Royal Government welcomes investments in all economic activities from Cambodian Entities and Foreign Entities, subject only to the restrictions set out in Article 2 of this Sub-Decree.
- 3.2 Use of Nominees: An individual or legal entity controlled by Cambodian citizens must not act for, or represent, either directly or indirectly, a Foreign Entity for the purpose of avoiding the effects of the provisions of this Sub-Decree, which restrict or prohibit the activities of Foreign Entities or Foreign nationals.

Article 4: Definitions

As used in this Sub-Decree, the following terms shall have the meaning as defined hereunder:

“Applicant” means a person or a group of persons who submit an Investment Proposal to the Council or to the Provincial/Municipal Investment Sub-committee.

“Cambodian Investor” means an Investor who is a Cambodian citizen or who is a Cambodian Entity.

“Cambodian Legal Entity” means a company which is registered in, and whose place of business is in, the Kingdom of Cambodia and 51 percent or more of its shares are held by Persons of Cambodian nationality.

“Certificate of Compliance” means the certificate of obligation satisfaction required to be lodged under Article 14.2 New or Article 24 New of the Law on Investment, and issued under Article 18.2 of this Sub-Decree.

“Conditional Registration Certificate” means the document issued by the Council or the provincial/municipal Investment Sub-committee as set out in paragraph 3 of Article 7 New of Law on Investment and Article 6.3 of this Sub-Decree.

“Construction Materials” means construction items including fixtures in or on a facility that is fully transformed and utilized in the construction of facilities to be used by a QIP to carry out its Investment Activity during the initial construction phase or expansion.

“Council” means the Council for the Development of Cambodia established by Article 3 of the Law on Investment.

“Council Sub-Decree” means the Sub-Decree No. 70/ANK/BK dated July 27, 2001 on the Organization and Functioning of the Council for the Development of Cambodia and its subsequent amendments No. 112/ANK/BK dated November 12, 2002 and No. 35/ANK/BK dated August 4, 2004.

“Customs Duties” means taxes on foreign trade as listed in the customs tariffs imposed on goods when importing into or exporting out of the customs territory.

“Domestic QIP” means a QIP that does not aim at export.

“Export QIP” means a QIP that sells or transfers a proportion of its product to a purchaser or transferee outside the Kingdom of Cambodia.

“Financial Management Law” means the annual Financial Management Law.

“Final Registration Certificate” means the document issued by the Council or the provincial/municipal Investment Sub-committee as set out in paragraph 7 of Article 7 New of the Law on Investment and Article 7.3 of this Sub-Decree.

“Foreign Legal Entity” means an entity which is not a Cambodian Entity or which is not created in compliance with Cambodian laws.

“Investment Activity” means the business activity to be carried out in Cambodia under a QIP.

“Investment Capital” means the value of the investment indicated in USD currency excluding the value of land and working capital.

“Investment Guarantees” means the guarantees set out in Chapter 4 of the Law on Investment as provided for in this Sub-Decree, which are available to an Investor who complies with all the requirements of this Sub-Decree.

“Investment Incentives” means the incentives set out in Chapter 5 of the Law on Investment and as provided for in this Sub-Decree, which are available to an Investor who complies with all the requirements of this Sub-Decree.

“Investment Proposal” means a proposal submitted to the Council or provincial/municipal Investment Sub-committee by any person for the purpose of establishing a QIP.

“Investor” means the person who carries out QIP.

“Law on Investment” means the Law on Investment promulgated by Royal Kram No. 03/NS/94 dated August 5, 1994 and which is amended by the Law on the Amendment to Law on Investment of the Kingdom of Cambodia promulgated by Royal Kram No. NS/RKM/0303/009 dated March 24, 2003.

“Law on Taxation” means the Law promulgated by the Royal Kram No. NS/RKM/0297/03 dated February 24, 1997 and which is amended by Law on the Amendment to Law on Taxation promulgated by Royal Kram No. NS/RKM/0303/010 dated March 31, 2003.

“Machine Parts” means parts of Production Equipments with a working life of less than 2 years including spares of such parts and equipments.

“Negative List” means the list of Investment Projects as set out in Schedule 1 of this Sub-Decree.

“Person” means natural or legal person.

“Production Equipment” means any machinery and tool used in the substantial transformation of Production Inputs which is not itself transformed or consumed within 2 (two) years of its importation, including information technology equipment or any motor vehicle.

“Production Inputs” means goods, including raw materials, semi finished products, and accessories serving production that is fully transformed or utilized in the production process of the QIP no later than 2 (two) years after importation. It does not include office equipments and furniture, petroleum products, vehicles, and spare parts for vehicles.

“Production Outputs” means goods which are produced from Production Inputs that have been transformed.

“Professional Service” includes, but is not limited to, legal, financial, accounting, auditing, tax consulting, architecture, engineering, information technology services, advertising, and management services.

“Provincial/municipal Investment Sub-committee” means the sub-committee of the provinces or municipalities established by Sub-decree to review and approve investment projects with an investment capital of less than USD 2,000,000- (two million US dollars) at the provincial and municipal level.

“Qualified Investment Project” or **“QIP”** means an investment project for which a Final Registration Certificate has been issued.

“Supporting Industry QIP” means a QIP in which one hundred percent of the product is used to supply the export industry instead of usually imported raw materials and accessories.

“Working Day” means a calendar day which is officially a working day of the Royal Government of Cambodia.

CHAPTER 2

INVESTMENT PROPOSALS AND REGISTRATION CERTIFICATES

Article 5: Application for Conditional Registration Certificate

- 5.1 Application and Fee: Any person who wishes to obtain the Investment Incentives and Guarantees or only the Investment Guarantees shall submit to the Council or the Provincial/Municipal Investment Sub-committee an Investment Proposal on a completed Application Form duly signed by or on behalf of the Applicant with appropriate Power of Attorney along with the payment of the Application Fee in the amount of 7,000,000 (seven million) Riels, representing the administration fees for securing the approvals, authorizations, licenses, or registrations from all relevant ministries and entities including stamp duty.
- 5.2 Application Form: The Application Form for an Investment Proposal is set out in Annex 2 of this Sub-Decree.
- 5.3 Evidence of authority to act: If an Investment Proposal is signed by a person on behalf of the Applicant, documentary evidence of that person's authority to so act must be submitted to the Council or the Provincial/Municipal Investment Sub-committee with the Investment Proposal.
- 5.4 Multi-activity Projects: If a person proposes to invest and carry out more than one Investment Activity, which, if registered, would be carried out as a QIP, the person must submit a separate Investment Proposal for each Investment Activity.
- 5.5 Election for Exemption from Tax on Profit: An applicant who wishes to become entitled to the exemption from the Tax on Profit under Article 14.1 of the Law on Investment, in accordance with Article 15 of this Sub-Decree on receiving a Final Registration Certificate, must make an election in writing to that effect in the Investment Proposal.
- 5.6 Election precluding other Fiscal Allowances: In making the election under Sub-Article 5.5, the Applicant acknowledges that the election to utilize the tax holiday provided under Article 14.1 of the Law on Investment disqualifies the Investor from claiming any investment allowance otherwise available to the Investor under the Law on Taxation in respect of the QIP.
- 5.7 Election for Investment Guarantees only: An Applicant, who wishes to receive only the benefit of the Investment Guarantees, may make a written election in the Application Form as long as the Applicant is a non-QIP but falls under the Investment Guarantees of the Law on Investment. In this case, the Council and the Provincial/Municipal Investment Sub-committee shall issue a specific license to the Applicant.

Article 6: Registration of Investment Proposal or its refusal

- 6.1 Registration Process: The Council or Provincial/Municipal Investment Sub-Committee must, within 3 Working Days of the submission of an Investment Proposal under Article 5.1:
 - (a) if neither paragraph (b) nor (c) applies, register the Investment Proposal and notify the Applicant in accordance with Sub-Article 6.3; or
 - (b) refuse the Investment Proposal and notify the Applicant in accordance with Sub-Article 6.6 if the Investment Proposal is made in respect of an Investment Activity which:
 - (i) is included in the Negative List; or
 - (ii) previously has been, or is currently, carried on by the Investor or any other person and which has already received Investment Incentives under the Law on Investment
 - (c) refuse the investment proposal and notify the Applicant in accordance with Sub-Article 6.6 if the Investment Proposal does not contain all the information required under Sub-Article 5.1.
 - (d) the Council or the Provincial/Municipal Investment Sub-committee 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.
- 6.2 Amendment of Investment Proposal: If the Investment Proposal made to the Council does not conform to Article 5 of this Sub-Decree, the Council or the Provincial/Municipal Investment Sub-committee may, by written notice within 3 Working Days of the Investment Proposal's submission to the Council or the Provincial/Municipal Investment Sub-Committee, require the Applicant to amend the Investment Proposal made to it and to resubmit the Investment Proposal to the Council and the Provincial/Municipal Investment Sub-committee.
- 6.3 Issuance of Conditional Registration Certificate: If the Council or the Provincial/Municipal Investment Sub-committee registers an Investment Proposal under Sub-Article 6.1(a), it must issue to the Applicant, within 3 Working Days of the submission of the Investment Proposal, a Conditional Registration Certificate, in the form set out in Schedule 3, containing the following:

- (a) a list of all the necessary approvals, authorizations, licenses, permits or registrations which are required for the QIP to be lawfully undertaken and The ministries, departments, authorities, entities of the provinces/municipalities or agencies of the Royal Government responsible for issuing those documents upon the Applicant meeting the criteria required for the issuing of those documents.
 - (b) the election made by the Applicant pursuant to Sub-Article 5.5, 5.6 or 5.7.
 - (c) the Investment Incentives and Guarantees to which the investment project will be entitled if the Final Registration Certificate is issued, including the Tax on Profit exemption period under Article 14.1 of the Law on Investment.
 - (d) the election made by the Applicant pursuant to Article 5.7, and the subsequent non-entitlement to the Investment Incentives.
 - (e) recognition of the statutes of the legal entity which will undertake the QIP.
- 6.4 Default on the issuance of Conditional Registration Certificate: If the Council or the Provincial/Municipal Investment Sub-committee fails to issue a Conditional Registration Certificate under Sub-Article 6.3 or fails to issue Letter of Non-Compliance under Sub-Article 6.6 within 3 Working Days, the Investment Proposal is deemed to be registered and the Council or the Provincial/Municipal Investment Sub-committee must issue a Conditional Registration Certificate to the Applicant immediately.
- 6.5 Information to accompany Conditional Registration Certificate: The Council or the Provincial/Municipal Investment Sub-committee must issue with the Conditional Registration Certificate the investment guidelines and assessment criteria for each of the approvals, authorizations, licenses, permits or registrations referred to in Sub-Article 6.3(a).
- 6.6 Letter of Non-Compliance: If the Council or the Provincial/Municipal Investment Sub-committee refuses an Investment Proposal under Sub-Article 6.1(b), it must issue to the Applicant a Letter of Non-Compliance containing:
- (a) the reason why the Investment Proposal was not acceptable; and
 - (b) the additional information required to enable the Council or the Provincial/Municipal Investment Sub-committee to register an amended Investment Proposal.

Article 7: Issuance of Final Registration Certificate

- 7.1 Council or the Provincial/Municipal Investment Sub-committee to assist with the various types approvals, authorizations: After issuing the Conditional Registration Certificate in accordance with Sub-Article 6.3, the Council or the Provincial/Municipal Investment Sub-committee must, on behalf of the Applicant, assist with the issuance of the approvals, authorizations, licenses, permits or registrations referred to in Sub-Article 6.3(a) by the relevant ministries, departments, authorities, entities of the provinces/municipalities or agencies of the Royal Government.
- 7.2 Payment of Deposit: An Investor shall not be required to make payment of any deposit to guarantee his or her investment except for the case of an infrastructure concession as required in the concession contract.
- 7.3 Issuance of Final Registration Certificate: When the holder of a Conditional Registration Certificate obtains all of the approvals, authorizations, licenses, permits or registrations referred to in Sub-Article 6.3(a), the Council or the Provincial/Municipal Investment Sub-committee must issue a Final Registration Certificate.
- 7.4 Period to issue Final Registration Certificate: If the holder of a Conditional Registration Certificate has not obtained all of the approvals, authorizations, licenses, permits or registrations referred to in Sub-Article 6.3(a) within 28 Working Days of the date of issuance of the Conditional Registration Certificate, the Council or the Provincial/Municipal Investment Sub-committee must issue a Final Registration Certificate.
- 7.5 Application for other approvals from relevant institutions: A Final Registration Certificate issued by the Council or the Provincial/Municipal Investment Sub-committee under Sub-Article 7.4 does not negate the obligation of the Applicant to obtain and receive all of the approvals, authorizations, licenses, permits or registrations required for the proposed QIP to operate lawfully.
- 7.6 Commencement of QIP: A QIP commences on the date of issuance of the Final Registration Certificate for that QIP and this commences the Trigger Period for the Tax on Profit Exemption period under Article 14.1 of the Law on Investment and Sub-Article 15.1 of this Sub-Decree.
- 7.7 Obligation to ask for other approvals: A QIP shall file written applications in accordance with applicable procedures to the Council or the Provincial/Municipal Investment Sub-committee for its approval of any changes of address, head office, place of business, company name, shares, and any other changes to the Investment Proposal and to the statute of the Investor within 10 (ten) Working Days prior to such changes so that the Council or the Provincial/Municipal Investment Sub-committee can decide on the issues no later than 10 (ten) Working Days.

Article 8: Revocation or Cancellation of Final Registration Certificate

- 8.1 Revocation of Final Registration Certificate: A Final Registration Certificate shall be revoked from the date it was issued by the Council or Provincial/Municipal Investment Sub-Committee if an Investor:

- (a) obtained a Final Registration Certificate or a Certificate of Compliance through fraud or misrepresentation; or
 - (b) does not commence an Investment Activity within six (6) months of the receipt of all the documents referred to in Sub-Article 7.3 except for the case of concession contracts in which such period is specified by agreement in the contract.
- 8.2 Cancellation of Final Registration Certificate: If an Investor applies to the Council or the Provincial/Municipal Investment Sub-committee for a Final Registration Certificate to be cancelled under Article 21 New of the Law on Investment, the Council or the Provincial/Municipal Investment Sub-committee must cancel that Final Registration Certificate only if and when the Investor has fully complied with Articles 22 New and 23 New of the Law on Investment.
- 8.3 Notification of revocation of Final Registration Certificate: If the Council or the Provincial/Municipal Investment Sub-committee revokes a Final Registration Certificate in accordance with this Article, the Council or the Provincial/Municipal Investment Sub-committee must notify the Investor in writing of the revocation.
- 8.4 Appeals: An Investor whose Final Registration Certificate is revoked by the Council or the Provincial/Municipal Investment Sub-committee under this Article may appeal in writing to Co-Chairmen of the Council within 20 Working Days of the date or receipt of the written notification of revocation from the Council or the Provincial/Municipal Investment Sub-committee under Sub-Article 8.3.
- 8.5 Loss of Investment Incentives: A QIP whose Final Registration Certificate is revoked or cancelled is not entitled to claim, on and from the date of the revocation or cancellation, any of the Investment Incentives set out in the Final Registration Certificate.

CHAPTER 3

ACQUISITIONS AND MERGERS OF QIPs

Article 9: Merger of QIPs

- 9.1 If two or more Investors, or an Investor and any other Person, agree to merge to form a new entity, and the new entity wishes to carry out the Investor's QIP and be entitled to the Investment Incentives and Guarantees specified in the QIP's Final Registration Certificate, the new entity must apply in writing to the Council or the Provincial/Municipal Investment Sub-committee to be registered as an Investor and for the QIP's Final Registration Certificate to be transferred to the new entity within 10 Working Days prior to the merging and transfer of the Final Registration Certificate.
- 9.2 The Council or the Provincial/Municipal Investment Sub-committee must consider the application made under Sub-Article 9.1 and must provide the new entity with a written approval or refusal of the registration and the transfer of the Final Registration Certificate within 10 (ten) Working Days of the receipt of the application.

Article 10: Acquisition of a QIP by unregistered Person

- 10.1 If an unregistered Person purchases the ownership of a QIP and it wishes to carry out the Investor's QIP and be entitled to the Investment Incentives and Guarantees specified in the QIP's Final Registration Certificate, the purchaser must apply in writing to the Council or the Provincial/Municipal Investment Sub-committee to be registered as an Investor and for the QIP's Final Registration Certificate to be transferred to the new entity within 10 (ten) Working Days prior to the transfer of the Final Registration Certificate.
- 10.2 The Council or the Provincial/Municipal Investment Sub-committee must examine the application made under Sub-Article 10.1 and must provide the purchasing entity with a written approval or refusal of the registration and the transfer of the Final Registration Certificate within 10 (ten) Working Days of the receipt of the application.
- 10.3 If a transfer of shares in an Investor results in control of the Investor being acquired by the transferee, the Investor must apply to the Council or the Provincial/Municipal Investment Sub-committee for the transfer and provide the name and address of the transferee within 10 (ten) Working Days prior to the transfer in order that the Council or the Provincial/Municipal Investment Sub-committee can decide on the issue no later than 10 (ten) days.
- 10.4 For the purpose of Sub-Article 10.3, "control" means holding at least 20% of the shares in the Investor.

Article 11: Acquisition of a QIP by another Investor

- 11.1 If a registered Investor purchases the ownership of a QIP and it wishes to be entitled to the Investment Incentives and Guarantees of a QIP carried on by that Investor, the purchasing Investor must apply in writing to the Council or the Provincial/Municipal Investment Sub-committee for the acquisition within 10 (ten) Working Days prior to the acquisition in order to receive that entitlement.
- 11.2 The Council or the Provincial/Municipal Investment Sub-committee must consider the application made under Sub-Article 11.1 and must provide the purchasing Investor with written approval or refusal of the registration and the transfer of the Final

Registration Certificate within 10 (ten) Working Days of the receipt of the application.

Article 12: Failure to register or to apply for approval

If a new Person or a purchasing Investor fails to apply to the Council or the Provincial/Municipal Investment Sub-committee for registration in accordance with Article 9 or 10, or a purchasing Investor fails to apply to the Council or the Provincial/Municipal Investment Sub-committee in accordance with Article 11, the new Person or the purchasing Investor is not entitled to any of the QIP's Investment Incentives and Guarantees.

CHAPTER 4 JOINT VENTURES

Article 13: Joint Ventures

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 and between Foreign Entities themselves and may include a joint venture with institutions of the Royal Government. There are no limitations based on nationality or the share-holding proportions of each shareholder, other than if the joint venture owns, or intends to own, land, or an interest in land in the Kingdom of Cambodia. In such case, the maximum combined share-holding of all persons who are not Cambodian Entities must not exceed 49 (forty nine) percent.

CHAPTERS 5 TAXATION

Article 14: General Principles

- 14.1 Liability for taxes: Investors are liable to, and must comply with the provisions of the Financial Management Law, the Law on Taxation, and the Law on Investment and related regulations.
- 14.2 Natural resources: The tax rate of the Tax on Profit, which profit derived from a contract sharing of oil and natural gas exploitation or from natural resources related activities including, but not limited to, timber, ore, gold and precious stones, shall be determined in accordance with Article 20.2 of the Law on Amendment to Law on Taxation.
- 14.3 Limitations: A full or partial exemption from taxes and customs duties shall only apply to the payment of any liability for the Tax on Profits and the payment of Customs Duty as provided in this Sub-Decree. These exemptions do not include the following:
- (a) tax on salary and withholding tax as stated in Articles 25 New and 26 New of the Law on Taxation, and Additional Profit Tax on the distribution of dividend; and
 - (b) Value Added Tax, specific tax on certain merchandises and services, duties and taxes to be paid at the time of import, and any other taxes as specified in the laws in force.

Article 15: Tax on Profit

- 15.1 Period of exemption from the Tax on Profit: In accordance with Article 14.1 of the Law on Investment, the profit tax exemption period, which is Trigger Period plus 3-year Period plus Priority Period, shall be determined in accordance with this Article.
- 15.2 Trigger Period: For Article 14.1 of the Law on Investment, the trigger period of the profit tax exemption period is the period 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.

For the purpose of this Sub-Article and Article 14.1 of the Law on Investment, profit refers to the taxable profit calculated under the provisions of the Law on Taxation regardless of the provisions of carry forward of losses under Article 17 of the Law on Taxation.

- 15.3 Three Years: This immediately commences from the taxation year immediately following the Trigger Period and the 2 immediately succeeding years.
- 15.4 Priority Period: The Priority Period determined under the Financial Management Law commences immediately after the third taxation year of the three year period provided under Sub-Article 15.3
- 15.5 Prepayment of the Tax on Profit for QIPs registered after the promulgation of Law on the Amendment to Law on Investment: The prepayment of the Tax on Profit does not apply to a QIP granted an exemption from the Tax on Profit as provided in

Article 14.1 of the Law on Investment.

15.6 Prepayment of the Tax on Profit for QIPs approved before the promulgation of Law on the Amendment to the Law on Investment: A QIP which is subject to Article 24 (2) New of the Law on Investment shall make monthly prepayments of Tax on Profit at the rate of 1% of turnover inclusive of all taxes, except Value Added Tax derived in the previous month, in accordance with Article 28 New of the Law on Taxation. The QIP's turnover realized during the exemption period determined by the Law on the Amendment to the Law on Investment of the Kingdom of Cambodia shall be exempt from prepayment of the Tax on Profit.

15.7 In accordance with Article 24 New of the Law on Taxation, a QIP shall not be subject to the minimum tax.

Article 16: Customs Duty Exemption on Production Equipments, Construction Materials, and Production Inputs

16.1 Exemption for Production Equipments and Construction Materials-Domestic QIP:

In accordance with Article 14.5 of the Law on Investment, Production Equipments and Construction Materials imported by a domestic QIP are exempt from Customs Duty. In the case where a QIP has a capability to directly export any portion of its manufactured products or has supplied for export industry, the quantity of Production Inputs that were taxed at the time of import and later used to produce goods that are, directly or indirectly, exported shall be entitled to duty exemption after a review of the quarterly report.

16.2 Customs Duty Exemptions for Production Equipments, Construction Materials, and Production Inputs - Export QIP:

In accordance with Article 14.6 of the Law on Investment, Production Equipments, Construction Materials, and Production Inputs imported by the Export QIP are exempt from Customs Duty. However, for the Export QIP which operates under the custom bounded warehouse mechanism, the customs duty exemption shall be in compliance with the Customs laws and regulations in force applicable to the mechanism. The processed Production Inputs that have not been exported shall be subject to the payment of customs duties and taxes applicable at the time of import after review of the quarterly report.

16.3 Customs Duty Exemptions for Production Equipments, Construction Materials, and Production Inputs ? Supporting Industry QIP:

In accordance with Article 14.7 of the Law on Investment, Production Equipments, Construction Materials, and Production Inputs imported by a Supporting Industry QIP are exempt from Customs Duty. However, in the case where the Supporting Industry QIP failed to supply 100% of its manufactured products to the export industry or directly export its products, then 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 after review of the quarterly report.

16.4 Procedure for Customs Duty Exemption: The Council must:

- (a) establish an inter-institution mechanism comprising members from the Council, and the Ministry of Economy and Finance to review the grant of incentives on the import and use of Production Equipments, Construction Materials and Production Inputs by a QIP for each investment purpose.
- (b) prepare a detailed Guideline on procedure for a QIP to be entitled to Customs Duty exemption.

16.5 Transfer or sale of Production Equipments, Construction Materials, and Production Inputs:

If any Production Equipments, Construction Materials, or Production Inputs in respect of which Customs Duty taxes were exempted on their importation are sold or used in a way unrelated to the QIP purpose, the Investor shall immediately:

- (a) pay Customs Duty taxes within 28 (twenty eight) Working Days in the amount calculated under the Customs Law and Regulations in force if the transfer or sale is done with a prior authorization from the Council.
- (b) pay Customs Duty, taxes, and penalties within 28 (twenty eight) Working Days in the amount calculated under the Customs Law and Regulations in force if the transfer or sale is done without prior authorization from the Council.
- (c) be subject to a temporary suspension of import authorization, and an examination of the Customs Duty exemption application submitted under the Law on Investment, including other Customs penalties in the case of omission or delay in payment of Customs Duty, Taxes and penalties as defined in paragraphs (a) and (b) of this Article 16.5

16.6 The transfer or sale of Production Equipments or Construction Materials and Production Inputs to another Investor:

An Investor or his/her representative may apply in writing to the Council for approval on the transfer or sale by a QIP of Production Equipments, Construction Materials, or Production Inputs which were imported with Customs Duty exemption, to another Investor to be used in a QIP.

CHAPTER 6 REPORTING OBLIGATIONS AND CERTIFICATES OF COMPLIANCE

Article 17: Reporting Obligations

17.1 Taxation Reporting Obligations: As mentioned in Article 104 New of the Law on Taxation, from the date of issuance of its Final Registration Certificate, a QIP shall submit monthly and annual tax declarations and shall pay all taxes as imposed

by each taxation regulation to the Tax Department, along with a Certificate of Compliance for the taxation year.

- 17.2 Customs Duty Exemption Reporting Obligation: All Production Equipments and construction materials imported by a QIP are subject to all customs clearance formalities. Within 30 (thirty) working days of import, a QIP must submit to the Council and the Tax Department the certified copies of customs clearance documents, including the valuation documents of those goods issued by the government appointed agency.

Article 18: Compliance Certificate

- 18.1 Compliance Certificate: In each taxation year, a QIP may not claim, and is not entitled to, any of the Investment Incentives unless a QIP is issued with a Compliance Certificate.
- 18.2 Automatic Issuance: Subject to a revocation of the Council under Sub-Article 18.4 and 18.5, the Council shall issue the Compliance Certificate to a QIP within 90 (ninety) Working Days after the end of each financial year.
- 18.3 Failure to Issue: If the Council failed to issue the Compliance Certificate under Sub-Article 18.2, it is deemed to have been issued but is subject to revocation under Sub-Article 18.4 and 18.5.
- 18.4 Review Powers: The Council may review any QIP holding a Compliance Certificate to determine whether the QIP has provided all information required to be lodged under Sub-Article 18.6.
- 18.5 Loss of Investment Incentives: The Council may revoke a QIP's Compliance Certificate if it is satisfied, after reasonable review under Sub-Article 18.4, that the QIP has failed to provide all information required to be lodged under this Article. The QIP loses its entitlement to all Investment Incentives from the date of revocation of the Compliance Certificate.
- 18.6 Information to be delivered: Every Investor who carries a QIP must lodge with the Council:
- (a) an annual financial statement, consisting of a balance sheet, a profit and loss account, cash flow statement and remark no later than the 31st of March of the following year;
 - (b) a Certificate of Tax Obligation Satisfaction from the Tax Department certifying that the Investor has:
 - (i) properly complied with and filed the monthly tax returns on time except in the case where such tax returns of that year are required by the Law on Taxation.
 - (ii) paid all taxes, levies, interest, and surcharges determined for the period of taxation audited by the Tax Department.
 - (c) quarterly report on the effective import of Production Equipments and Production Inputs for the production, and quarterly report on the effective export of the QIP's finished products and annual inventory list of immovable properties.
 - (d) investment information sheet in **CIB 01S** form.

CHAPTER 7 OWNERSHIP AND LAND USE

Article 19: Ownership

- 19.1 Ownership: The Land Ownership serving the Investment Activity is to be vested in a Cambodian natural person or legal entity in compliance with the Law in force.
- 19.2 Registration of Ownership: To register land Ownership, the Investor shall complete all forms or formalities for registration with the cadastral office under the jurisdiction of which the immovable property is located.
- 19.3 Ownership Rights: Under the Constitution of the Kingdom of Cambodia, the foreign natural person or legal entity may not own land in the Kingdom of Cambodia.

Article 20: Use of Land

- 20.1 Cambodian Legal Entity: In addition to the Ownership Rights, the Cambodian Investor is entitled to use land in various forms, including concession, lease, transfer, and as securities.
- 20.2 Foreign Legal Entity: A Foreign Legal Entity may use the land in various forms, including concession, long term lease for 15 (fifteen) years or more, and renewable short term lease. Land Use rights include the rights on buildings, arrangements, or improvements made by the lessee for a duration specified in the contract, provided that the uses are exercised in compliance with the law in force.
- 20.3 Lease of State Land: Any natural or legal entity who leased any piece of land from the State shall act in compliance with regulations regarding the management of the State property.
- 20.4 Sub-Lease: Any natural or legal entity who leased any piece of land from the State may sub-lease such land to a third party only if he/she obtained express prior approval or authorization from the competent authority.

CHAPTERS 8 LABOR FORCE

Article 21: Use of Labor Force

The Council has the duty to advise and help facilitate the investor with regard to obtaining, for the foreign spouse accompanying the investor, a visa, the right to stay and appropriate travel permit in compliance with the immigration law and its regulations.

For the recruitment by the investor of foreign staff and management experts, technical staff, skilled workers who are not available among Cambodians citizens, the Council shall help facilitate the investor to obtain the right to recruit those foreign employees to work as needed, in accordance with the Labor law, Immigration law and relevant regulations in force.

CHAPTER 9 PENALTIES

Article 22: Penalties

If the Investor fails to perform any obligation imposed by this Sub-Decree or the Law on Investment, the Investor shall be subject to penalties defined in Article 8.1, Article 12 or Article 18.5 of this Sub-Decree or other Laws regarding the omission or failure to perform obligations.

CHAPTER 10 TRANSITIONAL PROVISIONS

Article 23: Recognition as QIP of Investment Project Approved Prior to the Amendment to the Law on Investment

23.1 Any Invest Project approved under the Law on Investment of the Kingdom of Cambodia promulgated by Royal Kram No. 03/NS/94 dated August 05, 1994 and whose activity is undergoing before the date of entry into force of this Sub-Decree will be recognized as a QIP after the Investor has submitted a written proposal to the Council to have it deemed as a QIP and after satisfying all obligations defined in the Law on Investment and this Sub-decree.

The Council shall issue to the investor a Certificate of Recognition for the above Investment Project as QIP no later than 3 (three) Working Days.

For the Investment Project that has been approved but failed to perform any Investment Activity or started an Investment Activity for a period of time but later postponed the Activity without any notice of such postponement or termination to the Council, such Investment Project shall be subject to further regularization of documents in order to obtain QIP's entitlement before recommencement of the Investment Project.

23.2 Incentives for Investment Projects Approved Prior to the Adoption of the Amendment to the Law on Investment.

Investment Project which was approved prior to the adoption of the Amendment to the Law on Investment and has been recognized as QIP entitled to the profit tax rate of 9% before the promulgation of the Amendment to the Law on Investment of the Kingdom of Cambodia, is entitled to such 9% rate for a transitional period of not more than 5 (five) years starting from the fiscal year after the promulgation of the Amendment to the Law on Investment of the Kingdom of Cambodia and this Sub-decree only if the Investor has fulfilled all obligations stipulated in Chapter 6 of this Sub-Decree.

Investment Project which was approved prior to the adoption of the Amendment to the Law on Investment and has been recognized as a QIP and provided with Investment Incentives in writing by the Council may still be entitled to incentives in the form of profit tax and Customs Duties exemption on the import of Production Equipment, Construction Materials, and Production Inputs only if the Investor has fulfilled all obligations stipulated in Chapter 6 of this Sub-Decree.

CHAPTER 11 FINAL PROVISIONS

Article 24: Abrogation

The Sub-Decree No 88/ANK/BK dated December 29, 1997 on the Implementation of the Law on Investment of Cambodia, Amendment Sub-Decree No 53/ANK/BK dated June 11, 1999 on the Amendment to Sub-Decree on the Implementation of Law on Investment of Cambodia, Sub-Decree No 130/ANK/BK dated December 26, 2001 on the Amendment to Sub-Decree No 53/ANK/BK dated June 11, 1999, and any other regulation in contrary to this Sub-Decree shall be abrogated.

Article 25:

The Minister in charge of the Office of the Council of Ministers, the Minister of Economy and Finance, the Council for the

Development of Cambodia, Ministers of all ministries, heads of all institutions, and provincial/municipal governors shall effectively implement this Sub-decree within their respective functions commencing from the date of signature.

Phnom Penh, 27 September 2005

PRIME MINISTER
HUN SEN

CC:

- Ministry of Royal Palace;
- General Secretariat of Constitutional Council;
- General Secretariat of the Senate;
- General Secretariat of the National Assembly;
- Cabinet of Samdech Prime Minister;
- General Secretariat of the Royal Government;
- As defined in Article 25;
- Archives - Chronicle

ANNEX 1

of the Sub-Decree No. 111 ANK/BK date on September 27, 2005 on the Implementation of the Law on the Amendment to the Law on Investment of the Kingdom of Cambodia

Negative List (Article 6.1)

Section 1: Investment Activities Prohibited by the Relevant Law and Sub-Decrees:

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 electricity power by using any waste imported from a foreign country;
4. Forestry exploitation business prohibited by Forestry Law;
5. Investment activities prohibited by law.

Section 2: Investment Activities Not Eligible for Incentives

1. All kinds of commercial activity, import, export, wholesale, retails, including duty free shops;
2. Any transportation services by waterway, by road, by air except investment in railway sector;
3. Restaurants, karaoke parlors, bars, nightclubs, massage parlors or fitness clubs which are located outside of international standard hotel. However, though it is located in the international standard hotel if the Investor leased the above locations to a non-QIP third party lessee to conduct business, such investor shall not be entitled to profit tax exemption as granted to the Investor under the Amendment to the Law on Investment;
4. Tourism service provider, tourism agent, tourism information and tourism advertisement;
5. Casino and gambling business and service of any kind;
6. Currency and Financial business and services, including bank, financial institution, insurance company, and all kind of financial intermediation;
7. Activity related to newspaper and media, including radio, television, press, magazine, movie, video production or reproduction, theatre, studio, and related activities;
8. Professional services;
9. Living Modified Organisms LMOs that causes danger to biodiversity, human health and environment;
10. Production and processing of wood products which using wood from natural forest with a legal domestic supplying source as raw materials;
11. Production of tobacco products;
12. Production of food products and beverages with the investment capital less than USD500,000(five hundred thousand);
13. Production of product for textile industry with the investment capital less than USD500,000 (five hundred Thousand);
14. Production of garments, textiles, footwear, hats with the investment capital less than USD500,000 (five hundred thousand);
15. Production of furniture and fixture, which not using natural wood with the investment capital less than USD500,000 (five hundred thousand);
16. Production of paper and paper products with the investment capital less than USD 500,000 (five hundred thousand);
17. Production of chemicals, cement, agriculture fertilizer, petrochemicals with the investment capital less than USD1,000,000 (one million);
18. Production of rubber products and plastic product with the investment capital less than USD500,000 (five hundred thousand);

19. Production of leather products and other related products with the investment capital less than USD300,000(three hundred thousand);
20. Production of all kinds of metal products with the investment capital less than USD300,000 (three hundred thousand);
21. Production of electrical and electronic appliances and office materials with the investment capital less than USD300,000 (three hundred thousand);
22. Production of toys and sporting goods with the investment capital less than USD300,000 (three hundred thousand);
23. Production of motor vehicles, parts and accessories with the investment capital less than USD300,000 (three hundred thousand);
24. Clean water supplies with the investment capital less than USD500,000 (five hundred thousand);
25. Supporting industry, which has its entire production (100%) supplying export industry with the investment capital less than USD100,000 (one hundred thousand);
26. International trade exhibition center and convention halls with the investment capital less than USD8,000,000 (eight million)
27. Construction of modern market or trade center with the investment capital less than USD2,000,000 (two million) with size less than 10,000 (ten thousand) square meters and has inadequate space for car park;
28. Production of animal feed with the investment capital less than USD200,000 (two hundred thousand);
29. Production of ceramic products with the investment capital less than USD300,000; (three hundred thousand);
30. Training and educational institutes that provide training for skill development, technology, or poly technology that serve industrial, agricultural, tourism, infrastructure, environment, engineering, sciences, and other services with the investment capital less than USD4,000,000 (four million);
31. Hotel below 3-star grade
32. Complex tourism center with hotel containing less than 100 rooms or tourist inns of less than 30 housing and tourist estates (resort) less than a minimum length of ten (10) hectares;
33. Natural Tourism and creation of natural tourism site with the size less than 1,000 (one thousand)hectares of land with the investment capital less than USD1, 000,000 (one million);
34. Complex resort, including hotel, theme park, sport facilities, zoo with less than 50 (fifty) hectares;
35. Car parking;
36. Warehouses facilities;
37. Polyclinic having less than 50(fifty) patient beds with no modern equipment, laboratories, surgical operation, x-ray, emergency, pharmacy room, lift elevator (for up to 3 story building), apply no ambulances, morgue, with the investment capital less than USD1,000,000 (one million);
38. Production of modern medicines with the investment capital less than USD1,000,000 (one million);
39. Production of traditional medicines with the investment capital less than USD500,000(five hundred thousand);
40. Agricultural production:
 - 40.1 Paddy farming less than 1000 (one thousand) hectares
 - 40.2 All kinds of cash crops less than 500 (five hundred) hectares
 - 40.3 Vegetables less than 50 (fifty) hectares
41. Livestock production
 - 41.1 Cattle husbandry less than 1,000 (one thousand) heads;
 - 41.2 Dairy farm less than 100 (hundred) cows;
 - 41.3 Poultry farm less than 10,000 (ten thousand) heads;
42. Aquatic production:
 - 42.1 Fresh water aquaculture farm less than 5 (five) hectares;
 - 42.2 Sea water aquaculture farm less than 10 (ten) hectares;
43. Timber plantation, tree plantation, and wild animal farm:
 - 43.1 Timber plantation less than 1,000 (one thousand) hectares;
 - 43.2 Tree plantation less than 200 (two hundred) hectares;
 - 43.3 Wild mammal husbandry less than 100 (one hundred) heads;
 - 43.4 Wild bird husbandry less than 500 (five hundred) heads;
 - 43.5 Wild reptile husbandry less than 1,000 (one thousand) heads

The Ministry of Agriculture, Forestry and Fisheries shall define the definitions of each category in paragraph 43 above.
44. Freezing and processing of aquatic products and cereals and crops products for exports:
 - 44.1 freezing and processing of aquatic product for export with the investment capital less than USD 500,000 (five hundred thousand);
 - 44.2 processing of any kind of cereals and crops products for export with the investment capital less than USD 500,000 (five hundred thousand);
45. Provision of value added services of all kinds of telecommunication services
46. Real estate development.

Section 3: Investment Activities with specific characteristics which shall be Eligible for Custom Duties Exemption, but not Eligible for the Profit Tax Exemption

1. Telecommunication basic services;
2. Exploration of gas, oil and all kinds of mining, including supply bases for gas and oil activities.