

Cambodia

Law on Investment (1994)

Unofficial translation

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The year indicated in brackets after the title of the law refers to the year of publication in the Official Gazette or, when this is not available, the year of adoption of the law.

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Law on Investment

Chapter I. General provisions

Article 1

This law governs all Qualified Investment Projects and defines procedures by which any person establishes a Qualified Investment Project.

Only Qualified Investment Projects are entitled to the benefits subject to the scope of this Law.

Article 2

Within the meaning of this Law, the following terms shall be defined as follows:

“Qualified Investment Project” or “QIP” means an investment project which has received a Final Registration Certificate.

“Export QIP” means a Qualified Investment Project whose production is exported to be determined by Sub-Decree.

“Supporting Industry QIP” means a Qualified Investment Project which has its entire production (100%) supplying export industry as substitution for the regularly imported raw materials or accessories.

“Working day” means any calendar day which is an official working day of the Royal Government of Cambodia.

“Cambodian Entity” means a company which has a place of business and registered in the Kingdom of Cambodia and 51% or more of the shares of the company are held by a person with Cambodian nationality.

“Person” means any natural or juristic person.

“Conditional Registration Certificate” means the document issued by the Council under the paragraph 3 of the new Article 7 of this Law.

“Final Registration Certificate” means the document issued by the Council for the Development of Cambodia under the paragraph 7 of the new Article 7 of this Law.

“Investment Proposal” means the proposal submitted by any person to the Council for the Development of Cambodia with the purpose to establish a QIP.

“Applicant” means any person or group of persons submitting an Investment Proposal to the Council for the Development of Cambodia.

“Investor” means any person who carries on a Qualified Investment Project.

Chapter II. The council for the development of Cambodia

Article 3

The Council for the Development of Cambodia is the sole and One-Stop Service organization responsible for the rehabilitation, development and the oversight of investment activities. The council for the Development of Cambodia is the Royal Government's "Etat-Major" responsible for the evaluation and the decision-making on all rehabilitation, development and investment project activities.

Article 4

The Council for the Development of Cambodia comprises the following two operational boards:

1. The Cambodian Rehabilitation and Development Board; and
2. The Council for the Development of Cambodia

Article 5

The organization and functioning of the council for the Development of Cambodia shall be specified by Sub-Decree.

Chapter III. Investment procedures

Article 6.

All persons wishing to establish a QIP shall submit an Investment Proposal to the Council for the Development of Cambodia in the form and according to the procedures provided in this Law and the Sub-Decree.

Article 7

Within three (03) working days of the Council's receipt of the Investment Proposal, the Council shall issue to the Applicant a Conditional Registration Certificate or a Letter of Non-Compliance.

The Council shall issue the Conditional Registration Certificate if the Investment Proposal contains all the information required under the Sub-Decree, and if the proposed activity is not in the Negative List set out in the Sub-Decree. However, if the Investment Proposal does not satisfy the above condition, the Council shall issue a Letter of Non-Compliance to the Applicant.

The Conditional Registration Certificate shall specify 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, clearances, licenses, permits or registrations. The Conditional Registration Certificate shall also confirm the incentives that the QIP is entitled to under new Article 14 of this Law and recognize the statutes of the legal entity, which will undertake the QIP.

If the Council for the Development of Cambodia fails to issue a Conditional Registration Certificate or Letter of Non-Compliance within three working days, the Conditional Registration Certificate shall be considered to be automatically approved in the form set out in the Sub-Decree.

The Council for the Development of Cambodia shall obtain all of the licenses from relevant ministries-entities listed in the Conditional Registration Certificate on behalf of the Applicant.

All government entities responsible for issuing an authorization, clearance, license, permit or registration listed on the Conditional Registration Certificate shall issue such document no later than the 28th working day from the date of the Conditional Registration Certificate. Any government official who, without proper reason, fails to respond to an Applicant's request by this deadline shall be punished by law.

The Council for the Development of Cambodia shall issue a Final Registration Certificate within 28 working days of its issuance of the Conditional Registration Certificate. Issuance of the Final Registration Certificate does not release the QIP from obtaining any other approvals specified by competent ministries-entities. Even upon the lapse of the 28 working days deadline as stipulated in the paragraph 6 above, all competent entities shall issue approvals as prescribed by laws and regulations. The date of issuing the Final Registration Certificate shall be the date of QIP commencement.

All Letters of Non-Compliance shall clearly state the clear reasons why the Investment Proposal was not acceptable as well as the additional information required to enable the Council to issue a Conditional Registration Certificate.

Chapter IV. Investment guarantees

Article 8

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 as set forth in the Land Law.

Article 9

The Royal Government shall not undertake nationalization policy, which shall adversely affect private properties of investors in the Kingdom of Cambodia.

Article 10

The Royal Government shall not fix the price or fee of the products or services of a QIP.

Article 11

In accordance with the relevant laws and regulations issued and published to the public by the National Bank of Cambodia, the Royal Government shall permit investors with investments in Cambodia to purchase foreign currencies through the banking system and to remit abroad these currencies for the discharge of financial obligations incurred in connection with their investments. This concerns the following payments:

1. Payment for imports and repayment of principle and interest on international loans;
2. Payment of royalties and management fees;
3. Remittance of profits; and
4. Repatriation of invested capital in compliance with Chapter 8.

Chapter V. Investment incentives

Article 12

The Royal Government shall make available incentives under this Chapter to Qualified Investment Projects.

Article 13

Incentives and privileges shall include the exemption, in whole or in part, of custom duties and taxes.

Article 14

Incentives provided for in Article 13 shall include as follow:

1. A QIP shall be entitled to exemption from the tax on profit imposed under the Law on Taxation by obtaining a profit tax exemption period.

The tax exemption period is composed of a Trigger Period + 3 years + Priority Period. Priority Period shall be determined in the Financial Management Law.

The maximum Trigger Period is to be first year of profit or three years after the QIP earns its first revenue, whichever is sooner.

2. The entitlement of a QIP under the paragraph 1 above shall be subject to the QIP obtaining from the Council an annual certificate of obligation satisfaction before the State which shall be specified by the Sub-Decree.

3. A QIP shall be subject to a profit tax rate after its tax exemption period as determined in the Law on Taxation

4. A QIP which uses the entitlement under the paragraph 1 above shall not be entitled to claim any special depreciation under the Law on Taxation.

5. A domestically oriented QIP shall be entitled to import production equipment and production input construction materials, exempt of duty which shall be specified by the Sub-Decree.

6. Export QIPs other than an Export QIP which elects or which has elected to use the Customs Manufacturing Bonded Warehouse mechanism, shall be entitled to import production equipment, construction materials, raw materials, intermediate goods, and production input accessories, exempt of duty which shall be specified by the Sub-Decree.

7. A "Supporting Industry" QIP shall be entitled to import production equipment, construction materials, raw materials, intermediate goods and production input accessories, exempt of duty which shall be specified by the Sub-Decree.

8. A person which has acquired, or merged with, an investor, may on application to the Council for the Development of Cambodia inherit all, and any, guarantees, rights, privileges and obligations from the investor's QIP, subject to the merger or acquisition procedures which shall be specified by the Sub-Decree.

9. A QIP which is located in a designated SPZ or EPZ listed in a development priority list issued by the Council shall be entitled to the same incentives and privileges as other QIPs stipulated in this law.

10. A QIP shall be entitled to 100% exemption of export tax, except for activities as stipulated in laws in effective.

11. A QIP is entitled to obtain visas and work permits for the employment in the Kingdom of foreign citizens as managers, technicians and skilled workers, and residency visas for the spouses and dependants of those foreign nationals as authorized by the Council for the Development of Cambodia and in compliance with the Immigration and Labor Laws.

Article 15

The rights, privileges and entitlements of a QIP may not be transferred or assigned to any third party except by acquisition or merger as stipulated in the paragraph 8 of the new Article 14.

Chapter VI. Land ownership and use

Article 16

Ownership of land by investors for the purpose of carrying on a QIP shall be vested in natural persons holding Cambodian citizenship or in Cambodian Entities.

Use of land shall be permitted to investor, including concessions, unlimited long-term leases and limited short-term leases which are renewable, in compliance with the provisions of the Land Law.

Investors shall have the right to own and pledge as security and transfer the real and personal property situated upon the land and land which the QIP uses, for a period no longer than the period determined in a land concession contract or land lease agreement as permitted by Law.

Investors cannot transfer or pledge any longer the land concession, which has not been in operation.

Chapter VII. Employment practices

Article 17

Investors in the Kingdom of Cambodia shall be free to hire Cambodian nationals and foreign nationals of their choosing in compliance with the labor and immigration laws.

Article 18

Investors shall be allowed to hire foreign employees provided that:

- The qualification and expertise are not available in the Kingdom of Cambodia among the Cambodian populace. In the event of such hiring, appropriate documentation including photocopies of the employee's passport, certificate and/or degree and a curriculum vitae shall be submitted to the Council for the Development of Cambodia,

- A letter asserting needs for hiring the foreign employees shall be required. Investors shall obtain an approval and a permit from the Ministry of Social Affairs, Labor, Vocational Training and Youth Rehabilitation,
- Before working for investors, the foreign employee shall hold a permit for work in the Kingdom of Cambodia, issued by the Ministry of Social Affairs, Labor, Vocational Training and Youth Rehabilitation.

Investors shall perform the following obligations:

- Provide adequate and consistent training to Cambodian staff,
- Promotion of Cambodian staff to senior positions will be made over time.

Article 19

Foreign employees shall be allowed to remit abroad their wages and salaries earned in the Kingdom of Cambodia, after payment of appropriate tax, in foreign currencies obtained through the banking system.

Chapter VIII. Disputes and dissolution

Article 20

Except for land-related disputes, any dispute relating to a QIP concerning its right and obligations set forth in the law shall be settled amicably as far as possible through consultation between the Council for the Development of Cambodia, the investors and any other party involved in the dispute.

If the parties failed to reach an amicable settlement within two months from the date of the first written request to enter such consultations, the dispute shall be brought by either party for:

- Conciliation before the Council which shall provide its opinion, or
- Arbitration in or outside of Cambodia as agreed by both parties, or
- Trial by the tribunals of the Kingdom of Cambodia.

Article 21

If an investor intends to end its activities in the Kingdom of the Cambodia, it shall inform the Council for the Development of Cambodia through either a registered letter or a hand delivered letter stating the reason of such a decision, and signed by the investor or his attorney-in fact.

Article 22

If an investor intends to stop the activity of its QIP without judicial procedures, the investor shall provide proof to the Council that the QIP has properly settled its debts, including any complainants and claims from the Ministry of Economy and Finance, before the investor is allowed to officially stop the activities of the QIP or dissolve according to the applicable commercial law.

Article 23

Once the QIP is allowed to stop its activity either within the judicial procedures or not, the investor can transfer the remaining proceeds of their assets overseas or use them in the Kingdom of Cambodia. However, in the event that the QIP had used machineries and equipment that were imported duty free for less than five years, the QIP shall have the obligations to pay the duties applicable to those machineries and equipment, according to the determination of the Sub-Decree.

Chapter IX. Transitional provisions

Article 24

All investments authorized under the Law on Investment promulgated by Royal Kram No. 03/NS/94 dated August 05, 1994 and Sub-Decrees shall be considered to be Qualified Investment Projects as stipulated in this Law and relevant Sub-Decrees.

An QIP entitled to a tax on profit rate of 9% before the promulgation of this Law and which has commenced the investment activity in respect of which the approval was granted, shall be entitled to that 9% tax rate for five tax years commencing from the fiscal year after the promulgation of this Law, subject to the Investors submitting in each fiscal year after the promulgation of this law a certificate of obligation satisfaction before the State, which shall be specified by the Sub-Decree as stipulated in the paragraph 2 of the new Article 14.

A QIP entitled to an exemption of tax on profit before promulgation of this Law, and whose entitlement has been approved in writing by the Council, shall continue to be entitled to that profit tax exemption, subject to the Investors submitting in each fiscal year after the promulgation of this Law a certificate of obligation satisfaction before the State, which shall be specified by the Sub-Decree as stipulated in the paragraph 2 of the new Article 14.

Chapter X. Final provisions

Article 25

Where the QIP violates or fails to comply with the conditions stipulated by the Council for the Development of Cambodia, the Council shall have the power to withdraw the privileges and incentives granted to him, in whole or in part.

Article 26

Any provisions contrary to this Law shall be abrogated.

Article 27

This Law shall be promulgated immediately.

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