

ผลกระทบของการลงทุนจากสาธารณรัฐเกาหลีสู่การพัฒนาของกลุ่มประเทศ CLMV



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IMPACTS OF THE REPUBLIC OF KOREA FOREIGN DIRECT INVESTMENT  
ON THE DEVELOPMENT OF CLMV

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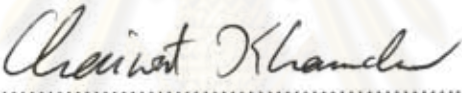
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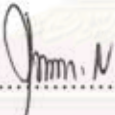
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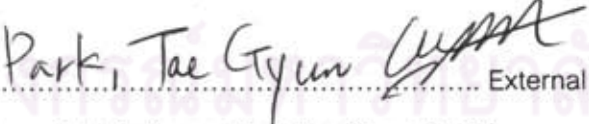
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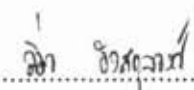
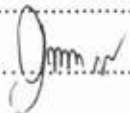
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การลงทุนโดยตรงจากต่างประเทศนำมาสู่การพัฒนาที่สำคัญในโครงสร้างพื้นฐานของ  
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การลงทุนจากต่างประเทศอย่างต่อเนื่อง ประเทศในกลุ่ม CLMV ซึ่งประกอบด้วย กัมพูชา ลาว  
พม่า และ เวียดนาม ก็เป็นกลุ่มประเทศที่ดึงดูดการลงทุนจากต่างประเทศเป็นจำนวนมาก และ  
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การศึกษานี้มีจุดประสงค์ในการระบุปัจจัยการเติบโตของผลผลิตมวลรวมในประเทศ  
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ของการลงทุนของเกาหลีในกลุ่ม CLMV กับปัจจัยต่างๆโดยวิธี Granger Causality โดยใช้  
ข้อมูล Panel Data ซึ่งประกอบด้วย ข้อมูลที่มีการเรียงตัวแบบอนุกรมเวลา และ แบบ  
ภาคตัดขวาง ผลการวิจัยแสดงให้เห็นว่า การขยายตัวของการลงทุนจากประเทศเกาหลีส่งผล  
ให้เกิดการขยายตัวของผลิตภัณฑ์มวลรวมภายในประเทศในประเทศเวียดนาม การทดสอบ  
Granger Causality ยืนยันว่าการขยายตัวของการลงทุนของประเทศเกาหลีในอนุภูมิภาค  
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สาธารณรัฐเกาหลีใน CLMV

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Foreign Direct Investment (FDI) brings the critical development in host countries' infrastructures such as public utility, information technology and transportation systems. FDI also improves their people's income and living standard. Because of above mentioned benefits, many countries have continuously put efforts to attract FDI. CLMV, consisting of Cambodia, Lao, Myanmar, and Vietnam, has struggled to attract FDI and due to their plentiful natural resources, lower manufacturing cost, and market opportunity, they have attracted FDI from many countries. Korean FDI in CLMV is increasing and has been recently ranked top.

This study has objectives to determine the factors of the growth in gross domestic products by means of linear regression and analyze causality between the growth of Korean FDI and other factors by means of Granger Causality test, using panel data (comprised of time series data and cross sectional data). The results showed that the growth of Korean FDI significantly boosted the growth of Vietnam's GDP. The granger causality test affirmed that the growth of Korean FDI to CLMV affects their GDP growth only in the first year. Finally, this study affirms the effectiveness of Korean FDI in CLMV.

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I hope this study will provide other researchers more benefits to develop insight view of Korean investment, especially in Cambodia, Laos, Myanmar, and Vietnam (CLMV) region.

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## Chapter I

### Introduction

#### 1. Background

Foreign Direct Investment (FDI) is the investment which usually involves participation in critical changing infrastructures such as information technology, transportation and social environment especially in developing countries. FDI outflow has emerged increasingly in developing countries as they need various benefits from overseas investment to better their economic growth. For instance, the overseas investment helps the investor finding the lower production cost, searching more natural resources and entering the regional market. After Plaza Accord Agreement in 1985, East Asian nations have faced the big impact from the competitive exporter which increases the tendency of overseas investment in new developed countries. Many researchers found benefits of FDI in various dimensions, positively and negatively.

A very recent interesting case-study, in terms of FDI dimension, is the Korean FDI inward. This took place in some developing countries since the growth of Korean overseas investment has been increasing to be the major investor. The Korean FDI increased itself significantly since early 1990s before it hit the currency crisis in 1997. After the interruption due to the crisis, Korean FDI has, again, started to continue the Korean FDI inward in 2002. The governmental deregulations on overseas investment by individuals have contributed to the growth of outward FDI. In particular, the recent investment in resource development surged on the back of government assistance.

In Southeast Asia region, FDI is regarded as the main factors to build up economical growth. In group of new ASEAN members, including Vietnam in 1995, and Myanmar, Cambodia and Laos in 1997, have the core purposes by unique politic, economy and commerce. Although, the political situation still branch this region off dissimilar political administration, FDI are an important progress for these regions. However, the global collaboration and economic integration among Southeast Asian nations are attractive factors for inflow capital. In diversity, the group of new ASEAN

members, composed of Cambodia, Laos, Myanmar, and Vietnam (CLMV), is the group of less developing countries in Southeast Asia region where there is conformity in livelihood dimension. The CLMV represents the group of opportunity lands which is completely ready for the development in economic environment.

Most of foreign investors consider production sources rather important as their objective is to help lowering the cost and expanding the market in the host country. In region, the ASEAN inward FDI was higher than 61 billion USD in 2007 by initial majority asset went to Singapore, Thailand, Indonesia, Malaysia and Vietnam, while other nations had lower investment proportion. However, inward FDI of others increased more than 70 percent in 2006. (UNCTAD, 2010: online) The most interesting industry is the industry that uses the natural resources especially in CLMV. For Myanmar, the extractive industries get the investment in mining, natural resources investigation, and petroleum. In Cambodia, telecommunication and textile industries are interesting. The agricultural production and service industry have invested in Laos continuously. Except the benefit of production cost, FDI inflow in this regional still emerge Free Trade Agreement to many nations.

The transformation of Korean investment in Asia with the growth of new developing countries from FDI is very interesting. In terms of ASEAN, South Korea is the third largest trade partner, the third largest investment destination, and the second largest construction market. Therefore this region is also a major supplier of natural resource and the ASEAN-Korea FTA which entered into enforcement already. The bilateral trade volume between ASEAN and the ROK nearly tripled from the period 2001 to 2008 and from 32 billion USD to 90 billion USD. (ASEAN-KOREA center, 2010: online)

Despite of the currency crisis, Korean FDI has been a success. Korean funding has contributed to increase in productivity, and improvement of trade balance, includes taking profit. The investment still has strengthened in intra-regional economic activities. In CLMV, the FDI increases more than past due to the privilege and the lower cost in many factors. This study will find impact of oversea investment and Korean FDI.

## 2. Objectives

1. To study relationship of outward Korean FDI and trading of Cambodia, Laos, Myanmar, and Vietnam (CLMV).

2. To analyze consequence result of Korean investment within CLMV in terms of both South Korea's development and domestic development.

## 3. Scope of Research Study

1. This research focuses on studying the impact of Korean FDI into CLMV economic development includes trends, behaviors, and factors affecting economic growth and so on. Its information will be representation as the formal available variables from reliable sources such as GDP, lending cost, investment trend and etc.

2. The research is to study quantitative data which is limited between 1992 and 2009 and other related timings.

## 4. Expected Benefit of Research

1. To find the character of Korean FDI in CLMV development.

2. This research will provide the information and guidance to the benefit of related parties.

## 5. Procedures

The economic data in this empirical study is the secondary data in terms of time series dataset, annually data since 1992 until 2009. The descriptive study uses cross-section data based on reliable sources for the country analysis such as government agencies, regional agencies (ACMES, APEC, ASEAN and etc.) and international agencies (ADB, IMF, WTO, and etc.).

This study shows deep descriptive analysis by using the statistical information in form of data tables and figures for understanding the structures and characteristics of Korean FDI in the CLMV region. Moreover, this study includes the specific econometric analysis to test relationship of ROK investment and CLMV.

## 6. Component of Research

Chapter 1 to describe the preface, the problems, rationale and the introduction about this study.

Chapter 2 to review the related FDI theories about purposes and characteristics, the multinational investment, and the development of CLMV and other co-operations in this region by using related literature review from the reliable sources.

Chapter 3 to show the economic linkage between CLMV and Korean Direct Investment by indicate the background of the ROK's trade evolution and investment development. For other issues, the content describes the component of economic cooperation which relates to CLMV, and the CLMV investment environment.

Chapter 4 to describe the research methodology in terms of the variable, hypothesis, limitation, and etc.

Chapter 5 to conclude the econometric result and descriptive analysis from supportable data.

Chapter 6 to summarize the research by indicating results, interesting remarks, and recommendations.

## 7. Definition of Terms

In this research, the some words refer to specific definition as follow.

- FDI refers to Foreign Direct Investment.
- GDP refers to Gross Domestic Products.
- Cambodia refers to the Kingdom of Cambodia.
- Laos refers to the Lao People's Democratic Republic.
- Myanmar refers to the Union of Myanmar.
- Vietnam refers to the Socialist Republic of Vietnam.
- ASEAN refers to the Association of Southeast Asian Nations.
- CLMV refers to the group of Kingdom of Cambodia, Lao People's Democratic Republic, Union of Myanmar, and Socialist Republic of Vietnam.
- Korea, or ROK, refers to the Republic of Korea.

## Chapter II

### Theory and Literature Review

#### 1. Multinational Investment

The recent boundary of commercial transactions is unlimited in its landscape, but the globalization policy of all government always expands the new formation of business operations especially in investment to business parties.

##### 1.1. International Commercial Theories

Many researches about international investment expresses the importance of the external funding to economic developing nations. Their initial studies have found relationships between international business and investment quantity since 1945. Mundell (1957) explains the phenomenon of capital abundance in developed country is produce and export goods in terms of capital intensive to country which have no comparative advantage in that goods. This Mundell's theory explains the characteristic of capital in form of substitution. Mundell uses the Heckscher-Ohlin-Samuelson (H-O-S), the traditional theory about the advantage of production from state has more comparative advantage in some products than others. In the practical view, Cho and Moon (2005) concludes the role of human factors and internationalization is important for their competitiveness may not have abundant natural resources. The open economy gain competitive factor by remobilizing human factors and opening up.

Besides the benefit of capital intensive, the other international trade theories express the reason to support foreign direct investment (FDI). Vernon (1966) developed the product life-cycle theory by response to the failure of H-O-S model. His theory suggests that early in a product life-cycle all the parts and labor associates with that product come from the area in which it was invented. After the product becomes favorites and uses in the world markets, production process moves away from the point of origin to other states. Moreover, Kim (2000) explains that FDI inflow in developing countries is due to external reasons rather than the internal effect.

## 1.2. FDI Importance and Impact of International Capital

Basu, Chakraborty and Reagle (2003) found the relationship between Gross Domestic Product (GDP) and FDI from 23 developing countries in Asia, Africa, Europe and Latin America. They found its relationship of both directions in more open economies, and one direction starts from GDP growth to increasing of FDI in closed economies. In the same, Trevino and Upadhyaya (2003) studies a specific experiment in 5 developing Asian countries, that the positive impact of FDI. In regulation barrier, Dhakal, Rahman and Upadhyaya (2007) uses regression techniques and identify institutional variables that explain the cross-country variation. The investigation shows that the relationship between FDI and country growth is reinforced by greater political rights and more limited rule of law.

In the different view, the study of Ntwala (2003) in Africa expresses the contradiction between the development of FDI and the socio-economic problem, however, the researcher recommends the government should revise the policies about FDI for maximize advantageous of their nations. In cultural view, Nabil (2000) studies the role of FDI in development and growth in the Organization of the Islamic Conference (OIC) which is insisted the improper policies of OIC states from cultural conservation play the dominant factor in inefficiency of FDI, however, his study supports the benefit of FDI in OIC development by the suitable environment then his conclusion shows the successfulness of some OIC members in development from FDI.

In study of Blonigen (2001), its discussion introduces the both of substitution effect and complementarity's effect. Substitution is replacing export by the outward investment for production facilities abroad. FDI will replace export's trade if there are sufficient costs to external transactions. For substituted effect, its FDI effect production of foreign capital may increases the local demand for those products. This effect relates more understanding about those markets. His study may insist that aboard affiliate investments may relate exports to host country.



Nevertheless, Dunning (1993) found natural resources that these resources such as minerals, raw materials and agricultural products are wanted from FDI inflow. The need was to guarantee a cheap and safe supply of natural resources justifies much of the FDI flows in the 1800s and early 1900s, largely from the most industrialized nations to the less developed areas of the global. For multinational firms, the FDI benefits extend to their companies develop relations to network actors in their local environments. Dunning analyzes the relationship between the owner and the decision by the multinational corporations give more advantage for the host nations follow by the market mechanism.

Many studies insist the effect of FDI with country growth. Alfaro and Charlton (2007) analyze industry-level data set to examine various links between FDI and country growth. They find FDI at the industry level to be associated with higher growth in value added. The relation is stronger for industries with higher skill requirements and for industries more reliant on external capital. Furthermore, FDI quality is also associated with positive and economically significant growth effects. In diverse direction, the negative results on growth have been noticed when FDI is in heavily protected industries (Encarnation and Wells, 1986:64-68).

Piriya (2008) reviews the connected theories between Multinational Corporation theory and International Capital Flow theory. The theory of international capital focuses on the movement of capital in amount and purpose to explain the causes and effects of this movement, while the Multinational Corporation represents activities associated with multinational enterprises. The most Multinational Corporations is relating firm structure manufacturing plants. In corporate view when the investment decision is happen, Moon (2004) found surplus factors became an important ownership advantage and contributed to a higher level of optimal output than before by increasing productivity. Then, Multinational Corporations seek complement factors abroad and increase the economic value of these factors as well as their own factors.

## **2. Korean Foreign Direct Investment**

## 2.1. ROK Foreign Direct Investment Policy

Hwang (2001) concludes the character of Korean economy in the face of growing of global economic integration depends on export-oriented, and then, Korean GDP about 73 percent relies on international trade. For these reasons, Korea is dedicated to maintain and further promoting openness. It is determined more than ever to promote free trade in both domestic and international markets. Moon (2007) concludes evolution of government in four stages as below.

Initial stage was timing between 1968 and 1974. In 1968, the government introduced four articles on foreign investment laws under the foreign exchange regulation. Article 131 referred to the approval of foreign investment. It stated the establishment of overseas subsidiary as an exception. For investing foreign stock, real estate or bond, approval of the Minister of Ministry of Finance was required. The investor must submit required documents.

Second stage looked to growth period since 1975 until 1979. Due to increasing in outward FDI transactions, the government revised the related laws. In 1975, the Ministry of Finance enacted foreign investment approval and post management guide and in 1978 the Bank of Korea established the by-laws on foreign investment approval operations. The approval requirement was needed. Investing companies had to get prior approval of their business plans by the president of the Bank of Korea. The attempt of the Government to control capital flight from the country pushed the introduction of controls.

Third stage was encouragement between 1980 and 1985. During this period, the government liberalized the law relating to outward FDI. Revisions were made in 1981, 1982 and 1983. Many conditions for FDI were relaxed. In 1981, the requirement of three-year business experience and host country's condition were adjusted and streamlined, and pre-approval process on outward FDI plan was stopped. In 1982, the investment rate was relieved; and then, restriction on credit limit was relaxed in 1983.

Forth stage was openness period between 1986 and 2004. Since 1986, the Korean economy had recorded trade surpluses and then outward FDI was more encouraged. Increasing local production costs and problems of labor drove firms to invest abroad. The government has relaxed more regulations including the investment ceiling for venture capitalists. In 2003, the enforcement ordinance in foreign trade law was established, which supported oversea Korean firms by solving obstacles.

Recently outward investment policy in Southeast Asia, the ASEAN-Korea Investment Agreement was signed on 2 June 2009 at the summit in Jeju Island, ROK. This agreement fulfilled the ASEAN-Korea Free Trade Agreement. The Investment Agreement is a legal framework to expand investment between both parties therefore this sign would afford better protection for both Korean and ASEAN investors by granting similar treatment with locals. The liberalization of investment in individual industries will be completed within five years of agreement taking effect.

## **2.2. Characteristic of Korean Foreign Direct Investment**

In the early period, Euh and Moon (1986) defines the successful multinationalisation of Korean firms, like others from Hong Kong, India, and Brazil, is depended on accumulating managerial experience and deepening international management techniques. Korea manufacturing investments are clustered in Asian countries and related with labor-intensive or technologically standardized products such as textiles and electronic appliances.

Deok (2007) describes Korean pays more attention to the region that need of capital so Korean FDI will lead to a more profitable in win-win game structure for both investor and recipient. Moreover, wage cost, labor disputes, and currency appreciation drive the Korean outflow FDI. Asia will be more a favorable place for Korean investors in the future not only because of low labor costs and transport costs but also because of increasing purchasing power. This result is similar to other studies, the labor intensive and trades are the main factors in selective decision of Korean FDI by evidence from China by Yao (2003) and Liu (2005).

Lee (2002) uses gravity model to analyze location of trade. Then he finds Korea's FDI stock, market size and growth in real GDP significantly cause a positive effect on location of FDI, while the real GDP and distance variables show negative effects on FDI which implies that Korean overseas production has little relation to high-income consumers and products. Lee notices transformation of choice of location after financial crisis. In early 1990s, the motivation was seeking low cost labor, but late 1990s; the driving FDI factor was formation of businesses in large conglomerate.

Shin, Mirza, and Kim (2009) analyzes conclude the recent characteristics and patterns of Korean outward FDI. The analyses are made at both the aggregate and industry levels to better understand the dynamics of Korean outward FDI. Half of outward FDI is in manufacturing sector conducted in three major industries: electronics, automobiles, and textiles. Although Korean firms are in several host countries, large portion is concentrated in four countries: China, Indonesia, United States, and Vietnam.

In last decade, the Korean FDI issue is stressed on the Southeast Asian region (ASEAN). The study of Ryou and Song (1993) expresses Korean outward FDI has increased since the mid 1980s related to changes in the global investment environment. Major incentives for Korean investors to invest in developing countries are the lower wages and the advantages of exporting to the developing country's market. In host countries, ASEAN countries emerged as the most notable recipients of Korea's outward FDI, with its share of investment almost doubling to 26 percent during the period between 1986 and 1991. Then, Korean FDI in this region has affected the economic development of both Korea and Host countries. They find the mutual benefit in promoting employment, export rate and transfer of technologies. Furthermore, the decision is limited by government policy, indefinite cost, and balance of payment.

In same period, Chinmay and Ki (2006) insist the trend of Korean FDI preference after 2000 in developing country such as China, Indonesia, Vietnam and India. This phenomenon is due to the Korean economic problems, such as, unfavorable industrial relations characterized as the antagonism between management and

domestic labor market, cost structure, unattractive business circumstances, and regulations. On the other hand, the higher labor cost and unstable labor market have prevented the inward foreign investment for supplementing the outward foreign investment, which led to imbalance between inward and outward foreign investment.

Min (2006) find Korean FDI in ASEAN has increased the direct investment value aftermath the crisis in 1997 follow to the increasing of the export in this region. Focus on Korean FDI in GMS region, there are many studies about the benefit of FDI in Southeast Asia. For instance, Chong (1999) studies the Mekong river basin development in terms of the realities and prospects of Korea's participation. Then he find Korea had a great interest in Basin development.

Korea remains keenly interested in participating in the development of the area. By this regional is the largest market of Korean and active participation in this region is viewed in mid and long term context. Min (2006) indicates that the Republic of Korea has experienced significant changes in both trade and FDI inflows as well as outflows following the 1997 Asian financial crisis. His research finds Korean FDI after the crisis has been successful. For giant country's effect, Cheong (2006) defines export-related Korean businesspeople that have extended their exporting life cycle by shifting their production facilities to China as their export platform since 1992. However, demand was lacking infrastructure-related materials. It is also observed that some Korean investments are shifting to Southeast Asian countries from China influence.

For other factor, Kim and Rhe (2009) find the determinant of Korean outward FDI are both conventional and idiosyncratic dimensions. He found a conventional result as market size by host market has a positive influence with Korean FDI. This finding indicates Korean FDI was also driven by the motive to acquire strategic assets. The major findings from Han and Thomas (1987) summarize the dominant type of FDI by Korean firms in the starting period is in natural resources. For patent factor, they still find the technology exploitation. This is the main factor of investment decision. However, compare with Japanese FDI, Chang and Andrew (2006) find the Korean firm's

decision are take more risk than Japanese firms by venturing into emerging markets that were characterized by high risk but might provide them untapped markets.

Jaewan (2007) concludes the prospects of Korean economic cooperation with CLMV is expected to increase steadily in the future as long as there is no sudden economic crisis as the one in 1997. Various factors like the following would do the economic between Korea and CLMV actively are the economic growth of the both. Its investment priorities are shifted to CLMV, specifically, Vietnam and Cambodia.

### **3. Evolution of Foreign Direct Investment in CLMV**

The CLMV group consists of four countries; the Kingdom of Cambodia, the Lao People's Democratic Republic, the Union of Myanmar, and the Socialist Republic of Vietnam. The CLMV countries still have relationship in terms of membership in global and regional organizations, such as the Association of Southeast Asian Nations (ASEAN). In depth of collaboration, the Asian Development Banking grants the initial financial to support the intra economy by the geography of this river basin as the Greater Mekong Sub-region (GMS), which consist of the CLMV, Thailand and south provinces of the People Republic of China. Its inside-economic infrastructure is predominantly based on agriculture, where rice as theirs main product, but they are diversifying into modern industry and transparent to liberalization economy.

Presently, the trend of global Free Trade Agreement (FTA) has increasing more importance in regional from both attractive investment policies and other incentives. In status, CLMV countries are not only the least developed countries but also the poorest states in the world. Although CLMV are the ASEAN members, their economic integration is differ from ASEAN so the CLMV economic surrounding will be a long full of obstacles and challenges. Donghyun, Innwon, and Gemma (2008) found the ASEAN-Korea Free Trade Area (AKFTA)'s considerations are important for productivity gains from competition. In view of transfer of technology through trade, these lags substantially behind Korea in terms of technological capabilities, especially in CLM.

Due to CLMV is the part of Great Mekong Sub-region (GMS) economic cooperation are the historical legacies and the political culture to be two factors to take into account in understand what influences pace of economic development in this regional. Its success of these states in overcoming the burden of their respective and intertwined histories has been striking. For cultural example, Buddhist religious countries, as political institutions, have been relative successful in encouraging economic development. For environment issue, Philip (2000) finds GMS programs in issues such as land tenure, macro-economic stabilization, and poverty alleviation, and then he concludes all with their own positive and negative implications for forest cover.

From traditional administration, the Yew's study (2006) has stressed on CLMV since the mid-1980s, they have been undergoing economic transition, from central planning to market economy, from inward-looking to outward looking economic development strategies and policies, and from close economic with the Soviet-bloc to closer economic relations with market economies. He refers the membership of ASEAN and WTO will help less developed states to reform and restructure their economies.

Quah (2007) surveys the IAI Work Plan was launched by ASEAN in 2002. Its plan aims to help narrow the development gap between the older six ASEAN member countries and the newer CLMV countries. This study cites many problems, among which are the low quality of some programs, and the lack of coordination between ASEAN and other development frameworks. After all, the old six ASEAN members have not enough budgets to meaningfully fund IAI initiatives. So the economic disparities will become more concern issue in the context of East Asian integration by expand "Initiative for ASEAN Integration" to "Initiative for East Asian Integration." These results show the importance of East Asia's role in expansion the economic influence.

Chalongphob (2006) insists the common interest of East Asia regional; compose of six tradition ASEAN members, China, Japan, and Korea, to provide development assistances to CLMV countries, whether financial or technical. Various cooperations such as ASEAN Integration initiative, Great Mekong Subregion (GMS), and

Ayeyawady-ChaoPhraya-Mekong Economic Cooperation Strategy (ACMECS) can provide financial and other technical assistances to CLMV. Masami (2007) identifies and analyzes the implemented policies so far on using geographical locations for developing the economic corridors in GMS. Thus, the researcher finds this GMS can be considered as the effective development scheme that had been implemented. In consequence result of economic integration, Chalongphob (2006) exhibits the negative side of economic integration with large development of disparity such as the social problems about illegal labor migration in neighbor countries.

Claude (2003) shows the notice of FDI. For East Asian and Southeast Asian countries, excluding Japan, the inward FDI-GDP ratio is very high compared with others. It seems that this is the most important characteristic and that the other characteristics, such as export-led growth, have been created by active inward FDI. Daisuke (2006)'s paper which concludes the interesting points of FDI in CLMV was the elimination of trade barriers would provide business opportunities within ASEAN, and the low wage countries, like as CLMV, can implement measures to attractiveness for FDI.

### **3.1. Kingdom of Cambodia**

Ludo, Joseph, Reth, and Daniel (2008) examines factors of inflow FDI into Cambodia economy during 1995-2005 which was small open economy. Geographic distance negatively affects the level of FDI inflows in Cambodia. The Asian crisis during 1997-1998 and China's WTO membership have negative impacts on the Cambodia to be attracted destination of FDI. Therefore, further liberalization of Cambodia trade will attract more inward FDI. Peter (2009) studies its attractive factors, and then, he finds the benefit to investing be the comparative advantage afforded in accessing resources but the other barrier to do business are higher than other countries in this sub region.

In tourism sectors, Vilailuk (2009) researches tourism liberalization and national strategies on tourism in Cambodia, which have the high importance in their economy, and then, this study finds the South Korea investors had the dominate roles in Cambodia. The Korean is the top of the market arrivals in Cambodia because of



attractive places, as Angkor Wat. Moreover, Vilailuk mentions the activity such as golfing that attracts Korean tourists. This phenomenon gives the consequence result in terms of investment. Many property projects are planned to developing by South Korean investors to cater for the growing businesses conducted. In 2007, Cambodia became the second biggest destination after China for Korea's overseas investment.

### **3.2. Lao People's Democratic Republic**

Over the past decade, FDI flows to Laos have gradually grown. Pemasiri and Sommala (2008) notice that in global there is increasing in global is as a result of liberalization of FDI regulations in most part of the world. Developing country governments are driven by the need to attract foreign investment by offering investment incentives and removing obstacles of investment. Countries, such as Laos that are isolated in the past, have experienced shortages of foreign capital flows. Nowadays, Laos has been successful in attracting foreign capital of multinational enterprises seeking new markets, resources and low production cost. Australian investors have become actively involved in various sectors of the Laos economy.

In present perspective, Oliver and Alfons (2009) shows the Lao PDR is considerably larger than the volume of ODA being provided by the donor community. In the case of conflicts between FDI in land and donor projects with other objectives, probably the larger project will be given preference. It is utmost importance that the donor community is aware of this changing environment and realizes the need to reassess how to do business in Lao PDR.

### **3.3. Union of Myanmar**

Khine (2008) introduces Myanmar is abundant land in natural resources, human resources, cultural and national heritages that are very attractive for foreign investors for many years. Since the enactment of the Myanmar Foreign Direct Investment Law in 1988, volumes of foreign investors have taken advantage of the opportunity available to them. Most of the FDI inflow in this early period was concentrated in oil and gas sector, followed by manufacturing sector and hotel &

tourism sector respectively. The challenge for Myanmar is not only to strengthen its relationships with these countries but also to tap powerful economies like Japan, Korea and Hong Kong as well those in the Middle East. The foreign policy adopted by the military government substantially increased Myanmar's external trade since the 1990s. Export amount increased by 14.4 times for the period between 1985 and 2006, and then, its import grew by 13.8 times in same period. (Toshihiro, 2009: 68)

#### **3.4. Socialist Republic of Vietnam**

In Vietnam, FDI has been considered to be the engine growth for developing countries. FDI of Vietnam has been increasing since the Law of Foreign Direct Investment (LFI) is issued in 1988. After market-oriented reform package was the first implemented in 1989, the country has also pursued proactive trade liberalization and integration with global economy. Vietnam has been increasing number of trade agreements, such as that with the EU in 1992, with the ASEAN in 1995, and with APEC in 1998. Then, the sector with FDI has become an integral part of Vietnam's economy.

Thuay (2007) studies the impacts of FDI on Vietnam's economy, particularly the technological spillovers effects brought in by MNCs. Although the value of FDI inflows decreased in 1997-1998 owing to the currency crisis, FDI has quickly recovered since 1999 and contributed a great deal to its growth. FDI has complemented insufficient domestic investments for enlarging production, helped to reduce government budget deficits, contributed to rising exports to international markets and increased employment. Moreover, with advanced technologies and know-how embodied in capital, FDI has been discussed as having a long-term effect of contributing to the growth of productivity in Vietnam's industries.

For Vietnam's citizen, Nguyen (2002) analyzes impacts of FDI on poverty reduction in Vietnam in the 1990s. He refers the economic reform in the late 1980s to the initial impact of FDI extension, and then, he finds FDI's impact on poverty reduction through direct and indirect impacts which come from the development of surrounding and employment.

## Chapter III

### The Economic Relationship of Republic of Korea and CLMV

#### 1. ROK Economic Development and Relationship with CLMV

Since 1945, Korea has liberated from Japanese empire after the ending of Second World War. Korea still was being the poorest countries in the world. Afterward, the Korean War in 1950 destroyed over two-thirds of the overall infrastructure. In 1960s, the Korean society was the traditional agricultural society. The Korea's foreign economic policy during this period focused on securing maximum foreign aid. Foreign assistance supported the import of necessary goods for survival, while exports were minimal. Korea sold a few natural resources overseas, thereby earning small amounts of foreign currency, but there was no formal policy, except for limited attention given to import substitution.

Then in 1962, Korea changed country structure to massive industry process. The export development strategy was promoted to labor-intensive industries. Between 1962 and 1970, the amount of exports rose rapidly because of the comparative advantage from implementation of various export promotion measures. Moreover, the nationalist policy was used to export's discouragement by the primary goal of international trade policy. The policy was to earn foreign currency. These actions produced dramatic phenomena. In the 1970s, the light manufacturing had less important, the heavy manufacturing and Chemical industry became the main share of Korean exports. In the mid-1980s, the Korea's policies, for export promotion and import restriction, encountered the aggressive resistance from overseas counterparts.

Due to international stage's pressure, Korean trade's policy opened domestic market to more liberalization and high competitive market. The indirect result of international acceptance in emitting economic border was honor received to chance to be host of Asian Game in 1986 and Olympic in 1988, be the second nation in Asia continent after Japan in 1964. In same period, both inward and outward foreign direct

investments were also liberalized. This led to foreign capital's movement increased significantly. However, Korea encountered the financial problem from the balance of payment in early 1990s, which trade deficit and current account deficit had raised gradually because trade and investment liberalization.

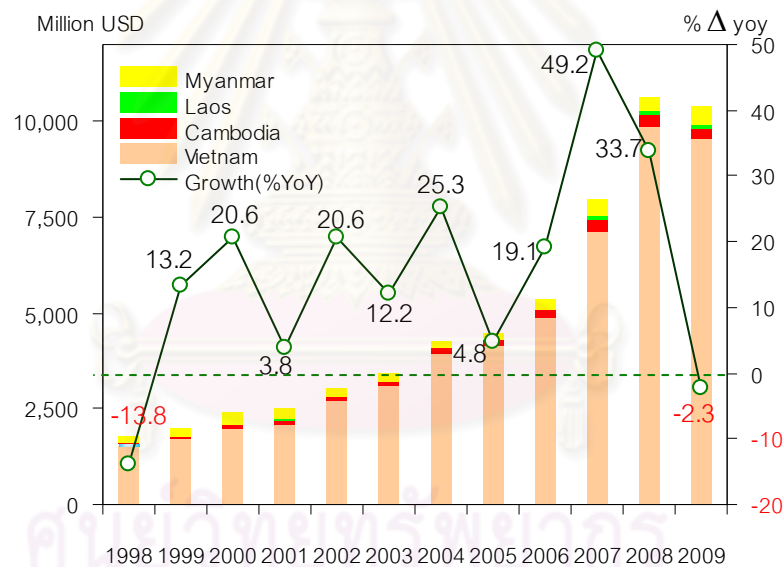
In private sector's side, trade and investment liberalization raised more obstacles to local industry, and then, the state level met critical problems in slowing exports and rapidly increasing imports. Moreover, Korea's financial structural, which had been protected from the traditional policy before 1980, had unstable from out-dated financial process. The source of financing borrowed from international financing market. Finally, Korea was impacted from the financial crisis in 1997 so this incident impacted to foreign exchange reserves. In November 1997, Korea government borrowed emergency fund from International Monetary Fund (IMF) by the limitation about government spending. It was used from IMF agreement.

From the loan agreement, the President Kim, new president in 1998, corrected the problems by issuing the new element of economic policy was globalizing. This policy was based on corporate governance and cultural economy. Then, this is the initial modernization trade policy. In global stage, Korea is an original Member of the World Trade Organization (WTO). Moreover, Korea has contracted trade agreements with its major trading partners in terms of bilateral and multinational negotiation, including trade negotiation with other emerging countries. Since 1998, Korean trade policy's objective has been to open economy based on market principles. To keep competitiveness of Korean businesses, the trade policy's objective is build to new diplomatic relation for trade expansion by focusing on the potential of new reachable market. The trade policy's target is to help government's growth to trade volume should reach 1 trillion USD by 2010, making Korea one of the top eight traders.

Besides, the present government of President Lee Myung Bak still precedes the supporting policy with foreign investment in Korea for the recover of depressive economy by emphasizing the research and development, supporting the

green industries, and establishing Global Korea Network for attracting foreign capital. Form enhancing competitiveness by developing technology advancement for supporting productivity in manufacturing, its policy reduced the numbers of human in services industry; the proportion is one third lower than in manufacturing side. For issue of human resources in manufacturing side, the number of low skilled labors within industry still has been lower level than other intensive-labor countries. Recently, International trade has been influenced to Korean economy's development. Moreover, Korea is still significant sources of funding in developing countries from Korean investors in order to find the opportunity in other countries to get benefit from investment.

Figure 1. Illustration of Korean Trade Volumes in CLMV



Source: Calculated from Korea International Trade Association (KITA)

### 1.1. Trading between ROK and CLMV

International Trade of Korea and CLMV initially grew when CLMV operated opened-door policy and restored its diplomatic relations with Korea. GSP is the driven factor in supporting the exports of both parties. In Vietnam, the bilateral trade between Korea and Vietnam has shown a continuous expansion due to the Doi Moi

reformed in Vietnam although it fell in a few years between the East Asian crises. This phenomenon brings the growth of Korea's trading to others during last 10 years.

For Cambodia, Korean trade started in 1997 when their diplomatic relation was restored. The trade volume increased almost six times to about 291 million USD at the end of 2009. Korea has maintained trade surplus with Cambodia until present. In the nearly period with Cambodia, Laos had the diplomatic relation with Korea in 1995 and started trading in following year with the small volume about 10 million USD in 1996. The trade volume between Korea and Laos has been steadily expanding. The bilateral trade between Korea and Myanmar has been started since the 1960s; however, the two countries began to trade actively in 1995. In summary, the amount of money of Korean trade within CLMV, composes of exports and imports, has been increasing continuously from industrial goods. Nowadays, Vietnam and Cambodia are regarded to be the main recent counterparts. (As Figure1)

Not only Korea's trading value is regarded to be the economic topic from Korea, but also, the amount of money of Korea's Official Development Assistance (ODA) has been increasing continuously. Korea's ODA in CLMV between 1991 and 2008 was about 192 million USD. To look forward, Korean policies have expanded the development cooperation by scaling up its ODA to a level commensurate with Korea are economic standing. In policy level, the Korean government still stimulates their entrepreneur units to participate in the international trend by increasing the proportion of grant aid to Least Developing Countries. The main characteristics of Korean ODA are sharing the Korean experiences which have the unique experience in achieving rapid development in various industries as both a recipient and a donor.

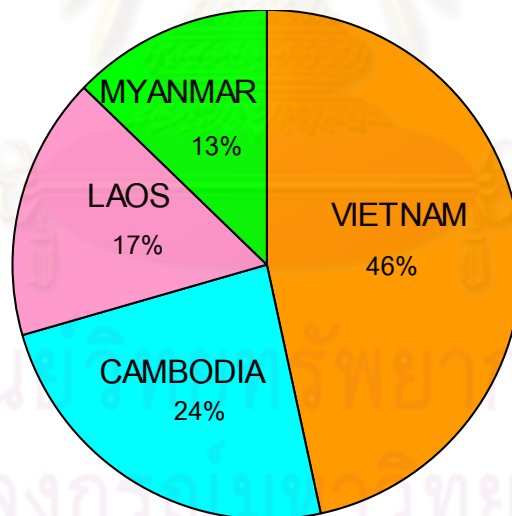
ODA laws such as the Korea International Cooperation Agency (KOICA)'s Act and the Economic Development Cooperation Fund (EDCF)'s Act presented the general goal of development projects. By the objectives, the goal of Korea's ODA poverty reduction and sustainable development were main challenges of the international development cooperation and the millennium developing goals and

Korea's experience in poverty alleviation served as its model. Given Korea's relatively small amount of assistance raised the visibility by concentrating on poverty reduction.

## 1.2. ROK Free Trade Agreements

Recently, the Korean Government is rushing to negotiate the Free Trade Agreement (FTA) for enhancing the Korean organization's capability to compete with other countries which have the benefits from their privileges from FTA. The Government policy has been affording for multilateral trade strategy to reduce trade deficits by covering merchandises, services, investments, government procurements, copyrights, technical standards, and etc. In both ways, the open market's strategy is solution to adjust the positioning of economy and productivity; however, this strategy could cause suffering in domestic society. For local understanding, the government has added more procedures to collect public opinion for be the issue of FTA since 2004.

Figure 2. Illustration of Korean ODA portion in CLMV between 1991 and 2008



Source: Calculated from Korea International Cooperation Agency (KOICA)

The objective is to secure procedural transparency by reflecting all opinions. From the beginning, Korean needs to generate their policies within the multilateral free trade system under the World Trade Organization rules, and then, to

drive export's quantity from their strategic industries. Afterwards, the Korean government still needs to promote more trade agreement criteria due to specific causes.

Initially, the more and more Korea's trade partners at this time have been adopted the FTA topics as their main stream of international trade, so, if Korea still could wait to participate with FTA issue with their major trade partners than their rivals, Korea will lose the position of the outstanding share in those markets. Secondly, the high level of liberalization under FTA framework leads economic to diversification and development. By the limitations of domestic market size and export dependency ratio reaching 70 percent, Korea had a limit into developed economy with only domestic consumption policy, so, Korean FTAs have been expanding economic sizes. In term of Korean enterprise level, their openness could lead the strength of their competitiveness by cheaper cost of raw materials.

Within developed countries, the Korean FTAs could increase the level of Korean investor's potential from learning technologies and innovations from host country. Thirdly, for domestic market, Korean FTAs could contribute the better opportunity in buy selection to the Korean, due to, the citizens within the FTA parties might purchase commodity goods in cheaper price levels because their tariffs are reduced or removed from FTA. Finally, in the sense of diplomatic, the international political may be the major determinant of Korea's determinations to willing FTAs. In this reason, these bilateral FTAs, with the United States, China, Japan, and others, are signed separately by the both of political and commercial causes could be the motivations of selecting FTA partners. Though the multilateral trade negotiations still are major trade strategy of Korea's policy, FTAs are noticed together for correct the defected points in multilateral trade negotiations. It is considered that FTA provides benefits to the concerned countries in negotiations and its level of success depends on how it is implemented. Form the world's tenth largest economy position and twelfth largest in trading quantity; Korea needs to enhance their proactive strategies over the global market in order to raising their GNP per capita in the level of developed country.



Since 2003 when the Korea's government established the FTA Roadmap, Korea had negotiated primarily in trade agreements with more than 50 countries. Recently, the effective agreements have been signed with Chile, Singapore, India, European Free Trade Association (EFTA), and ASEAN. In the next step, the Korean FTAs with the United State and the European Union are expected to final concluding. Moreover, Korea is processing negotiating with the others such as Peru, Australia, New Zealand, Columbia, Canada and Mexico.

For ASEAN which are important partners for around 10 percent of Korea total export and import, the ROK-ASEAN bilateral trade grew from 38.7 billion USD in 2003 to 718.6 billion USD in 2007. Korean Investment in ASEAN had increased from 710 million USD in 2004 to 3.71 billion USD in 2007. And Korea's reception of construction orders in ASEAN amounted to only 700 million USD in 2004. But in 2006, it was 2.76 billion USD, and reached 8.95 billion USD in 2007. For negotiation order, the ASEAN Korea Free Trade Agreement (AKFTA) was proposed by the Korean President Roh Moo Hyun in October 2003 at the ASEAN-ROK summit held in Bali, Indonesia. Subsequently, ROK-ASEAN Experts Group (AKEG) was established to draw up the Joint Study Report on the feasibility of an ROK-ASEAN FTA. The Joint Study has been completed and its recommendations were considered by the ROK-ASEAN Summit in Vientiane, pursuant to the endorsement given by the economic ministers of the ROK and the ASEAN to the recommendations. One of the recommendations was to realize the FTA with consideration for special and differential treatment for the ASEAN developing countries and additional flexibility for the newer ASEAN member countries, namely Cambodia, Laos, Myanmar and Vietnam (CLMV). These countries would be forced to realize the FTA in additional five years. (ASEAN-KOREA center, 2010: online)

The Framework Agreement was signed on 13 December 2005 in Kuala Lumpur, Malaysia. The main objective of this Agreement is to establish an ASEAN-Korea Free Trade Area to enhance economic, trade and investment cooperation among ASEAN states and Korea by progressively liberalizing and promoting trade in goods and services as well as create a transparent, liberal and facilitative investment regime. The

Agreement also aims to explore new areas and develop appropriate measures for closer economic cooperation and integration; facilitate more effective economic integration of the new ASEAN member states and bridge the development gaps; and, establish a cooperative framework to further strengthen economic relations among the countries. From the contracts in 2005 and the trade in goods chapter of the AKFTA entered into force in June 2007. It was agreed that ASEAN-6 and Korea shall eliminate tariffs for 90 percent of all products by 2010. Thailand signed the Accession Protocols to the Trade in Goods and the Trade in Services Agreements under the AKFTA on 27 February 2009.

In future, the initiative of ASEAN plus three cooperation began in December 1997 with the convening of an informal summit among the leaders of ASEAN and counterparts from China, Japan and Korea at the sidelines of the second ASEAN informal summit in Malaysia. The ASEAN plus three was institutionalized in 1999 when the Leaders issued a Joint Statement on East Asia Cooperation at 3rd ASEAN plus three Summit in Manila. Their leaders expressed resolve and confidence in further strengthening and deepening East Asia cooperation at various levels and in various areas, particularly in economic and social, political, and other fields. ASEAN and plus three countries hold dialogue and consultations at the summit, ministerial, senior officials and working groups to strengthen and deepen cooperation. Currently, there are 55 mechanisms under the ASEAN plus three processes, coordinating 20 areas of ASEAN plus three cooperation, which include economic, monetary and finance, political and security, tourism, agriculture, environment, energy, and ICT.

## **2. Korean Direct Investment in CLMV**

Since financial crisis in 1997, the Republic of Korea was the early state where recovered from the economic recession in Asia region. This phenomenon happened from the vigorous infrastructure and the helping funds from International Monetary Fund (IMF) by the strict measures that solved the financial problems such as to adjust Non Performing Loan (NPL). Overall, Korea got the investment in major industry from aboard, and then, Korea did overcome the past crisis rapidly. In past, the Korea's government encouraged in inward FDI from foreign investors, and then, this was the

main cause of the preceding successful. Moreover, Korea had many readiness factors in population which was more than 90 percent get the background education, the fully transportation system, and the geography in center of North East Asia. For supporting FDI, the Korean government promoted foreign investment through the enactment of the Foreign Investment Promotion Act (FIPA) since 1998.

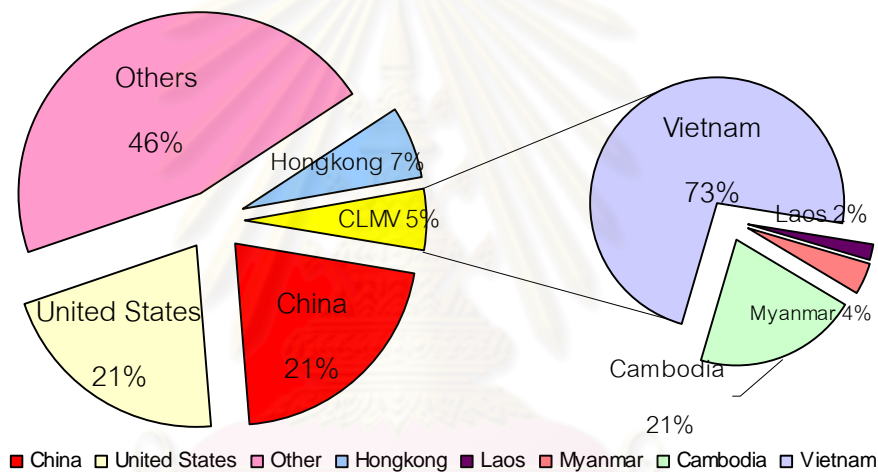
In practical organization, the Korea's government established the Korea Investment Service Center (KISC) was first part of driven organization for supporting the Korean investment regime in 1998. After initial successful, the government had planned to attractive foreign investment. In 2003, the transformation of embodied in the KISC was launched "Invest KOREA", with both goals of increasing foreign direct investment and reforming FDI supportive system. Invest KOREA has attracted foreign investment by identifying potential foreign investors, supporting investment projects, providing overall services by all experts, and building a cooperative network with related organizations.

The amount of money of cumulative FDI from 1998 to 2008 was about five times of the amount of money of cumulative FDI from 1962 to 1997, which started from the beginning industrialization to Asian financial crisis. The amount of FDI insists FDI be a major force driving the Korean economy. In structure of source of funding, the reduction of United State of America's investment capital after the last financial crisis was replaced by the increased FDI from the Europe and Japan. The recent investment trend was appearing in financial service industry from using the enforcement of the financial investment services and capital markets Act (FSCMA) in early 2009; and, investing from financial institutions to increase liquidity asset. The Korean manufacturing industry has been based on the growth of potential industries such as Semiconductors, Automobile, Shipbuilding, and etc.

The starting of Korean oversea investment had borne from the various motivations by each sector. For manufacturing side, the main reason was the cost reduction, like as, the lower wage, the lower ingredients, and the advantage of logistics cost. Furthermore, from international agreements, the Korean enterprises had emitted

the general privilege of business activities, or Generalized System of Preferences (GSP), due to; Korea was accepted to be the high economical development state. Then, the Korean's overseas direct investment in lower developing countries could get the benefit from investment. In diverse cause of another host country, the overseas investment in developed states will bring the technology and chance to access the local market together. In the government level, the supporting policies are issued continuously like as the bilateral agreements, the international organization's privileges, and the economic integration.

Figure 3. Illustration of portion of Oversea Korean Investment since 1980 by country

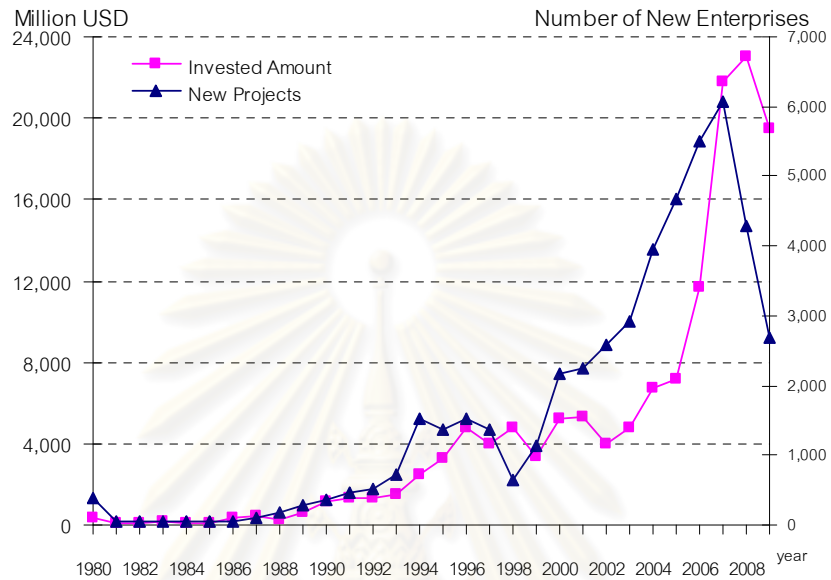


Source: Calculated from Korea Exim Bank (Accumulate Data as 29 May 2010)

In the dimension of outward FDI capital were modest from responding FDI control rule. After the 1990s, the outward Korean FDI (As Figure4) restored from many reasons as the labor-intensive activities moved offshore, and then, the Chaebol group, the group of Large Korean companies, began to quickly internationalize their operations. However, this overseas investment trend fell from the Asian financial crisis in 1997 by the overseas operations of the Chaebol were interrupted by their financial limitations and weaken currency. However, the level of overseas investment trend had climbed to the important production sources within developing regions. For interesting example, the China and the Southeast Asian regions are captured to be the good recipient of Korean investment in labor-intensive industry such as the textile industry. In

different sectors, the volumes of technology-intensive overseas projects are also increasing such as the electronic firms.

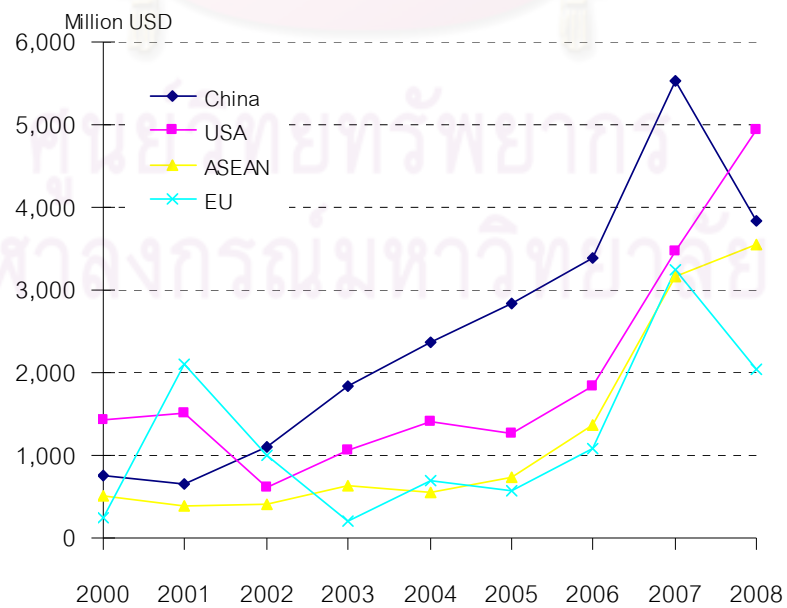
Figure 4. Illustration of trend of Korea's Oversea Direct Investment



Source: Calculated from Data of Korea Exim Bank (Data until 29 May 2010)

### 3. Economic Environment in CLMV

Figure 5. Illustration of trend of Korea's Oversea Direct Investment by destination



Source: Calculated from Data of Korea Exim Bank

Presently, all countries in East Asia have actively to be parts of the trend of regional integration. The critical transformation started since the economic crisis and the growth of the economic integration around the world. The formation of the ASEAN+3 group (ASEAN plus China, Japan and South Korea) or ASEAN+6 (ASEAN+3 plus Australia, New Zealand, and India) is expected to rapid establishment significantly. The Chiang Mai Initiative (CMI) is the initial of develop the cooperation from Asia region's financial cooperation. However, the East Asia countries still concerns about the development gap of each expected country member which is one of reason of launching of the oversea assistance plans. For instance, with the Asian Development Bank (ADB)'s assistance, the Mekong Tourism Coordination Office (MTCO) is established for support the cooperative tourism industry in Great Mekong Sub-region by setting co-progress for tourism development. These integrations in all level invade the everyday lives of CLMV citizens and local people have to face the new development unavoidably.

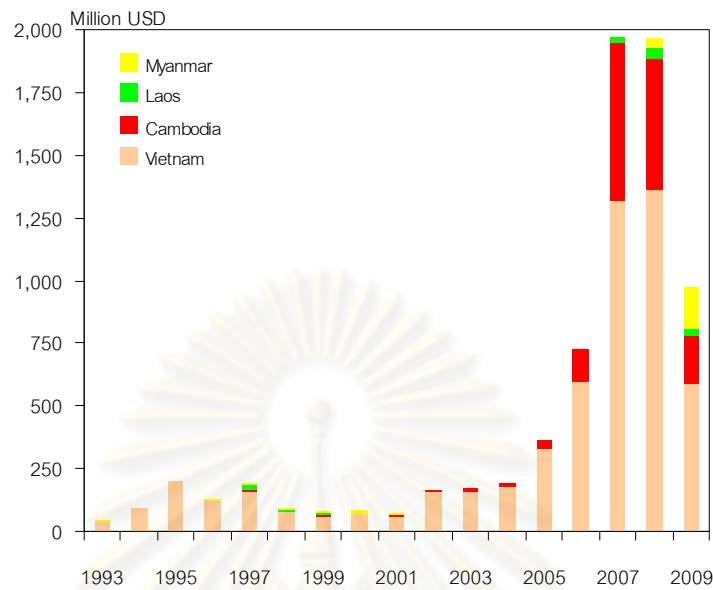
Table 1. Overview of Daily Life Indicators by country

Life Indicators	Cambodia		Laos		Myanmar		Vietnam	
	2003	2007	2003	2007	2003	2007	2003	2007
Internet subscribers per 1,000 persons	2.5	4.8	3.3	17.1	0.2	0.8	37.8	204.5
Mobile phone density per 1,000 persons	35.2	178.8	19.8	252.3	1.2	4.2	33.4	271.6
Life expectancy at birth (years)	2003	2006	2003	2006	2003	2006	2003	2006
	56.2	58.9	54.7	63.9	60.2	61.6	70.5	70.8
Net Primary enrolment rate (%)	90.1	91.3	85	83.6	79.6	81.3	93.1(2002)	87.8

Source: Information from ASEAN COMMUNITY IN FIGURES 2009

The CLMV is group of new developing member countries in ASEAN which is pay attention to be the part of East Asian development with excellent potential of geographic advantage; theirs location closes both the Pacific and Indian Oceans. In order to geographical advantage, CLMV needs to construct the effective logistics network that links CLMV to major city by lands and seaports. In ADB initiative, some networks have been already constructed by the GMS program. However, these economic corridor routes should be expanded to other city by several links.

Figure 6. Illustration of trend of Korea's Oversea Direct Investment within CLMV



Source: Calculated from Data of Korea Exim Bank

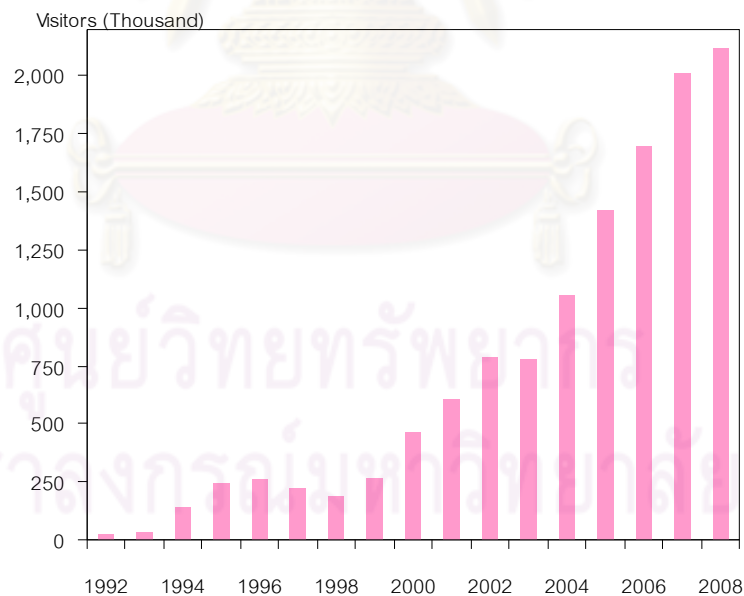
In addition, the ASEAN economic community is the core cooperation helps building the economic growth because of the increased negotiation power, the expanded market, and the liberalized investment from ASEAN Comprehensive Investment Agreement (ACIA) which supports the standardize of investment. This cooperation attracts the outside partners to multiply the volume of trades and investments with CLMV. From figure 5, Korea has been increasing investment amount in ASEAN; furthermore, Korea FDI is regarded in high ranking of FDI inflow within ASEAN.

### 3.1. Kingdom of Cambodia

Cambodia has succeeded in annual economic growth above 10 percent since 2004. The main industries are tourism, textile and construction sectors. Since 2004, Cambodia accessed to be member of the WTO, and then, its domestic laws were revised to attractive regulations. For example of the effective result, the exports quotas in the multilateral textile agreement were abolished in January 2005. These changing led to better investment status which brings to increased FDI.

In 2008, the structure of its GDP came from agriculture sector is 31.3 percent, industry sector is 22.3 percent, and service sector is 46.4 percent. Agriculture sector was the main source of citizen income by relating employ 67.6 percent. The main agricultural product was rice, and then, the other major products were soybeans, maize, vegetable, rubber, and tobacco. For industry sector, the industry sector had the portion of GDP as 22.3 percent, which happened from the major industries as the garment and textile, food, and tobacco. The industrial sector has been reformed after the awareness of industry since 1998. The construction was the new business that has share about 9.9 percent from the investment project of private and public. Lastly, the service sector had the highest portion of GDP about 46.4 percent, which was the highest growth in last 10 years, with major revenue came from tourists. The tourism revenue increased continuous from major tourist destinations as Angkor Wat, the wonder place of the Ancient world in Siem Reap province.

Figure 7. Illustration of number of visitors to Cambodia



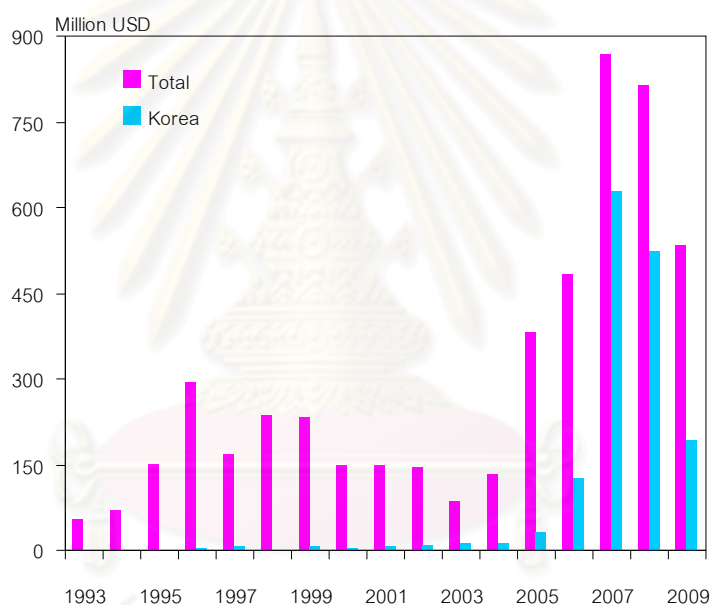
Source: Calculated from Ministry of Tourism, Cambodia

In the view of international trade, its imports had been increased in amount from 2,484 million USD in 2005 to 4,422 million USD in 2008, while as, its total exports had been increased from 2,082 million USD in 2005 to 3,356 million USD in



2008. For major trade partners were the United States, that exports most of Cambodia. The total United States trading value was 2,176.6 million USD that its separation is exported 2,040.6 million USD and imported 136 million USD. Vietnam was the most imported country with imports 988.3 million USD and exports 84.5 million USD. The major import goods were fuel, vehicles, and equipments. For exports, the top export goods were textile. For ROK, the share of exports was 0.3 percent that its amount was about 10.2 million USD, and, the share of imports was 5.1 percent that its amount was 224.8 million USD. (ASEAN-KOREA center, 2010: online)

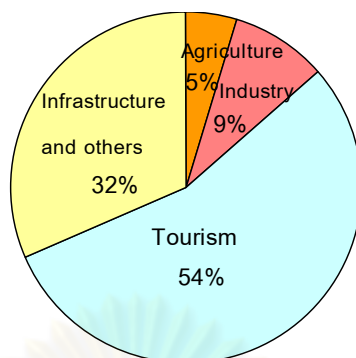
Figure 8. Illustration of trend of Cambodia's Foreign Direct Investment Inward



Source: Calculated from Data of Korea Exim Bank and World Investment Report 2010 (UNCTAD)

Since establishment of foreign investment supporting policy during 1994-2008, Cambodian Investment Board had approved 1,628 projects for investment promotion of investment projects. The top manufacturing industry was in textile for exports. Cambodia received the Generalized System of Preferences (GSP) from United States, Europe, and Japan, so, the benefit of tax exemption and lower cost attracted investors from abroad. The other industries were natural resources, construction, and service sectors. However, the tourism sector was the outstanding sector in last decade from the increased number of tourists.

Figure 9. Illustration of Investments in Cambodia by sector during 2004-2008



Source: Calculated from Council for the Development of Cambodia

Table 2. Foreign Direct Investment in Cambodia as end of 2008 by country

Country	Amount (Million USD)	%
1. China	4,371	40.1
<b>2. KOREA</b>	<b>1,240</b>	<b>11.4</b>
3. United State of America	672	6.2
4. Israel	300	2.8
5. Russia	102	0.9
6. Others	4,206	38.6

Source: Calculated from Cambodia Investment Board; Approved project basis fixed assets investment value

The major countries which had been investing in Cambodia are China, United States, and European nations. Although the amount of ROK bilateral trade was low, Korean FDI had the opposite direction. Korean FDI into Cambodia was in the second top rank especially in tourism and development, and textile.

Table 3. Accumulated ROK FDI in Cambodia as the end of 2009 by industry

Industry	Number of Acceptance	Number of New Overseas	Number of Remittance	Invested Amount
1. Real estate activities and renting and leasing	418	135	696	735,949
2. Construction <sup>a/</sup>	261	80	409	389,694
3. Manufacturing <sup>b/</sup>	230	86	488	146,476
4. Financial and insurance activities	24	8	23	53,295
5. Accommodation and food service activities	56	30	100	52,727
6. Others	509	194	942	192,972
<b>Total</b>	<b>1,498</b>	<b>533</b>	<b>2,658</b>	<b>1,571,113</b>

Source: Calculated from Korea Exim bank (unit: thousand USD)

Remark: a/ the most construction activities for tourism sector, b/ the most manufacturing activity is textiles.

### 3.2 Lao People's Democratic Republic

Table 4. Foreign Direct Investment in Laos as end of January 2008 by country

Country	Amount (Million USD)	%
1. Thailand	1,356	21.2
2. China	1,139	17.8
3. Vietnam	536	8.4
4. France	428	6.7
5. Japan	420	6.6
6. Others	1,631	25.5

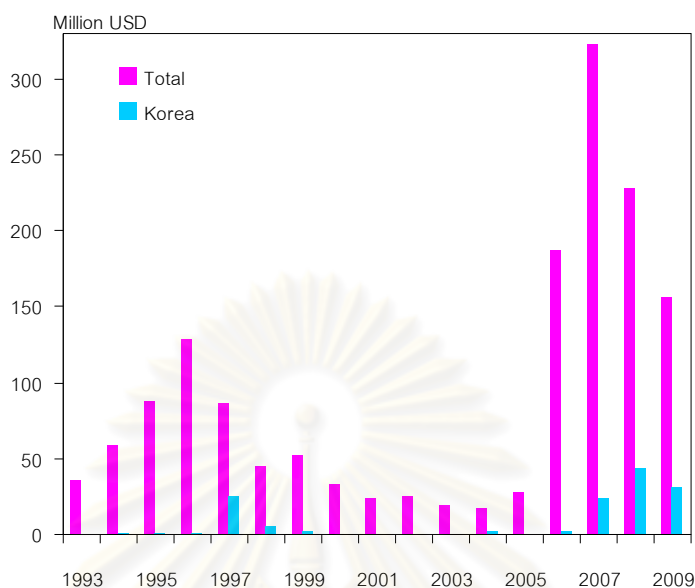
Source: Department of domestic and foreign investment (DDFI) of Laos; Share outside from govern investment.

(Korean FDI inward in Laos (flow) is the sixth rank in 2006 and the forth rank in 2007)

Lao People's Democratic Republic, or Laos, started trade relations to about 30 countries since 1986 according to transformation to market system by proceeding with "the new economic mechanism" policy. Their changing, led by the Economic and Social Development Plan since 1981, proceeded gradually by reducing the limitation, such as price control, land right, setting private firms, and etc. The value of money of imports was twice of exports; however, its government had strive the trade and investment to neighbors in ASEAN due to the attractive environments of labor costs, natural resources, and special trade privileges, as Normal Trade Relations (NTR). In structure of GDP, agricultural sector was about 40 percent of GDP, absorbing 80 percent's employment. In terms of the industrial sector, the portion was 31 percent of GDP, the main businesses were textile and related low-technology businesses. The other share was in service sector.

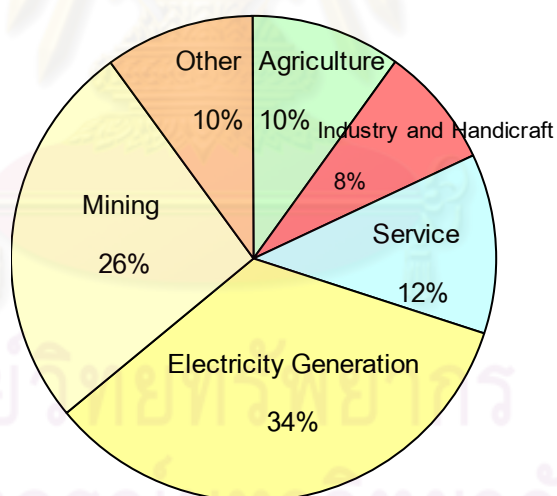
In 2007, Thailand was being the top exporter with 51.3 percent of its total exports, while, the second was Vietnam with 15.5 percent. For imports side, Thailand had the highest proportion about 70.6 percent of its total imports. Their international trade had been expanded gradually since 2002; however, Laos still had deficit in balance trade. The main exports goods were gold, copper, wood, electricity, coffee, and textiles. The capital goods were the imported goods.

Figure 10. Illustration of trend of Laos's Foreign Direct Investment Inward



Source: Calculated from Data of Korea Exim Bank and World Investment Report 2010 (UNCTAD)

Figure 11. Illustration of Investments in Laos by sector during 2001-2009



Source: Calculated from Source: Investment Promotion Department, MPI

Since Laos's government enacted laws promoting foreign investment on April 1988, and, Foreign Investment Management Committee (FIMC), which recently was renamed by the Promotion and Management of Domestic and Foreign Investment: (DDFI) under Investment Promotion Department, served the permitted licensing for investment promotion. DDFI provided one stop service. The highest foreign investment's amount in Laos was from Thailand. Their cumulative foreign investment by sector

showed that industry had the highest number of projects; however, the electricity plant was top in term of amount of money. For Korean FDI in Laos, the volume of Korean investment was still low amount and distributed to various sectors such as construction, manufacturing, financial and insurance etc. (As table 5)

Table 5. Accumulated ROK FDI in Laos as the end of 2009 by industry

Industry	Number of Acceptance	Number of New Overseas Enterprises	Number of Remittance	Invested Amount
1. Construction	25	9	61	60,393
2. Manufacturing	21	11	38	40,004
3. Financial and insurance activities	3	2	3	17,000
4. Real estate activities and renting and leasing	10	5	37	7,935
5. Arts, sports and recreation related services	8	5	27	3,154
6. Others	47	25	161	13,115
<b>Total</b>	<b>114</b>	<b>57</b>	<b>327</b>	<b>141,602</b>

Source: Calculated from Korea Exim bank (unit: thousand USD)

### 3.3 Union of Myanmar

Table 6. Foreign Direct Investment in Myanmar as end of March 2010 by country

Country	Amount (Million USD)	%
1. Thailand	7,422	46.2
2. United Kingdom	1,861	11.6
3. Singapore	1,592	9.9
4. China	1,334	8.3
5. Others	3,608	22.5
<b>6. KOREA (Rank 10<sup>th</sup>)</b>	<b>239</b>	<b>1.5</b>

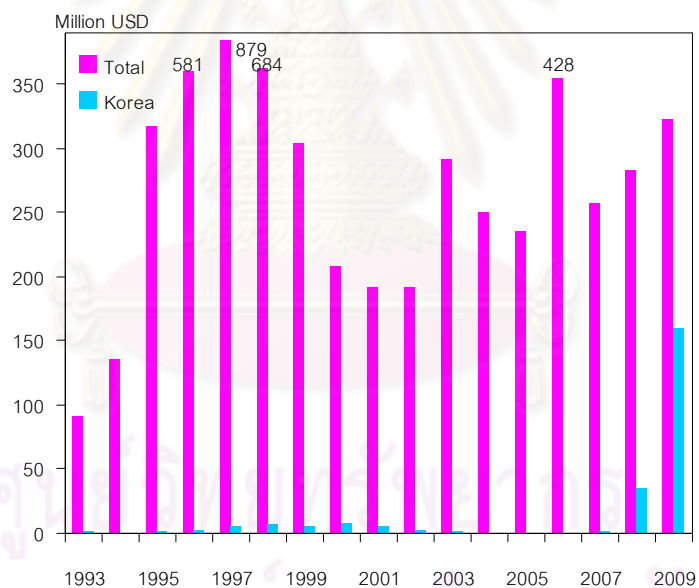
Source: Foreign Investment, Local Investment and Company Registration of Myanmar

The main structure of Myanmar economic was agriculture sector which has proportion above 40 percent. The others were related to its natural resources, such as mining and forestry. Although GDP had slow growth, the resource development industry still was interested from oversea investors, and then, its industry led their

national economy along with their traditional industries of agriculture, fishery and forestry.

The agriculture and fisheries industry assumed significant portion of Myanmar GDP and played an important role in earning income from foreign market. Principal exports products were crustaceans, including shrimps, and various kinds of fish. The top three imports countries were China, Singapore, and Thailand respectively. The main import goods were machinery, logistics equipments, and raw materials. By statistics, Korea still has low correlation in trade and investment with Myanmar. The main Myanmar export goods to Korea were petroleum gases and oils, on the other hand, Myanmar's imports from Korea were steel products, machinery, and materials.

Figure 12. Illustration of trend of Myanmar's Foreign Direct Investment Inward



Source: Calculated from Data of Korea Exim Bank and World Investment Report 2010 (UNCTAD)

Myanmar announced the opened investment for foreigners since 1988 with the Law of Foreign Investment, and then, their cabinet set up Myanmar Foreign Investment Commission (MIC) for management oversea investments in Myanmar. The recent trend of FDI in Myanmar still comes from major investment within ASEAN, especially in, oil, natural gas, and power sector. The other partners such as China, ROK, and India are likely to be significant capital in the same sector with ASEAN investors. In

2006, Myanmar announced plan to develop special economic zones to attract foreign investment. Concrete execution of the plan had been under way since late 2007, which prompted predictions that foreign investment will gradually increase.

Table 7. Accumulated ROK FDI in Myanmar as the end of 2009 by industry

Industry	Number of Acceptance	Number of New Overseas Enterprises	Number of Remittance	Invested Amount
1. Mining and quarrying	9	4	21	193,805
2. Manufacturing	81	35	136	46,460
3. Wholesale and retail trade	27	12	28	13,135
4. Agriculture, forestry and fishing	3	2	10	2,357
5. Arts, sports and recreation related services	3	3	5	1,053
6. Others	8	4	5	868
<b>Total</b>	<b>131</b>	<b>60</b>	<b>205</b>	<b>257,677</b>

Source: Calculated from Korea Exim bank (unit: thousand USD)

### 3.4. Socialist Republic of Vietnam

Vietnam, or Socialist Republic of Vietnam, is the third rank of oil exporter in Southeast Asia. The Vietnam government operated the central economic policies until December 1986, and then, the government had been changing the economic policy by “Doi Moi” policy for reduce monopoly in their economy. Due to the open economy of Vietnam, their trade value had expanding continuously from trade agreements with major partners as United States in 2001 and to access of the ASEAN free trade.

In 2008, the United States was the highest exports destination about 11,869 million USD, then, the other exports destinations were Japan, China, and Australia. Their export goods were oil, textile, footwear, and seafood, whereas, the main import’s countries were China, Japan, Korea, Taiwan, EU, Thailand, and Singapore. Their import’s goods were oil, computer, raw materials, medical equipments, and machinery. For Korea, the Korean exported to Vietnam in petroleum oils, apparel, and automobiles, and then, the largest sector of imports were agricultural, forest and marine products.

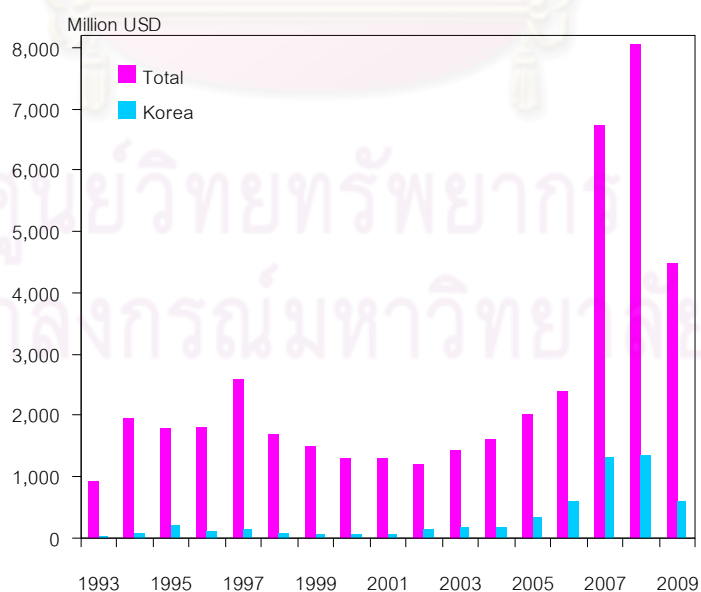
The improved infrastructure and communicate had the result of expanded FDI. Their changing in light industry was shifted from traditional formation to modern technology, however, the investing in Vietnam needs the close monitoring so foreign investors need to propose projects and then its proposal is approved by the Ministry of Planning and Investment (MPI). In 2008, the FDI in petroleum industry had the highest portion, and then, the second rank was agriculture and forestry. The other major sectors were Tourism, Transportation and Communication, Education, and Services.

Table 8. Foreign Direct Investment in Vietnam as end of 2009 by country

Country	Amount (Million USD)	%
<b>1. Korea</b>	<b>26,880</b>	<b>13.8</b>
2. Taiwan	22,619	11.6
3. Malaysia	17,202	8.8
4. Japan	17,420	9.0
5. Singapore	16,346	8.4
6. Others	93,963	48.3

Source: General Statistics Office of Vietnam

Figure 13. Illustration of trend of Vietnam's Foreign Direct Investment Inward



Source: Calculated from Data of Korea Exim Bank and World Investment Report 2010 (UNCTAD)



The top investors were Korea, Taiwan, Malaysia, Japan, and Singapore. Korea has the critical role for investment in Vietnam since 2006, when Vietnam entered to be member of WTO, because of regarding resources and cheap labor cost. The manufacturing sectors are the main target of Korean investors.

Table 9. Accumulated ROK FDI in Vietnam as the end of 2009 by industry

Industry	Number of Acceptance	Number of New Overseas Enterprises	Number of Remittance	Invested Amount
1. Manufacturing	3,423	1,320	8,653	2,975,039
2. Mining and quarrying	25	9	456	1,070,356
3. Real estate activities and renting and leasing	225	120	466	567,809
4. Construction	333	172	652	324,174
5. Accommodation and food service activities	99	44	225	224,137
6. Others	860	412	1,350	429,150
<b>Total</b>	<b>4,965</b>	<b>2,077</b>	<b>11,802</b>	<b>5,590,665</b>

Source: Calculated from Korea Exim bank (unit: thousand USD)

ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย

## Chapter IV

### Research Methodology

This methodology analyses the influence of Republic of Korea (ROK)'s direct investment in Cambodia, Laos, Myanmar, and Vietnam. In dimension about state development, the economical development factors are used to be tracing the level of state development. This analysis will test on both of regional and state levels depended on the specific issue. In macro economic analysis, this study indicates the relationship of variables from the expected model, furthermore, the researcher usually encounters the problems about the reasonableness of each factor together, therefore, the economic theory might describe the phenomenon when another thing being equal. In consequence, this study takes an interest to both of empirical and documentary studies for reasonable verification of macroeconomic variables, like as GDP and FDI.

#### 1. Data

This research data is based on secondary data form reliable sources. In econometric testing, the secondary data is used in terms of time series, thus, the annually data between 1992 and 2009 will be provided from many resources such as International Organizations are the United Nations Conference on Trade and Development (UNCTAD), the International Monetary Fund (IMF), World Trade Organization (WTO), Organization for Economic Co-operation (OECD), and Asian Development Bank (ADB). In domestic agencies is the Export-Import Bank of Korea, or Korea Eximbank.

For documentary study, the descriptive information are analyzed from the above mention, furthermore, this study adds the other reliable sources, such as the domestic board of investment units, the local government agencies, the ASEAN research agencies, the Korean research agencies, and the other reliable units.

#### 2. Empirical Analyze

Generally, the FDI has many advantages relate to all parts, for instance, the domestic employment, the knowledge transference, the market channel, and etc. However, the outstanding impact is the progressive economy, then, this study chooses economic factors to be requisite index of model. The Gross Domestic Products (GDP) is usually used to be economic indicators for explaining ROK direct investment's impact. For example, the UNCTAD selects this index and population size index to be the criteria for tracing the nation development. In composite index, GDP assembles from domestic consumption, private and public investment, and net export. In similar index, the Gross National Income (GNI), which adds oversea income index to be the additional factor, is the United Nation measurement index for dividing the status of least developing country. Finally, this analysis will select effective factors include the others to analysis.

Initially, this analysis has the aforementioned test by the Unit Root Test for avoid the distorting statistics, which this problem can be corrected by corrected variables in differencing form until those variables have the stationary properties. Due to time series data often is non-stationary that time series in macroeconomic variable is increasing over time. These mean and variance of non-stationary data changes over period which examines the relationship of variables using Ordinary Least Square (OLS) or estimates Panel Data by OLS may cause relationship problem, or Spurious Regression.

However, this solve has the negative impact in terms of the reducing relation within model. The initial contemplation of time-series data is to test Unit Root Test by Augment Dickey-Fuller test (ADF) method. This testing proves the stationary property of information set, afterward, the stationary data could compile in Ordinary Least Squares (OLS). In the opposite site, the Non-Stationary data may be cause of the spurious problem. In spurious case, this data will be improved by differencing before it is tested.

In this research, the expected linear model is used be as the main tool for analysis the FDI impact within CLMV. The state characteristics of CLMV still differ

from various factors such as political issue; so, this analysis defines testing by separate data set by state level. The FDI and other variables effect to economic growth so this study tests panel data by fix effect technique that setting constant and coefficients of each country because their economic conditions of each country are different. This study analyzes the relationship of all countries in CLMV, including Cambodia, Laos, Myanmar, and Vietnam. By panel data, individual data from each country is observed at several points at time (year). This characteristic of data set focuses on panel formation with relatively few periods and many individuals.

However, another testing by Granger Causality Test method is also included for the relationship analysis. The Granger test will insist the relationship of Korean FDI with other factors.

### 3. Hypotheses

In Nair–Reichert and Weinhold (2001), their past studied analyzed the growth and development by a panel of developing countries The past model, referred the mixed-fixed model that was proposed by Hsiao (1986), is shown as follows.

$$GGDP_{i,t} = \alpha_i + \gamma_i * D_{it} * GGDP_{i,t-1} + \beta_{1i} * GGDI_{i,t-1} + \beta_{2i} * GFDI_{i,t-1} + \beta_{3i} * GEXP_{i,t-1} + \beta_{4i} * INFL_{i,t-1} + \epsilon_{i,t}$$

By GGDP = Growth rate of gross domestic product  
 GGDI = Growth rate of gross domestic investment  
 GFDI = Growth rate of foreign direct investment (FDI) inflows  
 GEXP = Growth rate of exports of goods and services  
 INFL = Inflation rate  
 i = Country, t = Year

Nevertheless, this study regards the information in terms of sufficiency, reliability, and harmony, and then, the independent variables will be adapted to fit with the data set. The expected model is modified as follows.

$$GGDP_{i,t} = \beta_i + \beta_{1i} * GKFDI_{i,t} + \beta_{1i} * GNKFDI_{i,t} + \beta_{2i} * GEX_{i,t} + \beta_{3i} * GOD_{i,t} + \beta_{4i} * GDC_{i,t} + \epsilon_{i,t}$$

- By
- GGDP = Growth rate of gross domestic product.
  - GKFDI = Growth rate of gross Korean FDI (invested amount).
  - GNKFDI = Growth rate of total FDI inflows (except Korea FDI).
  - GEX = Growth rate of gross exports of goods and services.
  - GOD = Growth rate of gross overseas development assistance (ODA).
  - GDC = Growth rate of domestic credit.
  - $i$  = Country,  $t$  = Year

This expected model is different from initial model by adding new related factors in model based on these assumptions about relationship of variables as follows.

1. The both Korea (GKFDI) and total FDI except ROK (GNKFDI) will cause in same coefficient as the direction of the host GDP, because, the overseas FDI will boost the local economy in terms of job, exports, and technology.

2. The exports (GEX) are expected that have the result in the similar direction with the host GDP because the developing countries, as CLMV, are often the revenue of exports be the part of GDP.

3. The domestic credits (GDC) are expected that have the empirical result in the positive direction with the host GDP because the domestic credit helps to boost the private spending, even if, some situations domestic credit may have the fluctuated effects from the incorrect objectives and then these phenomenon can not be the impacts vividly.

4. The ODA (GOD) in the developing countries should effect on positive relationship to the host GDP as a result of the boosted investment in both of public and private sectors. However, the ODA may develop in ineffective part by economical, so the impact of ODA to GDP may not be indicated explicitly.

The data set is applied to annually data on Korean FDI, Total FDI, Exports, Official Development Assistance, Domestic Credit, and GDP for the period of 1992-2008. All series are applied to the form of the annual growths of gross data of

Cambodia, Laos, Myanmar, and Vietnam. The source of data are Korean FDI was obtained from the Korea Eximbank, the amount of total FDI was obtained from the United Nation Conference on Trade and Development, the amount of total ODA was obtained from the Organisation for Economic Co-operation and Development, the amount of domestic credit was obtained from Asian Development Bank, and the volume of exports was obtained from the World Trade Organization, and the GDP was obtained from the International Monetary Fund respectively.

In depth analysis, the correlation test by the Granger Causality is selected to be the technique for describing the relationship of variables. The Granger (1969) found the technique for reasonableness. For instance, the Granger Causality between two variables, which is the relationship of two variables, such as X and Y. If X is cause of the change in Y, the change in X guides the change in Y. In the sense of statistics, the researcher will test past information of another variable for describes its variable. In hypothesis test, the null hypothesis is X not cause of Y (Restricted regression) as follow.

$$\text{Restricted regression: } Y_t = \sum_{i=1}^m \alpha_i Y_{t-i} + u_t \quad ; \text{ By } u_t \text{ is error}$$

$$\text{Unrestricted regression: } Y_t = \sum_{i=1}^m \alpha_i Y_{t-i} + \sum_{i=1}^m \beta_i X_{t-i} + u_t \quad ; \text{ By } u_t \text{ is error}$$

Then using the sum of squared residuals from each regression calculates the F-statistic, and tests group of coefficients ( $\beta_i$ ) that is greater than zero or not. If the result rejects the null hypothesis or  $\beta_i$  differs from zero, X is a cause of Y.

Finally, the Granger Causality is used to test hypotheses. For this analysis, the FDI causes the expansion of GDP and bilateral trade as the null hypothesizes which test the Korean FDI is a measure of foreign ownership of nation productivity. The increasing FDI can be used as mechanism of expanding economic development. Moreover, the Korean FDI is an important factor to enhance the exports, so, the volume of FDI inflow should support the increasing of the bilateral trade with the host funding. Due to the related matter, this chapter will prove the hypothesis about the reasonable of variables as hypothesis below.

## Chapter V

### Analysis Result

This empirical test studies the impact of the ROK foreign direct investment to the development in CLMV region by investigates economic effect. The development factor is diagnosed by the economic data in both of regional and individual state levels.

#### 1. Empirical Test of Panel Unit Root Testing

These data sets were transformed to the annually growth term for cutting the effect of time series data, then, the data in growth formation were tested stationary by the combining P-value test, or Fisher test, at level order. This test will consider from the value of probability of t-statistic, which is calculated at significance level of 0.05, or 95% confidence interval. The result is showed in table 10.

Table 10. The statistics of Unit Root Test combining p-value at Level Order (0)

Variable	T-statistic	Probability
GGDP	15.9230	0.0435**
GKFDI	35.2401	0.0000*
GNKFDI	43.3830	0.0000*
GEX	29.4732	0.0003*
GOD	55.2330	0.0000*
GDC	15.8598	0.0444**

Remark: This report the marginal significance levels (p-values) of F-statistics for the null hypothesis of Granger causality, which asterisks \*, \*\* denote significance at the 1% and 5% level

The probability of t-statistics of all variables expresses the econometric result which cannot reject null hypothesis, and then, the unit root test's result in level order (0) appears the stationary property of these data variables, afterwards, we can use this stationary data set for econometric test.

#### 2. Estimation Model from Panel Data

From Unit Root test, all variables are used to study the stability at level order, then; its variables can be tested to find the relationship between the variables in this expected model.

The study of FDI impact and other variables, which affect to development, uses the panel data according to individual constants and country coefficients of each country because of the different economic conditions of each country. This study analyzes the relationship of CLMV countries, including Cambodia, Laos, Myanmar, and Vietnam.

The results from estimating models which fixed effect results found the R-squared is 0.612098 indicating that the variables in the model can describe the changes in GDP at preliminary percentage of 61.21 percent. The individual country test results show its results in table as follow.

### Cambodia

Table 11. The statistics of model estimation with the fixed effect of Cambodia

Variable	Coefficient	Probability
Constant	-3.471781	0.0000*
GKFDIC	0.003072	0.6765
GNKFDIC	-0.000389	0.9918
GEXC	0.266964	0.0023*
GODC	-0.010356	0.8809
GDCC	0.27905	0.0219**

Remark: Table shows p-values of expected model, which asterisks \*, \*\* denote significance at the 1% and 5% level

Table 11 shows results as the equation as below.

$$GGDPC = -3.471781 + 0.266964*GEXC + 0.279049*GDCC$$

Test results showed that the growth of Cambodian exports (GEXC) is significant at 0.01 and the correlation coefficient was 0.2670. This result can explain that



the growth of Cambodia exports increases 1 time, then, the growth of Cambodia GDP, with statistical significance at 0.01, increases 0.2670 time.

The growth of Cambodian domestic credit (GDCC) has significant at 0.05 and the correlation coefficient was 0.2790, which explains the growth of domestic credit increases 1 time, then, the growth of Cambodia GDP, with statistical significance at 0.05, increases 0.2790 time.

### Laos

Table 12. The statistics of model estimation with the fixed effect of Laos

Variable	Coefficient	Probability
Constant	12.855803	0.0000*
GKFDIL	0.001313	0.7898
GNKFDIL	-0.083942	0.1619
GEXL	0.44171	0.1057
GODL	0.237094	0.0384**
GDCL	-0.208591	0.0365**

Remark: Table shows p-values of expected model, which asterisks \*, \*\* denote significance at the 1% and 10% level

Table 12 shows results as the equation as below.

$$GGDPL = 12.855803 - 0.208591*GDCL + 0.237094*GODL$$

Test results showed that the growth of overseas direct investment in Laos (GODL) has significant at 0.05 and the correlation coefficient was 0.2371, which explains the growth of overseas direct investment in Laos increases 1 time, then, the growth of Lao GDP, with statistical significance at 0.05, increases 0.2371 time.

The growth of Laos domestic credit (GDCL) has significant at 0.05 and the correlation coefficient was -0.2086, which explains the growth of Laos domestic credit increases 1 time, then, the growth of Lao GDP, with statistical significance at 0.05, decreases 0.2086 time.

## Myanmar

Table 13. The statistics of model estimation with the fixed effect of Myanmar

Variable	Coefficient	Probability
Constant	69.905923	0.0000*
GKFDIM	-0.009126	0.1410
GNKFDIM	-0.030629	0.7265
GEXM	0.030131	0.9201
GODM	0.064796	0.5731
GDCM	-1.704768	0.0015*

Remark: Table shows p-values of expected model, which asterisks \*, denote significance at the 1% level

Table 13 shows results as the equation as below.

$$GGDPM = 69.905923 - 1.704768 * GDCM$$

Test results showed that the growth of Myanmar domestic credit (GDCM) has significant at 0.01 and the correlation coefficient was -1.7048, which explains the growth of Myanmar domestic credit increases 1 time, then, the growth of Myanmar GDP, with statistical significance at 0.01, decreases 1.7048 time.

## Vietnam

Table 14. The statistics of model estimation with the fixed effect of Vietnam

Variable	Coefficient	Probability
Constant	0.000148	0.0000*
GKFDIV	0.04493	0.0761***
GNKFDIV	0.031609	0.3898
GEXV	0.562505	0.0000*
GODV	-0.080294	0.0457**
GDCV	0.026691	0.8127

Remark: Table shows p-values of model, which asterisks \*, \*\*,\*\*\* denote significance at the 1%, 5% and 10% level

Table 14 shows results as the equation as below.

$$GGDPV = 0.000148 + 0.044930 * GKFDIV + 0.562505 * GEXV - 0.080294 * GODV$$

Test results showed that the growth of Korean FDI (GKFDIV) is significant at 0.10 and the correlation coefficient was 0.04493. This result can explain that the growth of Korean FDI in Vietnam increases 1 time, then, the growth of Vietnam GDP, with statistical significance at 0.10, increases 0.04493 time.

The growth of Vietnam exports (GEXV) has significant at 0.01 and the correlation coefficient was 0.5625, which explains the growth of Vietnam exports increases 1, then, the growth of Vietnam GDP with statistical significance at 0.01 increases 0.5625 time.

The growth of Vietnam ODA (GODV) has significant at 0.05 and the correlation coefficient was -0.0803, which explains the growth of Vietnam domestic credit increases 1 time, then, the growth of Vietnam GDP, with statistical significance at 0.05, decreases 0.0803 time.

### 3. Relationship Test by Granger Causality Test

Table 15. The statistics of Granger Causality of ROK FDI with economic factors

Lag Period (year)	1	2	3	4	5
Null Hypothesis:	Prob.	Prob.	Prob.	Prob.	Prob.
GKFDICLMV does not Granger Cause GGDPCLMV	<b>0.0296**</b>	0.1368	0.1599	0.2682	0.3204
GGDPCLMV does not Granger Cause GKFDICLMV	0.2487	0.5265	0.4245	0.5305	0.3072
GKFDICLMV does not Granger Cause GDCCLMV	0.5612	0.9581	0.7446	0.7006	0.5414
GDCCLMV does not Granger Cause GKFDICLMV	0.1109	0.2902	<b>0.0159**</b>	<b>0.0370**</b>	0.1450
GKFDICLMV does not Granger Cause GECLMVW	0.7395	0.1559	0.3169	0.3751	0.4432
GECLMVW does not Granger Cause GKFDICLMV	0.4722	0.7648	0.8021	0.1255	0.2392
GNKFDICLMV does not Granger Cause GKFDICLMV	0.8405	0.7741	0.6984	<b>0.0181**</b>	0.8716
GKFDICLMV does not Granger Cause GNKFDICLMV	0.5311	0.7985	0.3813	0.8147	0.6558
GODACLMV does not Granger Cause GKFDICLMV	0.7091	0.9317	0.8461	0.5207	0.6652
GKFDICLMV does not Granger Cause GODACLMV	0.5608	0.982	0.6537	0.4517	0.3825

Remark: Table shows p-values of model, which asterisks \*, \*\*, \*\*\* denote significance at the 1%, 5% and 10% level

The source of data in this part depends on the information in topic 1 (table10), so, these data are stationary and test the direction of pair variables between

the growth of FDI and other variables. The results have appeared in the table 15. From the p-values of F-Statistic, the hypothesis test is described as follows.

The growth of Korean FDI in CLMV (GKFDICLMV) is affect to the growth of GDP in CLMV (GGDPCLMV) in first year, while, the growth of GDP in CLMV (GGDPCLMV) is not affect to the growth of Korean FDI in CLMV (GKFDICLMV). The growth of domestic credit in CLMV (GDCCLMV) is affect to the growth of Korean FDI in CLMV (GKFDICLMV) in third year and fourth year, while, the growth of Korean FDI in CLMV (GKFDICLMV) is not affect to the growth of domestic credit in CLMV (GDCCLMV).

The growth of all FDI in CLMV except Korean FDI (GNKFDICLMV) is affect to the growth of Korean FDI in CLMV (GKFDICLMV) in fourth year, while, the growth of Korean FDI in CLMV (GKFDICLMV) is not affect to the growth of all FDI in CLMV except Korean FDI (GNKFDICLMV). For the other variables, the growth of Korean FDI in CLMV is not relating to the growth of exports and ODA within CLMV.

#### 4. Empirical Result

At the beginning, the estimated model of each CLMV nation shows the relationship of Korean FDI growth and the GDP growth in Vietnam only, this result matches their information about the amount of Korean FDI in Vietnam where is in the high ranking around last decade. In spite of the other countries as Cambodia, Myanmar, and Laos have been received the Korean investment, but theirs amount still low.

The effective variable in Cambodia, Laos, and Myanmar is the growth of domestic credit which has been impacting to the growth of GDP. This phenomenon of domestic credit's growth affects to the GDP because the local people had to more distribute funding for consumption and investing. These domestic loans will be benefit for add GDP value.

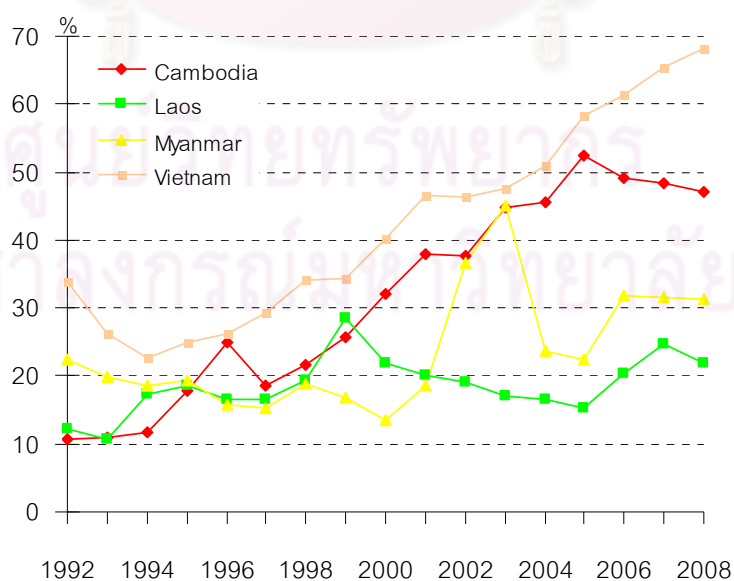
Table 16. The Share of CLMV Trade by Selected Partner, 2008, in percent

	ASEAN	China	Japan	Korea	Australia	Canada	EU25
Cambodia	21.76	10.78	1.67	0.08	0.32	3.34	9.70
Laos	84.20	5.58	2.49	1.80	2.10	0.07	1.42
Myanmar	53.59	11.24	3.60	2.47	0.36	0.01	1.90
Vietnam	20.87	14.17	11.82	0.00	0.00	0.00	11.40
	India	New Zealand	Pakistan	Russia	USA	Rest of the World	Total
Cambodia	1.06	0.04	0.19	0.22	24.96	25.87	100.00
Laos	0.27	0.01	0.00	0.16	0.33	1.58	100.00
Myanmar	8.46	0.12	0.36	0.06	0.83	16.99	100.00
Vietnam	0.00	0.00	0.00	0.00	10.26	31.49	100.00

Source: Information from ASEAN COMMUNITY IN FIGURES 2009

The growth of exports in both of Cambodia and Vietnam affects to the growth of GDP because the proportion of exports to GDP in both countries shown as figure 14 has the high portion that compares to other nations. As the trade shares in table 16, the number of Vietnam trade shares in 2008 represented the various distributions in many destinations. The purpose of Korean FDI in trading needs the low-production cost products not only for locals, but also international trading.

Figure 14. Illustration of trend of Export to GDP ratio within CLMV



Source: Calculated from Data of World Trade Organization and International Monetary Fund

In the second test, the Granger Causality test in this study reflected the size of Korean overseas investment that focused more on Vietnam economy than others. The growth of Korean FDI in CLMV (GKFDICLMV) affects to the growth of GDP in CLMV (GGDPCLMV) on first year only because overseas investment is distributive funding in building its fundamental, but its economic value don't recognize the growth of GDP after first period. The results of the growth of domestic credit (GDCCLMV) affects to the growth of Korean FDI in CLMV (GKFDICLMV) showed that the Korean firms may respond the consumption and investment of host nation during third year and fourth year. Lastly, the growth of total FDI except Korean FDI (GNKFDICLMV) affects to the growth of Korean FDI (GKFDICLMV) in fourth year because the investment trend of Korean firms similar to other nations.



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## Chapter VI

### Summary

#### 1. Conclusion

The investment is one of the important factors that influence all countries growth, including developed and developing state, thus, local governments should regard to give the precedence with investments from both of domestic and foreign investors. Especially, foreign investors often transfer the advance knowledge from the home country to the host land. Therefore, the foreign investment has the importance to boost economy scale in asset of receipt country and to bring proper innovation that effect to locals. Besides, the foreign investors still have prominent role to stimulated development in various fractions, for instance, the increased infrastructure, the export growth, and etc., meanwhile, the foreign investors might cause the negative effect in host country due to the careless investment regulations. The multinational company might effect on the decreased natural resources, the destroyed capability of domestic firms in market competition, the changed social value, and etc., so, the government has the responsibility about regarding to plan for setting investment policies and supporting proper measures for maximize benefits and minimize disadvantage simultaneously.

The investment of Republic of Korea (ROK) is one of the global funding sources around last decade. ROK has advantage from advance technology and strengthening in large-size industry. On the other hand, the developing countries are interested because the attractive regulations and the fruitful benefit resources, especially in the least-developing countries have the progressive lag wait advancement from oversea funding. Cambodia, Laos, Myanmar, and Vietnam (CLMV) are the countries which are interested from global investors due to preparedness and privileges, in sense of benefits from country handicap and international agreement.

This study finds effect of ROK FDI focuses on Korean direct investment within CLMV states by using the Gross Domestic Products as the economic indicators.

Basically, Panel Unit Root Test with Fisher's Test was used to test stationary property of its data set, which composes of the gross domestic products, the amount of Korean FDI, the total FDI inflows except Korea FDI, the gross exports of goods and services, the gross overseas development assistance, and the domestic credit. The Panel Data's technique by fixed effect is used to its empirical test, moreover, this analysis separates its effect of each country depends on factors. The study period is during 1992-2008 by the econometric data in empirical test depends on the reliable sources from international organizations.

The result of Panel Unit Root shows all variables where there is stationary property at level order. Because the probability value of t-statistics of all variables cannot deny null hypothesis, or  $H_0$ , therefore this data set can test in linear regression model for finding relationship of each country and in reasonableness test with Granger Causality test. From its test, the growth of Korean FDI only affects to the growth of Vietnam GDP. In spite of, the growth of Korean FDI within others has no effect to the growth of GDP. This result reflects the consistency of the quantity of foreign investment and the amount of GDP. However, the growth of Korean FDI that effects to the growth of Vietnam GDP is interesting point. Although the growth of total FDI except Korea FDI does not effect to the growth of Vietnam GDP, but the Korean FDI still has influence to the growth of Vietnam GDP.

This impact shows the capability of Korean company in host economic expansion than others. Besides, its result shows the critical factor as growth of domestic credit, which shows importance of domestic funding and better effects, which may happen from local distribution, to theirs GDP. For its reason, Vietnam has more potential to attract overseas investment, such as political stability, large population; reform local's law, and etc. According to Korea Trade Investment Promotion Agency, the low manufacturing costs, geographical location and political stability are Vietnam's attractive forces. Korea has been investing in Vietnam.



Furthermore, Granger Causality test insists the overview effect of the growth of Korean FDI to the growth of CLMV GDP. Finally, this analysis proves the importance of Korean direct investment in CLMV that affects to development in regional, although, its effect in individual country may not regarding clearly. However, the funding from the country where the high advance know-how can create the benefit for all stakeholders. The host country need to proper regulation for the flow of oversea funding by apply managerial methods.

## 2. Recommendations

In view of stakeholders, the policymakers, composes of each local governments and all stakeholders, should formulate the proper policies to promote the good environment for foreign investment. In order to have the competition of the developing countries by giving the attractive incentive, the government incentives should be provided continuously in close monitoring, meanwhile, the stimulated education to locals must be done together with improving the quality of human resources in next period. The human resource development is essential to economic growth in the long term. Especially, the natural resources, which are outstanding point of this region, should be protected in the first priority for development.

For the next study, the main problem of quantitative analysis is sufficient data as happened in this study. Although information can be found from many sources, unconformity in reliable issue and short period are the obstacle about the level of correlation. Thus the complete data in next study will help to more understanding in the effect of Korean FDI.

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Appendices

ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย

## Appendix A

### Econometric Empirical Testing

#### Panel Data Test

The test combines data set in country level including Cambodia, Lao, Myanmar, and Vietnam. The main variables will be collected in longitudinal form which is adapted from individual data to Panel Data Analysis. The analysis will be looking over all relationships which are considered to be cause of economic development in terms of state level. The descriptive of variables is showed in table A1. Moreover, the numbers of data set before changing to the growth form are showed as Table A3.

Table A1. Table of Descriptive Information

Variables	Descriptive	Source
GGDP	The growth of Gross Domestic Product between 1992 and 2009.	International Monetary Fund
GKFDI	The annual growth of Korea FDI between 1992 and 2009.(Invested amount)	Korea EximBank
GNKFDI	The annual growth of all FDI (Unctad) minus Korea FDI (Korea EximBank) between 1992 and 2009.	United Nations Conference on Trade and Development, and Korea EximBank
GOD	The annual growth of Oversea Development Assistance between 1992 and 2009.	Organization for Economic Co-operation and Development
GDC	The annual growth of domestic credit (stock) between 1992 and 2009.	Asian Development Bank
GEX	The annual growth of total exports between 1992 and 2009.	World Trade Organization

The Variables Name will be annexed with abbreviations which have meaning as table A2.

Table A2. Table of Descriptive Information

Abbreviations	Descriptive
CLMV	The group of data from Cambodia, Lao, Myanmar, and Vietnam
C	Cambodia Data
L	Lao Data
M	Myanmar Data
V	Vietnam Data

Table A3. Tables of Used Raw Data in Empirical Testing (Unit: Million USD)

Year	GDP	KFDI	NKFDI	OD	DC	EX
<b>Cambodia (C)</b>						
1992	2,439	1.3	32	95	211	265
1993	2,427	0.3	54	197	128	284
1994	2,765	0.9	68	181	151	490
1995	3,419	0.3	150	341	182	855
1996	3,486	4	290	253	216	644
1997	3,392	8	160	230	236	736
1998	3,106	0.9	242	231	224	800
1999	3,508	7	225	167	230	1,129
2000	3,653	4	145	249	235	1,389
2001	3,984	6	144	266	222	1,500
2002	4,283	8	137	295	241	1,923
2003	4,657	12	72	330	304	2,118
2004	5,332	14	118	321	400	2,798
2005	6,286	33	349	364	482	3,092
2006	7,264	126	357	361	652	3,514
2007	8,691	630	238	453	1127	4,089
2008	11,277	525	290	460	1704	4,708
<b>Lao (L)</b>						
1992	1,236	0.3	8	77	78	133
1993	1,392	0.2	36	92	104	241
1994	1,618	0.8	58	124	180	301
1995	1,880	0.9	87	170	195	311
1996	1,956	1.0	127	148	162	323
1997	1,846	26	61	166	288	359
1998	1,300	6	39	166	214	370
1999	1,422	2	49	211	147	311
2000	1,640	0.01	34	195	182	330
2001	1,673	0.04	24	152	272	320
2002	1,758	0.05	25	179	225	301
2003	2,024	0.1	19	191	220	335
2004	2,376	2	15	180	233	363
2005	2,726	0	28	169	252	553
2006	3,564	3	185	201	249	882
2007	4,226	25	299	240	305	923
2008	5,313	44	184	225	595	1,085
<b>Myanmar (M)</b>						
1992	2,684	4	145	83	12,870	531
1993	3,139	1	91	78	18,642	586
1994	4,120	0.4	135	149	24,096	798
1995	5,487	1	316	128	33,217	860
1996	4,955	3	578	46	43,350	754

1997	4,656	6	873	40	52,668	874
1998	6,459	6	677	41	66,125	1,077
1999	8,487	5	299	52	81,280	1,136
2000	8,905	9	199	69	106,760	1,646
2001	6,478	5	187	90	158,700	2,381
2002	6,778	2	189	86	219,001	3,046
2003	10,467	0.9	290	90	259,417	2,483
2004	10,567	0	251	84	368,922	2,380
2005	11,987	0.6	235	86	475,091	3,813
2006	14,503	0.5	427	101	590,730	4,589
2007	20,182	1	256	130	778,841	6,338
2008	28,189	36	247	422	885,476	6,937
<b>Vietnam (V)</b>						
1992	9,867	17	457	474	1,528	2,581
1993	13,181	38	888	225	2,548	2,985
1994	16,279	91	1,853	588	3,461	4,054
1995	20,798	200	1,580	553	4,263	5,449
1996	24,692	121	1,682	477	5,014	7,255
1997	26,892	155	2,432	592	5,718	9,185
1998	27,234	81	1,619	724	6,107	9,361
1999	28,702	61	1,423	1,025	6,423	11,541
2000	31,176	71	1,218	1,262	10,957	14,483
2001	32,524	61	1,239	858	12,985	15,029
2002	35,097	155	1,046	769	15,702	16,706
2003	39,563	161	1,289	980	20,431	20,149
2004	45,452	181	1,429	1,216	27,599	26,485
2005	52,931	332	1,689	1,268	36,923	32,442
2006	60,933	596	1,804	1,316	45,662	39,826
2007	71,111	1,318	5,421	1,513	68,101	48,561
2008	89,829	1,363	6,687	1,649	85,920	62,685

Remark: GDP is Gross Domestic Product, KFDI is Korea FDI (Invested Amount), GNKFDI is all FDI except Korea FDI, OD is Oversea Development Assistance, DC is domestic credit, and EX is exports.

The data in econometric testing needs to be the stationary property due to reliable of data set. The stationary property's test by unit root test method will be apply, then, this data set is transformed to growth term because growth form can reduce impact of linear trend in time series data so the growth data is during 1993-2008. Its methodology proves the pool data in panel analysis by fixed effect model, and then, this data set is validated by unit root test with Augmented Dickey-Fuller (ADF) method.

Table A4. Table of Econometric Outputs in Panel Unit Root Test (ADF method)

(T-Statistics have p-value less than the significant level at 0.01(\*) and 0.05(\*\*))

Series: GGDPC, GGDPL, GGDPM, GGDPV				
User specified lags at: 0				
Total (balanced) observations: 60				
Cross-sections included: 4				
Method		Statistic		Prob.**
ADF - Fisher Chi-square		15.9230		0.0435**
ADF - Choi Z-stat		-2.03727		0.0208
** Probabilities for Fisher tests are computed using an asymptotic Chi -square distribution. All other tests assume asymptotic normality.				
Intermediate ADF test results GGDPC?				
Series	Prob.	Lag	Max Lag	Obs
GGDPC	0.4128	0	3	15
GGDPL	0.1211	0	3	15
GGDPM	0.0394	0	3	15
GGDPV	0.1769	0	3	15
Series: GKFDIC, GKFDIL, GKFDIM, GKFDIV				
User specified lags at: 0				
Total number of observations: 56				
Cross-sections included: 4				
Method		Statistic		Prob.**
ADF - Fisher Chi-square		35.2401		0.0000*
ADF - Choi Z-stat		-3.32960		0.0004
** Probabilities for Fisher tests are computed using an asymptotic Chi-square distribution. All other tests assume asymptotic normality.				
Intermediate ADF test results GKFDI?				
Series	Prob.	Lag	Max Lag	Obs
GKFDIC	0.0012	0	3	15
GKFDIL	0.0017	0	3	13
GKFDIM	0.9428	0	3	13
GKFDIV	0.0113	0	3	15
Series: GNKFDIC, GNKFDIL, GNKFDIM, GNKFDIV				
User specified lags at: 0				
Total (balanced) observations: 60				
Cross-sections included: 4				
Method		Statistic		Prob.**
ADF - Fisher Chi-square		43.3830		0.0000*
ADF - Choi Z-stat		-5.21212		0.0000
** Probabilities for Fisher tests are computed using an asymptotic Chi-square distribution. All other tests assume asymptotic normality.				
Intermediate ADF test results GNKFDI?				
Series	Prob.	Lag	Max Lag	Obs
GNKFDIC	0.0051	0	3	15
GNKFDIL	0.0015	0	3	15
GNKFDIM	0.0146	0	3	15

GNKFDIV	0.0033	0	3	15
<b>Series: GDCC, GDCL, GDCM, GDCV</b>				
User specified lags at: 0				
Total (balanced) observations: 60				
Cross-sections included: 4				
Method			Statistic	Prob.**
ADF - Fisher Chi-square			15.8598	<b>0.0444**</b>
ADF - Choi Z-stat			-1.99782	0.0229
** Probabilities for Fisher tests are computed using an asymptotic Chi-square distribution. All other tests assume asymptotic normality.				
Intermediate ADF test results GDC?				
Series	Prob.	Lag	Max Lag	Obs
GDCC	0.5123	0	3	15
GDCL	0.0722	0	3	15
GDCM	0.1304	0	3	15
GDCV	0.0747	0	3	15
<b>Series: GEXC, GEXL, GEXM, GEXV</b>				
User specified lags at: 0				
Total (balanced) observations: 60				
Cross-sections included: 4				
Method			Statistic	Prob.**
ADF - Fisher Chi-square			29.4732	<b>0.0003*</b>
ADF - Choi Z-stat			-3.58409	0.0002
** Probabilities for Fisher tests are computed using an asymptotic Chi-square distribution. All other tests assume asymptotic normality.				
Intermediate ADF test results GEX?				
Series	Prob.	Lag	Max Lag	Obs
GEXC	0.0230	0	3	15
GEXL	0.0017	0	3	15
GEXM	0.0264	0	3	15
GEXV	0.3766	0	3	15
<b>Series: GODC, GODL, GODM, GODV</b>				
User specified lags at: 0				
Total (balanced) observations: 60				
Cross-sections included: 4				
Method			Statistic	Prob.**
ADF - Fisher Chi-square			55.2330	<b>0.0000*</b>
ADF - Choi Z-stat			-5.61026	0.0000
** Probabilities for Fisher tests are computed using an asymptotic Chi-square distribution. All other tests assume asymptotic normality.				
Intermediate ADF test results GOD?				
Series	Prob.	Lag	Max Lag	Obs
GODC	0.0000	0	3	15
GODL	0.0038	0	3	15
GODM	0.2922	0	3	15
GODV	0.0001	0	3	15

### Regression Model Estimation

From table A4, all variables in this study have P-value less than level of significance at level order (0), then, these data sets can also regression the model by using Eviews program's command. The expected model in form of linear regression will be proved the effect of Korean FDI and other variables to country development; the model is shown as below.

$$GGDP_{i,t} = \alpha_i + \beta_{1i} * GKFDI_{i,t} + \beta_{2i} * GNKFDI_{i,t} + \beta_{3i} * GEX_{i,t} + \beta_{4i} * GOD_{i,t} + \beta_{5i} * GDC_{i,t} + \epsilon_{i,t}$$

By

- GGDP = Growth rate of gross domestic product
- GKFDI = Growth rate of Korea FDI (Invested Amount)
- GNKFDI = Growth rate of total FDI (except Korea FDI)
- GEXP = Growth rate of exports of goods and services
- GOD = Growth rate of Oversea Development Assistance
- GDC = Growth rate of domestic credit

The country data indicate to "i", or country as Cambodia(C), Lao(L), Myanmar(M), and Vietnam (V) and "t" is years since 1993 until 2008.

The output of this testing is reported in table A5. In result, this output regards the information in form of Panel data, then, the result with fixed effect in cross-section is showed the individual coefficient for testing of each country. The overall result, or effects specification topic, is in the last part of output in table A5. The null hypothesis of this part is all independent variables cannot describe the change in dependent variable or  $H_0: \alpha_i = \beta_{1i} = \beta_{2i} = \beta_{3i} = \beta_{4i} = \beta_{5i} = 0$ . The critical results are F-statistics is 2.195441 and its P-value is 0.019966, then, its probability of F-statistics is lesser than level of significant. Its result rejects null hypothesis which concludes that independent variables can describe the dependent variable. Furthermore, R-squared is 0.612098 which shows level of correlation of independent and dependent variables at 61.21 percent.

Table A5. Tables of Econometric Output by Panel Data

(T-Statistics have p-value less than the significant level at 0.01(\*), 0.05(\*\*) and 0.10(\*\*\*))

Dependent Variable: GGDP?				
Method: Pooled Least Squares				
Included observations: 14				
Cross-sections included: 4				
Total pool (balanced) observations: 56				
White diagonal standard errors & covariance (no d.f. correction)				
Variable	Coefficient	Std. Error	t-Statistic	Prob.
C	19.82252	3.468823	5.714481	0.0000*
C--GKFDIC	0.003072	0.007295	0.421109	0.6765
L--GKFDIL	0.001313	0.004883	0.268812	0.7898
M--GKFDIM	-0.009126	0.006046	-1.509389	0.141
V--GKFDIV	0.04493	0.024509	1.833174	0.0761***
C--GNKFDIC	-0.000389	0.037518	-0.010375	0.9918
L--GNKFDIL	-0.083942	0.058624	-1.43187	0.1619
M--GNKFDIM	-0.030629	0.086789	-0.352913	0.7265
V--GNKFDIV	0.031609	0.036255	0.871854	0.3898
C--GEXC	0.266964	0.080682	3.308829	0.0023*
L--GEXL	0.44171	0.265283	1.665051	0.1057
M--GEXM	0.030131	0.298147	0.101061	0.9201
V--GEXV	0.562505	0.117595	4.783424	0*
C--GDCC	0.27905	0.115856	2.408596	0.0219**
L--GDCL	-0.208591	0.095535	-2.183399	0.0365**
M--GDCM	-1.704768	0.490966	-3.47227	0.0015*
V--GDCV	0.026691	0.111699	0.238955	0.8127
C--GODC	-0.010356	0.068547	-0.151075	0.8809
L--GODL	0.237094	0.109788	2.159553	0.0384**
M--GODM	0.064796	0.11381	0.569339	0.5731
V--GODV	-0.080294	0.038624	-2.078885	0.0457**
Fixed Effects (Cross)				
C--C	-23.2943			
L--C	-6.96672			
M--C	50.0834			
V--C	-19.82238			
Effects Specification				
Cross-section fixed (dummy variables)				
R-squared	0.612098	Mean dependent var	12.84982	
Adjusted R-squared	0.333294	S.D. dependent var	15.50923	
S.E. of regression	12.66361	Akaike info criterion	8.212869	
Sum squared resid	5131.744	Schwarz criterion	9.080877	
Log likelihood	-205.9603	Hannan-Quinn criter.	8.549394	
F-statistic	2.195441	Durbin-Watson stat	1.948362	
Prob(F-statistic)	0.019966**			



The below equation presents the individual estimated results of each country by using only selected variable from expected model. The variables in below equations are selected from the probability of t-statistics is less than the level of significant as asterisk.

#### Cambodia

$$\text{GGDPC} = -3.471781 + 0.266964*\text{GEXC} + 0.279049*\text{GDCC}$$

$$\text{T-test: } (5.714481)^* \quad (3.308829)^* \quad (2.408596)^{**}$$

#### Lao

$$\text{GGDPL} = 12.855803 - 0.208591*\text{GDCL} + 0.237094*\text{GODL}$$

$$\text{T-test: } (5.714481)^* \quad (-2.183399)^{**} \quad (2.159553)^{**}$$

#### Myanmar

$$\text{GGDPM} = 69.905923 - 1.704768*\text{GDCM}$$

$$\text{T-test: } (5.714481)^* \quad (-3.47227)^*$$

#### Vietnam

$$\text{GGDPV} = 0.000148 + 0.044930*\text{GKFDIV} + 0.562505*\text{GEXV} - 0.080294*\text{GODV}$$

$$\text{T-test: } (5.714481)^* \quad (1.833174)^{***} \quad (4.783424)^* \quad (-2.078885)^{**}$$

Remark: T-statistics appears in parenthesis by asterisk marks show T-Statistics's p-value at significant level at 0.01(\*), 0.05(\*\*), and 0.10(\*\*\*)

#### Granger Causality Test

From stationary test of data set in table A4, the correlation test with Granger Causality is used to be the econometric tool for testing the relationship of Korean FDI and other economic variables in regional level, therefore, the summary of empirical outputs in each lag (year) appears in table A6. These F-statistics in table A6 are used to testing null hypothesis of pair variables, and then, this result is reported in above table. Form the output result of these statistic results,

This testing show Korean FDI growth in CLMV (GKFDICLMV) is cause of GDP's growth of CLMV (GGDPCLMV) because the probability of F-statistic in first lag is less than level of significant at 0.05.

This testing show domestic credit growth in CLMV (GDCCLMV) is cause of Korean FDI growth in CLMV (GKFDICLMV) because the probability of F-statistic in third lag and fourth lag are less than level of significant at 0.05.

This testing show total FDI growth, except Korean FDI, in CLMV (GNKFDICLMV) is cause of Korean FDI growth in CLMV (GKFDICLMV) because the probability of F-statistic in fourth lag is less than level of significant at 0.05.

For the other result of null hypotheses, the probability of F-statistic cannot reject the null hypothesis.

Table A6. Figure of Econometric Result in Pairwise Granger Causality Tests

(T-Statistics have p-value less than the significant level at 0.05(\*\*))

Lag Period (year)	1		2		3		4		5	
Null Hypothesis:	F-Stat	Prob.	F-Stat	Prob.	F-Stat	Prob.	F-Stat	Prob.	F-Stat	Prob.
GKFDICLMV does not Granger Cause GGDPCLMV	5.00167	0.0296**	2.07947	0.1368	1.82015	0.1599	1.36427	0.2682	1.23723	0.3204
GGDPCLMV does not Granger Cause GKFDICLMV	1.36011	0.2487	0.65067	0.5265	0.95357	0.4245	0.80609	0.5305	1.26859	0.3072
GKFDICLMV does not Granger Cause GDCCLMV	0.3419	0.5612	0.04284	0.9581	0.41297	0.7446	0.5496	0.7006	0.82796	0.5414
GDCCLMV does not Granger Cause GKFDICLMV	2.62891	0.1109	1.27189	0.2902	3.903	0.0159**	2.90665	0.037**	1.81443	0.145
GKFDICLMV does not Granger Cause GEXCLMV	0.11176	0.7395	1.9375	0.1559	1.21644	0.3169	1.09652	0.3751	0.98942	0.4432
GEXCLMV does not Granger Cause GKFDICLMV	0.52427	0.4722	0.26977	0.7648	0.33216	0.8021	1.95409	0.1255	1.45243	0.2392
GNKFDICLMV does not Granger Cause GKFDICLMV	0.0409	0.8405	0.25757	0.7741	0.47956	0.6984	3.47892	0.0181**	0.35923	0.8716
GKFDICLMV does not Granger Cause GNKFDICLMV	0.39748	0.5311	0.22615	0.7985	1.0509	0.3813	0.38934	0.8147	0.66149	0.6558
GODCLMV does not Granger Cause GKFDICLMV	0.14073	0.7091	0.07085	0.9317	0.27079	0.8461	0.82223	0.5207	0.64839	0.6652
GKFDICLMV does not Granger Cause GODCLMV	0.34267	0.5608	0.01814	0.982	0.54626	0.6537	0.9432	0.4517	1.10359	0.3825

## Appendix B

### ASEAN 6 and Korea Agreement

#### ANNEX1: MODALITY FOR TARIFF REDUCTION AND ELIMINATION FOR TARIFF LINES PLACED IN THE NORMAL TRACK

1. Tariff lines placed by each Party in the Normal Track shall have their respective applied MFN tariff rates gradually reduced and eliminated according to the following Schedules. The first date of implementation shall be the date of entry into force of the Agreement. The tariff reduction will be in accordance with the rate provided for that year in the schedule.

(i) ASEAN 6 and Korea

X = applied MFN tariff rate	ASEAN-Korea FTA Preferential Tariff Rate (not later than 1 January)				
	2005	2007	2008	2009	2010
X > 20%	20	13	10	5	0
15% < x < 20%	15	10	8	5	0
10% < x < 15%	10	8	5	3	0
5% < x < 10%	5	5	3	0	0
X < 5%	Standstill			0	0

(ii) Socialist Republic of Vietnam ("Vietnam")

X = applied MFN tariff rate	ASEAN-Korea FTA Preferential Tariff Rate (not later than 1 January)							
	2006	2007	2008	2009	2011	2013	2015	2016
X > 60%	60	50	40	30	20	15	10	0
40% < X < 60%	45	40	35	25	20	15	10	0
35% < X < 40%	35	30	30	20	15	10	0-5	0
30% < X < 35%	30	30	25	20	15	10	0-5	0
25% < X < 30%	25	25	20	20	10	7	0-5	0
20% < X < 25%	20	20	15	15	10	7	0-5	0
15% < X < 20%	15	15	15	10	7	5	0-5	0
10% < X < 15%	10	10	10	8	5	0-5	0-5	0
7% < X < 10%	7	7	7	7	5	0-5	0-5	0
5% < X < 7%	5	5	5	5	5	0-5	0	0
X < 5%	Standstill						0	

(iii) Kingdom of Cambodia (Cambodia), Lao People's Democratic Republic (Lao PDR), and Union of Myanmar (Myanmar)

X = applied MFN tariff rate	ASEAN-Korea FTA Preferential Tariff Rate (not later than 1 January)						
	2006	2007	2008	2009	2012	2015	2018
X > 60%	60	50	40	30	20	10	0
45% < X < 60%	45	40	35	25	15	10	0
35% < X < 45%	35	30	30	20	15	5	0
30% < X < 35%	30	30	25	20	10	5	0
25% < X < 30%	25	25	20	20	10	5	0
20% < X < 25%	20	20	15	15	10	0-5	0
15% < X < 20%	15	15	15	10	5	0-5	0
10% < X < 15%	10	10	10	8	5	0-5	0
7% < X < 10%	7*	7*	7*	7*	5	0-5	0
5% < X < 7%	5	5	5	5	5	0-5	0
X < 5%	Standstill						0

Remark: \* Myanmar shall be allowed to maintain ASEAN-Korea FTA preferential tariff rates at no more than 7.5% until 2010.

2. The tariff rates specified in the relevant Schedules in paragraph 1 only set out the level of the applicable ASEAN-Korea FTA preferential tariff rates to be applied by each Party for the tariff lines concerned in the specified year of implementation and shall not prevent any Party from unilaterally accelerating its tariff reduction or elimination at any time if it so wishes.

3. The tariff lines in the Normal Track, which are subject to specific tariff rates, shall have such specific tariff rates reduced to zero, in equal proportions in accordance with the timeframes provided in the Schedules set out in paragraph 1.

4. For all tariff lines placed in the Normal Track where the applied MFN tariff rates are at 0%, they shall remain at 0%. Where they have been reduced to 0%, they shall remain at 0%. No

Party shall be permitted to increase the tariff rates for any tariff line, except as otherwise provided in this Agreement.

5. As an integral part of its commitments to reduce and/or eliminate the applied MFN tariff rates in accordance with the relevant Schedules in paragraph 1, each Party hereby commits to undertake further tariff reduction and/or elimination in accordance with the following thresholds:

(a) Korea

(i) Korea shall eliminate its tariffs for at least 70 % of the tariff lines placed in the Normal Track upon the entry into force of this Agreement.

(ii) Korea shall eliminate its tariffs for at least 95% of the tariff lines placed in the Normal Track not later than 1 January 2008.

(iii) Korea shall eliminate all its tariffs for tariff lines placed in the Normal Track not later than 1 January 2010.

(b) ASEAN 6

(i) Each Party shall reduce its applied MFN tariff rates for at least 50 % of the tariff lines placed in the Normal Track to 0-5 % not later than 1 January 2007.

(ii) Each Party shall eliminate its tariffs for at least 90% of the tariff lines placed in the Normal Track not later than 1 January 2009.

(iii) Each Party shall eliminate its tariffs for all tariff lines placed in the Normal Track not later than 1 January 2010, with flexibility to have tariff lines, not exceeding 5% of all the tariff lines or as listed in an agreed Schedule, eliminated not later than 1 January 2012.

(iv) Each Party shall eliminate all its tariffs for tariff lines placed in the Normal Track not later than 1 January 2012.

(c) Vietnam

(i) Vietnam shall reduce its applied MFN tariff rates for at least 50% of the tariff lines placed in the Normal Track to 0-5% not later than 1 January 2013.

(ii) Vietnam shall eliminate its tariffs for at least 90% of the tariff lines placed in the Normal Track not later than 1 January 2015.

(iii) Vietnam shall eliminate its tariffs for all tariff lines placed in the Normal Track not later than 1 January 2016, with flexibility to have tariff lines, not exceeding 5% of all the tariff lines, eliminated not later than 1 January 2018.

(iv) Vietnam shall eliminate all its tariffs for tariff lines placed in the Normal Track not later than 1 January 2018.

(d) Cambodia, Lao PDR and Myanmar

(i) Each Party shall reduce their respective applied MFN tariff rates for at least 50% of the tariff lines placed in the Normal Track to 0-5% not later than 1 January 2015.

(ii) Each Party shall eliminate their respective tariffs for at least 90% of the tariff lines placed in the Normal Track not later than 1 January 2017.

(iii) Each Party shall eliminate their respective tariffs for all tariff lines placed in the Normal Track not later than 1 January 2018, with flexibility to have tariff lines, not exceeding 5% of all the tariff lines, eliminated not later than 1 January 2020.

(iv) Each Party shall eliminate all its tariffs for tariff lines placed in the Normal Track not later than 1 January 2020.

6. If an exporting Party places a tariff line in the Normal Track, that exporting Party shall enjoy the tariff concessions which an importing Party has made for that tariff line as specified in and applied pursuant to the relevant Schedules either in this Annex or Annex 2 together with the undertakings and conditions set out therein. This right shall be enjoyed for so long as that exporting Party adheres to its own commitments for tariff reduction and elimination for that tariff line.

7. Each Party shall eliminate all its tariffs for the tariff lines given flexibility in paragraph 5, not later than 1 January 2012.

8. Each Party shall notify the other Parties its tariff lines placed in the Normal Track along with the tariff elimination schedule for each tariff line in accordance with paragraph 5, not later than the date when the commitment of the Party commences with respect to the tariff lines.

#### **ANNEX2: MODALITY FOR TARIFF REDUCTION/ELIMINATION FOR TARIFF LINES PLACED IN THE SENSITIVE TRACK**

1. The number of tariff lines which each Party can place in the Sensitive Track shall be subject to a maximum ceiling of:

(i) ASEAN 6 and Korea:

10% of all the tariff lines and 10% of the total value of imports from Korea or from the ASEAN Member Countries as a whole, as appropriate, based on 2004 trade statistics;

(ii) Vietnam:

10% of all the tariff lines and 25% of the total value of imports from Korea based on 2004 trade statistics; and

(iii) Cambodia, Lao PDR and Myanmar:

10% of all the tariff lines.

2. Tariff lines placed by each Party in the Sensitive Track shall be further classified into the Sensitive List and the Highly Sensitive List. The number of tariff lines which each Party can place in the Highly Sensitive List shall be subject to a maximum ceiling of:

(i) ASEAN 6 and Korea:

200 tariff lines at the HS 6-digit level or 3% of all the tariff lines at the HS digit level of each Party's own choice and 3% of the total value of imports from

Korea or from the ASEAN Member Countries as a whole, as appropriate, based on 2004 trade statistics.

(ii) Cambodia, Lao PDR, Myanmar and Vietnam:

200 tariff lines at the HS 6-digit level or 3% of all the tariff lines at the HS digit level of each Party's own choice.

3. The Parties shall reduce and, where applicable, eliminate the applied MFN tariff rates of tariff lines placed in the Sensitive List according to the following Schedules:

- (i) ASEAN 6 and Korea shall reduce the applied MFN tariff rates of tariff lines placed in their respective Sensitive Lists to 20% not later than 1 January 2012. These tariff rates shall be subsequently reduced to 0-5% not later than 1 January 2016.
- (ii) Vietnam shall reduce the applied MFN tariff rates of tariff lines placed in their respective Sensitive Lists to 20% not later than 1 January 2017. These tariff rates shall be subsequently reduced to 0-5% not later than 1 January 2021.
- (iii) Cambodia, Lao PDR and Myanmar shall reduce the applied MFN tariff rates of tariff lines placed in their respective Sensitive Lists to 20% not later than 1 January 2020. These tariff rates shall be subsequently reduced to 0-5% not later than 1 January 2024.

4. The tariff lines placed in a Party's Highly Sensitive List shall be categorised into five groups. For each group of their respective tariff lines in the Highly Sensitive List, the Parties undertake the following commitments:

(i) Group A (Tariff lines subject to 50% tariff rate capping):

ASEAN 6 and Korea shall reduce the applied MFN tariff rates of tariff lines placed in Group A to not more than 50 % not later than 1 January 2016. Vietnam shall reduce the applied MFN tariff rates of tariff lines placed in Group A to not more than 50% not later than 1 January 2021. Cambodia,



Lao PDR and Myanmar shall reduce the applied MFN tariff rates of tariff lines placed in Group A to not more than 50 % not later than 1 January 2024.

(ii) Group B (Tariff lines subject to tariff reduction by 20%):

ASEAN 6 and Korea shall reduce the applied MFN tariff rates of tariff lines placed in Group B by not less than 20% not later than 1 January 2016.

Vietnam shall reduce the applied MFN tariff rates of tariff lines placed in Group B by not less than 20% not later than 1 January 2021. Cambodia, Lao PDR and Myanmar shall reduce the applied MFN tariff rates of tariff lines placed in Group B by not less than 20% not later than 1 January 2024.

(iii) Group C (Tariff lines subject to tariff reduction by 50%):

ASEAN 6 and Korea shall reduce the applied MFN tariff rates of tariff lines placed in Group C by not less than 50% not later than 1 January 2016.

Vietnam shall reduce the applied MFN tariff rates of tariff lines placed in Group C by not less than 50% not later than 1 January 2021. Cambodia, Lao PDR and Myanmar shall reduce the applied MFN tariff rates of tariff lines placed in Group C by not less than 50% not later than 1 January 2024.

(iv) Group D (Tariff lines subject to TRQs):

The parties shall apply the tariff rate quotas on imports of the goods of tariff lines placed in Group D from the entry into force of this Agreement, in accordance with the conditions set out in their respective Schedule.

(v) Group E (Tariff lines exempted from tariff concession):

Each Party reserves the rights to maintain the applied MFN tariff rates of tariff lines placed in Group E. The number of tariff lines which each Party can place in Group E shall be subject to a maximum ceiling of 40 tariff lines at the HS 6-digit level.

5. Tariff lines in the Sensitive Track, which are subject to specific tariff rates, shall have such tariffs reduced in accordance with the timeframes provided for in paragraphs 3 and 4. The

proportion of tariff reduction for these tariff lines shall be equal to the average margin of tariff reduction of the tariff lines with ad-valorem tariff rates under the Sensitive Track, which are subject to tariff reduction in the same year.

6. Notwithstanding the Schedules in paragraphs 3 and 4, any Party may unilaterally accelerate the tariff reduction and/or elimination for its tariff lines placed in the Sensitive Track at any time if it so wishes. Nothing in this Agreement shall prevent any Party from unilaterally transferring any tariff line from the Sensitive Track into the Normal Track at any time if it so wishes.

7. The reciprocal tariff rate treatment of tariff lines placed by an exporting Party in the Sensitive Track, excluding Group E, while the same tariff lines are placed by the importing Party in the Normal Track, shall be governed by the following conditions:

- (i) the tariff rate for a tariff line placed by an exporting Party in the Sensitive Track, excluding Group E, must be at 10% or below and the exporting Party has given notification to that effect to the other Parties in order for that exporting Party to enjoy reciprocity;
- (ii) the reciprocal tariff rate to be applied to a tariff line placed by an exporting Party in the Sensitive Track shall be either the tariff rate of that exporting Party's tariff line, or the Normal Track tariff rate of the same tariff line of an importing Party from whom reciprocity is sought, whichever is higher;
- (iii) notwithstanding sub-paragraph (ii), the importing Party can, on its discretion, apply its Normal Track tariff rate even if such rate is lower than the tariff rate of the exporting Party; and
- (iv) the reciprocal tariff rate to be applied to a tariff line placed by an exporting Party in the Sensitive Track shall in no case exceed the applied MFN rate of the same tariff line of an importing Party from whom reciprocity is sought.

8. The tariff lines placed by each Party in the Sensitive List and the Highly Sensitive List under the Sensitive Track based on the modality set out in this Annex are respectively listed in Appendices 1 and 2.



ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย

## Appendix C

### Guide Book for Investing in ASEAN: Update 2009

#### CAMBODIA

##### I. RELEVANT INVESTMENT LEGISLATION

Cambodia has approved the *Law on the Amendment to the Law on Investment of the Kingdom of Cambodia* on 24 March 2003, which governs all Qualified Investment Projects (QIP) and defines procedures by which any person could establish a Qualified Investment Project. Its Sub-Decree to implement the *Law on the Amendment to the Law on Investment* was promulgated on 27 September 2005 followed by the *Sub-Decree on the Establishment and Management of the Special Economic Zones* on 29 December 2005, *Law on Concession* dated 19 October 2007 and its relevant laws and regulation that provide a conducive legal framework for investment.

The Royal Government has ensured the reduction of business transaction costs, expanded market access, reduced transportation costs and improved travel safety by improving physical infrastructure, thus ensuring the integration of rural and urban economies. The Royal Government has developed the necessary legal framework for private sector development and strengthened the “Government-Private Sector Forum” to function as an effective dialogue and dispute settlement mechanism. Reduced requirements for documents have facilitated trade and businesses, particularly through the implementation of the “Single Administrative Document (SAD)” system and the “Single Window” service. The Royal Government will continue to: strengthen the supportive legal framework for the private sector including laws and regulations, and administrative procedures and improve productivity through training for employees, technicians, and skilled labour; ensure fair competition; promote trade facilitation; enforce the labour law; and, strengthen the dispute settlement mechanism. As an important part of the policy for diversifying the economic base, the Royal Government will promote a favorable climate for developing the agro-processing industry, and assembling industry including electronic and machinery

assembly. In addition, the Royal Government will continue enhancing necessary legal framework, especially creating the law for the efficient operations of Special Economic Zones. The Royal Government will continue promoting the public and private sector partnership for investment especially for physical infrastructure projects.

The Royal Government has reduced minimum requirements for the registration of small and medium enterprises and the company registration fee. Accounting systems and the financial reporting mechanisms have been simplified. Loans provided by financial institutions to small and medium enterprises have increased considerably. The Royal Government will continue to improve the business climate for small and medium enterprise development focusing on four main aspects: (1) legal and regulatory framework-facilitating registration particularly via internet system, defining procedures and principles for inspection and certificate of origin for import and export, and adoption of a sub-decree on trade facilitation through risk management; (2) financing-creation of financial leasing companies, and strengthening governance and financial reports; (3) supportive actions for small and medium enterprises-promoting innovation and technology as well as financing for small and medium enterprises, and strengthening and widening other supportive services, (4) integrating small and medium enterprises into a global value chain and preventing all kinds of smuggling.

In addition, the Royal Government will promote the implementation of new measures including: establishing the National Productivity Center in order to improve productivity and reduce production costs; establishing a National Standards Institute to ensure product quality conforming with regional and international standards; establishing national testing laboratories for physics, chemistry, micro-biology, and mechanics in order to evaluate quality and set prerequisite criteria for products; strengthening industrial property rights protection mechanism in order to promote innovation, adoption of new techniques and new

Technology ; imparting training to improve skills; and strengthening the relevant legal framework.

The Royal Government continues to promote the “one province-one product” movement by encouraging inventions, entrepreneurship, and self-confidence in rural areas. This movement provides a comprehensive network linking production to the market, helps maintain regional identity, and encourages new initiatives for product diversification. The Royal Government will promote technical training for special products within some regions in the context of strengthening quality and expanding markets which are critical for further support to and participation in this movement.

The Royal Government has approved the establishment of a number of Special Economic Zones (SEZs) along the borders with Thailand and Vietnam including those in Koh Kong, Poipet, Phnom Den, Bavet the surrounding areas of Phnom Penh and Preah Sihanouk province with the aim of attracting more investments into Cambodia. In addition to geographical advantages, the Royal Government has implemented the “Single Window” mechanism at each SEZ in order to facilitate import-export procedures and to save time. Moreover, the SEZs offer investors superior and complete infrastructures and facilities, such as road network, factory buildings, electricity supply, clean water, water treatment plant, skill training, banking services, postal services and telecommunication, etc.

Furthermore, strengthening tourism sector infrastructure and ensuring the linkages between tourism and agriculture is an important endeavor for the improvement of the livelihood of people. Indeed, a key component of the Royal Government’s strategy is to establish a green belt zone or a agricultural development zone surrounding the tourist sites in order to achieve a pro-poor tourism development. In this context, in order to facilitate and attract private investments, the Royal Government has paid great attention towards improving key tourism infrastructures such as road network and airports in Phnom Penh, Siem Reap,

Sihanoukville, Koh Kong and other provinces. The Royal Government has channeled more funds to build agricultural infrastructure network and provide facilities to the development of green zones surrounding key tourist sites.

## 1. INVESTMENT ACT

- *Law on Investment of the Kingdom of Cambodia No. 03/NS (4 August 1994)*
- *The Amendment to the Law on Investment of the Kingdom of Cambodia (24 March 2003) (Khmer/English)*
- *Sub-Decree No 111 ANK/BK on the Implementation of the Amendment to the Law on Investment of the Kingdom of Cambodia (2005)*
- *Sub-Decree No 34 ANK/BK on the Amendment of the section 1 in the Annex I of the Sub-Decree No 111 ANK/BK on the Implementation of the Law on the Amendment to the Law on Investment of the Kingdom of Cambodia (2007)*
- *Sub-Decree No 149 ANK/BK on the Organization and Functioning of the Council for the Development of Cambodia (2008)*
- *Sub-Decree No 148 ANK/BK on the Establishment and Management of the Special Economic Zone (2005)*
- *Sub-Decree No 28 ANK/BK on the Amendment of Article 4 Point (4.1) of Sub-Decree on the Establishment and Management of the Special Economic Zone (2006)*
- *Sub-Decree No 18 ANK/BK on Amendment on Article 4 Point 4.1 and Point 4.3 of the Sub-Decree on the Establishment and Management of the Special Economic Zone*
- *Sub-Decree No 17 ANK/BK on the Establishment of the Sub-Committee on Investment of the Provinces-Municipalities of the Kingdom of Cambodia (2005)*
- *Sub-Decree No 146 ANK/BK on Economic Land Concession (2005)*
- *Sub-Decree No 114 ANK/BK on the Mortgage and Transfer of the Rights over a Long-Term Lease or an Economic Land Concession (2007)*
- *Law on Concessions (2007)*
- *Sub-Decree No 126 (RGC) on Management and Use of Co-owned Buildings (2009)*

*Details of the above laws and regulations can be found in the official website:  
<http://www.cambodiainvestment.gov.kh>*

## 2. COMPANIES ACT

Businesses operating in Cambodia may take on a variety of forms. In a Sole Proprietorship, the sole proprietor provides all the start-up capital and does not have a separate legal entity from the Proprietorship. The sole proprietor thus has unlimited liability for the debts and liabilities of the business.

Under Cambodian law, general partnerships can be formed without legal documentation since the partnership contract may be verbal or in writing (*Law on Concession-LoCE, Jun 2005, Art. 9*), but the partners also share unlimited liability for the debts and liabilities of the partnership. The partnership has no legal entity distinct from its members. Limited partnerships can also be formed through filing a certificate with the Business Registration Bureau at the Ministry of Commerce. Under a limited partnership, the general partners have unlimited liability for the debts of the companies, while limited partners are liable only for their contributed capital. Both sole proprietorships and partnerships are terminated upon the death or withdrawal of a general partner.

Limited Liability Companies (LLC) can be formed by filing Articles of Incorporation with the Ministry of Commerce, as well as submitting the required paperwork and fee to the Registrar of Companies and Businesses at the Commercial Registration Department. The LLC must issue a minimum of 1,000 shares with a par value of not less than KHR4,000 per share, and the company must have a registered office address within the Kingdom of Cambodia. Directors may be of any nationality, domicile, and residence, and all profits generated in Cambodia are subject to corporate tax rates. Private Limited Companies (PLC) may have no more than thirty (30) shareholders and may not offer shares or other securities to the public. PLC with only one shareholder must register as a Single Member Private Limited Company, but it may change its legal form to a PLC upon request. There are no



restrictions on the number of shareholders or transfer of shares for Public Limited Companies. *For more information on LLCs, please see LoCE Art. 88-89.*

Both foreign and domestic companies may establish branches in Cambodia in compliance with the *Law on Commercial Rules and the Commercial Register* as well as the LoCE. Branches must be registered with the Registrar. A branch of a foreign company is subject to the same legal and tax consequences as companies incorporated in Cambodia, and they are legally required to file returns and accounts on an ongoing basis. Parent companies, both foreign and domestic, are responsible for all debts and liabilities of the branch. Legal regulation regarding branches is outlined in LoCE Art. 281-285.

Companies incorporated outside of Cambodia may establish a Representative Office in order to coordinate administration and marketing within the country. Establishing a Representative Office is a good way for foreign companies to analyse the Cambodian market before making a larger investment, and such offices can be established provided they are used solely for marketing and administration. These offices are prohibited from engaging in any business in Cambodia, but they can perform promotional and liaison work. *For further information, please see LoCE Art. 277-280.*

### 3. RELEVANT LEGISLATION

#### *Investment*

- *Sub-Decree No 126 (RGC) on Management and Use of Co-owned Buildings (2009)*
- *Sub-Decree No 149 ANK/BK on the Organization and Functioning of the Council for the Development of Cambodia (2008)*
- *Agreement Between Japan and the Kingdom of Cambodia for the Liberalization, Promotion and Protection of Investment (2008)*
- *Law on Concessions (October 19, 2007)*
- *Sub Decree on the Mortgage-Transfer of the Rights over a Long-Term Lease or an Economic Land Concession (August 29, 2007)*

- *Sub-Decree No 34 ANK/BK on the Amendment of Section 1 in the Annex I of the Sub-Decree No 111 ANK/BK on the Implementation of the Law on the Amendment to the Law on Investment of the Kingdom of Cambodia (2007)*
- *Memorandum of Understanding on Investment Cooperation between the Kingdom of Cambodia and the Government of Australia (2006)*
- *Sub-Decree No 28 ANK/BK on the Amendment of Article 4 Point (4.1) of Sub-Decree on the Establishment and Management of the Special Economic Zone (2006)*
- *Sub-Decree No.111 on the Implementation of the Amendment to the Law on Investment (2005)*
- *Sub-Decree No 148 ANK/BK on the Establishment and Management of the Special Economic Zone (2005)*
- *Sub-Decree No.17 on the Establishment of the Sub-committee on Investment of the Provinces-Municipalities (2005)*
- *Sub-Decree No. 146 ANK/BK on Economic Land Concession (2005)*
- *Law on the Adoption of the Agreement between the Government of the Kingdom of Cambodia and the Kingdom of Netherlands on the Promotion and Protection of Investments (2005)*
- *Law on the Adoption of the Agreement between the Government of the Kingdom of Cambodia and the Socialist Republic of Vietnam on the Promotion and Protection of Investments (2005)*
- *Law on the Amendment to the Law on Investment (2003)*
- *Law on the Adoption of the Agreement between the Government of the Kingdom of Cambodia and the Republic of Cuba on the Promotion and Protection of Investments (2002)*
- *Law on the Adoption of the Agreement between the Government of the Kingdom of Cambodia and The Republic of Croatia on the Promotion and Protection of Investments (2002)*
- *Sub-Decree No.33 on Creation of Development Zones (2001)*

- *Law on the Adoption of the Convention on the Settlement of Investment Disputes between States and Nationals of other States (2001)*
- *Law on the Adoption of the Agreement between the Government of the Kingdom of Cambodia and the OPEC and Fund International Development on the Promotion and Protection of Investments (2001)*
- *Law on the Adoption of the Agreement between the Government of the Kingdom of Cambodia and the Republic of the Philippines on the Promotion and Protection of Investments (2001)*
- *Law on the Adoption of the Agreement between the Government of the Kingdom of Cambodia and France Republic on the Promotion and Protection of Investments (2001)*
- *Law on the Adoption of the Agreement between the Government of the Kingdom of Cambodia and F.R. Germany on the Promotion and Protection of Investments (2001)*
- *Sub-Decree on the Development of Sihanoukville Autonomous Port (2000)*
- *Law on the Adoption of the Agreement between the Government of the Kingdom of Cambodia and the Republics of Indonesia on the Promotion and Protection of Investments (2000)*
- *Law on the Adoption of the Agreement between the Government of the Kingdom of Cambodia and the Republic of Korea on the Promotion and Protection of Investments (2000)*
- *Law on the Adoption of the Agreement between the Government of the Kingdom of Cambodia and the Republics of Singapore on the Promotion and Protection of Investments (1999)*
- *Law on the Adoption of the Agreement between the Government of the Kingdom of Cambodia and the Swiss Confederation) (1999)*
- *Law on the Adoption of the Agreement between the Government of the Kingdom of Cambodia and the People's Republic of China on the Promotion and Protection of Investments (1999)*

- *Law on the Adoption of the Agreement between the Government of the Kingdom of Cambodia and the Kingdom of Thailand on the Promotion and Protection of Investments (1997)*
- *Law on the Adoption of the Agreement between the Government of the Kingdom of Cambodia and Malaysia on the Promotion and Protection of Investments (1996)*
- *Memorandum of Understanding on Economic and Technical Cooperation between the Kingdom of Cambodia and the Republic of India (1996)*
- *Sub-Decree on the Establishment of the Sihanoukville Industrial Zone (1995)*
- *Investment Incentive Agreement between the Royal Cambodian Government and the Government of the United States of America (1995)*
- *Law on the Investment in the Kingdom of Cambodia (1994)*

#### ***Business and Industry***

- *Law on Establishing Commercial Court (In preparation)*
- *Law on Anti-dumping, Countervailing Duty and Safeguard (In preparation)*
- *Regulations on Sanitary and Phyto-sanitary Measures (SPS) (In preparation)*
- *Law on Business Association, Cooperatives (In preparation)*
- *Law on Commercial Contract (Draft)*
- *Law on Personal Property Leasing (Draft)*
- *Law on Commercial Agency (Draft)*
- *Sub-Decree No 124 (RGC) on Organization and Functioning of National Center of Commercial Arbitration (2009)*
- *Ministerial Order No 518 (MIME) on the Organization and Functioning of the National Standards Council (2009)*
- *Law on Insolvency (Bankruptcy) (2007)*
- *Law on Secured Transaction (2007)*
- *Sub-Decree No 07 (RGC) on the Organization and Functioning of Chambers of Commerce of Cambodia (2007)*
- *Law on Standards (2007)*
- *Law on Management of Factories and Handicrafts (June 2006)*

- *Law on Commercial Arbitration (May 2006)*
- *Law on Commercial Enterprises (2005)*
- *Law on Negotiable Instruments and Payment Transactions (2005)*
- *Ministerial Order on Liability of Directors, Managers or Owners of an Enterprise for Tax Due, Additional Tax and Interest (2005)*
- *Ministerial Order on Determination of the Cost of Company Registration at the Ministry of Commerce (2004)*
- *Ministerial Order on Arbitration Council (2004)*
- *Sub-Decree on the Establishment of the Provincial Chamber of Commerce (2004)*
- *Law on the Adoption and Implementation of United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (2001)*
- *Ministerial Order on Cambodian Industrial Standards (2001)*
- *Law on the Management of Quality and Safety of Products and Services (2000)*
- *Ministerial Order on Trading Activities of Commercial Companies (2000)*
- *Law on the Amendments of the Law on the Commercial Regulations and Commercial Register (1999)*
- *Ministerial Order on Measures Against Food Products Devoid of Appropriate Packing Labels (1999)*
- *Sub-Decree on the Material Standard (1998)*
- *General Statute on Public Company (1996)*
- *Law on the Chamber of Commerce (1995)*
- *Sub-Decree on the Establishment of the Phnom Penh's Chamber of Commerce (1995)*
- *Law Bearing on the Commercial Regulations and Commercial Register (1995)*
- *Circular No.63 on the Adoption of the Market Economy (1994)*
- *Declaration No. 38 referring to Contract and Other Liabilities (1988)*

#### **Taxation and Accounting**

- *Ministerial Order No 599 (MEF) on Expense of Enterprises which are Authorized to Deduct Tax in relation to the Withholding Tax (2009)*
- *Ministerial Order No 1481 (MEF) on Tax Year (2007)*

- *Ministerial Order No 643 (MEF) on Obligation to Submit Financial Statements to be Audited Corporate Account (2007)*
- *Notice No 002 (MEF) on Obligation of Patent Tax Payment (2007)*
- *Ministerial Order No 1245 (MEF) on Establishment of Secretariat of the National Accounting Council (2006)*
- *Law on Amendment to the Law on Audit of the Kingdom of Cambodia (2006)*
- *Ministerial Order on Implementation of VAT for Supplying Industries or Contractor for serving Garment, Textile and Footwear (2005)*
- *Ministerial Order on the Organization and Functioning of Tax Department (2005)*
- *Ministerial Order on Liability of Directors, Managers or Owners of an Enterprise for Tax Due, Additional Tax and Interest to be paid (2005)*
- *Ministerial Order on the Tax on Profit (Amended) (2003)*
- *Ministerial Order on the Implementation of Cambodian Accounting Standards (CAS) (2003)*
- *Ministerial Order on the Tax on Profit (2003)*
- *Law on the Amendment to the Law on Taxation (2003)*
- *Sub-Decree on the Kampuchea Institute of Certified Public Accountants and Auditors (2003)*
- *Sub-Decree on the functioning of the National Accounting Council (2003)*
- *Ministerial Order on Salary Tax (2003)*
- *Law on Corporate Accounting, Audit and Accounting Profession (2002)*
- *Law on Audit of Government Entities (2002)*
- *Sub-Decree on Value Added Tax (1999.)*
- *Ministerial Order on Turnover Tax (N.A.)*
- *Law on Taxation (1997)*
- *Circular No.635 on the Certification of the Business Accounts (1994)*
- *Ministerial Order No.18 on the Identification of Business subject to Profit and Income Tax (1994)*
- *Law on Accounting (1992)*

### **Banking and Finance**

- *Law on Financial Lease (2009)*
- *Sub-Decree No 54 (RGC) on the Implementation of the Law on Publishing and Trading of Non-Government Securities (2009)*
- *Ministerial Order No 7.09-075(NBC) on the Maintenance of Minimum Reserve Requirement in Banking and Financial Institutions (2009)*
- *Ministerial Order No 7-09-013 (NBC) on Overdraft Facilities Made Available by the NBC to Banks and Financial Institutions Facing Temporary Liquidity Shortages (2009)*
- *Sub-Decree No.97 ANKR/BK on the Conduct and Organization of the Securities and Exchange Commission of Cambodia (2008)*
- *Law on Issuance and Trading of Non-Government Securities (2007)*
- *Law on Combating Money Laundering and Terrorist Financing (2007)*
- *Law on State Securities/Bonds (2007)*
- *Ministerial Order No 7-06-207 (NBC) on Amendment to Ministerial Order on Granting License to Commercial Banks (2006)*
- *Law on Negotiable Instruments and Payments Transaction (2005)*
- *Law on Insurance (2000)*
- *Ministerial Order on the Licensing of Banks (2000)*
- *Ministerial Order restructuring the Foreign Trade Bank of Cambodia (FTRC) (1999)*
- *Law on Banking and Financial Institutions (1999)*
- *Law on Foreign Exchange (1997)*
- *Law on the Organization and Functioning of the National Bank of Cambodia (1996)*

### **Trade**

- *Law on Rules of Origin (In preparation)*
- *Ministerial Order No 734 (MEF) on Special Customs Procedures for Implementing in Special Economic Zones (2008)*
- *Ministerial Order No 116 on Customs Bonded Warehouse (2008)*
- *Law on Customs (2007)*

- *Instructional Circular #007 (MEF) on the Implementation of Policy of the Facilitation of Trade through Risk Management (2007)*
- *Sub-Decree No 20 (RGC) on Creation of Inter-Ministerial Coordinating Committee for Implementing Obligations and Commitment of Cambodia in the World Trade Organization (WTO) (2007)*
- *Ministerial Order No 001 (MEF) on Adjustments of the Tariff Rates and Specific Tax Rate on Import Commodities (2007)*
- *Ministerial Order No 176 (MOC) on a Certain Necessary Measures for Export Management under Trade Preferences System (2006)*
- *Ministerial Order No 607 (MEF) on Establishment and Putting into Operation the Office of Risk Management and Audit of Customs and Excise (Aug 2006)*
- *Sub-Decree No 21 on Risk Management (Mar 2006)*
- *Sub-Decree No 131 (RGC) on the Specification of forest products and sub-products permitted to be exported and imported (2006)*
- *Prime Minister Order on SAD, Single Window, Risk Management (2005)*
- *Memo of the Ministry of Industry, Mines and Energy to GMAC (Elimination of Certificate of Processing) (2005)*
- *Law on WTO Accession (2004)*
- *Ministerial Order on Trading Activities of Commercial Companies (2000)*
- *Ministerial Order Amending and Supplementing the Issuance of the Certificate of Origin, Commercial Invoice and Expo (1999)*
- *Ministerial Order on the Issuance of the Certificate of Origin, Commercial Invoice and Export License for Garments (1999)*
- *Decision No.112 on the Creation of an Inter-Ministerial Commission for the Preparation and Organization of Import and Export Procedures and Regulations (1994)*
- *Law regulating the Duties on the Imported and Exported Goods (1989)*

#### **Labour**

- *Ministerial Order No 133 (MLVT) on Payment of the Occupational Risk Contribution by the Garment and Shoe Enterprises and Establishments for the Year 2009-2010 (2009)*



- *Sub-Decree No 67 (RGC) on Creation and Putting into Operation of the National Agency for Occupations and Labor (2009)*
- *Circular #185 (MOLVC) on Wages of Night Work (2007)*
- *Law on Amendment to Articles 139 and 144 of the Labor Law (2007)*
- *Sub-Decree No 16 (RGC) on Creation of National Social Security Fund (2007)*
- *Law on Social Security (2002)*
- *Law on Amendment to the Law on Labor (Draft)*
- *Law on Labor (Amendment) (1997)*
- *Sub-Decree on the Export of Khmer Labor to Work Overseas (1995)*
- *Law on Labor (1993)*

#### **Intellectual Property Rights**

- *Law on the Protection of Layout Design of IC (In preparation)*
- *Law on Undisclosed Information (In preparation)*
- *Sub-Decree No. 64 (RGC) on the Implementation of the Law Concerning Marks, Trade Names and Acts of Unfair Competition (July 2006)*
- *Ministerial Order No 707 (MIME) on Procedures for Registration of Industrial Designs (2006)*
- *Law on the Copyright and Related Rights (2003)*
- *Law on the Patents, Utility Model Certificates and Industrial Design (2003)*
- *Law on Marks, Trade Names and Acts of Unfair Competition (2002)*
- *Ministerial Order on Procedures of the Intellectual Property Department (1997)*

#### **4. MINIMUM INVESTMENT LEVEL**

In order to be eligible for investment incentives under the Qualified Investment Project (QIP) status, investment capital should be in excess of the amount as set in the Annex I, Section II of the Sub-decree on the Implementation of the *Law on the Amendment to the Law on Investment of the Kingdom of Cambodia*, dated 27 September 2005.

#### **5. OTHER RELATED INVESTMENT LEGISLATION**

- *Civil Code (2007)*
- *Law on Criminal Procedure (2007)*
- *Law on Civil Procedure (2006)*
- *Sub-Decree on Management of Forest Concession (2000)*
- *Sub-Decree on Requirements for Permission of Non-Immigrant Foreigners to Enter, Stay, and Exit the Kingdom of Cambodia (1999)*
- *Charter Law on Amendment of the Constitution (1999)*
- *Law on Immigration (August 26, 1994)*
- *Law on Nationality (August 20, 1996)*
- *Sub-decree on Environmental Impacts Assessment (EIA) (Source at Ministry of Environment)*
- *Sub-decree on Water Pollution Control (Source at Ministry of Environment)*
- *Law on Amendment to the law on taxation dated 24 April 2003 (Khmer/English) (Source at Ministry of Economy and Finance)*
- *Law on Land Management (August 30, 2001)*
- *Law on Pattern (December 6, 2002)*

Details of these laws and regulations can be found in the official website:  
<http://www.cambodiainvestment.gov.kh>

## **II. SECTOR-SPECIFIC LAWS AND POLICIES**

### ***Special Economic Zone/Industrial Land***

- *Sub-Decree No.57 on the Establishment of Poipet “O Neang” Special Economic Zone (Jun 2006)*
- *Sub-Decree No.148 on the Establishment and Management of the Special Economic Zone (2005)*
- *Sub-Decree No.147 on the Organization and Functioning of the CDC (2005)*
- *Sub-Decree No.10 on the Creation of the Nearng Kok Industrial Zone, Koh Kong Province (2002)*
- *Sub-Decree No.33 on Creation of Development Zone (2001)*

- *Sub-Decree on the Establishment of the Sihanoukville Industrial Zone (1995)*

#### **Banking and Finance**

- *Law on Government Securities (In preparation)*
- *Law on Securities and Exchange (In preparation)*
- *Law on Insurance (2000)*
- *Ministerial Order on the Licensing of Banks (2000)*
- *Ministerial Order restructuring the Foreign Trade Bank of Cambodia (FTRC) (1999)*
- *Law on Banking and Financial Institutions (1999)*
- *Law on the Organization and Functioning of the National Bank of Cambodia (1996)*

#### **Infrastructure, Transport and Land**

- *Law on Merchant Shipping (In preparation)*
- *Law on Water Supply (In preparation)*
- *Law on Geographical Indication (In preparation)*
- *Sub-Decree on Implementation of the Law on Concessions (Draft)*
- *Law on the Telecommunications (Draft)*
- *Sub-Decree No 106 (RGC) on Establishment of the National Airline Company (2009)*
- *Sub-Decree No 01 (RGC) on the Establishment of Phnom Penh Port Business Center (2009)*
- *Law on the Civil Aviation (2008)*
- *Decision No 01 (RGC) on Creation of Commission for Preparing Legal Standards and Procedures on Land Use in Provinces-Municipalities and Urban Areas of the Kingdom of Cambodia (2008)*
- *Law on Concessions (2007)*
- *Sub-Decree No 124 (RGC) on Granting Concession of Cambodian Royal Railway (2007)*
- *Ministerial Order No 830 (MEF) on Creation of Working Group for Managing Oil Revenue of the Ministry of Economy and Finance (2007)*
- *Sub-Decree #114 (RGC) on the Mortgage and Transfer of the Rights over a Long -Term Lease or an Economic Land Concession (2007)*
- *Law on the Water Resources Management (2007)*

- *Highway Code*
- *Sub-Decree No 129 (RGC) on Rules and Procedures of Reclassification of Public Properties of the State and of Public Legal Persons (2006)*
- *Sub-Decree No.146 on Economic Land Concessions (2005)*
- *Sub-Decree on the State Land Management (2005)*
- *Instruction on Hearing Procedure of the National Cadastral Commission (2005)*
- *Sub-Decree No 19 on Social Land Concessions (2003)*
- *Ministerial Order on the Guidelines and Procedures of the Cadastral Commission (2002)*
- *Sub-Decree No.48 on Sporadic Land Registration (2002)*
- *Sub-Decree No.47 on Organization and Functioning of the Cadastral Commission (2002)*
- *Sub-Decree No.46 on Procedures of Establishing Cadastral Index Map and Land register (2002)*
- *Sub-Decree No.131 on the Determination of Maximum License Fee for Electric Power Service Providers in Cambodia (2001)*
- *Law on Land (2001)*
- *Law on Electricity (2001)*
- *Sub-Decree on Management of Forest Concession (2000)*
- *Circular on Management of Means of Water Transport (2000)*
- *Sub-Decree No.11 on Build-Operate-Transfer (BOT) Contract (1998)*
- *Law on Land Use Planning, Urbanization and Construction (1994)*
- *Decision No.34 on the Creation of a National Committee for Land Planning and Urbanization of Areas surrounding Phnom Penh, Towns and Provinces (1993)*

#### **Tourism**

- *Law on Tourism (2009)*
- *Ministerial Order No 105 (RGC) on Classification of Hotels (2009)*
- *Law on the Suppression of Gambling (1996)*
- *Law on the Protection of Cultural Heritage (1996)*

#### **Agriculture and Environment**

- *Law on the Amendment to the Law on Forest (Draft)*

- *Law on Fisheries (Draft)*
- *Sub-Decree No 123 (RGC) on Determination of Category/Type of Products and Endangered Fishery Products/Resources (2009)*
- *Ministerial Order No 402 (MAFF) on Forms of Registers, Certificates and Permits to be used for the Cambodian Specified Rubber Label and Official Letter of Recognition (2008)*
- *Ministerial Order on Control/Inspection of Food Safety of Agricultural Products (2007)*
- *Ministerial Order No 002 (MAFF) on List of Maximum Residue Limits of Pesticide in Fruit and Vegetables (2007)*
- *Sub-Decree # 131 (RGC) on the Specification of Forest Products and Subproducts Permitted to be Exported and Imported (2006)*
- *Law on Forestry (2002)*
- *Sub-Decree on The Control of Air Pollution and Noise Disturbance (2000)*
- *Sub-Decree on the Water Pollution Control (1999)*
- *Sub-Decree on Management of Solid Waste (1999)*
- *Law on Environment Protection and Natural Resource Management (LEPNRM) (1997)*
- *Sub-Decree on Conferring the Right to Sell and Export Rubber Products to the Ministry of Agriculture, forestry and Fisheries (1994)*
- *Sub-Decree on the Creation of a National Permanent Commission for Coordinating the Privatization and the Promotion of Rubber Plantations (1994)*
- *Decision No.65 on the Annulment of the Existing Procedure for Timber Export (1994)*
- *Royal Decree on the Protection of Natural Areas (1993)*

### III. INVESTMENT APPLICATIONS

#### 1. AGENCY INVOLVED IN ADMINISTERING INVESTMENT APPLICATIONS AND GRANTING OF INCENTIVES

- *Council for the Development of Cambodia (Cambodian Investment Board)*

The Council for the Development of Cambodia (CDC) is the sole and One-Stop Service organisation responsible for the rehabilitation, development and the oversight of private

investment activities. The CDC is the Royal Government's "Etat-Major" responsible for the evaluation and the decision-making on all rehabilitation, development and private investment project activities, processing applications for investment projects, providing investment advice, and administering investment activities.

The role and functions of the Council for the Development of Cambodia "Cambodian Investment Board and Cambodian Special Economic Zones Board" are specified as set forth in the sub-decree No. 149 ANKR dated 3 October 2008, on the organisation and functioning of the Council for the Development of Cambodia.

## **2. CONDITIONS INCLUDING TIMETABLE FOR PROCESSING OF APPLICATIONS**

Within three (3) working days of the receipt of the Investment Proposal, the CDC shall issue to the Applicant a Conditional Registration Certificate or a Letter of Non-Compliance.

The CDC 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 conditions, the CDC shall issue a Letter of Non-Compliance to the Applicant.

The Conditional Registration Certificate shall specify the approvals, authorisations, clearances, licenses, permits or registrations required for the QIP to operate, as well as the government entities responsible for the issue of 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 recognise the statutes of the legal entity which will undertake the QIP.

If the CDC fails to issue a Conditional Registration Certificate of Letter of Non-Compliance within three working days, the Conditional Registration shall be considered to be automatically approved.

All government entities responsible for issuing an authorisation, clearance, license, permit or registration listed on the Conditional Registration Certificate shall issue such a document no later than the 28th working day from the date of the Conditional Registration Certificate.

The CDC 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 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.

### 3. SPECIAL SERVICES FOR EXPEDITING APPLICATIONS

The CDC offers a one-stop service for investment in Cambodia.

Through its executive arm, the Cambodian Investment Board (CIB), CDC is responsible for the processing of applications for investment projects. As such, the government is fully committed to the speeding-up of new investment-project approvals by making the CDC a truly effective and well-disposed one-stop service.

### 4. PROCEDURES FOR INVESTMENT APPLICATIONS

Party to Take Action	Process	Condition/Remarks
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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 To be issued within 3 working days after submission of the Investment Proposal
The CDC or PMIS	<p>1) Issuance of "Conditional Registration Certificate"(CRC)</p> <ul style="list-style-type: none"> <li>• if the Investment Proposal contains all the information required, and</li> <li>• if the proposed activity is not in the Negative List or not related to national interest / environmental sensitivity</li> </ul>	<p>The CRC specifies the approvals, authorisations, clearances, licenses, permits or registrations required for the QIP to operate, as well as the government entities responsible to issue such approvals, etc.</p> <p>The CRC confirms the incentives to which the QIP is entitled and recognizes the status of the legal entity.</p>
The CDC or PMIS	<p>2) Issuance of "Letter of Non-Compliance"</p> <ul style="list-style-type: none"> <li>• If the Investment Proposal does not satisfy the above condition</li> </ul> <p>3) If a CRC or Letter of Non-Compliance is not issued within 3 working days, the CRC shall be considered automatically approved</p>	<p>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.</p>



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 authorisation, clearance, license, permit or registration listed on the CRC shall issue those no later than the 28 working day from the date of the CRC.
The CDC or PMIS	Issuance of a "Final Registration Certificate" (FRC)	Any government official who, without proper reason, fails to respond to an Applicant's request by this deadline shall be punished by law. 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 the QIP commencement

#### IV. INVESTMENT PROTECTION

##### 1. CONVERSION, REMITTANCE AND THE FOREIGN EXCHANGE REGIME

###### • *Currency*

The U.S. Dollar is widely and commonly use in Cambodia for investment. The exchange rate of the U.S. Dollar has been stable at around 4,000 Riel since the 1998 devaluation. Checks or credit cards and other financial forms are widely used and accepted for commercial purposes.

**• Remittance**

Article 11 of the *Amended Law on Investment of 2003*: 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:

- payment for imports and repayment of principal and interest on international loans;
- payment of royalties and management fees;
- remittance of profits; and
- repatriation of invested capital in compliance with Chapter 8.

**• Foreign Exchange Regime**

The “*Law on the Foreign Exchange*” of September 1997 stipulates that “there shall be no restriction on foreign exchange operations...” through authorised banks (Article 5) but the authorised banks shall report to the National Bank of Cambodia the amount of each transfer equaling or exceeding 10,000 US dollars (Article 17). Residents are allowed to hold foreign currencies freely (Article 7).

The import or export of raw gold, uncut precious stones or other raw precious metals shall be free but subject to prior declaration to the National Bank of Cambodia, and the import or export of the means of payment equaling or exceeding 10,000 US dollars in foreign currencies or the equivalent amount in domestic currency by a traveler shall be declared to customs officers (Article 12 & 13).

Loans and borrowings, including trade credits, may be freely contracted between residents and nonresidents as long as the loans disbursement and repayments are made through authorised banks (Article 18).

## 2. EXPROPRIATION AND COMPENSATION

As set forth in the Article 61 & Article 62 of the *Land Law* (30 August 2001), in the case of withdrawal of a concession, for whatever reason, the concessionaire is not entitled to claim any compensation for any damage.

## 3. INVESTMENT GUARANTEE AGREEMENTS

The *Law on Investment* guarantees the investment as follows (Article 8 to Article 11 of the “*Law on Investment*”):

- 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.
- The Royal Government shall not undertake any nationalisation policy that would adversely affect private properties of investors in the Kingdom of 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 discharge of financial obligations in connection with their investment. This concerns the following payment:
  - payment for imports and repayment of principal and interest on international loans;
  - payment of royalties and management fees;
  - remittance of profits; and
  - repatriation of invested capital in compliance with chapter 8.

## 4. INTELLECTUAL PROPERTY RIGHTS (IPR)

Intellectual Property (IP) generally refers to the product of creativity and intellectual effort. IP can be an invention or innovation, special names and images used in a trade, original designs or expression of an idea.

Cambodia has comprehensive laws for the protection of IP, which conform to all the major international IP conventions. The framework is intended to encourage creativity and ensure that creators receive the financial and other benefits of their innovations.

IP being territorial in nature would need registration in countries in which protection is desired. The laws of the foreign country would apply if an application for IP rights is sought in that country. To obtain protection outside Cambodia, it is necessary to file separate applications in the countries concerned. In order to get protection in these countries you may either file applications in those countries directly or, for certain IP, through existing international systems.

Cambodia's key laws protecting IP are in full compliance with the standards laid down in *Trade Related Aspects of Intellectual Property Rights* ("TRIPS").

The Intellectual Property Department at the Ministry of Commerce investigates complaints against infringements and has extensive powers of search and seizure.

There are a number of options affording protection, depending on the item to be protected:

- i) Marks and Trade Names
- ii) Patents, Utility Model Certificates and Industrial Designs
- iii) Copyright and Related Rights

***i) Marks and Trade Names***

Marks or logos that are capable of distinguishing goods (trademark) or services (service mark) may be registered as marks. Certain marks will be refused if they are misleading or deceptive, or closely resemble existing marks. Marks can be one of the most powerful marketing tools you have, as they help customers recognise your business. Registering a mark allows you to protect the goods and services which carry it, and gives you an IP asset to stop other people or organisations from

copying them. A trade name is the name and/or designation identifying and distinguishing an enterprise.

The owner of the mark has an exclusive right to use the mark on his/her goods or services, and can take legal action against anyone using the mark without the owner's consent. A mark can be letters, words, names, signatures, numerals, devices, brands, labels, tickets, shapes, sound, colors, aspect of packaging or any combination of these. Anyone fraudulently using a mark, including selling and importing goods bearing a forged mark, or possessing or using equipment for the purpose of making or applying a forged mark to goods, commits a criminal offence in Cambodia.

The natural or legal person can apply or may engage advisers to help with this process. The documents for mark registration required by the Intellectual Property Department of Ministry of Commerce are as follows:

- Application for registration of the mark (1 set)
- Specimens of the mark (15 sets) (Listed under the applicable class or classes of the International classification)
- The official fee for this registration is KHR200,000.

#### *ii) Patents, Utility Model Certificates and Industrial Designs*

Patents in Cambodia are protected by the *Law on Patents, Utility Model Certificates and Industrial Designs* (22 Jan 2003).

#### **Patents**

A patent is the title granted to protect an "invention". An invention is the idea of an inventor which permits in practice the solution to a specific problem in the field of technology. An invention may relate to a product or a process.

An invention is patentable if it is: i) new; ii) involves an inventive step; and iii) is industrially applicable. There are a number of types of inventions that are not patentable such as methods of doing business. Once registered, a patent may be freely assigned or licensed. The right to a patent belongs to the inventor. However, where an invention is made during the course of an employment contract, the right to the patent shall belong to the employer, unless there is a contract to the contrary.

A patent is a monopoly right over an invention given by the law to the patentee for a maximum of 20 years. It serves to encourage new inventions, as it allows the patentee to benefit from the commercial exploitation of the invention. In return, the patentee provides full disclosure of the invention so that the public may avail themselves of the disclosure of the information and benefit from such disclosures.

#### ***Utility Model Certificate***

A protectable utility model certificate is a certificate granted for the protection of a utility model, which is any invention which is new and industrially applicable, and may be, or relate to, a product or a process. There is no inventive step as required for a patent.

#### ***Application for a Patent or Utility Model Certificate***

Application for registration of a patent or utility model certificate is made at the Department of Industrial Property at the Ministry of Industry, Mines and Energy.

The following is required for application as set out in parkas:

- Request for the grant of Patents and Utility Model Certificates shall be made on Form No. 1 P/UM.
- The request shall indicate each applicant's name, address, nationality and residence and shall be signed by each applicant.

- Where the applicant is the inventor, the request shall contain a statement to that effect, and, where he is not, it shall indicate each inventor's name and address and be accompanied by the statement justifying the applicant's right to the Patents and Utility Model Certificates.
- If the applicant is represented by an agent, the request shall so indicate and state the agent's name and address.
- The title of the invention shall be short and precise.

### ***Industrial Designs***

A protectable industrial design is any composition of lines or colours or any three-dimensional form, or any material, whether or not associated with lines or colours. This is provided that such composition, form or material gives a special appearance to a product of industry or handicraft, and appeals to and is judged by the eye.

### ***Application for the Registration of an Industrial Design***

Application for registration of an industrial design is made at the Department of Industrial Property at the Ministry of Industry, Mines and Energy.

The following is required for application as set out in parkas:

- Application for registration of an industrial design containing a request, drawing, photographs or other adequate graphic representations of the article embodying the industrial design and an indication of the kind of products for which the industrial design is to be used shall be made to the Department for Industrial Property.
- Request for the registration of an Industrial Design shall be made on Form No. 1 ID
- The request shall indicate each applicant's name, address, nationality and residence and shall be signed by each applicant.
- Where the applicant is the creator, the request shall contain a statement to that effect, and, where he is not, it shall indicate each creator's name and address and

be accompanied by the statement justifying the applicant's right to the registration of the industrial design.

- If the applicant is represented by an agent, the request shall so indicate and state the agent's name and address.

- A request by the applicant for deferral of publication of the industrial design or designs included in the application shall be made in writing and shall indicate the period of deferment requested.

### *iii) Copyright*

Copyright protects works like novels, software programs, plays, sheet music and paintings. Generally, the author of a copyright work has the right to reproduce, publish, perform, communicate and adapt his work. These rights enable him or her to control the commercial exploitation of the work.

### *iv) Licenses and Licensing*

It is very difficult for a new business to know what licenses are required. There are, indeed, over 75 licenses that may apply to SMEs in Cambodia and these are issued across a large number of ministries. To find out which licenses apply to your business, you may visit the SME Sub-Committee's SME web portal accessed from [www.mime.gov.kh](http://www.mime.gov.kh) where all the licenses issued to the SMEs in Cambodia should be listed. This website has a table which sets out who needs each of the different licenses together with samples of the application form and where to apply.

## 5. DISPUTE SETTLEMENT

The *Law of Investment of 2003* stipulates the dispute settlement procedures in Article 20 as follows:

- 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 between the



Council for the Development of Cambodia, the investors and any other party involved in the dispute.

- If the parties fail 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.

## V. PERFORMANCE REQUIREMENTS

### 1. LOCAL CONTENT

Currently, there is no local content requirement in Cambodia, or in other words, there is no restriction on the use of important materials, parts and components unless they are harmful to the health, environment or society. However, exporters in Cambodia should take into account the rules of origin requirements (ROO) for the GSP including the EBA (Everything-But-Arms Initiative) scheme for exports to the EU market. The EBA provides special arrangements for least developed countries, including Cambodia. Practically all products (excepting arms and ammunition) covered by the EBA are granted duty free access to the EU market if they fulfill the ROO requirements.

Under the GSP, exported products have to originate in the beneficiary country. For products manufactured with materials from other countries, final products can be considered as originating in the beneficiary country if the materials have undergone sufficient working or processing. The requirements for ROO refer to the technical criteria, the added value or other economic criteria.

Under the EBA, the ROO requires that at least 40% of the contents of exported products have to originate in the country. One exception, however, is that under the special waivers,

certain textile products from Cambodia are allowed to have cumulative origin with ASEAN countries of the EU. The ROO lay down that all products have to be accompanied by a certificate of origin Form A (issued by competent authorities in the country of export, namely the Ministry of Commerce in Cambodia) or an invoice declaration in order to prove the origin or the imported materials in the beneficiary country, and that they have to be shipped direct to the countries of import.

For exports from Cambodia to the USA under the GSP, the ROO requirement is a minimum 35% and the qualifying member countries of ASEAN, namely, Cambodia, Thailand, Indonesia and the Philippines, are treated as one country for the GSP rule-of-origin requirements.

## 2. EMPLOYMENT

### • *Article 17 to Article 18 of the “Law on Investment”*

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

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 curriculum vitae shall be submitted to the Council for the Development of Cambodia.
- A letter asserting the need for hiring foreign employees shall be required. Investors shall obtain approval and a permit from the Ministry of Labour.
- Before working for investors, the foreign employee shall obtain a permit for work in the Kingdom of Cambodia, issued by the Ministry of Labour.

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.

The Ministry of Labour has established a labour book and work permit mechanism and employers are required to submit various documents needed to have the Ministry of Interior issue long-term visas to foreign workers. There are no limitations on appointing foreign workers to higher-level positions. However, a ceiling of 10% foreigners of an employers' total workforce is enforced, with exceptions being made upon a demonstration of need to the Ministry of Labour.

### 3. EXPORT ORIENTATION

Under the *Amended Law on Investment*, Export QIPs (see “Chapter IV, Investment”) can import production equipment, construction materials and production materials free from customs duty, unless Export QIPs operate under the customs bonded warehouse mechanism. By being approved as Export QIPs, they are also granted a tax holiday or special depreciation scheme. For exports, VAT is also refunded or credited as to the materials for exported products.

## VI. FOREIGN EQUITY POLICIES

### Equity Regulations

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 8, *Law on Investment*)

## VII. INVESTMENT INCENTIVES

## 1. CORPORATE INCOME TAX/INCOME TAX ALLOWANCE

### • *Incentives (Subject to New Amended Law on Investment - 2003)*

**Article 13:** Incentives and privileges shall include the exemption, in whole or in part, of custom duties and taxes. Incentives provided for in Article 13 shall include as follows:

i) A Qualified Investment Project (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. The Priority Period shall be determined under the Financial Management Law. The maximum Trigger Period is to be the first year of profit or three years after the QIP earns its first revenue, whichever is sooner.

ii) 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.

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

iv) 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.

v) 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.

vi) 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.

vii) 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.

viii) 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.

ix) 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.

x) A QIP shall be entitled to 100% exemption of export tax, except for activities as stipulated under laws that are in effect.

xi) 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 authorised by the Council for the Development of Cambodia and in compliance with the Immigration and Labor Laws.

## 2. EXEMPTION FROM OR REDUCTION OF TAXES ON IMPORTED CAPITAL GOODS

### • *Exemption for Production Equipment and Construction Materials-Domestic QIP*

In accordance with Article 14.5 of the *Law on Investment*, production equipment 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, 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.

### • *Customs Duty Exemptions for Production Equipment, Construction Materials, and Production Inputs-Export QIP*

In accordance with Article 14.6 of the *Law on Investment*, production equipment, 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 bonded 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.

• ***Customs Duty Exemptions for Production Equipment, Construction Materials, and Production Inputs—Supporting Industry QIP***

In accordance with Article 14.7 of the *Law on Investment*, production equipment, 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.

• ***Procedures for Customs Duty Exemption***

The Council must:

- i) 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 Equipment, Construction Materials and Production Inputs by a QIP for each investment purpose.
- ii) Prepare a detailed Guideline on procedures for a QIP to be entitled to Customs Duty exemption.

• ***Transfer or Sale of Production Equipment, Construction Materials, and Production Inputs***

If any production equipment, 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:

- i) 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 authorisation from the Council.
- ii) 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 authorisation from the Council.
- iii) Be subject to a temporary suspension of import authorisation, 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, penalties as defined in paragraphs i) and ii) of this Article 16.5. 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 Equipment Construction Materials, or Production Inputs which were imported with Customs Duty exemption, to another Investor to be used in a QIP.

### 3. LIST OF INVESTMENT SECTORS TO WHICH INCENTIVES SHALL APPLY

#### i) Crop Production

- Paddy farming greater than 1,000 ha.
- All types of cash crops greater than 500 ha.
- Vegetables greater than 50 ha.

#### ii) Livestock Production

- Livestock more than 1,000 heads
- Dairy farming more than 100 heads
- Poultry and eggs for 10,000 heads

#### iii) Fisheries

- Hatcheries more than 2 ha.
- Shrimp farming and other aqua-culture production greater than 10 ha.

#### iv) Manufacture and Processing of Food & Related Products

- Investment Capital greater than 500,000 USD

- Beverages
  - Fats & oils
  - Sugar confectionery
  - Meat products
  - Dairy products
  - Preserved fruits and vegetables
  - Grain mill products
  - Bakery products
  - Animal feed products
- v) Manufacture of Textile Mill Products
- Investment Capital greater than 1,000,000 USD
    - Weaving mill cotton, wool and man-made material
    - Narrow fabric mills
    - Floor covering mills
    - Knitting mills
- vi) Manufacture of Apparel and Other Textiles :Investment Capital greater than 500,000 USD
- vii) Manufacture of Furniture & Fixtures
- Investment Capital greater than 500,000 USD
    - Household furniture
    - Office furniture
    - Building partitions and fixtures
- viii) Manufacture of Paper & Allied Products
- investment Capital greater than 1,000,000 USD
    - Tree plantations for paper and pulp mills
    - Paper production
    - Paperboard mills
    - Paperboard containers
- ix) Manufacture of Chemicals & Allied Products



- Investment Capital greater than 500,000 USD
  - All types of chemicals including agricultural chemicals
  - Plastics and other synthetics
  - Drugs
  - Cleaning products
  - Paint & allied products

x) Manufacture of Rubber & Miscellaneous Plastics

- Investment Capital greater than 500,000 USD

xi) Manufacture of Leather & Other Products

- Investment Capital greater than 500,000 USD

xii) Manufacture of Fabricated Metal Products

- Investment Capital greater than 500,000 USD

xiii) Manufacture of Electrical & Electronic Equipment

- Investment Capital greater than 500,000 USD

xiv) Manufacture of Transportation Equipment

- Automobiles and spare parts
- Aircraft and spare parts
- Constructions and means of water transport
- Equipments and means of rail transport
- Bicycles and motorcycles

xv) Highway and Bridge Construction

xvi) Exploitation of Minerals, Ores, Coal, Oil and Natural Gas

xvii) Production of Machinery and Industrial Equipment

- Investment Capital greater Than 1,000,000 USD

xviii) Production of Consumption Goods

xix) Hotel Construction

- Three stars classification or higher

xx) Medical Complex of International Standard, Educational Facilities of International Standard, Vocational Training Centers.

xxi) Physical Infrastructure Facilities to support the Tourism and Cultural Sectors.

xxii) Production and Exploitation Activities to protect the Environment.

#### 4. LIST OF INVESTMENT SECTORS TO WHICH INCENTIVES SHALL NOT APPLY

i) All Types of Trading Activities

ii) All Forms of Transportation Services

iii) Duty-free Shops

iv) Restaurant, Karaoke, Bars and Massage Parlors; outside the premises of international standard hotels

v) Shopping Mall

vi) News and Media-related Activities (Radio, TV, Newspapers)

vii) Retail and Wholesale

viii) Professional Services

*Note: the above list is subject to change when the new sub-decree of the new Amended Law on Investment takes place and is ratified. All the above investment sectors would be applicable to receive incentives and be treated the same.*

#### 5. OTHER INCENTIVES

##### VAT Refund

An investment enterprise approved by the CDC is eligible for a refund of VAT paid on the import of materials before the enterprise begins operation in Cambodia. Under the special registration procedure available to investment enterprises, the investment enterprise can only remain registered for 2 years as a VAT investment enterprise and must repay all VAT refunds received within that period if taxable supplies (sales) have not been made by the expiration of that period. During this 2-year VAT refund period, the investment enterprise can only reclaim input tax that is attributable to the intended taxable supplies to be produced by that enterprise. The refund eligibility automatically expires when the enterprise

makes its first VAT sale. Investment enterprises that will make only non-taxable supplies are not eligible for this type of VAT refund.

## **VIII. PROMOTED AREAS/SECTORS FOR FOREIGN INVESTMENT**

### **1. PRIORITY/PROMOTED SECTORS**

Sectors in which investment is strongly encouraged:

- Agriculture and agro-industry
- Transport and telecommunications infrastructure
- Energy and electricity sectors
- Labor-intensive industries and export-oriented processing and manufacturing
- Tourism-related industries
- Human resource development
- Mining

*Source: The Sub-decree No.111 ANK/BK date 27 September 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)*

### **2. EXPORTED PRODUCTS**

- Garments, rubber, other agricultural commodities, and footwear.

### **3. PROSPECTIVE PRODUCTS**

- Rubber-based products.

### **4. RESTRICTIONS**

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

- Production/processing of psychotropic substances and narcotic substances.

- Production of poisonous chemicals, agriculture pesticide/insecticide and other goods by using chemical substances, prohibited by international regulations or the World Health Organization, that affects the public health and environment.
- Processing and production of electricity power by using any waste imported from a foreign country.
- Forestry exploitation business prohibited by *Forestry Law*.

*Source: The Sub-decree No.111 ANK/BK date 27 September 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)*

## **IX. TAXATION**

### **• Article 14 of the Law on Investment: 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 is profit derived from a contract sharing of oil and natural gas exploitation or from natural resources related activities including, but not limited to, timber, ores, golds 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 merchandise 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 of the Law on Investment: 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 the Trigger Period plus the 3-year Period plus the 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 immediate 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 realised 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.

## 1. CORPORATE TAX

- **Corporate Income Tax:** Corporate Income Tax is 20%.

- **Tax on Profit**

A profit tax is levied on all businesses and is calculated on the basis of either actual profit or estimated profit, depending on the tax regime applicable to the taxpayer. Companies are all classified under the real regime of taxation and are subject to a flat profit tax rate of 30% (for natural resource exploitation), 20%, 9% or 0%. The standard corporate rate is 20%. A 9% rate may be awarded to certain investments promoted by the Cambodian Investment Board. The Investment Board may also grant a tax holiday to certain projects for a maximum of 8 years, thus reducing the investor's effective profit tax rate to 0% for that period. The following are the applicable profit tax rates as of January 1999:

Profit Realised From:	Rate
Activities of business enterprises	20%
Oil or natural gas production sharing contracts or exploitation of natural resources	30%
Activities of business enterprises granted profit tax investment incentives by the CDC	9%
Activities of business enterprises granted tax holiday by the CDC (the tax holiday cannot be for more than 8 years)	0%
Activities of sole proprietorships, based on graduated scale	0-20%
Gross premiums for insurance companies insuring Cambodian risk	5%

Cambodian residents are taxable on worldwide income/profits, while non-residents are taxable only on Cambodian-sourced income/profits. Residents earning foreign-sources income/profits are entitled to receive credits for foreign taxes incurred. Cambodian

residents include companies that are “organised and managed” in Cambodia or that have their “principal place of business” in Cambodia.

## 2. VALUE ADDED/SALES TAX

There are 2 rates of VAT:

- 0%: applies only to goods exported to Cambodia and services “consumed” outside Cambodia, and

- 10%: this standard rate is of the “taxable value” of the goods or services.

All corporations, importers, exporters and investment enterprises must register for VAT at the time of commencing business. All other taxpayers must register if their taxable turnover for goods exceeds 125 million Riels (approximately US\$33,000) or taxable turnover for services exceeds 60 million Riels (approximately US\$16,000) for the preceding 3 consecutive months. At the time of registration, the Tax Department will issue a certificate of registration, which includes a Tax Identification Number for use in all future tax filings. Investment enterprises approved by the CDC may apply for VAT registration prior to making taxable supplies. This allows the enterprise to claim a refund of the VAT it has been charged prior to making taxable supplies.

Non-taxable supplies for which VAT is not charged include the following:

- Public postal service
- Medical and dental services and goods sold incidental to those services
- Passenger transport by a wholly state-owned public transportation system
- Insurance services
- Primary financial services
- Imported articles for personal use that are exempt from customs duties
- Non-profit activities on the public interest that have been recognised as such by the Ministry of Economy and Finance.

## 3. WITHHOLDING TAX

No withholding tax on dividend.

• **Local Payments**

Withholding taxes from local transactions made by a resident enterprise or a resident individual (when the payment by such individual is made in the course of carrying on a business in Cambodia) to a resident person include:

- 15% on payment made to individuals for services provided (management, consulting, etc)
- 15% on payment of royalties for intangibles, oil, gas, minerals and interest (except interest paid to domestic banks or savings institutions)
- 10% on payment for rental of movable or immovable property
- 5% on interest paid by local bank to resident individual with nonfixed term account.

No withholding is levied on payments to tax exempt entities such as charitable associations.

• **Foreign Payments**

A flat rate of 15% must be withheld from any payment of Cambodia source income to non-residents, whether overseas or within Cambodia. For payments to entities that are not registered in Cambodia, i.e. the entity is not “carrying on a business” or does not have a permanent establishment in Cambodia; the 15% withholding requirement is applicable.

This withholding tax does not apply to dividends, which are taxed separately.

#### 4. PERSONAL INCOME TAX

• **Tax on Profit**

Resident individuals are taxed at progressive rates up to a ceiling of 20%. In terms of individuals, a non-Cambodian national will be considered a resident by having a “domicile” or making his or her “principal place of abode” in Cambodia, or by being present in Cambodia for more than 182 days in a calendar year.

The following are the applicable salary tax rates:

Monthly salary I Riel (3800 Riel=US\$1)	Rate
500,000 (\$132) – 1,250,000 (\$329)	5%



1,250,001 (\$329) – 8,500,000 Riel (\$2,237)	10%
8,500,001 (\$2,237) – 12,500,000 (\$3,289)	15%
Above 12,500,000 (\$3,289)	20%

Cambodian residents are taxable on both Cambodian source salary and foreign source salary. Non-residents are taxable only on Cambodian source salary. Except for fringe benefits, which are based taxed at the rate of 20%, employees must withhold 15% of the taxable salary of non-resident taxpayers.

## 5. LAND/PROPERTY TAX

### • *Tax on House and Land Rent*

Businesses (other than real-estate) renting out land, buildings, certain equipment, storage facilities etc. are liable to tax on House and Land Rent, which is levied at 10% of the relevant rental fee.

This tax is not imposed where tax on Profit has been withheld from the rental payment.

### • *Tax on Unused Land*

Land in towns and other specified areas, without construction, or with unused construction, and certain developed land, is subject to tax on Unused Land, which is calculated by the Commission for the Evaluation of Unused Land, on every 30 June of every year.

A tax of 2% of the assessed market price of the remaining land is charged, of which becomes the responsibility of the registered owner to pay before 30 September of the relevant year.

## 6. REAL PROPERTY GAINS TAX

A 4% registration tax is levied on the registration of ownership of real property or other immovable assets, either as a result of direct transfer or a contribution of share capital to an enterprise.

## 7. ESTATE DUTY

All real estate companies are subject to pay estate duty as set by the Ministry of Economy and Finance, through its prakas (ministerial decree) and sub-decree.

## 8. FISCAL STAMP TAX

Fiscal Stamp Tax is paid on certain official documents and, perhaps more importantly for foreign investors, certain advertising postings and signage, illumination and the language used (foreign or Cambodian).

## 9. IMPORT DUTY

Import duties are, however, imposed on all goods imported in-to Cambodia. Import duties are collected regardless of the point of entry on all goods crossing the border, except those specifically exempted from import duties by law or by the relevant authorities including:

- Goods temporarily imported into Cambodia
- Articles for personal use
- Goods exempted from duties by international treaty
- Humanitarian aid and some donations
- Goods related to international relations
- Goods imported for a wedding or funeral

Import duties are set by the annual Custom Tariff Schedules. Rates vary from 0% to 35%.

*For further information, please refer to*

***General Department of Customs and Excise of Cambodia***

# 6, Norodom Blvd, Phnom Penh, Cambodia

Fax : (855) 23 214 065

E-mail : [customs@camnet.com.kh](mailto:customs@camnet.com.kh)

Website : <http://www.customs.gov.kh>

## 10. OTHER TAXES

- *Turnover Tax*

Since 1 January 1999, the turnover tax has been levied at the flat rate of 2%. Until 31 December 1998, the turnover tax applied to all persons or entities (whether local or foreign, company or individual) deriving revenue in Cambodia. With the introduction of VAT on 1 January 1999, the turnover tax is no longer applied to real regime (large and/or incorporated) taxpayers.

• ***Patent Tax (Business Registration Tax)***

All business enterprises must register annually with the tax authorities and pay a patent tax of US\$300 per year. Business registration must be made within 15 days of the company's registration as a legal entity and by 31 March of the applicable ensuing fiscal year.

The patent tax rates for the trade and industrial sector vary between 15,000 Riels and a maximum of 0.1% of turnover for companies with more than 100 million Riels turnover. The rates for service sector vary between 15,000 Riels and a maximum of 0.25% of turnover for companies having in excess of 40 million Riels turnover.

• ***Registration Tax (or Transfer Tax)***

Certain documents relating to the establishment, dissolution or merger of a business or the transfer of title in certain assets (such as land vehicles) are subject to registration tax. The tax is generally levied at 4% of the transfer value.

• ***Tax on Means of Transportation***

The tax imposes a number of statutory fees on the registration of certain transportation vehicles, including trucks, buses, motor vehicles and ships.

• ***The 1999 Finance Law***

The 1999 Finance Law specifies taxes levied on the distribution of certain petroleum, cigarette and alcohol products.

• ***Specific Tax on Certain Merchandise and Services***

Rates vary from 2%, 10%, 20% or 30%, depending on the item of merchandise and services.

## **X. FINANCIAL REGULATIONS**

### **1. BORROWING REGULATIONS**

An investment enterprise cannot borrow more than 3 times its equity with limited exceptions.

### **2. FOREIGN EXCHANGE REGULATIONS**

According to The *Law on Foreign Exchange* dated 22 August 1997, as well as the regulations issued by the National Bank of Cambodia, foreign currencies can be freely purchased through the banking system. The Law specifically states that there are no restrictions on foreign exchange operations, specifically including the purchase and sale of foreign exchange, and transfers and all other types of international settlements. However, the Law requires that authorised intermediaries only perform these transactions. These intermediaries are legally recognised banks in Cambodia, which are required to report to the National Bank of Cambodia transactions in excess of US\$10,000.

### **3. REPATRIATION OF CAPITAL/PROFITS**

The repatriation of funds overseas shall comply with the Royal Decree regarding the management of Foreign Exchange No. Chs/RKM/0897/03 dated 22 August 1997 and all provisions set and announced by the National Bank of Cambodia. The repatriation includes:

- Payment for imports and overseas transfer of the principal and interest on loans
- Payment of royalties and management service fees
- Remittance of profit after payment of all financial obligations, taxes, and related expenses
- Remittance of investment capital overseas according to the company's installment payment plan
- Money appropriately saved or remaining after salary expenditures.

## XI. APPROVAL FOR THE EMPLOYMENT OF FOREIGN WORKERS

### 1. CONDITIONS FOR THE APPROVAL OF FOREIGN EMPLOYEES (MANAGERIAL, SUPERVISOR, UNSKILLED)

The 1997 *Labor Law* sets out the following regulations for foreign employees:

- No foreigner can work unless he possesses a work permit and an employment card issued by the Ministry in charge of Labour. These foreigners must also meet the following conditions:

- have a legal work permit to work in the Kingdom of Cambodia
- have legally entered the Kingdom of Cambodia
- possess a valid passport
- possess a valid residency permit
- be fit for their job and have no contagious diseases. These conditions must be

determined by a Prakas (Ministerial Order) from the Ministry of Health with the approval of the Ministry in charge of Labour.

- The work permit is valid for one year and may be extended as long as the validity of extension does not exceed the fixed period in the residency permit of the person in question (Article 261).

- The Ministry in charge of Labour shall issue a Prakas (Ministerial Order) for the issuance of work permits and employment cards to foreign workers (Article 262).

- The maximum percentage of foreigners who can be employed in each of the enterprises shall be determined by a Prakas of the Minister in charge of Labour based on each of the categories of personnel as follows (Article 264):

- Office personnel
- Specialised personnel

- Non-specialised personnel

## 2. WORK PERMIT PROCESSING AND REQUIREMENTS (MANAGERIAL, SUPERVISOR, UNSKILLED)

Employment of foreigners requires a written contract, which cannot be more than 2 years or it becomes a contract of unlimited duration.

A Qualified Investment Project (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 authorised by the Council for the Development of Cambodia and in compliance with the Immigration and Labor Laws.

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

The 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 population. 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;
- Investors shall have the obligation to provide adequate and consistent training to Cambodian staff;
- Promotion of Cambodian staff to senior positions will be made over time.

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

## **XII. LAND AND BUILDING OWNERSHIP**

### **1. REGULATIONS ON ACQUISITION OF LAND AND BUILDINGS**

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 investors, 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.

### **2. RESTRICTIONS**

Foreign ownership of land is illegal. Non-Cambodian legal entities are expressly prohibited from land ownership under Article 44 of the *1993 Constitution* and Article 16 of the *1994 Investment Law*

However, a foreign investor may secure control over land through a longterm lease. Foreign individuals and legal entities may lease land for up to 99 years, according to the *Investment Law* and current practice. The *Investment Law* would also permit foreign ownership of buildings located on land lease by the foreign entity for 70 years.

### XIII. INVESTMENT PROMOTION AGENCY

*Council for the Development of Cambodia (CDC)*

Cambodian Investment Board (CIB)

Government Place, Sisowath Quay, Wat Phnom

Phnom Penh

Cambodia

Tel : (855) 23 981 154

Fax : (855) 23 428 426

E-Mail : [CDC.CIB@online.com.kh](mailto:CDC.CIB@online.com.kh)

Website : [www.cambodiainvestment.gov.kh](http://www.cambodiainvestment.gov.kh)

ศูนย์วิทยพัทยากร  
จุฬาลงกรณ์มหาวิทยาลัย



## LAO

### I. RELEVANT INVESTMENT LEGISLATION

#### 1. INVESTMENT ACT

**Law on the Promotion of Foreign Investment (No. 11/NA dated 22 October 2004)**

*(A new investment law was promulgated by Lao PDR in 2009. The date of entry into force is to be determined.)*

The Law on the Promotion of Foreign Investment determines the principles, regulations and measures regarding the promotion, protection and management of foreign investment in Lao PDR.

#### **Forms of Foreign Investment**

*(Article 5 of the Foreign Investment Promotion Law No. 11/NA)*

Forms of investment are classified into three types as follows:

- Business Cooperation by contract
- Joint Ventures between foreign and domestic investors (foreign partners must hold at least 30% of equity share)
- 100% foreign-owned enterprises

Apart from these, foreign investors can also set up representative offices and establish branches in Lao PDR (branches are limited to banks or financial institutions, insurance companies, international consulting firms and foreign airlines).

#### **Investment Terms**

*(Article 11 of Foreign Investment Promotion Law No. 11/NA)*

The terms of foreign investment are based on the characteristics and size of the enterprise or projects and can be up to 50 years. This can be extended for 25 more years subject to Government approval. The investment term of a foreign enterprise shall be for a maximum of 75 years.

## 2. COMPANIES ACT

- *Enterprise Law (No. 11/NA, dated 9 November 2005)*

### Forms of Domestic Investment and Term of Investment

Investment forms and terms of domestic enterprises shall be implemented in accordance with Part II of *Enterprise Law Number 11/NA, dated 9 November 2005*.

## II. INVESTMENT APPLICATIONS

### 1. AGENCIES INVOLVED IN ADMINISTERING INVESTMENT APPLICATIONS AND THE GRANTING OF INCENTIVES

The Government of Lao PDR established the Committee for Promotion and Management of Investment (CPMI) at the central and local levels as follows:

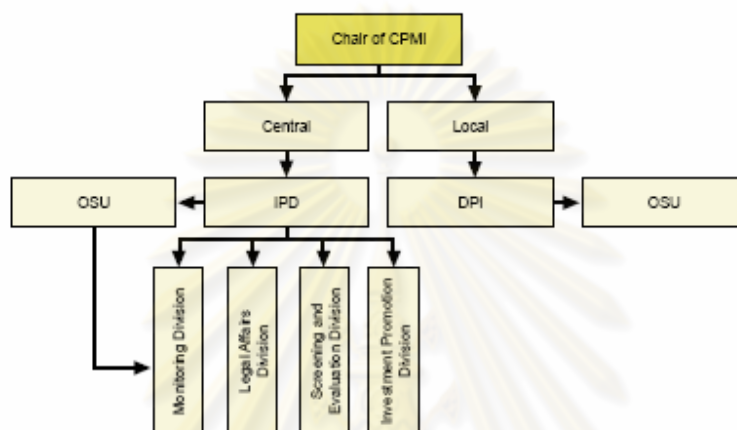
- **CPMI at central level:** Minister of Planning and Investment (MPI) is the chair of the CPMI by virtue of his position. There is also an Investment Promotion Department (IPD) acting as a Permanent Office with One-Stop-Service Unit (OSU).

*Investment Promotion Department (IPD)* (the former Permanent Office of Department for promotion and management of Domestic and Foreign Investment (DDFI), is a central government agency under the supervision of the CPMI, which is under the umbrella of the Ministry of Planning and Investment (MPI). IPD is empowered to appraise investment applications, and report to the CPMI on the investment approvals. IPD is also responsible for the monitoring of investment projects licensed by CPMI, as well as providing incentives for both domestic and foreign investment.

- **CPMI at local level:** the provincial governor or the mayor of Vientiane Capital city is the chair of the CPMI by virtue of his position, which utilises the Provincial Department for Planning and Investment as permanent offices with the One-Stop-Service Unit (OSU), which is located in the Investment Unit of the Department for Planning and Investment. (*Roles and*

functions of CPMI at each level are provided for in Articles 43, 44 of Decree on Domestic Investment Number 300/PM and in articles 52, 53 Decree on Foreign Investment Number 301/PM)

Diagram of the Organisational Structure of the Committee for Promotion and Management on Investment (CPMI)



## 2. CONDITIONS INCLUDING THE TIMETABLE FOR THE PROCESSING OF APPLICATIONS

### • Investment Application and Approval Procedures

i) *Investment Application Forms* (obtainable at the central and local levels of CPMI) should have the following attachments:

- Business plan
- Joint venture agreement (in case there are more than two shareholders)
- Draft Articles of Association of the enterprise to be established in the Lao PDR
- Certified documents for corporate income tax paid for the past three years retroactively in the case of investment proposed by entity(ies)
- Other certified documents of the investors:
  - biographic information
  - copy of passport
  - ID card and criminal record number 3 (in the case of domestic investors)

- 6 copies of 3 X 4cm recent photos of the General Manager or the company's representative in the Lao PDR.

Investors must file 7 copies of the above mentioned documents.

***ii) Submission of Investment Applications***

Applications for foreign investment in the Lao PDR shall go through the one stop service unit of the Committee for Promotion and Management of Investment (“CPMI”).

For investment projects based on the activities listed under investment type 1 (Annex 3 of Decree Number 300/PM and Decree Number 301/PM) with an investment value of less than US\$3,000,000- (or below US\$5,000,000 for four provinces: Vientiane Capital, Savannakhet, Champasak and Luang Prabang), investment applications can be submitted to CPMI at the local or central level. For investment activities other than under investment type 1, applications must be submitted to the CPMI at the central level only.

***iii) Examination of a Foreign Investment Application***

Upon receipt of a complete application in accordance with Article 19 of the *Foreign Investment Promotion Law No. 11/NA*, the CPMI shall coordinate with the relevant sectors and local authorities where necessary to examine and to respond in writing to the foreign investor pursuant to the following timeframes:

- 15 working days for projects which fall under the list of promoted activities/promoted sectors.
- 25 working days for projects which fall under the list of open activities with conditions/promoted sectors with some restrictions.
- 45 working days for projects which involve the grant of a concession, large scale projects or projects related to natural resource.

Foreign investors who are qualified will obtain a foreign investment licence, an enterprise registration certificate and a tax registration certificate at the same time from the CPMI at the

place where the foreign investors are licensed; thereafter they will be considered as enterprises established in conformity with the laws of Lao PDR.

*iv) Location for Submitting Investment Applications*

For information concerning the government's investment policies and regulations, as well as the investment application form instructions, investors may contact:

- Central level:

***Investment Promotion Department (IPD), Ministry of Planning and Investment (MPI)***

Souphanouvong Avenue, Vientiane 01001, Lao PDR

Tel : (856-21) 222 690, 219 568, 218 377

Fax : (856-21) 215 491

E-mail : [investinlaos@gmail.com](mailto:investinlaos@gmail.com)

Website : <http://www.invest.laopdr.org>

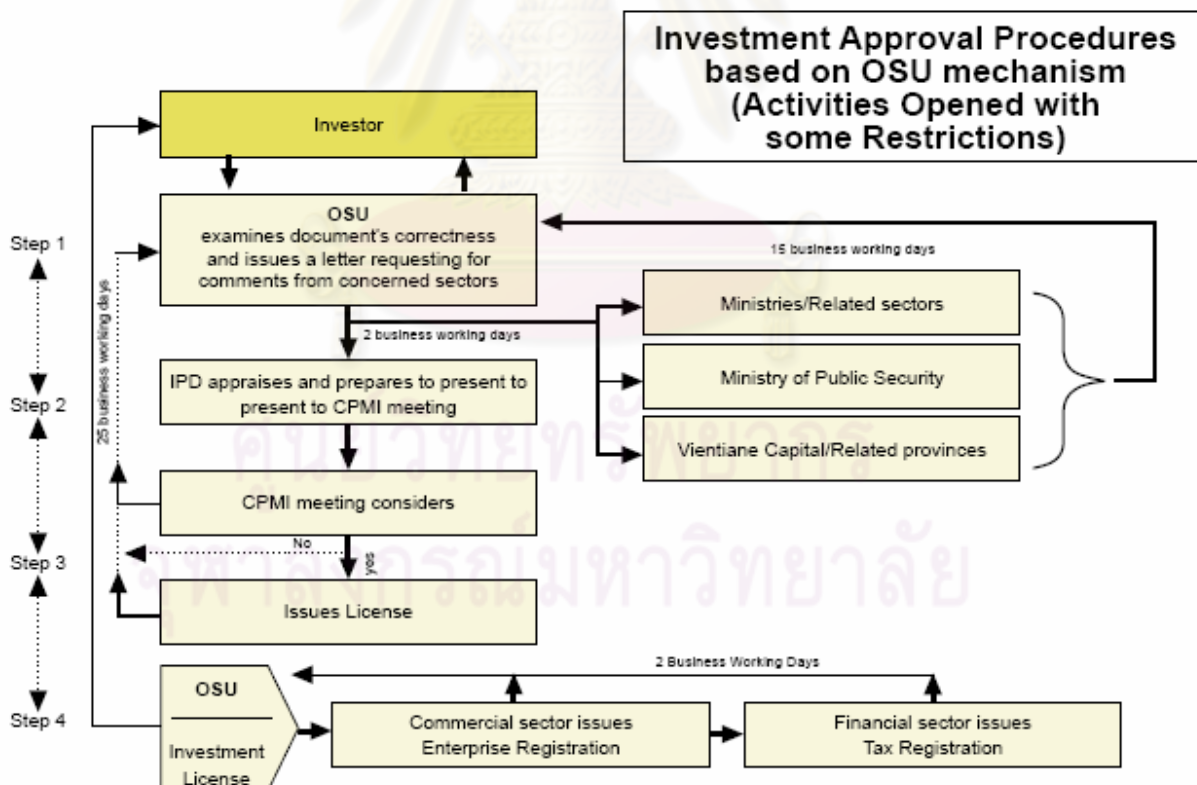
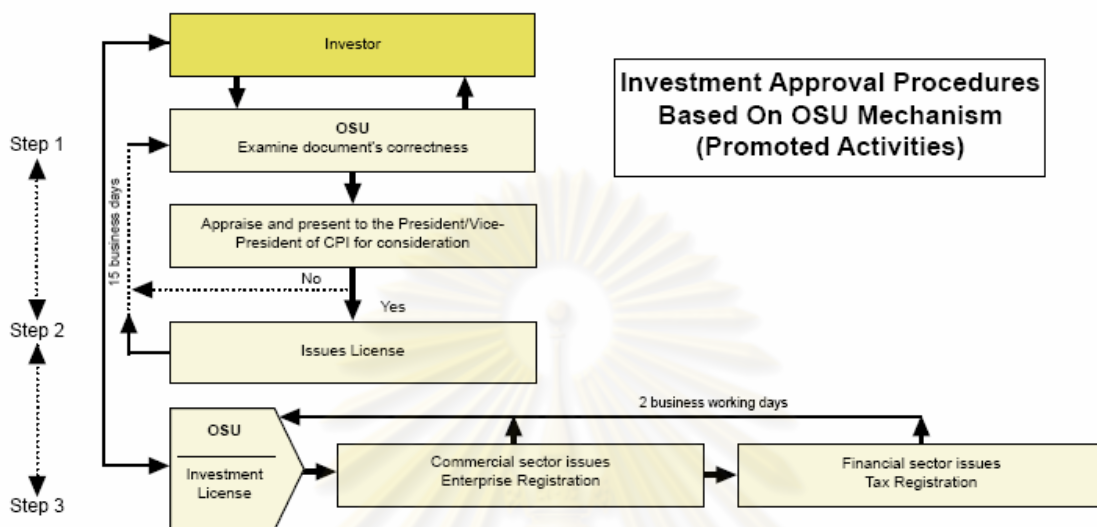
- Local level

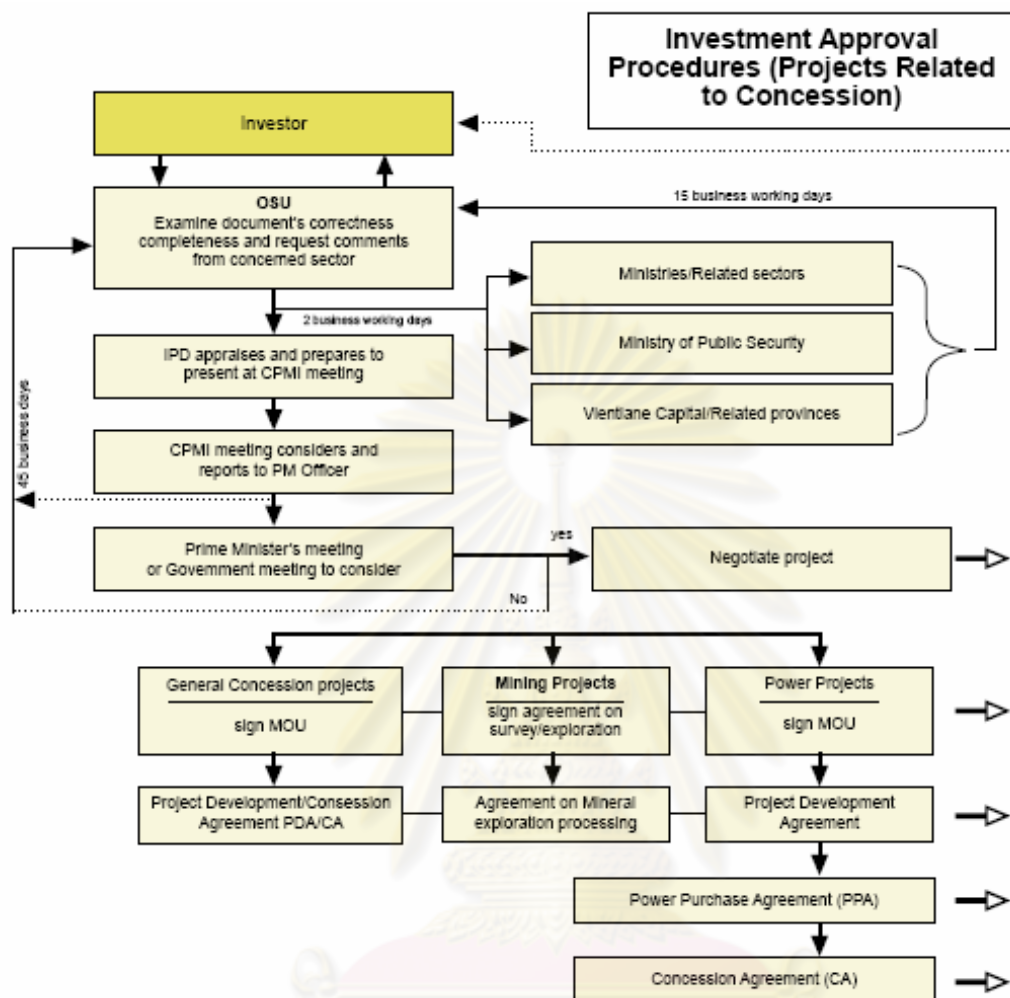
No.	Name(s)	Address(es)
1.	Department for Planning and Investment in Vientiane Capital	Vientiane Capital Administration Office Tel : 021-415941, 412527 Fax : 021-413134 Email : amphayvan@hotmail.com
2.	Department for Planning and Investment in Sayaboury	Simeuang Village Sayaboury District and Province Tel : 074-211445, 211702 Fax : 074-211041, 211262
3.	Department for Planning and Investment in Xieng Khuang	Phonsavang Village Pek District, Xieng Khuang Province Tel : 061-312023 Fax : 061-312133
4.	Department for Planning and Investment in Bokeo	Muangkeo Village Houaysai District, Bokeo Province Tel/ Fax: 084-211490

5.	Department for Planning and Investment in Phongsaly	Phoufa Village Phongsaly District and Province Tel : 088-210846 Fax : 088-210713
6.	Department for Planning and Investment in Houa Phanh	Phanxay Village, Phathy Rd Samneua District Houa Phanh Province Tel : 064-312065 Fax : 064-312140
7.	Department for Planning and Investment in Luang Prabang	Fongkham Village Luang Prabang District and Province Tel : 071-212331 Fax : 071-212781
8.	Department for Planning and Investment in Luang Namtha	Saysomboun Village Luang Namtha District and Province Tel : 086-312165 Fax : 086-211741
9.	Department for Planning and Investment in Oudomxay	Phoukhiao Village Xay District, Oudomxay Province Tel : 081-312036 Fax : 081-312347
10.	Department for Planning and Investment in Khammouane	Nabo Village Thakhek District Khammouane Province Tel : 051-212288 Fax : 051-212289
11.	Department for Planning and Investment in Champasak	Champasak Provincial Office Tel/- Fax: 031-212541
12.	Department for Planning and Investment in Savannakhet	Phonsavang Tai Village Kaysone Phomvihane District Savannakhet Province Tel : 041-212163, 215042 Email : Savacms2@laotel.com
13.	Department for Planning and Investment in Saravane	Saravane Provincial Office Tel : 034-2114477 Fax : 034-211028
14.	Department for Planning and Investment in Xekong	Mai Houa Meuang Village Lamam District, Xekong Province Tel : 038-211015 Fax : 038-211015
15.	Department for Planning and Investment in Attapeu	Phonsavang Village Samakhixay District, Attapeu Province Tel : 036-211120 Fax : 036-211019
16.	Department for Planning and Investment in Borikhamxay	Anousone Village Paksane District Borikhamxay Province Tel : 054-212204 Fax : 054-212204

### 3. PROCEDURES FOR INVESTMENT APPLICATIONS

#### Procedures for Investment Applications at Central Level





#### 4. REGISTRATION

After receiving the investment license, IPD's One-Stop Service Unit shall proceed with the registration for investors as follows:

- Enterprise Registration
- Domestic Tax Registration<sup>3</sup>



In addition to the registration requirements above, and before commencing business operations, the investment enterprises must obtain other necessary operating licenses for their business operations, which are divided into three categories as follows:

- *Category 1* - investment activities of a consulting or trading nature: must obtain approval to use company seals.

- *Category 2* - investment activities without construction of new building or factory: must obtain approval to use company seals and operating license from the concerned sectors.

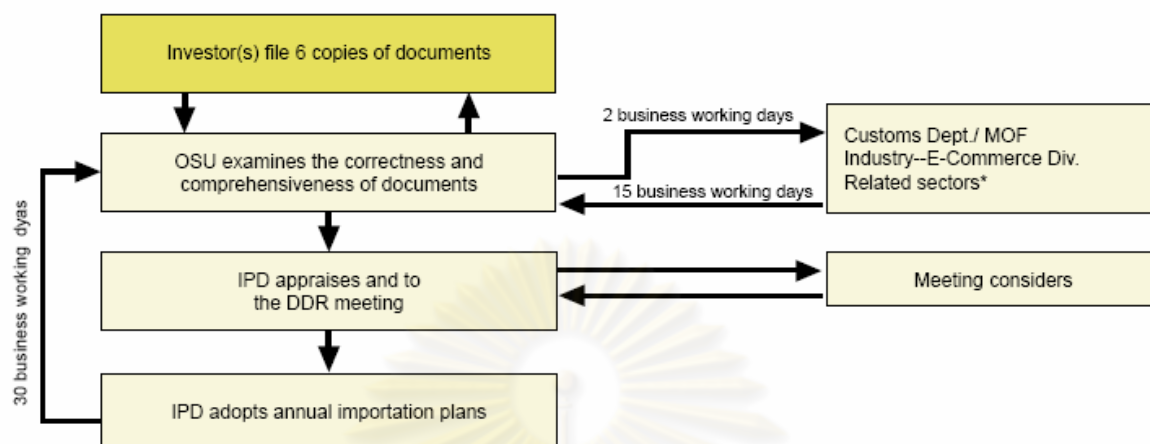
- *Category 3* - investment activities involving construction of new building or factory: must obtain approval to use company seals, construction permit and operating license.

#### **5. REGULATION ON IMPORTATION (*Article 33 of Decree 301/PM*)**

Investors must submit their annual importation plans in accordance with the CPMI standard forms at the central and local levels (where the investment license has been issued). The CPMI will consider approving and issuing a certificate within 30 business days from the date of receiving the request. The approved annual importation plans will be transmitted to officials at the border where the importation will take place to monitor and deduct the balance based on actual importation. Approved annual importation plans can be modified once.

Additional importation not included in the annual importation plans such as utilities or emergency spare parts to replace the old and broken ones with a value not over US\$30,000 shall be permitted by the Ministry of Finance (Custom Department) not more than twice a year based on verification from concerned sectors. In case the value exceeds US\$30,000, the request shall be referred to the CPMI for consideration on a case by case basis.

### Approval Procedures for the Annual Importation Plan



## 6. REPORT ON INVESTMENT ACTIVITIES/OPERATIONS

Contents of the report on investment operation activities of investment enterprises consist of the following criteria:

- Capital importation;
- Value of assets on the reporting day;
- Record of compliance with custom and tax obligations;
- Use of domestic raw materials;
- Value of exported commodities (for activities which produce commodities for export);
- Labour used within the enterprise; and
- Implementation of a social welfare regime.

Investment enterprises must submit reports on the status of operations according to the standard CPMI forms on a semi-annual and annual basis. Any enterprise not complying with this requirement will not receive the investment promotion incentive from the CPMI and will be considered in violation of investment rules and regulations.

## 7. REGULATIONS ON CHANGE IN THE LEGAL BASIS

In case an investment enterprise wishes to modify the terms of its investment, an application requesting such modifications must be made to the CPMI.

Types of Changes in the Legal Basis:

i) Changes in the legal basis of existing investment which needs the approval of CPMI are:

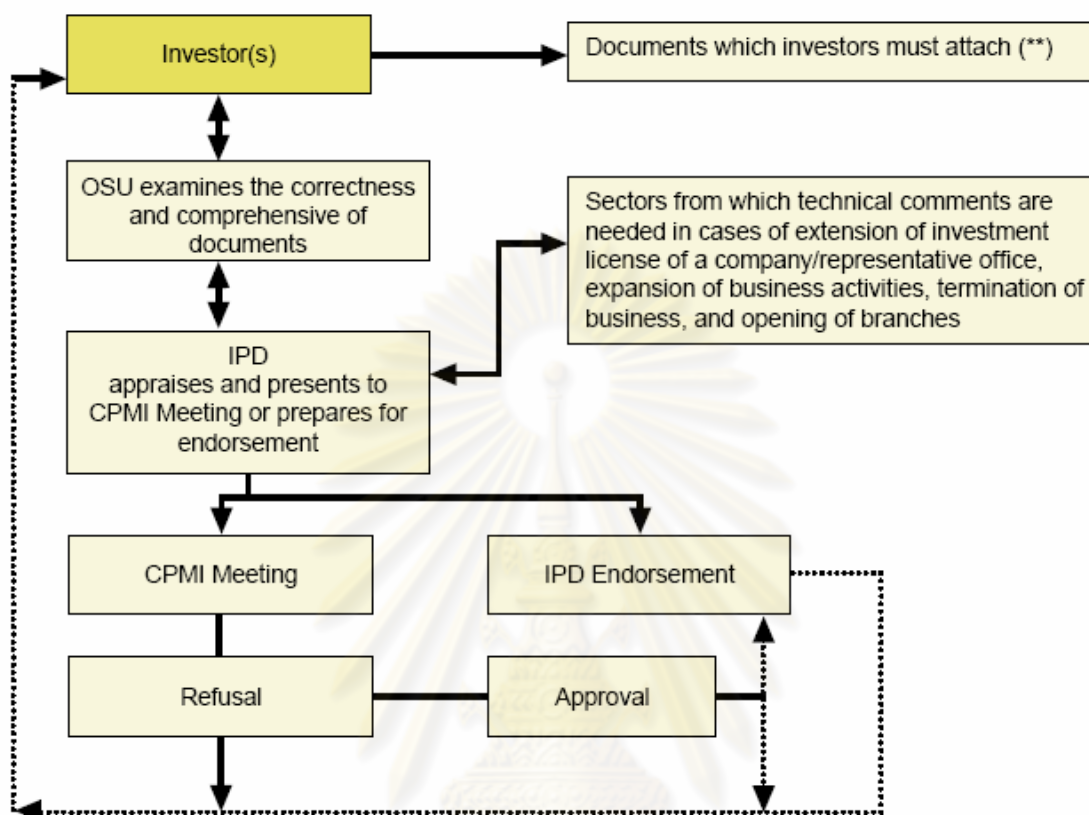
- extension of the investment license
- addition of more business activities or increase in investment capital
- opening of branches of the invested company within Lao PDR
- splitting or merging of a company
- permanent termination of business
- extension of license of representative office

ii) Changes in the legal basis of investment, which needs the approval from IPD:

- temporary suspension of business
- increase in investment capital without expanding of the company's business activities

- endorsement of change in shareholders
- endorsement of new directors or representatives
- endorsement of changing location of company or representative offices
- change of name of the company or the representative.

## Request for Change in the Legal Basis



Remarks : (\*\*)

1. Application/request form;
2. Copy of investment license, enterprise registration, tax registration, business operation license, article of association which has been approved;
3. Performance Report (in case of extension of investment license of a company/representative office, expansion of business activities);
4. Original Investment license or representative office license (in case of extension of company license or representative offices, modification, permanent termination of investment);
5. Certification of the importation of investment capital from the bank of the Lao PDR (in case of capital increase);
6. Business plan (in case of expansion of business) or operation plans (in case of opening branches or request for extension of representative offices);
7. Short biography and copy of passport of Director (in case of changing of new Director or extension of representative office) and copy of identification card, short biography and criminal record number 3 (in case of a Lao national);

8. *Notes or shareholders' resolution or executive board of director's resolution, share transfer agreement or share purchase agreement. Documents must be notarised at the Notary Public Office, joint-memorandum between two or more companies (in case of shareholder changes or in case of merging of two or more companies);*

9. *Property lease agreement with certificate recognised by village authority, certified receipt of lease payment (in case of changing location)*

### III. INVESTMENT PROTECTION

#### 1. INTELLECTUAL PROPERTY RIGHTS (IPR)

- *Article 12 of the of the Foreign Investment Promotion Law No.11/NA* Foreign investors have the right to protection of their intellectual property which have been registered by the relevant authorities in Lao PDR.

#### 2. DISPUTE SETTLEMENT

- **Domestic Investment Enterprises**

Internal disputes shall be resolved as follows:

- The parties in dispute must first attempt to resolve the disputes by mediation.
- If the disputes cannot be solved amicably, the parties shall then file an initial complaint to the CPMI where the investment licenses were issued. The duration for mediation of disputes is within 30 business days;
- If that does not result in a satisfactory outcome, the parties may file their complaint to the State Arbitration Agency for Economic Dispute or to a judicial process as agreed by the disputing parties.

In the case of enterprises having an agreement with the government, the resolution shall be based on terms and conditions of the agreement.

- **Foreign Investment Enterprises**

In the case of a dispute arising from a business operation under the form of business by contract, the dispute shall be resolved as prescribed in the contract.

In case of a dispute in a joint venture enterprise, or 100% foreign-owned investment enterprise, the parties shall proceed to a resolution based on the following steps:

- The parties in dispute must first attempt to resolve the disputes by mediation;
- If the disputes cannot be solved amicably, the parties shall then file an initial complaint to the CPMI where investment licenses were issued. The duration for mediation of disputes is within 30 business days;
- If that does not result in a satisfactory outcome, the parties may file their complaint to the State Arbitration Agency for Economic Dispute or to judicial process as agreed by the disputing parties.

#### **IV. INVESTMENT INCENTIVES**

##### **1. INVESTMENT PROMOTION INCENTIVES**

To promote domestic and foreign investment and attract investors to invest in promoted activities, the Government has established the following fiscal incentive systems (*Foreign Investment Promotion Law no. 11/NA*):

**Corporate Income/Profit Tax Rates and Profit Tax Exemption-Reduction Period**

Zone	Tax Incentive		
	Exemption Period	Tax Rate during Exemption/ Reduction Period	Full Profit Tax Rate
Zone I	7 years	-	10%
Zone II	5 years	7.5% for 3 years	15%
Zone III	2 years	10% for 2 years	20%

*Remarks:*

- *Zone I: Mountainous, plateau zones with no economic infrastructure to facilitate investments*
- *Zone II: Mountainous, plateau zones with a moderate level of economic infrastructure to accommodate investments*
- *Zone III: Mountainous, plateau zones with good economic infrastructure available for investments.*

*The profit tax exemption period starts from the date of commencement of business operation of an enterprise.*

In addition to the incentives mentioned above, the foreign investment enterprises shall be entitled to the following incentives:

- i) The reinvested profits will be exempted from profit tax for that accounting year (Article 18 of *Investment Promotion Law No. 11/NA*).
- ii) During the period of profit tax exemption, enterprises will be entitled to the exemption of minimum tax measure (Article 18 of *Investment Promotion Law No. 11/NA*).
- iii) Exemptions of custom duty and import tax for importations of machinery, materials, equipment and heavy vehicles directly used in production. In addition, enterprises will be entitled to custom duty and import tax exemption or reduction for the importation of raw materials and semi – finished products (Article 34, 35, 37 of *Decree No. 301/PM*).
- iv) Foreign expatriates are subjected to personal income tax at a flat rate of 10% (Article 14. of *Investment Promotion Law No. 11/NA*).
- v) Foreign investors and their family members will be granted multiple entry visas (maximum up to 5 years per each issuance and renewable)  
(Article 30. of *Decree No. 301/PM*)

## **2. CRITERIA FOR RECEIVING INCENTIVES (Article 15-22 of Decree No. 301/PM)**

The receiving of incentives is based on investment zones, sectors/activities (except activities related to rights to concession from the Government) and specific conditions of each activity such as:

- i) Production for export (with registered capital of US\$300,000 and export not less than 80% of total production);
- ii) Activities relating to agriculture or forestry, processing of agriculture, forestry and handicraft (must have registered capital of US\$300,000 and over);

- iii) Industrial processing activities, industries using modern technology, scientific research and developments, environment and biodiversities protection activities (with registered capital of US\$500,000 and over, using 100% new machinery with certification from producers or reliable institutes. Activities on scientific research-analysis must have registered capital of US\$100,000 and over);
- iv) Activities related to human resource development, skills development and public health (must have registered capital of US\$100,000 and over);
- v) Infrastructure development activities (but not of a construction contractual nature, must have registered capital of US\$500,000 and over);
- vi) Production of raw materials and equipment to be supplied to key industrial activities (must have registered capital of US\$500,000 and over)
- vii) Development of tourism industry and transit services (must have registered capital of US\$500,000 and over);
- viii) Production of construction materials, spare parts and equipment to be supplied to other industrial production (registered capital US\$1,000,000 (one million) and over).

A detailed list of business activities of the eight sectors mentioned above can be found in the annex of the Prime Minister's Decree Number 300/PM and 301/PM on the Implementation of the *Law on the Promotion of Domestic Investment* and the *Law on the Promotion of Foreign Investment* respectively.

Investment activities other than the eight sectors mentioned above shall be subject to regular profit tax at a rate of 35% as provided by the *Tax Law*.

## V. PROMOTED AREAS/SECTORS

### 1. PROMOTED ACTIVITIES

- *Article 16 of the of the Foreign Investment Promotion Law No.11/NA*



The Government determines promoted activities as follows:

- i) Production for export;
- ii) Agricultural and forestry activities, agro-forestry and handicraft processing activities;
- iii) Activities relating to industrial processing, industrial activities using modern technology, scientific study and analysis activities and development, activities in relation to protection of environment and biodiversity;
- iv) Human resources development, skills development and protection of people's health;
- v) Construction of infrastructure;
- vi) Production of raw materials and equipment to be supplied to key industrial activities;
- vii) Development of tourism and transit services.

## 2. PROMOTED ZONES

- *Article 17 of the of the Foreign Investment Promotion Law No.11/NA*

The Government specifies 3 promoted zones based on geographical location and socio-economic conditions as follows:

*Zone 1: Mountainous, plain and plateau zones with no economic infrastructure to facilitate investments.*

*Zone 2: Mountainous, plain and plateau zones with a certain level of economic infrastructure suitable to accommodate investments to some extent.*

*Zone 3: Mountainous, plain and plateau zones with good infrastructure to support investments.*

The classification of each zone is attached as Annex 1 of the *Prime Minister's Decree on Domestic Investment Number 300/PM* and *Decree on Foreign Investment Number 301/PM*.

## VI. TAXATION

## 1. REGULAR CUSTOMS AND TAX SYSTEMS

i) Regular import duty rates are between 3% - 40%

ii) Indirect taxes include

- Business turnover tax between 5% -10%

*(Provided in Article 17, Part 3 of Tax Law Number 04/NA, dated 19/5/2005)*

- Excise tax between 5% - 90%

*(Provided in Article 28, Part 4 of Tax Law Number 04/NA, dated 19/5/2005)*

iii) Direct taxes include:

- General profit tax at 35%
- Minimum tax at the rate of 0.1% of total revenue
- Personal income tax between 0%-25% (progressive rate)
- Fees and service charges

Investment activities related to natural resources such as: mining survey and exploration, power energy, land concession activities are subject to natural resources tax and/or royalty and/or land concession fees as periodically levied by the Lao Government or according to negotiation and agreement.

## 2. DUTY AND TAX INCENTIVES

- *Article 18 of the of the Foreign Investment Promotion Law No.11/NA*

Foreign enterprises investing in activities within the promoted sectors and zones determined in Article 16 and 17 of the *Foreign Investment Promotion Law No. 11/NA* will be entitled to the following duty and tax incentives:

- 0% of import duties on production vehicles, machinery, equipment and raw materials directly used in production;

- No export duties on finished products;

- Profit tax is classified into 3 groups: 20%, 15% and 10% and profit tax exemption is offered for a period of up to 7 years depending on activities, investment areas and size of investment (*please refer to Section IV.1 for details*)

- *Article 14 of the of the Foreign Investment Promotion Law No.11/NA*

- Foreign expatriates/Foreign employees working in a foreign investment enterprise are subjected to personal income tax at a flat rate of 10%.

## **VII. FINANCIAL REGULATIONS**

### **FOREIGN EXCHANGE AND REPATRIATION OF CAPITAL/PROFITS**

- *Article 12 of the of the Foreign Investment Promotion Law No. 11/NA*

Foreign investors shall have the following rights and benefits:

- To transfer/repatriate profits, capital and other income after full payment of duties, taxes and other fees in accordance with regulations and laws, to their home countries or a third country through a commercial bank located in the Lao PDR.

- To open a Kip account and a foreign currency account with commercial banks located in the Lao PDR.

## **VIII. APPROVAL FOR THE EMPLOYMENT OF FOREIGN WORKERS**

### **FOREIGN EMPLOYEES AND WORK PERMITS**

- *Article 12 of the of the Foreign Investment Promotion Law No. 11/NA*

Foreign investors shall have the following rights and benefits:

- To use foreign labour, if necessary, but this shall not exceed 10% (ten percent) of the enterprise's labour.

- Foreign investors and their families, foreign professionals and employees of a foreign enterprise will be provided with facilities such as multiple entry visas and long term residence in the Lao PDR with the agreement of the Government; and will have the right to request Lao nationality in accordance with the Nationality Law.

## **IX. LAND AND BUILDING OWNERSHIP**

### **LEASE OR CONCESSION OF LAND**

• *Article 12 of the of the Foreign Investment Promotion Law No. 11/NA* Foreign investors shall have the following rights and benefits:

- To receive benefits from the lease of or a concession over land such as the right to use
- To sell or use assets associated with the leased land or concession as security to any persons or financial institutions or for the purpose of joint venture
- To sublease the right to use land, to transfer the land lease or concession agreement in accordance with the lease term
- To use the land lease agreement or concession in Joint Ventures or as security with other persons.

The details of the rights, benefits and obligations of foreign investors related to the land lease or concession shall be in compliance with the Land Law and other relevant laws.

#### **X. INVESTMENT PROMOTION AGENCY**

*Investment Promotion Department (IPD)*

*Ministry of Planning and Investment (MPI)*

Souphanouvong Avenue

Vientiane 01001, Lao PDR

Tel : (856-21) 222 690, 216 958, 218 377

Fax : (856-21) 215 491

E-mail : [investinlaos@gmail.com](mailto:investinlaos@gmail.com)

Website : [www.invest.laopdr.org](http://www.invest.laopdr.org)

ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย

## MYANMAR

### I. RELEVANT INVESTMENT LEGISLATION

#### 1. INVESTMENT ACT

• *The Union of Myanmar Foreign Investment Law (November 1988)*

Contributes towards attracting foreign capital inflows, with the following main objectives:

- Promotion and expansion of exports
- Exploitation of natural resources requiring substantial amounts of capital
- Technology transfer activities
- Development of energy conservation activities
- Regional development
- Creation of more employment opportunities

According to the Foreign Investment Law, foreign investment in Myanmar can take one of the following three forms:

- Sole proprietorships, partnerships, limited companies, or wholly foreign-owned subsidiaries. A partnership firm or a limited company incorporated outside Myanmar can conduct business as a foreign branch by bringing in the total capital required by such a branch.

- Production sharing contracts with one of the state-owned economic enterprises (SEEs) for exploration, extraction and sale of petroleum and natural gas and mining operations.

- Joint ventures, either as partnerships or limited companies with any individual, firm, cooperative, or state-owned enterprise of Myanmar.

• *Procedures Relating to the Union of Myanmar Foreign Investment Law (December 1988)*

A foreign investor who intends to invest in Myanmar is required to apply a permit from the MIC (Myanmar Investment Commission) if the investor wishes to be considered for incentives and exemptions under the Foreign Investment Law.

The application procedure is as follows:

- The potential investor, or promoter, must submit the investment proposal to the MIC in a prescribed form, which can be obtained from the MIC at the following address:

***The Myanmar Investment Commission***

Building No (32)

Nay Pyi Taw

Union of Myanmar

- The investment proposal has to be supported by the following documents:

- business profiles and documents supporting financial credibility such as the latest audited accounts of the person or the firm intending to make the investment;
- bank reference and recommendation regarding the potential foreign investor's business standing; and
- detailed calculations relating to the economic justification of the proposed project indicating:
  - the estimated annual net profit, annual income and expenditure statement;
  - annual production services, annual cash flow statement;
  - the estimated annual foreign exchange earnings and requirements;
  - recoupment period;
  - prospects of creating employment;
  - prospects of increasing national income;
  - local and foreign market conditions;
  - requirement for local consumption; and
  - prospects of foreign exchange savings.

*Notes:*

- If the proposed project is a 100% direct foreign investment, a draft contract executed with a State organisation that is responsible for the smooth operation of the enterprise in the respective field must also be attached;

- If the proposed project is a joint-venture, a draft contract between the foreign investor and the local counterpart must also be attached

- If the proposed project involves leasing of land, a draft lease agreement must also be attached
- If the proposed joint-venture in Myanmar is in the form of a limited liability company, a draft Memorandum and Articles of Association must also be attached
- If the proposal meets all the requirements set out in the Foreign Investment Law, the MIC will issue a permit ("MIC permit") with stated terms and conditions

## 2. COMPANIES ACT

- ***The Myanmar Companies Act (1914)***

Administers private and public companies.

- ***The Myanmar Companies Rules (1940)***

Provides rules and regulations for the liquidation of private and public companies.

- ***Special Company Act (1950)***

Specially promulgated for the incorporation of private and public companies in which the State has equity.\

## 3. MINIMUM INVESTMENT LEVEL

US\$500,000 for Manufacturing and US\$300,000 for Services.

## 4. OTHER RELATED INVESTMENT LEGISLATIONS

- ***The Myanmar Partnership Act (1932)***

Administers the partnership enterprises and registration of partnership.

- ***Immovable Property Restriction Law (1987)***

This Law prohibits the transfer of immovable property from foreigners to citizens, and vice versa.

- ***The Co-operative Society Law (1992)***

Reforms co-operative societies to be in line with the market economy.

- ***The State-Owned Economic Enterprises Law (1989)***

Identifies areas of economic activities that shall be solely undertaken by the State sector.

- ***Law Relating to Fishing Rights of Foreign Vessels (1989)***

Focuses on the conservation of marine and freshwater fisheries to enable systematic operation in fishery activities.

- ***Law Relating to Aquaculture (1989)***

Encourages wider participation of foreign investors and it promotes exports in the aquaculture activity.

- ***The Myanmar Tourism Law (1990)***

Promotes the development of hotels and the tourism industry.

- ***Commercial Tax Law (1990)***

Replaces the commodity and services tax for better coverage of taxes.

- ***The Central Bank of Myanmar Law (1990)***

Streamlines the monetary policy and extend banking services.

- ***Myanmar Marine Fisheries Law (1990)***

Encourages wider participation of foreign investors and to promote exports.

- ***Fresh Water Fisheries Law (1991)***

Encourages wider participation of foreign investors and to promote exports.

- ***The Private Industrial Enterprise Law (1990)***

Consolidates and promotes large, medium and small scale private industries.

- *Procedures relating to the Private Industrial Enterprise Law (1991)*

- ***The Tariff Law (1992)***

Streamlines the custom tariff rates.

- ***Myanmar Hotels and Tourism Law (1993)***

Promotes the development of hotels and tourism industry.

- ***The Myanmar Insurance Law (1993)***

Replaces the Insurance Business Law of 1975 and for wider coverage of insurance activities.

- ***The Science and Technology Development Law (1994)***



Promotes science and technology and co-operation with research institutes and high-tech oriented organisations.

- ***The Protection of Wild Life and Wild Plants and Conservation of Natural Areas Law (1994)***

Deals with the enforcement and implementation of policies regarding the protection of wildlife and natural plants and conservation of natural areas.

- ***The Myanmar Mines Law (1994)***

Relates to the development of mineral prospecting and exploration works to enhance production of minerals and promotion of exports. It also aims to enforce and implement mineral resources policy effectively and also for environmental conservation.

- ***Myanmar Citizens Investment Law (1994)***

Promotes the inducement of domestic investment so as to lead to the promotion of production and exports by the private sector.

- ***Myanmar Pearl Law (1995)***

Implements the policy of the Government relating to the pearl production and marketing. It also encourages and supervises the development of pearl production, and protects and conserves water area of oyster fishing grounds from destruction and oysters from extinction.

- ***Myanmar Gems Law (1995)***

Promotes the development of gems and jewelry market in Myanmar, while at the same time enforces and implements the policy to regulate the trading of precious stones.

- ***The Insurance Business Law (1996)***

Facilitates wider coverage of the insurance business in Myanmar to meet the growing demand for more sophisticated insurance needs in the country.

- ***Forest Law (1992)***

Implements the forest policy, environmental conservation policy of the Government; prevent the dangers from the destruction of forests and bio-diversity; outbreak of fires; infestation of insects and occurrence of plant disease; conservation of natural forests and establishment of forest plantations.

- ***Arbitration Act (1944)***

Dispute arising between contracting investors may comply with the provisions of this Act. The arbitration proceedings shall in all respect conform to this Act.

## II. INVESTMENT APPLICATIONS

### 1. AGENCY INVOLVED IN ADMINISTERING INVESTMENT APPLICATIONS AND GRANTING OF INCENTIVES

- *The Myanmar Investment Commission (MIC)*

MIC was established to be the initial approving authority for foreign investment activity in the country. Its major responsibility is to evaluate foreign investment proposals. It also has the authority to stipulate terms and conditions of investment permits and evaluate foreign investment situations.

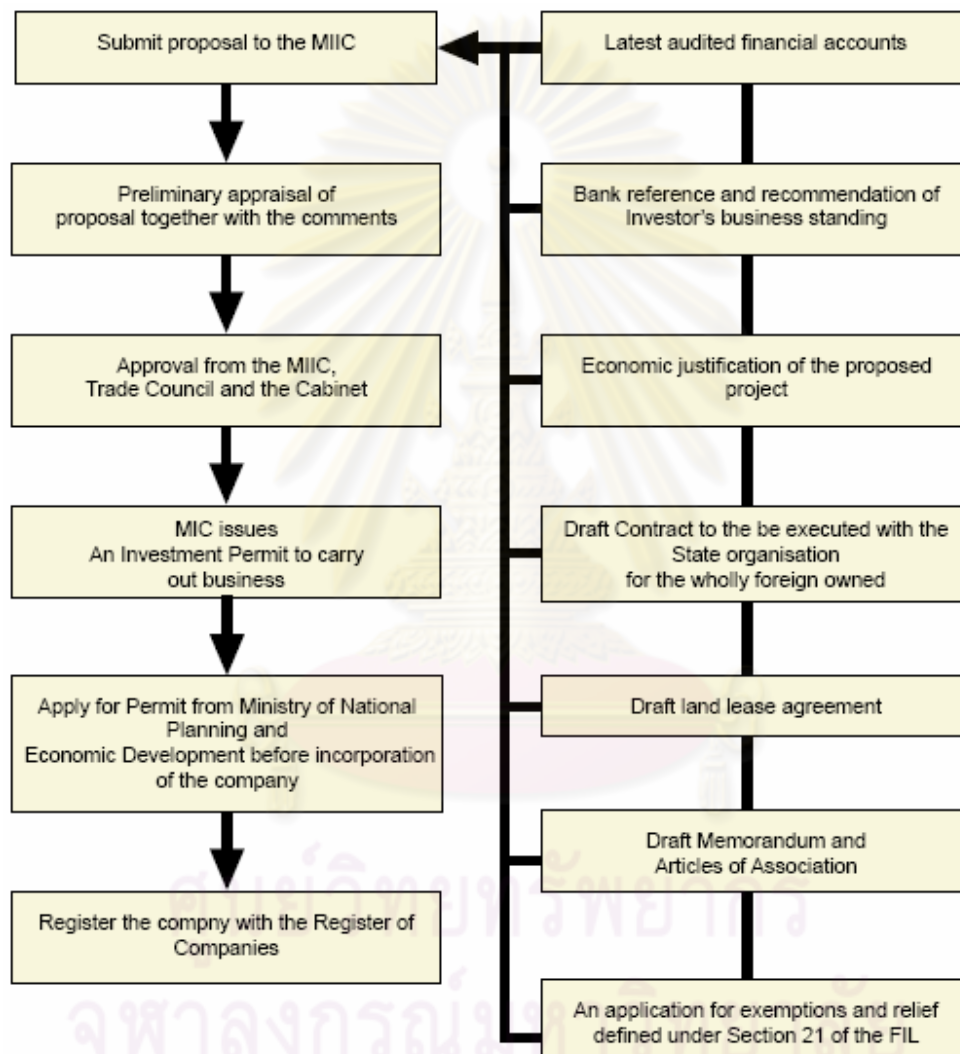
### 2. CONDITIONS INCLUDING TIMETABLE FOR PROCESSING OF APPLICATIONS

The following are the application procedures:

- A promoter for foreign investment shall submit a proposal in the prescribed form to MIC. The MIC will issue a permit if the proposal is approved.
- If the approved economic activity is to be established as a limited company, it must apply for a Permit to Trade Council of the Ministry of National Planning and Economic Development through the Company Registration Office.
- After being granted a Permit to Trade Council, the company must be registered with the Company Registration Office under the Ministry of National Planning and Economic Development.
- A company involved in foreign trade has to apply for registration as an exporter/importer with the Ministry of Commerce.

The Duration for processing an application will take 4-6 weeks if the documents are in order and a complete Proposal Form attached. (Refer to Section 1 "Procedures relating to the Union of Myanmar Foreign Investment Law).

### 3. PROCEDURES FOR INVESTMENT APPLICATIONS



### III. INVESTMENT PROTECTION

#### 1. FOREIGN EXCHANGE REGIME

Myanmar maintained exchange restrictions and multiple currency practices subject to IMF approval under Article VIII in terms of; (i) limits on the purchase of foreign exchange by residents for foreign travel and by nonresidents for the remittable portion of wages, as well as for payments and transfers relating to invisible and other current international transactions, and (ii) the divergence between the official exchange rate used for transactions of the public sector and the parallel market-determined foreign exchange certificate (FEC) rate.

## 2. INVESTMENT GUARANTEE AGREEMENTS

- *The Promotion and Reciprocal Protection of Investments Agreement with the Republic of the Philippines (17 February 1998)*
- *The Promotion and Reciprocal Protection of Investments Agreement with the Socialist Republic of Viet Nam (12 May 2000)*
- *The Investment Promotion and Protection Agreements with People's Republic of China (12 December 2001)*
- *The Promotion and Reciprocal Protection of Investments Agreement with the Lao People's Democratic Republic (5 May 2003)*
- *The Investment Promotion and Protection Agreements with the Kingdom of Thailand (14 March 2008)*
- *The Investment Promotion and Protection Agreements with the Republic of India (24 June 2008)*
- *The Encouragement and Reciprocal Protection of Investments Agreement with the State of Kuwait (6 August 2008)*

## IV. FOREIGN EQUITY POLICIES

### *Equity Regulations*

100% foreign equity ownership is allowed according to the Foreign Investment Law (without any conditions).

Foreign investors may enter into a joint venture, either as a partnership or a limited company with any individual, firm, co-operative, or State-owned enterprise of Myanmar.

In the case of a joint venture, the foreign capital must be at least 35% of the total equity capital.

## **V. INVESTMENT INCENTIVES**

### **1. CORPORATE INCOME TAX/INCOME TAX ALLOWANCE**

Foreign investors are granted a minimum of 3 year corporate income tax exemption, extendable on a case-by-case basis.

### **2. EXEMPTION FROM OR REDUCTION OF TAXES ON IMPORTED CAPITAL GOODS**

The *Union of Myanmar Foreign Investment Law 1998* grants exemption from customs duty and other internal taxes on imported capital equipment and materials during the construction, exploration and development period of the investment project.

During the construction period as mentioned in the proposal form or extended construction period approved by MIC, the investor can enjoy this exemption.

### **3. EXEMPTION FROM OR REDUCTION OF TAXES ON IMPORTED RAW MATERIALS**

During the first 3 years of commercial production and operational period, exemption from customs duty and other internal taxes on imported raw materials is granted.

The investor has to inform MIC of the commencement date of commercial operation for approval. After getting MIC approval, the investor can enjoy the exemption on imported raw materials.

Information on the performance of the project is required in applying for the above incentives.

#### 4. OTHER INCENTIVES

- Exemption or relief from income tax on profits which are maintained in a reserved fund and re-invested within one year.
- Right to accelerate depreciation.
- Relief from income tax up to 50% on the profits accrued from exports.
- Right to pay income tax on behalf of the foreigners employed and to deduct the same from the assessable income of the enterprise.
- Right to pay income tax of the foreign employees at the rates applicable to the citizens of Myanmar.
- Right to deduct the expenditures for research and development carried out within the State.
- Right to carry forward and set off losses up to 3 consecutive years, from the year the loss is made.

#### VI. PROMOTED AREAS/SECTORS

##### *Priority/Promoted Sectors or Industries*

The types of economic activities allowed for foreign investment, as appeared in *MIC Notification No. 1/89*, are classified into 9 sectors:

- Agriculture
- Livestock and Fishery

- Forestry
- Mining
- Industry
  - Foodstuffs
  - Textiles
  - Personal Goods
  - Household Goods
  - Leather Products and the Likes
  - Transport Equipment
  - Building Materials
  - Pulp and Paper
  - Chemicals, Chemical Products and Pharmaceuticals
  - Iron and Steel
  - Machinery and Plant
- Construction
- Transport and Communication
- Trade
- Economic activities mentioned in section 3 of the State-owned Economic Enterprises Law, provided permission has been obtained under section 4 of the said Law.

If investment proposals not specified in the above mentioned list are submitted, they will be considered on a case-by-case basis by MIC.

## VII. TAXATION

### 1. CORPORATE TAX

Corporations incorporated in Myanmar are treated as residents and taxed at the rate of 30% on income accruing or arising in Myanmar and outside of Myanmar.

## 2. VALUE ADDED TAX/SALES TAX

Commercial Tax is payable on goods, imported or produced in Myanmar, trading sales, and services ranging from 0%-200%.

## 3. WITHHOLDING TAX

Withholding tax rates are dependent on the types of payments (interest, royalties, and payment for the work done under different kinds of organisations) and could range from 3.5% to 15 %. There is no withholding tax on dividends.

Payments on income such as interest, royalties, and on contracts are subject to the following rates of withholding tax:

- **Interest**

- For resident citizens and resident foreigners: 15%
- For non-resident foreigners: 20%

- **Royalties for the use of license, trade marks, patent rights, etc.**

- For resident citizens and resident foreigners: 15%
- For non-resident foreigners: 20%

- **Payment on contracts undertaken by State organizations ,development committees and cooperative societies**

- For resident citizens and resident foreigners: 3%
- For non-resident foreigners: 3.5%

- **Payment for work done by foreign contractors**

- For resident citizens and resident foreigners: 2.5%
- For non-resident foreigners: 3%

## 4. PERSONAL INCOME TAX



A non-resident's salary is taxed at the rate of 35%. Other income is taxed at the minimum rate of 35% or at the resident rates, graduating from 3% to 50%. A foreigner staying in Myanmar for 183 days or more is considered a resident foreigner. Both resident foreigners and resident citizens are taxed on salaries based on progressive scale, starting at 3% and rising to a maximum rate of 30%. A non-resident foreigner is subject to tax on income derived from every source within Myanmar, at the flat rate of 35%, or at progressive rates ranging from 3% to 50%, whichever is greater.

## 5. IMPORT DUTIES

Import duties range from 0%-50%.

For information on import duties, please refer to customs tariff of Myanmar, harmonised commodity description and coding system. For various import duties, please contact the following address:

***Customs Department***

132, Strand Road

Yangon, Union of Myanmar

Tel : 095-01-380-729

Fax : 095-01-371-231

Email : [mcd.ygn@mptmail.net.mm](mailto:mcd.ygn@mptmail.net.mm)

## VIII. FINANCIAL REGULATIONS

### 1. BORROWING REGULATIONS

Domestic borrowing in foreign currencies is not available. Domestic borrowing in local currencies can be provided by the commercial banks operating in the country.

### 2. FOREIGN EXCHANGE REGULATIONS

There is a 15% withholding tax for interest paid to non-resident lenders.

### 3. SOURCE OF FINANCING

Foreign borrowings and foreign equity investments would require prior approval from MIC. All foreign investments should be registered with MIC to enable applications for capital repatriation and profit remittance.

### 4. REPATRIATION OF CAPITAL/PROFITS

Remittances of profit and capital repatriation are subject to prior approval of MIC and are also subject to Exchange Control regulations.

## IX. APPROVAL FOR THE EMPLOYMENT OF FOREIGN WORKERS

### 1. CONDITIONS FOR THE APPROVAL OF FOREIGN EMPLOYEES (MANAGERIAL, SUPERVISOR, UNSKILLED)

In appointing personnel in an organisation formed under the Permit issued by MIC, preference shall be given to citizens. However, MIC can consider the request for appointment of experts and technicians from abroad on a case-by-case basis.

An economic organisation formed under a Permit shall make arrangements for local and foreign training so as to ensure its local personnel's proficiency in their work and promotion to higher ranks of service.

### 2. WORK PERMIT PROCESSING AND REQUIREMENTS (MANAGERIAL, SUPERVISOR, UNSKILLED)

Employment of foreign experts and technicians by the enterprises formed under the Permit issued by MIC is allowed.

The following procedures would have to be completed to employ foreign experts and technicians:

- The Investor has to mention the number of foreign experts/technicians to be employed in the investment application form submitted to the MIC.
- After obtaining MIC permit, a company has to apply for an appointment and stay-permit.

With the endorsement of MIC, a company has to apply for a work permit to the Directorate of Labour under the Ministry of Labour, and for a stay permit and visa to the Immigration and National Registration Department under the Ministry of Immigration and Population.

## **X. LAND AND BUILDING OWNERSHIP**

### **1. REGULATIONS ON ACQUISITION OF LAND AND BUILDINGS**

Foreigners cannot own land but can lease it for periods up to 30 years, or more if approved by MIC, from the government.

The lease can be extended if the project is mutually beneficial between the Investor and the State.

### **2. RESTRICTIONS**

According to *Immovable Property Restriction Law (1987)*, a foreigner or a foreign company cannot lease any immovable property such as land from the private sector more than one year at a time.

## **XI. INVESTMENT PROMOTION AGENCY**

*Myanmar Investment Commission (MIC)*

Secretariat, Directorate of Investment and Company Administration (DICA)

Ministry of National Planning and Economic Development

Building No (32), Nay Pyi Taw

Myanmar

Tel : (95-67) 406 334, 406 075

Fax : (95-67) 406 333

E-Mail : [DICA.NPED@mptmail.net.mm](mailto:DICA.NPED@mptmail.net.mm)

Website : [www.dica.gov.mm](http://www.dica.gov.mm)



ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย

## VIETNAM

### I. RELEVANT INVESTMENT LEGISLATION

#### Latest Investment Regulations

On 1 of July 2006, the investment regime came into effect. This investment regime comprises of a unified **Enterprise Law** (“EL”) which regulates corporations and a common **Investment Law** (“IL”) which regulates investment. The promulgation of these two important pieces of legislation is considered a significant watershed for the improvement of the legal environment on investment activities and corporate governance in Viet Nam.

For further information on the above new policies, refer to the following websites:

<http://www.mpi.gov.vn> or <http://fia.mpi.gov.vn>

#### 1. INVESTMENT ACT

- **New Laws: The Investment Law** came into effect as of 1 July 2006; *The Investment Law*:
  - Applies to all investors regardless of economic sectors;
  - Expands the forms of investment to foreign investors;
  - Simplifies investment procedures; and
  - Creates equal playing field for both foreign and local investors.
- **Decree No. 108/2006/ND-CP dated 22 September 2006** of the Government provides detailed provisions and guidelines for the implementation of a number of articles of the *Law on Investment*
- **Decree No. 29/2008/ND-CP dated 14 August 2008** of the Government issues regulations on industrial zones, export processing zones and economic zones
- **Decree 101/2006/ND-CP dated 21 September 2006** of the Government on re-registration, conversion and registration for replacement with investment certificates by enterprises with foreign owned capital pursuant to *Law on Enterprises* and *Law on Investment*

- *Decree No. 38/ND-CP dated 15 April 2003* of the Government on the conversion of some FDI enterprises into operation under the form of share holding companies.

## 2. COMPANIES ACT

- *The Enterprise Law (EL) (2006)*

Provides for the establishment, organisation and operation of various types of domestic enterprises. Under the EL, following are the four main corporate forms:

- limited liability companies (“LLCs”);
- joint stock (or shareholding) companies (“JSCs”);
- partnerships; and
- private enterprises (i.e., sole proprietorships).

All of these structures are known as “enterprises”. An LLC or a JSC is likely to be the most appropriate structure for foreign investors who want to set up a joint-venture company.

- *Decree No. 139/2007/ND-CP dated 29 September 2007* of the Government provides detailed provisions and guidelines for the implementation of the *Enterprise Law*.

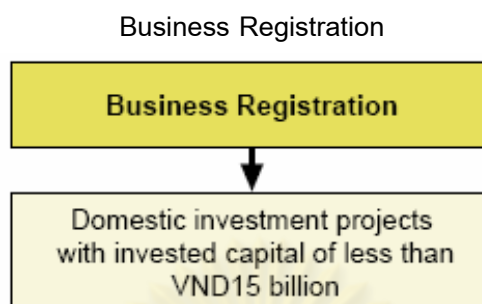
## 3. MINIMUM INVESTMENT LEVEL

The ratio of capital contribution of a foreign joint venture party or parties shall be agreed by the joint venture parties but shall not be less than 30% of the legal capital of the joint venture enterprise. Based on the business sector, technology, market, business results and other socio-economic benefits of the project, the investment license issuing body may consider and permit the foreign joint venture party to have a lower capital contribution ratio but not less than 20% of the legal capital.

### **Level 1 (Business Registration):**

Domestic enterprises with an invested capital of less than VND15 billion that do not operate in the conditional sectors are required to follow the “business registration” procedures.

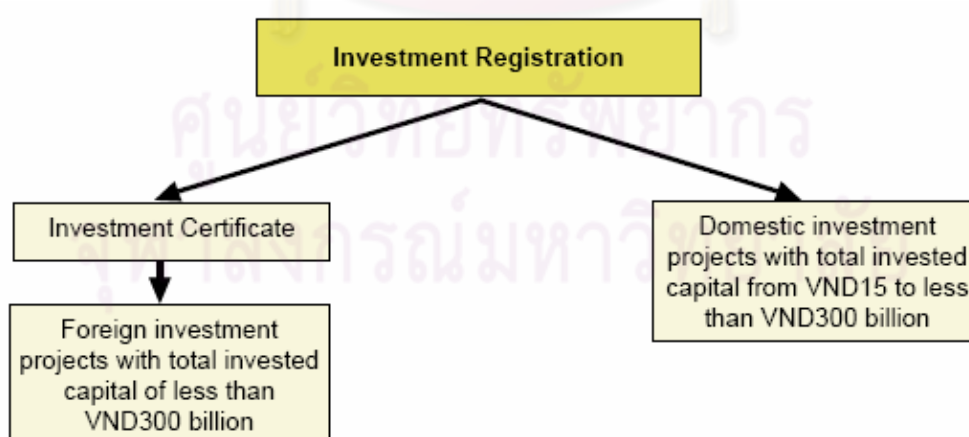
Domestic investment projects with invested capital of less than VND15 billion



**Level 2 (Investment Registration):**

Foreign investment projects with a total invested capital of less than VND300 billion, and not in a conditional sector are required to follow the “investment registration” procedures. Foreign investors of such projects must carry out the procedures for investment registration in order to be granted an investment certificate. The investment certificate also serves as the business registration of the corporate entity.

Domestic investment projects with a total invested capital from VND15 billion to less than VND300 billion are also required to follow the “investment registration” procedures. Subject to a request of the local investor, the Licensing Authority will issue an investment certificate to such investor.



Enterprises can subsequently register additional investment projects without the need to create a separate entity. The procedures on for “investment registration” are set out in

Decree 108. According to Decree 108, an investor must submit application documents for investment registration to the Licensing Authority. The Licensing Authority checks the documents and issues the investment certificate to the investors within 15 working days of receiving the valid application documents.

**Level 3 (Investment Evaluation):**

Any investment projects with a total invested capital of VND300 billion or more or investment projects in conditional sectors must go through an “investment evaluation” by the Licensing Authority and by other relevant authorities.

There are two different types of evaluation:

- evaluation for investment projects in conditional sectors regardless of total invested capital.
- evaluation for investment projects with total invested capital of VND300 billion or more, regardless of the sectors.

For the evaluation of investment projects with total invested capital of VND300 billion or more, along with the application documents, the applicant must also submit an “economic-technical explanation” of the investment project to the Licensing Authority. This covers the economic-technical explanatory statement, objectives, scale, location, investment capital, implementation schedule, land use needs, and technological and environmental solutions of the investment project.

For the evaluation of investment projects in the conditional sectors, in addition to the application documents, the investor must also demonstrate compliance with requirements specific for that conditional sector.



When assessing the application documents, the Licensing Authority may liaise with other relevant Ministries and authorities in evaluating the proposed investment project.

Items to be evaluated shall comprise:

- compliance with master planning/zoning for technical infrastructure, master planning/zoning for land use, master planning for construction, master planning for utilisation of minerals and other natural resources;
- land use requirements;
- project implementation schedule;
- environmental solutions.

#### 4. OTHER RELATED INVESTMENT LEGISLATION

- *Law on Export and Import Duties*
- *Law on Value Added Tax*
- *Law on Corporate Income Tax*
- *Labour Law*
- *Commercial Law*
- *Land Law*
- *Others Laws and Regulations*

No.	Legal Document	Issuing Authority	Content of Legal Document
<i>Foreign Investment</i>			
1	Law No. 59/2005/ QH11 dated 29/11/2005	National Assembly	Law on Investment providing for investment procedures, investment incentives, right and obligations of the investors.
2	Law No. 60/2005/ QH11 dated 29/11/2005	National Assembly	Law on Enterprises providing the type of enterprises, establishment procedures, organisation and operation of enterprises
3	Decree 88/2006/ ND-CP	Government	Decree on business registration

	dated 29/8/2006		
4	Decree 108/2006/ND-CP dated 22/9/2006	Government	Decree providing guidelines for implementation of a number of articles of the Law on Investment
5	Decree 139/2007/ND-CP dated 05/09/2007	Government	Decree providing guidelines for implementation of a number of articles of Law on Enterprises
6	Decree 101/2006/ND-CP dated 21/9/2006	Government	Providing regulations on re- registration or conversion by enterprises with foreign invested capital, and registration for change [of investment licences] for investment certificates by enterprises with foreign invested capital in accordance with the Law on Enterprises and the Law on Investment
7	Decision 1088/2006/ QD-BKH dated 19/10/2006	Ministry of Planning and Investment	Decision on promulgating the sample form of documents for carrying out investment procedures in VietNam
8	Circular 03/2006/TT- BTC dated 19/10/2006	Ministry of Finance	Providing guidelines for the implementation of Decree 88

## II. SECTOR-SPECIFIC LAWS AND POLICIES

No.	Legal Document	Issuing Authority	Content of Legal Document
<i>Foreign Exchange Control</i>			
9	Ordinance No. 28/2005/PL-UBTVQH 11 dated 13/12/2005	The Standing committee of National Assembly	Ordinance on foreign exchange control
10	Decree 160/2006/ ND- CP dated 28/12/2006	Government	Providing guidance for implementing the Ordinance on Foreign Exchange Control
11	Decree 134/2005/ ND- CP on 1/11/2005	Government	Regulation on Foreign Borrowing and Repayment of Enterprises

<i>Labour</i>			
12	Labour Code dated 23/6/1994	National Assembly	Law on Labour
13	Law No. 35/2002/ QH10 dated 2/4/2002 Law No.74/2006/QH11 dated 29/11/2006	National Assembly	Law on amendments and supplements to a number of articles of the Labour Code dated 23/6/1994
14	Decree 34/2008/ ND- CP dated 25/3/2008	Government	Regulation on recruitment and management of foreigners working in Viet Nam
<i>Land</i>			
15	Law No.13/2003/ QH11 dated 26/11/2003	National Assembly	Law on Land
16	Decree 181/ND-CP dated 29/10/2004	Government	Providing guidance for the implementation of a number of articles of the Law on Land
17	Decree 182/ND-CP dated 29/10/2004	Government	Sanctioning administration violation in the area of land
<i>Intellectual Property</i>			
18	Law No. 50/2005/ QH11 dated 29/11/2005	National Assembly	Law on Intellectual Property
19	Law No. 80/2006/ QH11 dated 29/11/2006	National Assembly	Law on Technology Transfer
<i>Import - Export</i>			
20	Law No. 45/2005/ QH11 dated 27/6/2005	National Assembly	Law on Export and Import Duties
21	Law No.29/2001/ QH10 dated 29 June 2001, and No.42 /2005/QH11	National Assembly	Law on Customs

	dated 14 June 2005		
22	Decree 149/2005/ ND-CP dated 8/12/2005	Government	Making detailed provisions for the implementation of the Law on Export and Import Duties
<i>Various Taxes</i>			
23	Law No. 78/2006/ QH11 dated 29/11/2006	National Assembly	Law on Tax Management
24	Law No. 14/2008/ QH12 dated 12/06/2008	National Assembly	Law on Corporate Income Tax
25	Decree 124/2008/ ND-CP dated 11/12/2008	Government	Providing guidance on the implementation of the Corporate Income Tax Law
26	Circular 130/2008/ TT-BTC dated 26/12/2008	Ministry of Finance	Regulating in detail the implementation of the Decree 124 on Corporate Income Tax
27	Law No. 13/2008/ QH12 dated 12/06/2008	National Assembly	Law on Value Added Tax
28	Decree No.123/2008/ND-CP dated 08/12/2008	Government	Regulating in detail the implementation of the Law on VAT
29	Circular 129/2008/ TT-BTC dated 26/12/2008	Ministry of Finance	Providing guidance on the implementation of Decree No. 123 on Value Added Tax (VAT)
30	Law No.27/2008/ QH12 dated 28/11/2008	National Assembly	Law on Special Sales Tax
31	Decree 26/2009/ ND-CP dated 16/03/2009	Government	Providing guidance on the implementation of the Special Sales Tax Law
32	Circular 64/2009/ TT-BTC dated 27/03/2009	Ministry of Finance	Providing guidance on the implementation of Decree 26 on Special Sales Tax

33	Law No.04/2007/ QH12 on Personal Income Tax dated 05/12/2007	The Standing Committee of the National Assembly	Law on Personal Income Tax
34	Decree No 100/2008/ND-CP dated 08/09/2008	Government	Stipulating in detail the implementation of the Law on Personal Income Tax
35	Circular 84/2008/ TT- BTC dated 30/09/2008 and Circular No.62/2009/TT-BTC dated 27/03/2009	Ministry of Finance	Providing guidelines for implementation of Government Decree 100 on Personal Income Tax
<i>Real Estate Business</i>			
36	Law No. 63/2006/ QH11 dated 29/06/06	National Assembly	Law on Real Estate Business
37	Law No. 56/2005/ QH11 dated 29/11/05	National Assembly	Law on Resident Housing
<i>Education</i>			
38	Law No. 38/2005/ QH11 dated 14/06/05	National Assembly	Education Law
39	Decree 06/2000/ ND-CP dated 06/03/00	Government	Cooperation including on investment with foreign countries in the areas of examination and treatment of diseases, training and education, scientific research
40	Circular 14/2005/TTLT- BGD&DT-BKH&DT dated 14/04/05	Ministry of Education & Training – Ministry of Planning & Investment	Providing guidance to the implementation of Decree 06
<i>Post &amp; Telecommunication</i>			
41	Ordinance dated 43/2002/PL-UBTV QH 10	National Assembly	Post & Telecommunication
<i>Transportation</i>			

42	Law No. 35/2005/ QH11 dated14/06/05	National Assembly	Law on Railways
43	Law No. 66/2006/ QH11 dated29/06/06	National Assembly	Law on Civil Aviation
44	Law No. 40/2005/ QH11 dated14/06/05	National Assembly	Maritime Law
45	Decree 10/2001/ ND-CP dated 19/03/01	Government	Conditions for operating business in maritime services

Chapter V, Article 30 of Investment Law (2005) prescribed the domains banned from investment as follows:

- i) Projects which are detrimental to national defense, security and public interests.
- ii) Projects which are prejudicial to historical or cultural relics, Vietnamese culture, morals or fine customs.
- iii) Projects, which may cause harm to people's health, destroy natural resources or environment.
- iv) Projects on the treatment of hazardous wastes brought from outside into Viet Nam; production of toxic chemicals or use of toxic agents banned under treaties.

#### Conditional Investment Domains

- i) Conditional investment domains include:
  - Domains, which affect national defense, security, social order and safety;
  - Financial and banking domains;
  - Domains, which affect public health;
  - Culture, information, press and publishing;
  - Entertainment services;
  - Real estate business;

- Survey, prospecting, exploration and exploitation of natural resources; ecological environment;
  - Development of education and training; and
  - Some other domains as provided for by law.
- ii) For foreign investors, apart from the domains defined in Clause 1 of this Article, conditional investment domains shall also include those scheduled for implementation of international commitments in treaties to which the Socialist Republic of Viet Nam is a contracting party.
- ii) For foreign-invested enterprises having already invested in the domains other than the conditional ones, which, however, in the course of operation, have been added to the list of conditional investment domains, investors shall still be entitled to continue operation in such domains.
- iv) Foreign investors may be applied the same investment conditions as domestic ones in cases where the latter own 51% or more of charter capital of an enterprise.
- v) Based on socio-economic development requirements in each period and the consistency with commitments in treaties to which the Socialist Republic of Viet Nam is a contracting party, the Government shall stipulate a list of conditional investment domains, conditions for the establishment of economic organisations, investment forms and the opening of markets in a number of domains for foreign investment.

### **III. INVESTMENT APPLICATIONS**

#### **1. AGENCIES INVOLVED IN ADMINISTERING INVESTMENT APPLICATIONS AND GRANTING OF INCENTIVES**

##### **Licensing Authority**

The Board of Management (“BOM”) of industrial zones (“IZs”), export processing zones (“EPZs”), high-tech zones (“HTZs”), and economic zones (“EZs”) are responsible for

licensing foreign investments within their zones. Build-Operate-Transfer (BOT) projects are licensed by the Ministry of Planning and Investment (“MPI”).

The Provincial People’s Committee is the authority responsible for all other foreign investments. Licensing applications shall be submitted to these bodies, who will consult with other relevant governmental authorities (where so required) before issuing the final approval.

The Prime Minister will approve the following:

- Investment projects, irrespective of the source of investment capital and scale of investment:
  - construction and commercial operation of airports; air transportation;
  - construction and commercial operation of national sea ports;
  - exploration, mining and processing of petroleum; exploration and mining of minerals;
  - radio and television broadcasting;
  - commercial operation of casinos;
  - production of cigarettes;
  - establishment of university training establishments; and
  - establishment of IZs, EPZs, HTZs and EZs.
- Investment projects, irrespective of the source of investment capital but with a total invested capital of VND1,500 billion or more in the following sectors:
  - business activities related to the electricity sector, processing of minerals, metallurgy;
  - construction of railway, road and internal waterway infrastructure; and
  - production and business activities related to alcohol and beer.
- Investment projects with foreign-invested capital in the following sectors:
  - commercial operations of sea transportation;
  - construction of networks for and supply of postal and delivery, telecommunications and internet services, construction of wave transmission networks;
  - printing and distribution of newspapers and printed matter, publishing; and



- establishment of independent scientific research establishments.

In cases where the investment projects stipulated above are included in the master plan approved by the Prime Minister (or by an authorised entity) and satisfy the conditions in accordance with the laws of Viet Nam and with international treaties to which Viet Nam is a member, the Licensing Authority will issue an investment certificate to the investor without the need to make a submission to the Prime Minister for a decision on an investment policy.

In cases where the investment projects stipulated above are not included in the master plan approved by the Prime Minister (or by an authorised entity) or do not satisfy conditions in international treaties to which Viet Nam is a member, the Licensing Authority will obtain opinions from the relevant Ministries, MPI and other relevant bodies in order to collate and submit them to the Prime Minister for his decision on investment policy.

In cases where the investment projects stipulated above are in a sector for which there is no master plan yet, the Licensing Authority will obtain opinions from the relevant Ministries, MPI and other relevant bodies in order to collate and submit them to the Prime Minister for his decision on investment policy.

#### **Authorities that Consider and Approve Investment Projects**

##### **i) The Prime Minister of the Government of Viet Nam**

The Prime Minister shall make decisions in relation to Group A projects, comprising the following:

- Projects in the following sectors, irrespective of invested capital:
  - Infrastructure construction of industrial zones, export processing zones, high-tech zones, urban areas; BOT, BTO and BT projects;
  - Construction and operation of sea ports and airports; operation of sea and air transportation;

- Oil and gas;
- Post and telecommunication services;
- Publishing, printing services (except projects for the printing of technical materials, printing of normal patterns on textiles and garments, leather and footwear), press; radio and television broadcasting; advertising services together with the publication of advertisements; cinematographic activities; artistic performance; conducting games with prizes; medical examination and treatment establishment; pre-tertiary education, college, undergraduate and postgraduate training or equivalent levels; scientific research and production of medicine for humans;
- Insurance, finance, auditing and valuation;
- Exploration and exploitation of rare and precious natural resources;
- Construction of residential houses for sale;
- National defense and security projects;
- Projects with invested capital of at least US\$40 million in the following fields: electricity, mining, metallurgy, cement, mechanical engineering manufacture, chemicals, hotels, apartments for lease, tourism-entertainment areas;
- Projects using at least 5 hectares of urban land or at least 50 hectares of land of other categories.

#### ii) The Ministry of Planning and Investment

The Ministry of Planning and Investment shall make decisions on Group B projects (being projects which are not Group A projects as stipulated above), except for projects referred to in point iii) below.

#### iii) Provincial People's Committees

Provincial people's committees shall make decisions on the following projects:

- Projects that are consistent with the approved planning and plan for socio-economic development;

- Projects not included in the list of Group A projects and having the amount of invested capital as stipulated by the Prime Minister (at present, up to US\$10 million for the People's Committees of Hanoi and Ho Chi Minh City and under US\$5 million for the People's Committee of other provinces).

Provincial people's committees shall not be delegated with the authority to issue investment licenses to the following projects (irrespective of the amount of invested capital):

- Construction of national roads or railways;
- Production of cement, metallurgy, electricity, sugar, alcohol, beer and cigarettes; manufacture and assembly of automobiles and motorbikes;
- Travel tours;
- Projects in the sectors of culture, education and training;
- Construction and operation of supermarkets.

#### iv) Management Boards of Industrial Zones

Management boards of industrial zones are authorised by the Ministry of Planning and Investment to issue investment licenses to projects under Group B which have investment of up to US\$40 million in the industrial zones.

## 2. CONDITIONS INCLUDING TIMETABLE FOR PROCESSING OF APPLICATIONS

The Investment Law stipulates that the time-limit for evaluation of investment shall not exceed thirty (30) days from the date of receipt of a complete and valid file. In necessary cases, the above time-limit may be extended, but not beyond forty five (45) days.

A representative office ("RO") is the simplest form of presence for a foreign company in Viet Nam. It is intended to promote business opportunities for its head office and to supervise or speed up the performance of contracts that the head office has entered into with Vietnamese parties. An RO is subject to the following regulations:

- Decree No. 72/2006/ND-CP of the Government dated 25 July 2006;
- Circular No. 11/2006/TT-BTC of Ministry of Trade dated 28 September 2006.

An RO cannot, in precise terms, be regarded as an investment in Viet Nam since such an office cannot conduct any revenue-generating activities. A foreign company can open more than one RO in Viet Nam. The establishment and operation of ROs of credit institutions, education establishments, and insurance companies are subject to different regulations.

#### **i) Establishment Conditions**

A foreign company that wants to set up an RO in Viet Nam must, in general, satisfy the following requirements:

- it must have obtained a certificate of incorporation in the relevant foreign country where its head office is situated;
- the RO's parent company must have been in operation for at least one year after its lawful establishment or business registration in its country prior to an application for an RO licence; and
- its proposed operating activities in Viet Nam must not be prohibited by the laws of Viet Nam.

#### **ii) Application Procedures**

To establish an RO in Viet Nam, foreign companies are required to file the following documents with the relevant licensing authority:

- an application in a standard form (the application must be made in Vietnamese language or in both Vietnamese and another widely used language);
- a notarised copy of the company's certificate of incorporation (a Vietnamese translation of this document must also be notarized by the Vietnamese Notary Office or certified by the Vietnamese embassy in the relevant foreign country);

- legalised copy of the parent company's audited financial report for the previous financial year (or evidence proving the actual existence and operation of the parent company for the latest financial year); and
- the company's charter.

The licensing authority may require a power of attorney or other documents to verify that the signatory to the application is fully authorized to sign the application although this is not required by law. For example, a notarised office lease agreement or a copy of the lessor's certificate of incorporation may also be required in cases where the RO leases its office.

The implementing regulations foreshadow that electronic forms may be made available in the future for online applications.

### **iii) Press Announcement**

Within 45 days from the issuance date of the licence, ROs are required to publish details such as its name, name of its parent company, office location, chief representative, etc., for three (3) consecutive issues of a printed or electronic newspaper.

### **iv) Licensing Authority**

The Department of Industry and Trade is responsible for issuing licenses for ROs.

### **v) Time Limit for Licensing and Licensing Fee**

Within 15 days after the date of receipt of all documents, a license for the establishment of an RO is issued by the relevant licensing agency. In the event that the application is not made in compliance with the law, the relevant licensing authority will give a written notice to the applicant within three (3) working days after the date of receipt of the application. The licensing fee for establishment of an RO is currently VND1,000,000 (approx. USD60.00).

### **vi) Operation**

The operating duration of an RO in Viet Nam is five (5) years, which is extendable. Within forty-five (45) days of issuance of the RO's licence, the RO must register its operations by way of a written notice to the relevant licensing authority indicating its office address, number of Vietnamese staff and foreign staff working at the RO and its chief representative, and obtain an acknowledgement from the relevant licensing authority. For the purpose of the above registration, the relevant licensing authority may require a copy of the lease agreement of the RO in Viet Nam. Following the registration, and on the basis of a letter of introduction issued by the provincial Department of Industry and Trade, the RO will register its seal with the provincial Police Department. During the term of the RO licence, any change in (i) the name or nationality of the parent company, or the name of the RO, (ii) the number of staff, (iii) the content of the RO's activities, or (iv) the RO's address, must be reported to the relevant licensing authority.

#### **vii) Permitted Activities**

The RO is permitted to carry out the activities specified in its licence. Such permitted activities include non-revenue generating activities such as market research, customer support, and marketing or feasibility studies for investment projects.

Foreign companies are not permitted to use the RO as a vehicle to carry on actual business in Viet Nam. For example, the RO cannot be used to conclude or execute commercial contracts. However, the chief representative of the RO may be authorised by the parent company to negotiate and to sign contracts on its behalf, under a power of attorney on a case-by-case basis, provided that such contracts may only be performed by the parent company itself. It should be noted that there may be tax implications for authorising a representative in Viet Nam to sign a contract on behalf of the parent company.

ROs may (i) lease an office, residential accommodation and other facilities necessary for its activities (but no sublease by the ROs is permitted), (ii) import equipment and facilities

necessary for its operation and (iii) employ Vietnamese and expatriates. It may also open a bank account in foreign and Vietnamese currency at a bank in Viet Nam, but any conversion or remittance of currencies must comply with the foreign exchange laws of Viet Nam. The purpose of this account is to pay for the expenses of a representative office and should not be used for the receipt of payments from other companies.

ROs may be required to obtain a tax code for the purpose of deducting and paying personal income tax on behalf of its employees.

#### **viii) Reporting**

ROs are required to file an annual report regarding its operation in the previous year with the relevant licensing authority before the last working day of January in the following year. If necessary, and upon the written request of the competent authority, an RO may also be obliged to make a report and/or supply information and documents relating to its operation.

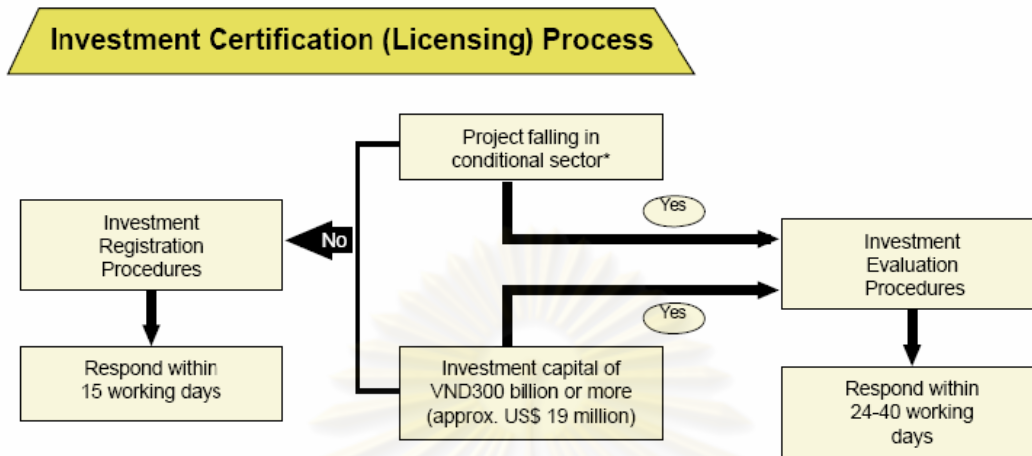
#### **ix) Termination**

The operations of an RO may be terminated in any of the following circumstances:

- (a) where the parent company so requests;
- (b) where the parent company terminates its operations;
- (c) where the authorised State body makes a decision to withdraw or revoke the licence in accordance with the law of Viet Nam;

In case of termination of operations under items (a) and (b) above, the parent company must forward a notice of termination of operation of the RO to the relevant licensing authority at least 30 days prior to the date of termination of operation of the RO, and is required to return the license to the relevant licensing authority.

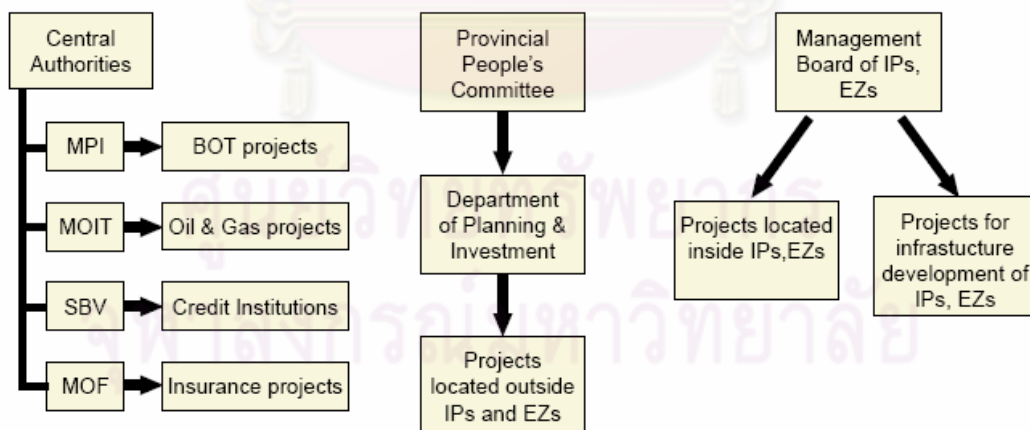
For making an investment in Viet Nam, a foreign investor must obtain an Investment License from one of the abovementioned agencies depending on the type of project.



\* The Lists of conditional sectors for both domestic and foreign investors and specifically for foreign investors can be found in the Law on Investment and its guiding Decree No.109 dated 22 September 2008

### 3. PROCEDURES FOR INVESTMENT APPLICATIONS

#### LICENSING - Authorities



## IV. INVESTMENT PROTECTION

### 1. FOREIGN EXCHANGE REGIME



Viet Nam has committed to implement its obligations with respect to foreign exchange matters in accordance with the provisions of the WTO Agreement and related declarations and decisions of the WTO that concerned the IMF. Unless otherwise provided for in the IMF's Articles of Agreement, VietNam will not resort to any laws, regulations or other measures, including any requirements with respect to contractual terms, that would restrict the availability to any individual or enterprise of foreign exchange for current international transactions within its customs territory to an amount related to the foreign exchanges inflows attributable to that individual or enterprise.

After a foreign investor has discharged fully its financial obligations to the State of Viet Nam, it shall be permitted to remit abroad the following:

- its profits derived from business activities;
- payments received from the provisions of technology and services and from intellectual property;
- the principal of and any interest on foreign loans; investment capital and proceeds from the liquidation of investments;
- other sums of money and assets lawfully owned by the investor

A foreigner working in Viet Nam for an investment project shall be permitted to remit abroad his or her lawful income after having discharged fully his or her financial obligations to the State of Viet Nam. The remittance of the above sums of money shall be made in a freely convertible currency in accordance with the trading exchanges rate published by a commercial bank selected by the investor.

## 2. EXPROPRIATION AND COMPENSATION

Security for capital and assets as enacted in Article 6, Chapter 2 of *Investment Law* (2005) is as follows:

- Investment capital and lawful assets of investors shall not be nationalized or confiscated through administrative measures.
- Where it is really necessary for defense, security and national interests, if the State acquires compulsorily or requisitions assets of an investor, such investor shall get paid or be compensated at the market prices at the time of announcement of compulsory acquisition or requisition.
- The payment or compensation must ensure the legitimate interests of investors and must not discriminate between investors.
- For foreign investors, the payment or compensation for assets specified in Clause 2 of this Article shall be made in a freely convertible currency and may be transferred abroad.
- Procedures and conditions for compulsory acquisition and requisition shall comply with the provisions of law.

### 3. INTELLECTUAL PROPERTY RIGHTS (IPR)

On 1 January 2006, the *Civil Code* came into force. On 1 July 2006, the *Law on Intellectual Property*, which codified the government regulations on intellectual property, came into force. These are the two principal laws governing the protection of intellectual property rights in Viet Nam and adopted by Viet Nam to conform to WTO standards on intellectual property protection.

In addition to these laws, Viet Nam is also a State Party to the *Paris Convention*, the *Madrid Agreement*, *Madrid Protocol*, and the *Stockholm Convention of 1967* (which established the World Intellectual Property Organisation). Viet Nam is also a member of the *Agreement on Trade- Related Aspects of Intellectual Property Rights (TRIPs Agreement)*, the *Berne Convention for the Protection of Literary and Artistic Works* with effect from 26 October 2004, the *Geneva Convention for the Protection of Producers of Phonograms* against *Unauthorised Duplication of their Phonograms* with effect from 6 July 2005, the *Brussels*

*Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite* with effect from 12 January 2006, the *International Convention for the Protection of New Varieties of Plant* with effect from 24 December 2006, and the *Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations* with effect from 1 March 2007.

Viet Nam's industrial property regime is administered principally by Ministry of Science and Technology (MoST) acting through NOIP. The copyright regime is administered by the Ministry of Culture, Sports and Tourism, acting through the Copyright Department.

#### i) Protection of Intellectual Property Rights

Generally, except for trade secrets, geographic indications, and trade names (which are entitled to legal protection as far as it fulfils the conditions of formation and usage), intellectual property rights are protected in Viet Nam upon registration on a first-to-file priority basis. Below is a summary of the various types of intellectual property rights protected in Viet Nam and the duration of the protection:

Type	Brief Description	Duration of Protection
Patent for Invention	A technical solution presenting worldwide novelty and an inventive step applicable in socio-economic fields	20 years from the date of application
Patent for Utility Solution	A new technical solution in comparison with existing technology and achievable in current economic technological conditions	10 years from the date of application
Industrial Design	The external appearance of a product embodied by lines, three dimensional forms, colours, or a combination of these that is novel, inventive throughout the world, and capable of serving as a pattern for an industrial or handcrafted product	5 years from the date of application which is renewable for an additional two periods of 5 years each (for a total of 15 years maximum)
Layout Design of	Three dimensional circuit elements and their interconnections in the integrated circuit which is	The earlier of: (i) 10 years from the date of grant; (ii) 10 years

Integrated Circuits	original and not widely known in the relevant field	from the date of the first commercial use by owner or an assignee; (iii) 15 years from the creation of the design.
Trademark	Marks used to distinguish goods or services of one person from similar goods and services of another person. They may take the form of words, images, or any combination presented in one or more colours	10 years from the date of application (renewable for successive 10-year periods without limit)
Geographic Indication	Information indicating territorial origin of a product with characteristics or qualities pertaining to the territory	In perpetuity from the certification of protection
Trade Name	Names of individuals or entities used in business activities	As long as it is in formation and usage
Trade Secret	Confidential trade information which could enable the possessor to gain economic advantage	As long as it is in formation and usage
New Plant Variety	New plant variety with a recognisable name among relevant species as created by selection or development which is of distinctiveness, uniformity, and stability for plantation.	20 years from the certification of protection (25 years for timber trees and vines)
Copyright	Moral and material rights with respect to original literary, artistic and scientific works including software	Author's life plus 50 years (except for movies, photographs, plays, applied fine art works, which enjoy 50-year protection)

## ii) Trademarks

Trademarks are generally protected by registration but certain marks, including logos, cannot be registered if they are:

- not distinctive;
- widely used;
- descriptive of the goods or services in question; or
- misleading, deceptive, or identical to or confusingly similar to existing registrations.

### **Priority Rights**

Viet Nam adopts a first-to-file rather than a first-to-use priority system, so that an earlier application for a trademark establishes a right of first priority. The date of priority is generally the date of application, but this can be earlier if a qualifying application has been made in another member country of the international trademark treaties.

Trademarks that have been internationally registered in accordance with an international treaty can also be established in Viet Nam once accepted for protection by the trademark office. Applicants who wish to rely on international treaties in establishing a right of priority must make an express statement to that effect in their application for protection and present evidence in support of their claim of priority.

### **Registration Procedure**

Viet Nam has adopted the classification of goods and services as specified in the *Nice Agreement* for the purposes of trademark registration although Viet Nam is not a member of the *Nice Agreement*. A preliminary trademark search can be conducted by the applicant to establish whether the mark or any similar mark has already been registered before applying for a trademark in Viet Nam.

Applications can be made either for international registration (including Viet Nam) through the World Intellectual Property Organisation or directly in Viet Nam.

### **“Well-known” Trademarks**

Trademarks may still be protected in Viet Nam in the absence of first-to-file priority. "Well-known" trademarks in Viet Nam are protected in perpetuity. A trademark will be deemed well-known if it has wide public recognition as evaluated on the following criteria:

- number of customers;
- location for sales;
- sales turnover;
- the number of years in continuous use;
- reputation of goods or services bearing the mark;
- the number of countries where the trademark has been protected or recognised as well-known; and
- costs for an assignment or licensing of the mark, or investment capital contribution value of the mark.

### iii) Patents

#### **Invention and Utility Solution**

An invention is defined as a technical solution which is new in comparison to existing technology, which is of a creative character, and is applicable to various social and economic fields. The following are excluded from patent protection: scientific discoveries, theories, or mathematical methods; schemes, plans, rules and methods for performing mental acts; methods of training domestic animals, playing games, and doing business; computer programs; the presentation of information; solutions of aesthetic characteristics only; plant varieties or animal breeds; processes of plant or animal production which are principally of a biological nature, other than microbiological processes; and human and animal disease prevention methods, diagnostic and treatment methods.

An applicant unable to secure protection as an invention patent may qualify for protection as a utility solution patent (which is essentially an invention without involving an inventive step).

### **Priority Rights**

The priority of applications for patent protection is determined by either the date on which NOIP receives the application or in accordance with the applicable international treaties. Applicants relying on international treaties to establish a right of priority must make an express statement to that effect in their application and present evidence in support of their claim of priority.

Viet Nam is a State Party to the *Patent Cooperation Treaty* ("PCT"). State Parties to the PCT have agreed to permit an applicant to wait for up to 30 months after the initial filing of a patent application in one country to begin prosecuting the application in other countries. Vietnamese law extends this period to 31 months.

### **Registration Procedure**

Patent applications can be made either for international registration under the PCT procedure or directly in Viet Nam. Applying for patent protection directly in Viet Nam will only be possible if the invention or utility solution has not been made public anywhere in the world by being used or described in a written publication before the filing date or priority date, as applicable. A patent application must be submitted to NOIP.

NOIP publishes the application in the industrial property gazette after preliminary examination and acceptance of the application. A substantive examination will only be carried out upon request by the applicant or a third party. A substantive examination determines the patentability of the invention or utility solution and its scope of protection.

### **iv) Industrial Designs**

An industrial design is evaluated for worldwide novelty in the same way as an invention which requires a substantial distinction and uniqueness when evaluated by a person having ordinary skill in the relevant area. Excluded from the protection of industrial designs are mere functional or technical features of a product's appearance, external features of civil or industrial construction works, and the shape of a product which is invisible during the use of the product.

A technical design should not be disclosed in any form or in any jurisdiction until the date of filing for protection. This is to maintain its worldwide novelty. Priority rights over protection of industrial designs are achieved by the same way as for trademarks and patents. Since international applications are not available for protection of industrial designs, applicants need to register in Viet Nam through NOIP.

#### **v) Copyright**

##### **Owners and Authors of Copyright**

There is a distinction between owners and authors of works. An author is a person who creates all or part of a literary, artistic or scientific work. Those who translate, adapt or edit works are deemed to be the authors of their derivative work. Owners of works may be authors or co-authors, authorities or organisations which delegate a duty to an author to create a work, individuals or organisations which contract with an author for the creation of a work, heirs who inherit a work from an author who was also the owner of a work, and individuals and organisations to which ownership rights over a work are transferred by contract. Rights over a work include personal rights (including the right to name a work and to permit others to use the work) and property rights (including the right to receive royalties and to rent out the work). These rights are divided into three types: (i) rights of an author; (ii) rights of an owner; and (iii) rights of an author who is concurrently the owner of a work and therefore holds full personal and property rights over a work.

##### **Establishment of Copyright**



Copyright arises from the moment a work is created in a definite form. *The Civil Code* provides that copyright protection in respect of foreign individuals and entities will be limited to works which are first published or disseminated in Viet Nam, or which are created and take a definite form in Viet Nam. Works of foreign authors not first published in Viet Nam must be published in Viet Nam within thirty days of first publication.

Viet Nam has acceded to the *Berne Convention for the Protection of Literary and Artistic Works* that provides the protection of Vietnamese copyright law to *qualifying* works under the *Berne Convention*.

#### **Registration of Copyright**

Authors, co-authors and owners of works have the right to apply for the registration and protection of copyright and ownership of such works to the Copyright Department under the Ministry of Culture, Sports and Tourism.

The application must be supported by evidence of the applicant's authorship and/or ownership of the work. Where the application is in order, the applicant will be issued with a Copyright Certificate<sup>1</sup> within 15 working days from the receipt of the application.

The Ministry of Culture, Sports and Tourism has primary responsibility for the protection of copyright in Viet Nam and is assisted at the local level by a network of Culture, Sports and Tourism Inspectors.

#### **vi) Transfer of Intellectual Property Rights**

##### **Industrial Property**

Owners of industrial property that is protected in Viet Nam (except for "geographic indications") may license the right to use or transfer ownership of such objects to a third party. Exclusive licensees of the right to use industrial property may further sub-license their right to use.

### **Registration Requirement**

License or assignment of industrial property rights must be made by a written contract. A licensing or assignment agreement must include certain provisions set forth by law such as the particulars of the parties, price, rights and obligations, scope, term, and territory for licensing. Assignment of certain types of industrial property, including inventions, industrial designs, layout designs of an integrated circuit, and trademarks, must be registered with NOIP. The licensing of industrial property rights is binding on the licensor and the licensee without registration with NOIP, but is ineffective against third-parties until registration with NOIP.

### **Duration**

The duration of licensing contracts is limited to the valid duration of the certificate of protection<sup>2</sup> for each type of industrial property.

### **Prohibited Terms**

Certain terms restricting a licensee's rights may be invalid, especially those terms that do not originate or protect the rights of the licensor. These terms include:

- prohibitions on the licensee's innovation or improvement of the licensed objects of industrial property (except for trademarks), or any obligation of the licensee to transfer such improvement to the licensor free of charge;
- direct or indirect limits on the licensee's export of goods or services provided under the industrial property object license contract to territories where the licensor is neither the owner of the corresponding industrial property right nor the exclusive importer of such goods (e.g., where the licensor grants exclusive licence of the industrial property);
- any obligation of the licensee to purchase from a source appointed by the licensor and without product quality assurance of all or a certain percentage of materials, accessories, or equipment from the licensor or another supplier; and
- prohibitions on the licensee's claim in respect of the validity of the industrial property right or the licensor's right to license.

### **Other Statutory Obligations and Restrictions**

The licence or assignment of the trademark must not cause confusion in relation to the characteristics and origin of the goods or services bearing the trademark. The current regulations prohibit the licence or assignment of industrial property rights for the purpose of squeezing out competitors and attempting to monopolise the market.

### **Licence of Copyright and Related Rights**

Authors and owners of copyrights may transfer all or part of the property rights over a work to others under a contract or under the laws on inheritance. The personal rights of an author are not generally transferable, but an author who is concurrently the owner of a work has a limited right to transfer some of his/her personal rights.

### **vii) Enforcement of Intellectual Property Rights**

#### **Course of Action**

The remedies for industrial property infringement fall into two categories judicial and administrative. An owner or registered user of industrial property is entitled to commence proceedings in court for infringement of their intellectual property rights and the courts have the power to issue an injunction preventing the infringement from continuing and to award damages. The competent authorities have the powers to enforce such an injunction.

Proceedings can be filed at NOIP for verification of the infringement. The customs authorities, market management authorities and economic police have the power to regulate infringing goods and to take the necessary action to seize infringing products. The courses of action available to them include: powers of search; sealing up of premises; temporary detention of persons; temporary custody of goods; and the suspension of production and sale of goods.

#### **Administrative Penalties for Infringement**

Infringement of rights over industrial property objects shall be subject to penalties in the form of either a warning or a fine. Other sanctions may also be applied such as the suspension of a business licence; confiscation of counterfeit goods, facilities or materials used in the infringement; compelled destruction of counterfeit goods; distribution or use of counterfeit goods for non-commercial purposes; and compensation for damages. Penalties must be applied within one year, or two years for business activities which infringe legal rights of registered trademarks, geographical indications, inventions, or industrial designs, following the date of the infringement. After these statutory time limits have passed, infringers will not be subject to penalties.

#### **Border Control**

The Law on Intellectual Property allows customs authorities to apply border control measures for all goods that infringe on intellectual property rights. Border control measures include:

- suspension of customs procedures for goods suspected of infringing intellectual property rights; and
- inspection of goods so that an intellectual property right holder may collect information to exercise the right to request suspension of customs procedures.

Customs authorities can suspend the release of goods where there is: (a) a request from the intellectual property right holder; (b) production of protection certificates and evidence of infringement, and (c) a sum of money has been deposited or a bank guarantee has been provided for possible compensation to persons later determined to have not infringed on intellectual property rights.

## **4. DISPUTE SETTLEMENT**

### **i) Conciliation and Mediation**

The laws of Viet Nam emphasise the need for parties to settle their disputes by conciliation and mediation. Parties are encouraged to seek the assistance of the relevant authorities to arrive at an amicable solution to any dispute. A settlement agreement reached between the

parties during mediation or conciliation is currently treated in the same way as a normal contractual agreement, with the usual contractual remedies available for breach of its provisions. Where litigants are required to attend conciliation meetings chaired by a judge, the settlement agreements reached, and thereafter recognised by judges' decisions, are final and enforceable against the parties.

If conciliation and mediation fail, the parties may refer the matter to various fora, including international arbitrators, commercial arbitrators in Viet Nam, Vietnamese courts, or foreign courts.

#### ii) International Arbitration

In 1995, Viet Nam ratified the *Convention on the Recognition and Enforcement of Foreign Arbitral Awards* ("New York Convention"). Shortly thereafter, the *Ordinance on Foreign Arbitral Awards* was passed providing for domestic enforcement of foreign arbitral awards. This was subsequently repealed by the new *Civil Proceedings Code* ("CPC") which took effect on 1 January 2005.

#### General

Under the CPC, foreign arbitral awards are defined as arbitral awards rendered outside Viet Nam or within Viet Nam by non- Vietnamese arbitrators. Vietnamese court considers the recognition and enforcement of a foreign arbitral award when the award has been rendered in or by arbitrators of a country being a party to the *New York Convention* or, in case of a country not being a party to the *New York Convention*, to the extent that such country grants reciprocal treatment to Viet Nam.

Organisations and individuals who obtain favourable foreign arbitral awards or their lawful representatives may file a petition with the Vietnamese court to request for the recognition and enforcement of the award, provided that: (i) in respect of an organisation, the obliged organisation has its head office in Viet Nam; (ii) in respect of an individual, the obliged

individual resides or works in Viet Nam; or (iii) the properties subject of the enforcement of civil decision, judgment of foreign court, or decision of foreign arbitration, are in Viet Nam at the time the petition is filed.

The CPC has significantly broadened the scope of recognition and enforcement of foreign arbitral awards in relation to business and commercial disputes so that the scope covers most commercial relations.

### iii) Foreign Courts

Under the laws of Viet Nam, FICs may not be able to refer their disputes to a foreign court.

Judgments issued by foreign courts are not enforceable in Viet Nam unless Viet Nam has signed a bilateral treaty with the relevant country regarding enforcement of that country's court judgments.

### iv) Domestic Arbitration

Since the issuance of the *Ordinance on Commercial Arbitration* on 25 February 2003, Viet Nam has significantly improved its legislation on the operation of commercial arbitrators in Viet Nam. It is expected that more economic arbitration centres will be established in the near future.

Under the *Ordinance on Commercial Arbitration*, commercial disputes may be resolved by an arbitration tribunal organised by an arbitration centre or set up by the parties (ad hoc arbitration). The arbitration tribunal may consist of three arbitrators or a single arbitrator as agreed by the parties.

Commercial arbitrators in Viet Nam have jurisdiction to arbitrate commercial disputes. Under the *Ordinance on Commercial Arbitration* "commercial disputes" includes disputes relating to the sale and purchase of goods, provision of services, distribution,

business representation and agency, custodianship, leasing or hiring, hire purchase, construction, consultancy, licensing, investment, finance, banking, insurance, exploration and exploitation, transportation, and other commercial activities.

The laws of Viet Nam allow parties to a dispute with “foreign elements” to: (i) appoint foreigners as their arbitrators provided that the appointed foreigners are qualified to act as arbitrators in their own countries, and (ii) to agree on the application of a foreign substantive law, foreign arbitration rules, foreign language for arbitral proceedings, and an appropriate location for arbitral proceedings inside or outside Viet Nam. Arbitral awards issued by commercial arbitrators in Viet Nam will be enforced in Viet Nam. Arbitral awards given by the commercial arbitrators under the *Ordinance on Commercial Arbitration* do not need to be recognised by a Vietnamese court. Following the arbitration proceeding, a successful claimant is entitled to bring the relevant arbitral award to the relevant enforcement agency for enforcement unless such arbitral award is cancelled by a Vietnamese court.

Although the *Ordinance on Commercial Arbitration* gives parties to a dispute an opportunity to request a relevant Vietnamese court to cancel an arbitral award, the court may only review procedural matters and cannot re-hear the dispute. The court may, at the request of a party to the dispute, cancel an arbitral award given under the *Ordinance on Commercial Arbitration* in the following circumstances:

- the parties do not have an arbitration agreement;
- the arbitration agreement is void (for example, the party to the relevant agreement does not have the authority to sign such an agreement);
- the composition of the arbitration tribunal or the arbitral proceedings is not in accordance with the agreement of the parties;
- the dispute does not fall under the jurisdiction of the relevant arbitration tribunal;
- the relevant arbitrators are in breach of their obligations; and
- the arbitral award is contrary to the public interest of Viet Nam.

Unless otherwise stipulated by law, the statute of limitation for arbitration proceedings is two years from the date of the dispute. The parties have 30 days after the arbitral award is given to apply to the court for cancellation of the award.

The *Ordinance on Commercial Arbitration* imposes the following restrictions on the selection of governing law in arbitration proceedings:

- disputes between Vietnamese entities must be resolved in accordance with the laws of Viet Nam; and
- disputes involving a “foreign element” may be resolved in accordance with any law agreed between the parties to the dispute, provided that the selection and the application of that law are not contrary to the basic principles of the laws of Viet Nam.

For this purpose, a “foreign element” means:

- (a) one party to the dispute is a foreign entity;
- (b) the basis of the dispute arises outside of Viet Nam; or
- (c) the assets relating to the dispute are located outside of Viet Nam.

#### **v) Vietnamese Courts**

The Vietnamese court system consists of the Administrative Court, Economic Court, Civil Court, Labour Court and Criminal Court. The jurisdiction of each type of court is different, depending on the type of dispute. The Economic Court has jurisdiction over most commercial and financial disputes.

Viet Nam has unified its court procedures for the different courts under the CPC. Under the CPC, all disputes, whether civil, commercial or labour, are now subject to the same set of procedural rules. A dispute may, depending on the type of dispute and the value of the dispute, either be heard at the district court or the provincial court at first instance. The



recognition of foreign judgments and foreign arbitral awards fall under the jurisdiction of the provincial courts.

Generally speaking, court procedures in Viet Nam can be divided into three distinct stages: first instance, appeal and review (second appeal). Most cases go to both first instance and appeal as parties are entitled to appeal against a judgment within 15 days of the judgment. In this case, first instance judgments are not enforceable until the case has been disposed of by the appellate court.

Under the laws of Viet Nam, anyone may petition for review (second appeal) of a case (on the grounds of legal errors or newly discovered evidence) whether they are a party to the proceedings or not. The decision to grant such a review is made administratively by either the Chief Judge or Chief Prosecutor of a competent court or Prosecutor.

The CPC and its guiding regulations provide for a much more comprehensive set of rules on the application of important remedies such as preliminary injunctive relief. In certain cases, the CPC also allows parties to apply for temporary measures even before the court formally accepts a case for resolution.

Decisions and judgments issued by Vietnamese courts are enforceable in Viet Nam. Foreign investors should be aware of certain statutes of limitation. In general, the CPC provides that the statute of limitation for initiating court proceeding is 2 (two) years from the date the dispute arises.

#### **vi) Enforcement Process**

Following the court or the arbitration proceeding, the successful claimant is required to initiate the enforcement process by sending an application to the enforcement authority in cases where the involved parties fail to voluntarily execute the judgment or decision. The

statute of limitation for filing an application for enforcement of a court judgment or decision is three years from the effective date of the court judgment or decision. Except for limited cases wherein claimants are exempted from enforcement fee obligation. The claimant is responsible for paying an enforcement fee in accordance to a scale based on the value of the assets which such claimant actually receives.

Any dispute as between domestic investors or as between a domestic investor and a State administrative body of Viet Nam relating to investment activities in the territory of Viet Nam shall be resolved at a Vietnamese arbitration body or court. Any dispute to which one disputing party is a foreign investor or an enterprise with foreign owned capital, or any dispute as between foreign investors shall be resolved by one of the following tribunals and organisations:

- A Vietnamese court;
- A Vietnamese arbitration body;
- A foreign arbitration body;
- An international arbitration body;
- An arbitration tribunal established pursuant to the agreement of the disputing parties

Any dispute between a foreign investor and State administrative body of Viet Nam relating to investment activities in the territory of Viet Nam shall be resolved by a Vietnamese arbitration body or court, unless otherwise provided in a contract signed between a representative of a competent State body of Viet Nam with the foreign investor or in an international treaty of which the Socialist Republic of Viet Nam is a member.

#### **V. PERFORMANCE REQUIREMENTS**

No performance requirements imposing limits on trade and investment or any TRIMs.

Investors are not compelled to satisfy conditions on compulsory sales markets (exports or domestic sales), localisation ratios, development of domestic resources or other requirements relating to technology transfer and labour recruitment.

## VI. INVESTMENT INCENTIVES

### 1. PREFERENTIAL CORPORATE INCOME TAX (CIT)

Other than the standard tax rate, preferential rates of 10% and 20% apply to a number of investment projects which satisfy certain conditions such as investment in certain fields of business and/or in encouraged geographical locations. Specifically:

(a) CIT at 10% for 15 years

The preferential tax rate applies to newly-established Foreign Investment Companies (FICs) from investment projects in areas with specially difficult socio-economic conditions as listed in the Appendix issued with Decree No.124/2008/ND-CP dated 11 December 2008 (“Decree 124”), and in Economic Zones (EZs) and High-tech Zones (HTZs); or newly established FICs from investment projects in the sectors of (i) hightech; scientific research and technological development; (ii) investment in development of water plants, power plants and water supply systems; in bridges, roads and railways; in airports, seaports and river-ports; in air fields, stations and other specially important infrastructure works as decided by the Prime Minister of the Government; and (iii) computer software products (the “Sectors”).

(b) CIT at 10% for up to 30 years

In the case of newly-established FICs from investment projects in the Sectors which are on a large scale, with high-tech or new tech and which have a special need to attract investment, the duration of applicability of the preferential tax rate may be extended but the total duration shall not exceed 30 years.

(c) CIT at 10% for the whole operational period

The preferential tax rate applies during the whole operational period to that part of income of any enterprise operating in the sectors of education and training, occupational or vocational training, medical health care, culture, sport and the environment (“**Socialisation Sectors**”).

(d) CIT at 20% for 10 years

The preferential tax rate applies to newly-established FICs from investment projects in areas with difficult socio-economic conditions as listed in the Appendix of Decree 124.

The duration of applicability of the preferential tax rates is calculated consecutively from the first year in which the enterprise has turnover from the activity or operation entitled to the preferential tax rate. After the stated preferential tax rate expires, the normal CIT of 25% will be applicable for the remaining years of the relevant project. With respect to oil and gas or rare and precious mineral exploitation projects, the CIT rate, subject to various conditions, ranges between 32% and 50%. A specific rate for these types of projects will be determined by the Prime Minister at the proposal of MOF.

## 2. EXEMPTIONS AND REDUCTIONS OF CORPORATE INCOME TAX

In addition to preferential CIT rates, FICs and foreign parties to Business Co-operation Contracts (BCCs) may enjoy CIT exemption between two (2) to (four) 4 years and a 50% reduction in CIT between four (4) to nine (9) years subsequently. Specifically:

(a) Newly-established FICs from investment projects in (i) areas with specially difficult socio-economic conditions as listed in the Appendix of Decree 124, (ii) EZs and HTZs, and (iii) the Sectors are exempted from CIT for a period of four (4) years and are entitled to a 50% reduction of the amount of CIT payable for a period of nine (9) subsequent years.

(b) Newly-established FICs in the Socialisation Sectors operating in areas other than areas with difficult or especially difficult socio-economic conditions as listed in the Appendix of Decree 124 are exempted from CIT for a period of four (4) years and are entitled to a 50% reduction of the amount of CIT payable for a period of five (5) subsequent years.

(c) Newly-established FICs from investment projects in areas with difficult socio-economic conditions as listed in the Appendix of Decree 124 are exempted from CIT for a period of two (2) years and are entitled to a 50% reduction of the amount of CIT payable for a period of four (4) subsequent years. The duration of tax exemption and reduction is calculated consecutively from the first year in which the FIC has taxable income from an investment project. If an FIC does not have taxable income in the first three years as from the first year in which it has turnover from an investment project, then the duration of tax exemption and reduction is calculated from the fourth year.

#### CIT Preferential Rates, Exemptions and Reductions

FICs	Exemption (year)	50% reduction (after exemption)
Newly-established FICs from investment projects in: areas with specially difficult socio-economic conditions; economic zones and high-tech zones; and the Sectors	4	9
Newly-established FICs in the Socialisation Sectors	4	5
Newly-established FICs from investment projects in areas with difficult socio-economic conditions	2	4

### 3. OTHER INCENTIVES

#### Carried-Forward losses

During the operation, any losses incurred by FICs or foreign parties to BCCs in any tax year may be carried over to the following years and such losses are deductible from taxable income. Losses may be carried forward for a maximum period of five (5) consecutive years as from the year following the year in which the loss arose. Carrying-back of losses is not permitted.

#### **Profit Remittance Tax**

From 1 January 2004, profits derived from foreign investments in Viet Nam are not subject to profit remittance tax.

### **VII. PROMOTED AREAS/SECTORS**

#### **SECTORS ENTITLED TO INVESTMENT INCENTIVES**

*(The list of sectors entitled to investment incentives is issued together with Government Decree No.108 /2006/ND-CP dated 22 September 2006 making detailed regulations and providing guidelines for implementation of the Law on Investment)*

#### **1. LIST OF SECTORS TO WHICH SPECIAL INVESTMENT INCENTIVES SHALL BE GIVEN**

(a) Production of new materials, new energy; production of high-tech products, bio-technology products, info-technology products; production of manufactured mechanical products

1) Production of composite materials, light construction materials, rare and precious materials

2) Production of high quality steel, alloy, special metals, sponge iron; steel billets

3) Production of new energy: Construction of plants using solar energy, wind energy, bio-gas, geothermal energy, tides

- 4) Production of medical equipment for analytical and extractive technologies in medical sector; orthopaedic instruments, wheelchairs, specialised instruments for the disabled
- 5) Projects applying advanced technology, biotechnology to produce medicines meeting international GMP standards; production of drug materials for antibiotics
- 6) Production of computers; information, telecommunications and Internet equipment; pivotal info-technology products
- 7) Production of semiconductors and high-tech electronic components; production of software products, website applications; provision of software services; research on information technology; training human resources in the field of info-technology
- 8) Production and manufacture of precision mechanical equipment; equipment and machinery for examination and control of safety during the process of industrial production; industrial robots

**(b) Cultivation and processing of agricultural, forestry and aquatic products; making salt; production of man-made strains, new seeds and breeds of animals**

- 9) Afforestation and taking care of forests
- 10) Cultivation of agricultural, forestry and aquatic products in uncultivated land, unexploited waters
- 11) Catching of marine products at offshore sea
- 12) Production of new strains; propagation and hybridisation of seeds and breeds of animals with high economic efficiency
- 13) Production, exploitation and refining of salt

**(c) Use of high-technology; modern technology; protection of ecological environment; research on development and fostering of high-technology**

- 14) Application of high-technology; application of new technologies which have not been applied in Viet Nam; application of biotechnology
- 15) Pollution treatment and environmental protection; manufacture of equipment for treatment of environmental pollution, equipment for observation and analysis of environment

16) Collection and treatment of liquid waste, gaseous waste, solid waste; recycling and reuse of waste

17) Research on development and fostering of high-technology

**(d) Employment of large number of employees**

18) Projects regularly employing 5,000 or more employees

**(e) Construction and development of infrastructures and important projects**

19) Construction and operation of infrastructure facilities in industrial zones, export processing zones, high-tech zones and economic zones, and of important projects established under a decision of the Prime Minister

**(f) Development of facilities in educational, training, medical, gymnastic and sports sectors**

20) Construction of drug detoxification centres or tobacco detoxification centres

21) Setting up establishments providing sanitation services to prevent and fight against epidemics

22) Establishment of geriatric centres, and relief centres concentrating on care for the disabled and orphans

23) Construction of sports centres for training and coaching athletes with high performance; sports centres for the disabled; sports centres with equipment and facilities for exercises and contests, meeting requirements of international sporting events

**(g) Other sectors of production and service**

24) Investment in research and development (R&D) accounting for 25% or more of turnover

25) Services of salvage in the sea

26) Construction of tenements for employees working in industrial zones, export processing zones, high-tech zones, economic zones; construction of dormitories for college students and construction of housing for people entitled to social benefits



## 2. LIST OF SECTORS TO WHICH INVESTMENT INCENTIVES SHALL BE GIVEN

(a) Production of new materials, new energy; production of high-tech products, biotechnology products, info-technology products, manufactured mechanical products

- 1) Production of sonic, electric and thermal highly-insulating materials; wood-substitute synthetic materials; fire-proof materials, construction plastics, fibreglass, special cement
- 2) Production of non-ferrous metals; cast-iron refining
- 3) Production of moulds for metal and non-metal products.
- 4) Construction of new power plants, electricity transmission and distribution networks
- 5) Production of medical equipment; building storage for preservation of pharmaceutical products and for storing human medicaments for prevention of and fighting against natural disasters, calamities, dangerous epidemics
- 6) Production of equipment for testing toxic substances in foodstuffs
- 7) Development of petrochemical industry
- 8) Production of coke, activated carbon
- 9) Production of crops protection drugs, insecticides, preventive and curative drugs for animals and aquatic creatures, veterinary drugs
- 10) Materials for production of drugs, preventive and curative drugs for social diseases; vaccines, medical bio-products, medicines from pharmaceutical materials, oriental medicines
- 11) Construction of establishments for biological testing, and for evaluating effects of drugs; construction of establishments meeting criteria for production, preservation and testing of drugs; cultivation, reaping and processing of pharmaceutical materials
- 12) Development of resources of pharmaceutical materials and production of drugs from pharmaceutical materials; projects for researching on and proving the scientific basis of oriental medicine prescriptions, and formulating testing criteria in respect of oriental medicine prescriptions; conducting a survey of and compiling statistics on various types of pharmaceutical materials used for production of drugs; collection, inheritance and

application of oriental medicine prescriptions; search for, exploitation and utilisation of new pharmaceutical materials

13) Production of electronic products

14) Production of machinery, equipment and components packs in the fields of exploitation of petroleum, mining, and energy; manufacture of large-size lifting and lowering equipment; manufacture of machine tools for metal processing; metallurgy equipment

15) Production of high and medium voltage electric devices; largesize generators

16) Production of diesel engines; production and building of, and repair to ships; production of equipment and spare parts for cargo ships, fishing boats; manufacture of dynamic and hydraulic machinery and parts, and compressing machines

17) Production of equipment, vehicles and machinery for construction; production of technical equipment for the transportation industry; production of locomotives and carriages

18) Production of machine tools, machinery, equipment, spare parts serving agricultural and forestry production; food processors; equipment used in irrigation

19) Production of equipment and machinery for the textile and garment industry; production of machinery for the leather industry

**(b) Cultivation and processing of agricultural, forestry and aquatic products, making salt; production of man-made strains, seeds and breeds of animals**

20) Cultivation of medicinal plants

21) Preservation of post-harvest agricultural products; preservation of agricultural and aquatic products and foodstuffs

22) Production of bottled or canned juice from fruits

23) Production and refining of feed for cattle, poultry, aquatic creatures

24) Technical services in support of cultivation of industrial plants and forestry plants, animal husbandry, aquaculture, protection of plants and domestic animals

25) Production, propagation and hybridisation of seeds and breeds of animal

**(c) Use of high technology, modern technologies; protection of ecological environment; research on development and fostering of high technology**

26) Production of equipment for dealing with oil-overflow

27) Production of equipment for waste treatment

28) Construction of technical establishments and facilities: laboratories, experimental stations for application of new technologies to production; establishment of research institutes

**(d) Labour-intensive production**

29) Projects that employ 500 to 5,000 regular employees

**(e) Construction and development of infrastructure facilities**

30) Construction of infrastructure facilities in service of production and operation of cooperatives and community life in rural areas

31) Projects for operation of infrastructure facilities and production in complexes of industries and trades in rural areas

32) Construction of water plants or water supply systems in service of living needs or industries; construction of drainage systems

33) Construction and improvement of bridges, roads, airports, ports, railroad stations, bus stations, parking lots; opening of more railroad routes

34) Construction of technical infrastructures for densely-populated areas in localities provided in Appendix B issued together with this Decree

**(f) Development of facilities in educational, training, medical, gymnastic, sports and national cultural sectors**

35) Construction of infrastructure facilities of educational and training establishments. Construction of private and people-founded schools and educational and training establishments at all levels: pre-schools; popular schools; secondary vocational schools; colleges and universities

- 36) Establishment of people-founded hospitals and private hospitals
- 37) Construction of gymnastic and sports centres, exercising clubs, gymnastic and sports clubs; establishments for production and manufacture of or for repair to equipment and devices used for gymnastic and sports exercises
- 38) Establishment of national cultural houses, groups of singers and dancers performing national music and dance; theatres, film studios, film printing and developing establishments, cinemas; production and manufacture of, and repair to national musical instruments; renovation and conservation of museums, national cultural houses and cultural and artistic schools
- 39) Construction of national tourism areas, eco-tourism areas; construction of cultural parks including sports areas and entertainment areas

**(g) Development of traditional trades**

- 40) Formulation and development of traditional trades in relation to production of fine-art and handicraft products; processing of agricultural products and food; production of cultural products

**(h) Other production or service sectors**

- 41) Provision of the Internet connection, access and application services, and establishment of telephone booths in regions included in Appendix B issued together with this Decree
- 42) Development of means of public transportation including: development of ships and airplanes, means of railroad transportation, automobiles of 24 seats or more for transportation of passengers by land; modern and high-speed boats for transportation of passengers by river; container ships, oceangoing vessels
- 43) Projects for relocation of production establishments out of inner cities
- 44) Construction of type-I markets and exhibition areas
- 45) Production of children's toys

- 46) Projects for raising capital and lending capital by People's credit funds
- 47) Legal consultancy; consultancy on intellectual property and technology transfer
- 48) Production of various types of materials for pesticides
- 49) Production of basic chemicals, purified chemicals, specialized chemicals and dyes
- 50) Production of materials for cleansers, and additives for the chemical industry
- 51) Production of paper, cardboard, artificial planks directly from sources of agricultural and forestry materials at home; production of paper-pulp
- 52) Weaving fabric, completing textile products; producing silk and fibres of various kinds; tanning and semi-processing of hides
- 53) Investment projects in industrial zones, established under a decision of the Prime Minister

### 3. LIST OF GEOGRAPHICAL REGIONS OF INVESTMENT INCENTIVES

No	Province	Regions with specially difficult socio-economic conditions	Regions with difficult socio-economic conditions
1	Bac Kan	All districts and towns	
2	Cao Bang	All districts and towns	
3	Ha Giang	All districts and towns	
4	Lai Chau	All districts and towns	
5	Son La	All districts and towns	
6	Dien Bien	All districts and Dien Bien city	
7	Lao Cai	All districts	Lao Cai city
8	Tuyen Quang	Na Hang and Chiem Hoa districts	Ham Yen, Son Duong and Yen Son districts, and Tuyen Quang town
9	Bac Giang	Son Dong district	Luc Ngan, Luc Nam, Yen The and Hiep Hoa districts
10	Hoa Binh	Da Bac and Mai Chau districts	Kim Boi, Ky Son, Luong Son, Lac Thuy, Tan Lac, Cao Phong, Lac Son and Yen Thuy districts
11	Lang Son	Binh Gia, Dinh Lap, Cao Loc, Loc	Bac Son, Chi Lang and Huu Lung

		Binh, Trang Dinh, Van Lang and Van Quan districts	districts
12	Phu Tho	Thanh Son and Yen Lap districts	Doan Hung, Ha Hoa, Phu Ninh, Song Thao, Thanh Ba, Tam Nong and Thanh Thuy districts
13	Thai Nguyen	Vo Nhai and Dinh Hoa districts	Dai Tu, Pho Yen, Phu Luong, Phu Binh and Dong Hy districts
14	Yen Bai	Luc Yen, Mu Cang Chai and Tram Tau districts	Tran Yen, Van Chan, Van Yen and Yen Binh districts, and Nghia Lo town
15	Quang Ninh	Ba Che and Binh Lieu districts, Co To island district, and other islands and isles of the province	Cam Pha district
16	Hai Phong	districts of Bach Long and Cat Hai	
17	Ha Nam		Ly Nhan and Thanh Liem districts
18	Nam Dinh		Giao Thuy, Xuan Truong, Hai Hau and Nghia Hung districts
19	Thai Binh		Thai Thuy and Tien Hai districts
20	Ninh Binh		Nho Quan, Gia Vien, Kim Son, Tam Diep and Yen Mo districts
21	Thanh Hoa	Muong Lat, Quan Hoa, Ba Thuoc, Lang Chanh, Thuong Xuan, Cam Thuy, Ngoc Lac, Nhu Thanh and Nhu Xuan districts	Thach Thanh and Nong Cong districts
22	Nghe An	Ky Son, Tuong Duong, Con Cuong, Que Phong, Quy Hop, Quy Chau and Anh Son districts	Tan Ky, Nghia Dan and Thanh Chuong districts
23	Ha Tinh	Huong Khe, Huong Son and Vu Quang districts	Duc Tho, Ky Anh, Nghi Xuan, Thach Ha, Cam Xuyen and Can Loc districts
24	Quang Binh	Tuyen Hoa, Minh Hoa and Bo Trach districts	The remaining districts except Tuyen Hoa, Minh Hoa and Bo

			Trach districts
25	Quang Tri	Huong Hoa and Dac Krong districts	The remaining districts except Huong Hoa and Dac Krong districts
26	Thua Thien – Hue	A Luoi district	Phong Dien, Nam Dong, Quang Dien, Huong Tra, Phu Loc and Phu Vang districts
27	Da Nang	Hoang Sa island district	
28	Quang Nam	Dong Giang, Tay Giang, Nam Giang, Phuoc Son, Bac Tra My, Nam Tra My, Hiep Duc, Tien Phuoc, Nui Thanh districts, and Cu Lao Cham island	Dai Loc and Duy Xuyen districts
29	Quang Ngai	Ba To, Tra Bong, Son Tay, Son Ha, Minh Long, Binh Son and Tay Tra districts, and Ly Son island district	Nghia Hanh and Son Tinh districts
30	Binh Dinh	An Lao, Vinh Thanh, Van Canh, Phu Cat and Tay Son districts	Hoai An and Phu My districts
31	Phu Yen	Song Hinh, Dong Xuan, Son Hoa and Phu Hoa districts	Song Cau, Tuy Hoa and Tuy An districts
32	Khanh Hoa	Khanh Vinh and Khanh Son districts, Truong Son island district, and other islands of the province	Van Ninh, Dien Khanh and Ninh Hoa districts, Cam Ranh town
33	Ninh Thuan	All districts	
34	Binh Thuan	Phu Quy island district	Bac Binh, Tuy Phong, Duc Linh, Tanh Linh, Ham Thuan Bac and Ham Thuan Nam ditricts
35	Dac Lac	All districts	
36	Gia Lai	All districts and town	
37	Kon Tum	All districts and town	
38	Dak Nong	All districts	
39	Lam Dong	All districts	Bao Loc town

40	Ba Ria – Vung Tau	Con Dao island district	Tan thanh district
41	Tay Ninh	Tan Bien, Tan Chau, Chau Thanh and Ben Cau districts	The remaining districts except Tan Bien, Tan Chau, Chau Thanh and Ben Cau districts
42	Binh Phuoc	Loc Ninh, Bu Dang and Bu Dop districts	Dong Phu, Binh Long, Phuoc Long and Chon Thanh districts
43	Long An		Duc Hue, Moc Hoa, Tan Thanh, Duc Hoa, Vinh Hung and Tan Hung districts
44	Tien Giang	Tan Phuoc district	Go Cong Dong and Go Cong Tay districts
45	Ben Tre	Thanh Phu, Ba Tri and Binh Dai districts	The remaining districts except Thanh Phu, Ba Tri and Binh Dai districts
46	Tra Vinh	Chau Thanh and Tra Cu districts	Cau Ngang, Cau Ke and Tieu Can districts
47	Dong Thap	Hong Ngu, Tan Hong, Tam Nong and Thap Muoi districts	The remaining districts except Hong Ngu, Tan Hong, Tam Nong and Thap Muoi districts
48	Vinh Long		Tra On district
49	Soc Trang	All districts	Soc Trang town
50	Hau Giang	All districts	Vi Thanh town
51	An Giang	An Phu, Tri Ton, Thoai Son, Tan Chau and Tinh Bien districts	The remaining districts except An Phu, Tri Ton, Thoai Son, Tan Chau and Tinh Bien districts
52	Bac Lieu	All districts	Bac Lieu town
53	Ca Mau	All districts	Ca Mau city
54	Kien Giang	All districts, and islands and isles of the province	Ha Tien town, Rach Gia town



55	Other regions	High-tech zones and economic zones entitled to incentives, established under a decision of the Prime Minister	Industrial zones and export processing zones established under a decision of the Prime Minister
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#### 4. LIST OF CONDITIONAL INVESTMENT SECTORS APPLICABLE TO FOREIGN INVESTORS

*(issued together with Decree No. 108/2006/ND-CP dated 22 September 2006, making detailed regulations and providing guidelines for implementation of the Law on Investment)*

In common with all countries, Viet Nam reserves its sovereign right to restrict foreign investment in sensitive fields, namely the “conditional sectors”. Investment projects in conditional sectors must satisfy certain conditions in order to be licensed. Conditional sectors include:

- 1) Radio-broadcasting, televising
- 2) Production, publication and distribution of cultural products
- 3) Exploitation and processing of minerals
- 4) Establishment of infrastructure facilities of telecommunications networks, broadcasting and transmission networks, provision of telecommunications and Internet services
- 5) Construction of public postal networks, provision of postal and express services
- 6) Construction and operation of river ports, sea ports, airports
- 7) Transportation of cargoes and passengers by railroad, by air, by land, by sea, by inland waterway
- 8) Catching of marine products
- 9) Production of cigarettes
- 10) Trade in properties
- 11) Doing business in export-import and distribution sectors

- 12) Investment in education and training sector
- 13) Hospitals, clinics
- 14) Other investment sectors in international treaties of which Viet Nam is a member and which require Viet Nam to commit to restricting the opening of the market to foreign investors

Investment conditions applicable to foreign investors with investment projects included in investment sectors that are stipulated in the above sectors must conform to provisions of international treaties of which Viet Nam is a member.

Most importantly for foreign investors, “conditional sectors” also include all “investment fields under international treaties to which Viet Nam is a member committing to limited market access to foreign investors”. For example, this covers the market access roadmaps contained in Viet Nam’s WTO accession package.

For business sectors that are made “conditional” by international commitments, Decree No. 108/2006/ND-CP dated 22 September 2006 of the Government, which implements certain provisions of the IL (“Decree 108”), provides that the applicable requirements are those specified in the treaty or other agreement relating to international commitments. For example, under WTO commitments, investors from WTO member countries are permitted to establish engineering firms in Viet Nam on the condition that for 2 years after the date of Viet Nam’s accession, 100% foreign-owned companies may only provide such services to other foreign investment enterprises in Viet Nam.

For sectors which are declared conditional but are not mentioned in international agreements, investors must look at domestic laws to find the applicable conditions. For example, the relevant conditions for investment in “real estate business” are contained in the Law on Real Estate Business.

## 5. RESTRICTIONS

Areas prohibited by law include:

- investment projects detrimental to national defence, security, and the public interest;
- investment projects detrimental to historical and cultural traditions and the ethics or customs of Viet Nam;
- investment projects harming people's health or destroying natural resources and the environment; and
- investment projects treating toxic waste imported to Viet Nam and investment projects manufacturing toxic chemicals banned by international law.

## VIII. TAXATION

### 1. CORPORATE INCOME TAX

#### Corporate Income Tax (CIT) Rates

With effect from 1 January 2009, the new Law on CIT introduces a standard CIT rate of 25% (as opposed to 28% previously applicable to Foreign Investment Companies (FICs) and foreign parties to Business Co-operation Contracts (BCCs) for both local enterprises operating under the Law on Enterprises and FICs, including foreign parties to BCCs. FICs and foreign parties to BCCs which obtained investment licences or certificates before 1 January 2009 will continue to enjoy the preferential tax incentives as stipulated in their investment licence or certificate.

### 2. CAPITAL TRANSFER TAX

The tax rate applied to capital transfer is 25% and 20% of the assessable income with respect to corporations and individual tax residents, respectively, and 0.1% of the transfer price with respect to individual non-tax residents. Upon obtaining the amendment to the

investment certificate, the transferor is required to register the transfer of capital with the tax authority.

### 3. VALUE-ADDED TAX

Value-Added Tax (“VAT”) applies to the supply of goods and services for use in production, business or consumption in Viet Nam. VAT is calculated on the sale/purchase price of the relevant goods or service before the addition of VAT.

The applicable VAT rates are 0%, 5% and 10%, of which the normal rate of 10% is applicable to most goods and services; 5% for a number of encouraged goods and services; and 0% for exported ones and international transportation. Certain goods and services are exempt from VAT, e.g., unprocessed agricultural products sold by the producer, certain insurance services and certain imported equipment. The difference between being subject to VAT at 0% and being exempt from VAT is that, in the former case, the input VAT can be claimed from the tax authority.

- **VAT Exemptions**

Foreign-invested projects shall be exempt from VAT with respect to the following imported items:

- machinery, equipment and materials which are not yet able to be produced domestically and which are required to be imported for direct use in scientific research and technological development activities;
- machinery, equipment, replacement parts, specialised means of transportation and materials which are not yet able to be produced domestically and which are required to be imported to carry out prospecting, exploration and development of petroleum and natural gas field; and
- aircraft, drilling platforms and watercraft which are not yet able to be produced domestically and which are required to be imported to form fixed assets of enterprises or

which are leased from foreign parties for use in production and business and in order to be subleased.

#### 4. PERSONAL INCOME TAX

On 21 November 2007, the National Assembly of Viet Nam passed the new *Law on Personal Income Tax* ("PIT"), which comes into force on 1 January 2009. The Government issued *Decree No. 100/2008/ND-CP* dated 8 September 2008 ("**Decree 100**") and MOF issued *Circular No. 84/2008/TTBTC* dated 30 September 2008 ("**Circular 84**") for providing guidance on the Law on Personal Income Tax.

- **Taxpayers**

Under the new *Law on Personal Income Tax*, taxpayers include tax residents and non-tax residents.

- A tax resident who (a) stays in Viet Nam for 183 days or more within a calendar year or within a consecutive 12 month period from his/her arrival in Viet Nam or (b) has a registered permanent residence in Viet Nam or has a house rented in Viet Nam under a lease contract of 90 days or more in a tax year, is subject to PIT on worldwide-sourced income (regardless of where the income is paid) and Viet Nam-sourced income.

- A non-tax resident who does not fall under the category of tax resident above is subject to PIT on income sourced in Viet Nam.

- **Non-taxable Income and Allowable Deductions**

- **Non-taxable Income:**

The following incomes, among others, are not subject to PIT:

- Income from the transfer of immovable properties between spouses; parents and children; adoptive parents and adopted children; parents-in-law and children-in-law; grandparents and grandchildren; and between siblings;

- Income from the transfer of residential houses, residential land use right and properties attached thereto in case the house or the land is the only place for accommodation of the transferor;

- Income being receipt of an inheritance or gift of real property as between husband and wife; as between parents and children, including foster parents and adopted children; as between parents-in-law and children-in-law; as between grandparents and grandchildren; and as between siblings;

- Interest income from deposits or savings in credit institutions/ banks and interest from life insurance policies;

- Income from overseas remittances from Vietnamese relatives;

- Salary for night-shifts and excessive amount of overtime income;

- Pension paid by the Social Insurance;

- Income from the scholarships granted by the State budget or by national and international organisations;

- Insurance compensation payments under life insurance policies, non-life insurance policies, compensations for accidents at work;

- Income earned from charity (non-profit) funds; and

- Income from governmental or non-governmental foreign aids for charity and humanitarian purpose.

#### **Family Deductions:**

Under the new PIT regime, sums called as “family deductions” may be deducted from the taxable business incomes and employment incomes of tax residents prior to the assessment of tax. Family deductions include:

- Personal deduction of VND4 million/month (approx. USD240.00/ month); and

- Dependent deduction of VND1.6 million (approx. USD100.00/dependent/month).

Under Circular 84, a dependent means a person that a taxpayer has obligations to feed up or support, including (a) infant or offspring being handicapped or incapable to work, and (b) individuals having no income or having incomes not exceeding VND500,000/month (approx. USD31.00/month) including offspring studying in universities, colleges, high schools or technical and vocational schools; spouse who is incapable of working; parents over the working age or incapable of working; and other persons directly reared or cared for by taxpayers who are over the working age, or within the working age but is disabled, with no residence.

There is no limit on the number of dependent reported by each taxpayer but each dependent must be reported once by taxpayers.

#### Other Deductions:

Taxpayers can claim deductions from their business incomes and employment incomes for the compulsory contributions of Social Insurance, Health Insurance, professional indemnity insurances, and other statutory insurances.

Furthermore, donations to licensed charity organisations including humanitarian funds and study encouragement funds established and operating under *Decree No. 148/2007/ND-CP* dated 25 September 2007 may also be deducted from business incomes and employment incomes of taxpayers.

#### • Personal Income Tax Rates Applicable to Tax Residents

The scale of progressive tax rates on each portion of income that applies to business income and employment income are as follows: Exchange rate USD1 = approx. VND17,000

Tax Bracket	Portion of Annual assessable Income (million VND)	Portion of Annual Assessable Income (million VND)	Tax Rate (%)
1	Up to 60	Up to 5	5

2	Over 60 to 120	Over 5 to 10	10
3	Over 120 to 216	Over 10 to 18	15
4	Over 216 to 384	Over 18 to 32	20
5	Over 384 to 624	Over 32 to 52	25
6	Over 624 to 960	Over 52 to 80	30
7	Over 960	Over 80	35

Flat tax rates for other taxable income:

Assessable Income	Tax Rate (%)
Capital investment, royalties	5
Franchise, interests and dividends	5
Inheritances	10
Winning or prizes, gifts	10
Gains transfer of securities	20
Value transfer of securities (Gains are unable to be determined)	0.1
Gains on transfer of immovable properties	25
Value transfer of immovable properties (Gains are unable to be determined)	2

• Personal Income Tax Rates Applicable to Non-Tax Residents

Flat tax rates are applicable to non-tax residents as follows:

Income Items	Tax Rate (%)
1. Business income (on turnover arising from provision of goods & services):	
(a) For trading activities	1
(b) For services	5
(c) For production, construction, transportation and other business activities	2
2. Employment income (irrespective of where the income is paid or received)	20
3. Capital investment (on total amount receivable from the investment)	5
4. Capital transfer (on transfer price)	0.1
5. Transfer of immovable properties (on transfer price)	2
6. Royalty and franchise (on the portion of income exceeding VND10 million)	5
7. Prizes, inheritances and gifts (on the portion of income exceeding VND10 million)	10



## 5. IMPORT AND EXPORT DUTIES

### • Tax Rates

Export duties are charged on a few items, primarily agricultural products (e.g. rice, forest products and fish) and natural minerals. Rates vary between 0% and 50% of the FOB price of exported goods (in accordance with Resolution 977 passed on 13 December 2005 by the Standing Committee of the National Assembly). Petroleum oil is subject to an export duty rate between 0% and 8%.

Import duty rates are now classified into three categories as follows:

- preferential rates vary between 0% and 150% of the CIF price of imported goods in accordance with Resolution 977. Preferential rates are applied to goods imported from any one of some 60 countries which have MFN status with Viet Nam;
- ordinary rates apply to goods imported from other countries. These are up to 50% above the preferential rates applicable to MFN countries; and
- special preferential rates apply to goods imported from countries which have a special preferential agreement with Viet Nam, e.g. the ASEAN member countries under the CEPT and EU member countries under the Textile-Garment Treaty between Viet Nam and EU.

To be eligible for the preferential rates or special preferential rates, the imported goods must be accompanied by an appropriate Certificate of Origin.

### • Import Duty Exemptions

FICs and parties to BCCs shall be exempted from import duty with respect to the following goods, provided that: (a) they are implementing a project in an encouraged field of business set out in Appendix I, or in a geographical location set out in Appendix II, of *Decree 108 of the Government* dated 22 September 2006; and (b) such goods are imported to form the fixed assets of the enterprise:

- equipment and machinery;

- specialised means of transport that are used to carry materials between parts of a production line as certified by the MOST, and means of transport to be used for carrying workers (automobiles having 24 seats or more, and watercraft);
- components, details, detachable parts, spare parts, accessories, moulds and supplements pertaining to or accompanying the equipment and machinery, and specialised means of transport as specified above;
- raw materials and materials imported for the manufacturing of the equipment and machinery which are parts of the production line or the manufacturing of components, parts, detached devices, spare parts, installations, moulds and accessories which accompany the equipment and machinery;
- construction materials which cannot be manufactured domestically; and
- goods and materials imported by BOT companies and contractors for the performance of BOT, BTO and BT projects.

The above exemption of import duty is also applicable in the case of a project's expansion or replacement or renovation of technology.

Under *Circular 113 of the MOF* dated 13 December 2005, import duty is also exempt on one-off purchases of certain equipment for "encouraged investment projects" in hotels, offices, apartments for lease, residential properties, commercial centres, technical services, supermarkets, golf courses, tourist areas, sports areas, recreation and entertainment parks, health-care facilities, training centres, cultural, finance, banking, insurance, auditing and consulting services. This equipment is specified in Appendix III of *Decree 149 of the Government* dated 8 December 2005.

Projects that fall under the list of projects in which investment is especially encouraged are entitled to exemption of import duty for the raw materials used for production for a period of 5 years from the commencement of production.

In addition, goods and products imported in a number of circumstances also enjoy import duty exemption.

- **Approval for Import Duty Exempted Items**

Based on the investment certificate, the feasibility study and the technical design of a project, the MOIT or an agency authorised by it will approve the list of import duty exempted goods.

The imported goods mentioned above must not be assigned or sold in the Vietnamese market except as approved by the MOIT. Otherwise the relevant taxes must be paid in accordance with laws.

## 6. SALES TAX

### Special Sales Tax

A luxury tax imposed on goods including petrol, automobiles, airconditioners, votive paper, playing cards, alcohol, beer, cigarettes, and operations including discotheques, karaoke, casinos, entertainment with betting, lottery and golf.

## 7. WITHHOLDING TAX

Payment of interest to offshore lenders is subject to withholding tax of 10%.

Foreigners are considered to be resident in Viet Nam and are taxable on their worldwide income if they live and work in Viet Nam for an aggregate of 183 days or more within a period of 12 months. Tax is computed at progressive rates.

Non resident foreigners who spend between 30 days and 182 days working in Viet Nam are taxed only on Viet Nam-source income at a rate of 25 percent. However, this will need to be considered in light of the provisions of any Double Taxation Agreement.

Those who spend less than 30 days a year in Viet Nam will not be subject to a tax.

## 8. LAND/PROPERTY TAX

There is land rental which varies per region. For more details, please contact the General Department of Land Administration.

### Land rental applied to FDI projects

#### Urban land

Unit: USD/m<sup>2</sup>/year

Urban land category	Minimum rate	Maximum rate
Category I	1.0	12.00
Category II	0.8	9.60
Category III	0.6	7.20
Category IV	0.35	4.20
Category V	0.18	2.16

#### Non-urban land

Unit: USD/m<sup>2</sup>/year

Type of commune	Minimum rate	Maximum rate
1. Commune with boundary adjoining an urban area in category I	0.18	1.08
2. Commune with boundary adjoining an urban area in category II	0.10	0.60
3. Other regions:		
-In deltas	0.060	0.36
-In midlands	0.045	0.27
-In mountainous regions	0.020	0.12

Land rent rates shall be calculated as follows:

*Land rent rate per year (USD/m<sup>2</sup> per year) = the minimum rate applicable to each land category (USD/m<sup>2</sup> per year) \* the location co-efficient \* the infrastructure co-efficient \* the industry sector co-efficient*

## 9. OTHER TAXES

### Natural Resources Tax

A tax levied on industries exploiting Viet Nam's natural resources such as petroleum, minerals, forest, fisheries and natural water. Rates vary according to the resource being mined.

## IX. FINANCIAL REGULATIONS

### 1. BORROWING REGULATIONS

Enterprises with foreign owned capital may borrow from credit institutions permitted to operate in Viet Nam. Enterprises with foreign owned capital may mortgage assets attached to the land and the value of land use rights as security for borrowing loans from credit institutions permitted to operate in Viet Nam.

### 2. FOREIGN EXCHANGE

While the Government is responsible for the macro-economic foreign exchange policies, the State Bank of Viet Nam (SBV) is responsible for regulating and implementing those policies and for overseeing currency transactions to ensure its compliance with relevant guidelines. A significant step forward in State management on foreign exchange is the adoption of the *Foreign Exchange Ordinance* (the "**Ordinance**"). The Ordinance was passed by the Standing Committee of the National Assembly on 13 December 2005 with the expectation that this legislation will regulate the high level foreign exchange market in Viet Nam and will

satisfy the conditions for the country's integration into the WTO. The Ordinance became effective on 1 June 2006.

- **Bank Accounts**

#### **Accounts in Viet Nam**

All FICs and foreign parties to BCCs must open a capital account<sup>3</sup> with an authorised bank in Viet Nam to monitor the flow of capital in foreign currency into and out of Viet Nam. Therefore, certain transfers of capital (e.g., transfer of capital/equity, profits or off-shore loans) must be effected through this capital account.

In addition to the capital account, FICs and foreign parties to BCCs can open other foreign currency and VND accounts at other banks in Viet Nam.

#### **Accounts outside Viet Nam**

The opening and operation of offshore accounts must be approved by the SBV. FICs are allowed to open offshore accounts in certain special circumstances. For example, the opening of offshore accounts by BOT companies in Viet Nam for security purposes as required under financing agreements or for the remittance of equity.

- **Conversion**

All FICs and foreign parties to BCCs are entitled to buy foreign currency for current transactions and other permitted transactions in accordance with the foreign exchange regulations.

Not being required to obtain approval for conversion, the ability of FICs and foreign parties to BCCs to convert VND into foreign currency is only subject to foreign currency being available from banks.

### **Government Guarantee**

The Government shall support foreign exchange balancing in cases where authorised credit institutions are not able to satisfy the demand for foreign currency of investors with respect to a number of important projects in the sectors of Energy; Waste treatment; and Construction of traffic infrastructure.

### **Conversion Purposes**

Under the Ordinance, all residents are entitled to buy foreign currency to meet their payment requirements for legitimate purposes, subject to the selling bank's verification. In the territory of Viet Nam, all transactions being payments and remittance of money relating to current transactions of residents and non-residents shall be conducted freely in compliance with relevant regulations. According to Decree 160 dated 28 December 2006 implementing the Ordinance ("Decree 160"), payment for current transactions includes the following: (i) repayment of principal, interest and fees under foreign loans; (ii) overseas remittance of net income and depreciation of investment capital (if applicable); (iii) payment for imports of goods and services and other current transactions; and (iv) other remittance for consumption purposes and similar transactions.

#### **• Foreign Currency Payments**

Foreign currency payments within Viet Nam, except for certain limited circumstances, are strictly prohibited under the Ordinance and are subject to the strict control of the SBV. Except for certain circumstances provided by Decree 160, residents and non-residents are prohibited from effecting a sale/purchase, making a payment, or granting loans in foreign currency and posting notice of goods and services in a foreign currency.

Examples of permissible circumstances provided by Decree 160 are:

- transactions with credit institutions and other organizations licensed to provide foreign exchange services.

- Residents being organisations may internally transfer capital in foreign currencies via bank accounts (as between an entity with legal status and a dependent accounting entity or vice versa).
- Residents may contribute capital in foreign currencies in order to implement foreign investment projects in Viet Nam.
- Residents are entitled to receive payments in foreign currencies made via bank account transfer in accordance with entrusted import or export contracts.
- Residents being domestic or foreign contractors are entitled to receive payments in foreign currencies made via bank account transfer by investors or principal contractors in order to make payment and to remit outside Viet Nam.
- Residents being insurers are entitled to receive foreign currencies transferred via bank accounts by insurance buyers for goods and services which must be re-insured overseas.
- Residents being organisations conducting business in dutyfree goods, organisations providing services in isolated areas of international bordergates or organisations providing customs bond warehouse services are entitled to receive payments in foreign currencies and Viet Nam dong from the supply of goods and services.
- Residents being customs and police offices at international bordergates and customs bond warehouses are entitled to receive foreign currencies from non-residents with regard to taxes and fees for entry or exit visas or for the provision of services.
- Non-residents being diplomatic missions or consulates are entitled to collect fees for entry or exit visas or other charges and fees in foreign currencies.
- Individual foreign non-residents and residents are entitled to receive wages, bonuses and allowances in foreign currencies from residents or non-residents being organisations.
- Non-residents are entitled to transfer foreign currencies via bank accounts to other non-residents or to make payment to residents for export of goods and services.
- Transactions are approved to be effected in foreign currency by the SBV on case by case basis.



It should be noted that a breach of the above requirements may make the whole contract, to which the payment relates to, invalid.

• **Rates of Exchange**

Each day the SBV announces in the mass media an average exchange rate in the Foreign Currency Interbank Market of VND against USD. This official exchange rate is used in the following circumstances:

- to calculate import/export duties;
- to consider bidding for national projects at the time of the opening of bids; and
- to calculate the value of capital contributions made to a JVC or a BCC at the time of the capital contribution.

Commercial banks (including foreign bank branches) shall determine and announce their buying/selling rates of VND against USD within the range permitted by the SBV.

### 3. SOURCE OF FINANCING

Subject to the laws of Viet Nam, from the date of receiving an investment certificate by a Licensing Authority, FICs in Viet Nam are entitled to obtain loans from (and grant security to) both onshore and offshore lenders.

• **Borrowing Limit**

The investment certificate of an FIC stipulates its total investment capital and charter capital. The difference between the total investment capital and the charter capital is the loan capital of the FIC. All loans obtained by an FIC from onshore and offshore lenders (including loans from shareholders) must not exceed the amount of the loan capital.

Exceptions are made in the following circumstances:

- offshore loans for working capital with a term of one year or less if the loan is obtained after the completion of construction and the project is already in operation; and
- refinancing (i.e., when an existing loan is paid out by another new loan).

Approval from the Licensing Authority will be required if the loan amount results in the borrower exceeding the loan capital unless that loan falls under the above exceptions. On this basis, due consideration should be given to the capital structure of an FIC in Viet Nam.

- **Registration**

Offshore loans with a term of up to 1 year (or short-term loans) for working capital purposes are not subject to registration with the SBV. A short-term loan, however, must be registered with the SBV if the loan is extended and the total loan term (including both original term and extended term) is over 1 year.

All loans obtained from offshore lenders (including offshore shareholders) and with a term of more than 1 year must be registered with the SBV within 30 days from the date of execution of the loan agreement and prior to the first drawdown under the loan agreement. For the purpose of registration with the SBV, the borrower is required to submit a standard application form to the SBV and the loan agreement must be translated into Vietnamese. It should be noted, however, that a prior approval from SBV must be obtained if a provision of the finance documents is not consistent with the laws of Viet Nam.

Any amendment to the details of the SBV registration certificate (including loan assignments) must also be registered with SBV within 30 days of the date of the amendment agreement and before the effective date of such amendment.

Foreign and domestic borrowings are allowed.

#### 4. REPATRIATION OF CAPITAL/PROFITS

- **Remittance of Capital and Profits**

After a foreign investor has discharged fully its financial obligations to the State of Viet Nam, it shall be permitted to remit abroad the following:

- Its profits derived from business activities;
- Payments received from the provision of technology and services and from intellectual property;
- The principal of and any interest on foreign loans;
- Invested capital and proceeds from the liquidation of investments;
- Other sums of money and assets lawfully owned by the investor.

A foreigner working in Viet Nam for an investment project shall be permitted to remit abroad his or her lawful income after having discharged fully his or her financial obligations to the State of Viet Nam.

The remittance of the above sums of money shall be made in a freely convertible currency in accordance with the trading exchange rate published by a commercial bank selected by the investor.

Procedures for remitting abroad the sums of money relating to an investment activity shall be subject to the laws on foreign exchange control.

Foreign investors investing in Viet Nam shall have the right to transfer abroad:

- Their profits derived from business operations;
- Payments received from the provision of technology and services;
- The principal of and interest on any foreign loan obtained during the course of operation;
- The invested capital;
- Other sums of money and assets lawfully owned.

## X. APPROVAL FOR THE EMPLOYMENT OF FOREIGN WORKERS

## 1. CONDITIONS FOR THE APPROVAL OF FOREIGN EMPLOYEES

Following the promulgation of the *Labour Code* in June 1994, as amended from time to time, a series of implementing regulations have been issued to govern particular areas of labour law, including labour contracts, employment procedures, working hours, and salaries/remunerations (referred to collectively as the "*Labour Code*").

### • Recruitment

Under the *Labour Code*, FICs are allowed to recruit Vietnamese employees directly or through a recruitment centre. Not less than seven (7) days before recruiting, FICs are required to publicly announce (on either local or central mass media) and post at its head office the recruitment requirements such as a job description, job qualifications, number of workers to be recruited, the contract term, salary, and working conditions. Within seven (7) days from the recruitment, FICs are required to provide a list of recruited workers to the relevant DOLISA.

International or foreign organisations, including any representative offices and branches in Viet Nam, are required to recruit Vietnamese employees through a recruitment centre. In the event that the recruitment centre fails to supply the required candidates within 15 days of a recruitment request, the foreign organisation is entitled to recruit employees directly.

Foreigners may work in Viet Nam in the following forms: (a) pursuant to a labour contract; (b) internal transfer within an enterprise which has a commercial presence in Viet Nam; (c) performance of contracts that are economic, commercial, financial, banking, insurance, scientific, cultural, sports, education, or medical health; (d) service providers pursuant to a contract; (e) foreigners (who does not live in Viet Nam and who does not receive remuneration from any source in Viet Nam) offering services by participating in activities relating to representation of a service supplier in order to negotiate the sale or consumption of services of such supplier, on condition that foreigner does not directly sell such services to the public and does not directly participate in the provision of services; or (f) foreigners

representing a foreign nongovernmental organisation which is permitted to operate in Viet Nam.

Foreigners must satisfy all of the following conditions in order to work in Viet Nam: (i) be at least 18 years of age; (ii) in good health as necessary to satisfy the job requirements; (iii) either a manager, executive director, or an expert as defined under the law; (iv) not have a criminal record for a national security offence; (v) not currently subject to criminal prosecution or any criminal sentence in accordance with the laws of Viet Nam and foreign laws; and (vi) with a work permit issued by the authorised State body of Viet Nam if required.

#### • Labour Contracts

A labour contract must, with the exception of contracts with a term of less than three (3) months, be in writing and signed directly between an employee and the legal representative of the employer. The contract must be made on the standard form issued by MOLISA. The contract must contain the following details: the work to be carried out, working hours and length of breaks, the wage, workplace, term of contract, health and safety provisions, and social insurance. The standard form also allows the employer and employee to agree on other employment terms and conditions.

The contents of a labour contract must be in compliance with the laws of Viet Nam and any collective labour agreement of the relevant company.

#### Types of Labour Contracts

The Labour Code introduced three types of labour contracts:

- non-fixed term labour contract;
- fixed term labour contract (from 12 to 36 months); and
- “seasonal” labour contract (less than 12 months).

### **Probationary Period**

A probationary period can be applied before the execution of a labour contract. During the probationary period, either party can terminate the employment contract without prior notice.

The probationary period must be:

- no more than 60 days for positions requiring college level qualifications;
- no more than 30 days for positions requiring secondary level qualifications, or with respect to technicians and trade persons; and
- no more than six (6) days for manual labour.

### **• Termination of Employment**

#### **Unilateral Termination**

The *Labour Code* only allows unilateral termination of a labour contract in limited circumstances, irrespective of any mutual agreement or other circumstances. There are different procedures for termination by employers and employees. Generally, a party terminating a labour contract unilaterally must give prior notice of termination to the other party.

#### **Unilateral Termination by an Employee**

An employee who signs a labour contract with a fixed term from 12-36 months, or for seasonal work or a specific task of less than 12 months, is entitled to unilaterally terminate the contract prior to expiration if the employee:

- is not assigned to the work, workplace, or working conditions agreed under the labour contract;
- is not paid the full amount or at the time specified in the labour contract;
- is subject to maltreatment or forced labour;
- cannot continue their employment due to adverse personal or family difficulties;
- is elected to a full-time position in a representative public office or is appointed to an office in a State body;

- is sick or involved in an accident requiring medical treatment for three consecutive months in respect of a fixed-term labour contract of 12 months to 36 months or a quarter of the contract term in respect of a seasonal job or a specific job with a term of less than 12 months; or
- in the case of female employees, is pregnant and must stop working based on the advice of a doctor.

An employee who signs a non-fixed term labour contract is entitled to unilaterally terminate the contract whenever he/she wishes so provided that 45-day prior notice is duly given to the employer.

#### **Unilateral Termination by an Employer**

During the term of a labour contract, unilateral termination by an employer is permitted in the following circumstances:

- the employee regularly fails to perform his contractual duties;
- the employee is dismissed for disciplinary reasons;
- the employee has been sick for an extended period (6 months or 12 months depending on the term of the labour contract);
- the employer is forced to make cuts in the production and workforce due to force majeure events such as fire or natural disaster; or
- the company or organisation ceases operations.

#### **• Wages, Overtime Payments, and Statutory Minimums**

The Labour Code allows foreign-invested projects to denominate and pay wages to Vietnamese employees in Dong. Salaries for foreigners may be denominated and paid in foreign currency.

The Government decides and publishes a minimum wage which varies depending on geographical regions and types of work. The current minimum wage is VND1,200,000 per

month (approx. USD72.00) for employees within Area 1 which includes the urban districts and Ha Dong City of Hanoi and the urban districts of Ho Chi Minh City; VND1,080,000 per month (approx. USD65.00) for employees within Area 2 such as the rural districts of Hanoi and Ho Chi Minh City, some districts of Hai Phong City, Da Nang City, etc.; and VND950,000 per month (approx. USD57.00) for employees within Area 3 such as other provincial cities, the remaining districts of Hanoi, some districts of Bac Ninh province, Bac Giang province, Hung Yen province, etc. For the rest of the country, the minimum wage is VND920,000 (approx. USD55.00).

Overtime on a normal working day (six days of the week and including non-public holidays) must be at least one and a half times the normal hourly rate. On non-working days (1 day a week), overtime pay is at least twice the normal hourly pay, while overtime on public holidays and paid annual leave is three times the normal pay rate. Overtime may not exceed four (4) hours a day or 16 hours a week, or 200 hours in a year or 300 hours in a year for special circumstances which require the approval of the provincial People's Committee.

The normal number of working hours in a week is 48 hours, comprising six 8-hour working days and extendable by mutual agreement. Employees working in dangerous, noxious, or especially toxic jobs (as defined by MOLISA) have their work day shortened to six (6) or seven (7) hours.

An employee working for at least 12 months is entitled to annual leave of 12 days in addition to public holidays. Certain especially hazardous and toxic jobs are entitled to either 14 or 16 days annual leave as determined by the Government. An employer may set the schedule of annual leave after consulting with the Executive Committee of the enterprise trade union and notifying his employees. Employees will be compensated for remaining leave prior to departure from work.



An employee is entitled to paid leave for the following personal reasons: marriage (3 days leave); marriage of a son or daughter (1 day leave); and the death of a person's parents, spouse's parents, spouse, son, or daughter (3 days leave). Female employees are entitled to maternity leave of at least four (4) months, with an allowance equal to 100% of their salary to be paid by the Social Insurance Fund. At least two (2) months of the maternity leave must be taken post-birth.

## **2. WORK PERMIT PROCESSING AND REQUIREMENTS**

Expatriates working in Viet Nam for three (3) months or more must obtain a work permit. The term of a work permit is required to correspond with the length of the labour contract, which is capped at 36 months but may be extended at the employer's request.

Not less than twenty days before an expatriate's estimated date of commencement of work, an FIC must apply to MOLISA or its authorized agency to obtain a work permit for that expatriate. MOLISA or its authorized agency is obliged to give its decision within 15 days of its receipt of such application. Clear reasons must be provided if the application is refused. In addition, a work permit can be withdrawn in certain circumstances, including for a breach of the laws of Viet Nam by the expatriate.

Five groups of foreigners working in Viet Nam are exempt from the requirement of obtaining a work permit: (i) foreigners entering Viet Nam to work for less than three (3) months; (ii) a member of a limited liability company with two or more members; (iii) the owner of a one member limited liability company; (iv) a member of the board of management of a shareholding company; (v) a foreigner entering Viet Nam to offer services; (vi) foreigners entering Viet Nam to work to resolve an emergency situation such as a breakdown or a technically or technologically complex situation arising and affecting, or with the risk of affecting, production and/or business which Vietnamese experts or foreign experts currently in Viet Nam are unable to deal with. Such foreigners must carry out procedures for issuance

of a work permit if their work extends for more than three (3) months; and (vii) a foreign lawyer to whom the Ministry of Justice has issued a certificate to practice law in Viet Nam.

Not less than seven (7) days prior to the date of commencement of work, foreigners who are exempted from work permit requirements must be registered at DOLISA where the employer's head office is located. The registration must state the name, age, nationality and passport number of the employee, the dates of commencement and termination of employment, and a description of the work to be done.

- **Collective Labour Agreement**

In FIC must negotiate a collective labour agreement if requested by the trade union at the company. This agreement is valid only if at least 50% of the employees agree to the provisions of the agreement. The collective labour agreement covers matters such as wages for different categories of employees and working conditions. A copy of the collective labour agreement must be filed with DOLISA within 10 days of the signing of the agreement and will come into effect from the date agreed by the parties as stated in the agreement, or from the signing date where no such date is specified. The term of the collective labour agreement can be of one (1) to three (3) years subject to renewals thereafter.

- **Trade Unions**

Within six (6) months of the commencement of a company's operations, the provincial federation of trade union must set up a provisional trade union organisation at the company to represent and protect the rights and interests of employees and the workforce. An employer must recognise a trade union's status once it is validly organised. There are strict rules protecting the trade union and its members from any coercion or discrimination from employers regarding activity within the trade union. The employer is responsible for ensuring an environment conducive to the activities of the trade union.

- **Employment Funds**

The Social Insurance Fund, Health Insurance Fund, and Unemployment Insurance Fund only cover Vietnamese employees.

- **Social Insurance Fund**

Contribution to the State Social Insurance Fund is a statutory obligation of both the employer and employee in all contractual employment relationships longer than three (3) months. The Social Insurance Fund provides benefits such as pensions, salaries during sick days, salaries and treatment for labour-related accidents and occupational illnesses, maternity benefits, and death benefits.

The contributions are made as follows:

- Employer pays 15% of the monthly salary pool to the Social Insurance Fund.
- Employee pays 5% of his/her monthly salary to the Social Insurance Fund.

- **Health Insurance Fund**

The Health Insurance Fund covers 100% of medical expenses, except for cases where high cost treatments are involved. In such cases, the Health Insurance Fund covers 100% of medical expenses incurred by working employees provided that they are less than VND7 million and 60% of such medical expenses with a cap of VND20 million if they are above VND7 million.

An employer is obliged to pay 2% of the monthly salary pool to the Health Insurance Fund. Each employee must also contribute by paying 1% of his or her monthly salary to the Health Insurance Fund.

- **Unemployment Insurance Fund**

The provision of the law on Unemployment Insurance Fund takes effect on 1 January 2009. Unemployment insurance covers unemployment allowance, job-learning support, and job-seeking support. The contributions are made as follows:

- Employer pays 1% of the fund of monthly salary pool of employees who participate in unemployment insurance on which unemployment insurance premiums are based.
- Employee pays 1% of his/her monthly salary on which unemployment insurance premiums are based.

- **Provision Fund for Retrenchment Allowances**

A company is required to place 1-3% of the total wages paid into a Retrenchment Allowance Fund. When an employee loses his or her job due to restructuring or technological advances affecting a company, the employer has the responsibility to retrain the employee. If a new job cannot be created, the employee is entitled to a severance pay of one month's salary for each year employment, with at least two months of such pay guaranteed.

## **XI. LAND AND BUILDING OWNERSHIP**

*(The major issues of the Land Law passed by the National Assembly of Viet Nam on 6 November 2003, effective as of 1 July 2004 (the "Land Law"). The Land Law is in the process of being amended in 2009)*

- **Land Use Rights and Land Use Right Certificate**

Private ownership of land is not permitted in Viet Nam and the people hold all ownership rights with the State as the administrator. However, the laws of Viet Nam allow ownership of a right to use land. This right is called the Land Use Right ("LUR").

Foreign investors in Viet Nam obtain LURs (a) by way of a JVC to which a local Vietnamese partner contribute LUR as capital contribution, or (b) by way of land leased directly from certain permitted lessors such as the State.

- **Land Lease**

A foreign investor may lease the land directly from the Government after he/ she establishes an FIC in Viet Nam.

#### **Lessors permitted to lease land to FICs**

Previously, FICs in Viet Nam could only lease land from the Government or sublease land from an infrastructure developer. In addition to these lessors, Article 93.3 of the current *Land Law* has allowed FICs, which are set up by foreign investors in Viet Nam, to lease land from:

- Vietnamese economic organisations (including State-owned companies), private joint stock companies, and limited liability companies;
- overseas Vietnamese citizens; or
- an existing FIC which leases land from the Government and develops infrastructure facilities on the land, provided that this existing FIC has paid the land rental for the whole land lease term.

The *Land Law* only allows the lessor who has obtained the land under the “allocation” regime (as opposed to the land “lease” regime) to lease his or her land to FICs. The one exception where the land obtained by the lessor under the “lease” regime can be subleased to FICs is when, in accordance with Article 111.1(dd) of the *Land Law*:

- the Vietnamese Party has leased the relevant land before the effective date of the current Land Law, i.e., 1 July 2004; and
- the land lease has been prepaid in full for the whole or for the majority of the lease term and the remaining prepaid term is at least five (5) years.

#### **Land Contribution by Local Parties to Joint Ventures**

It is a matter of practice that Joint Ventures in Viet Nam have local partners contribute their portion of capital in the form of the LUR value. In this case, the local partner’s land payment must not be sourced directly from the State budget.

Under the *Land Law*, the Vietnamese party to a Joint Venture may make capital contributions in the form of the LUR only after it has received a land “allocation”, rather than a land “lease”, and where a payment in full for the land “allocation” has been made. Where the land usage fee payment is deferred, the contribution of the LUR into foreign investment projects is still permissible as far as the deferment is allowed in writing by the relevant People’s Committee.

There is one exception under the *Land Law* where a Vietnamese party which “leases” land from the Government can make its contribution in the form of the LUR to a Joint Venture. This exception requires the two conditions as explained above to be satisfied in accordance with Article 111.1(dd) of the *Land Law*.

After the Joint Venture is incorporated as a result of the issuance of the investment certificate by the Licensing Authority, the LURC will be issued to and in the name of the Joint Venture.

#### **Lease term**

The lease term must be consistent with the duration of the approved project provided that it must not exceed 50 years or, in some special circumstances, 70 years.

The extension of the lease term may be allowed by the Government upon expiry if the lessee wants to continue to use the land, provided that:

- the lessee has complied with the land regulations during its use period; and
- the use of land is consistent with the approved land plan.

Foreign investors wishing to extend their lease term must obtain approval to do so under Decree 181. Foreign investors must apply for an extension six (6) months before expiration of their LURs and include in their applications an amended business or production plan approved by the relevant authorities.

### Rights of foreign investors to the land leased

The LUR of foreign investors shall vary depending on the payment arrangement of land rentals. Where land is being leased from the Government, the *Land Law* contemplates two payment arrangements of land rental:

- annual rental payment (the “Annual Arrangement”); and
- one-off payment of rental for the entire lease term (the “One-off Arrangement”).

Under a land lease for the Annual Arrangement, the FIC could use the land only and is not allowed to transfer, sub-lease, or mortgage the LUR. In addition to the LUR given under the Annual Arrangement regime, FICs adopting the One-off Arrangement regime have the additional rights as follows:

- rights to transfer LURs and assets attached to the land (foreign investors with an Annual Arrangement may only transfer assets attached to the land);
- rights to sublease land and assets attached to the land;
- rights to contribute LURs and assets attached to the land as capital of joint ventures; and
- rights to mortgage LURs and assets to credit institutions in Viet Nam during the term of the lease.

### • Land Price

Land Price is determined in three ways:

- by the relevant People’s Committee;
- via auction; or
- by land users upon transfer/lease, sublease of LURs, or contribution of LURs as capital.

The Government determines land price based on the actual value of the land under normal circumstances. If there is a large discrepancy between their calculations compared to the market price, the Government must adjust the price. The provincial People’s Committee issues an official land price for each specific type of land on the first of January every year. The official land price must not be 20% higher than the maximum price or 20% lower than the minimum price of the land price framework provided by the Government.

- **Lease of Commercial Property**

As an alternative to leasing a piece of land, service or software companies may consider leasing an office in a commercial building. The procedure for leasing such an office is comparatively simple and is not subject to any approval by Vietnamese authorities. Another alternative is to lease an office or factory from another company located in an IZ or EPZ.

- **Land Clearance**

Under the *Land Law*, foreign organisations and individuals and overseas Vietnamese investing in Viet Nam are not required to pay compensation and assistance for the resettlement of residents. However, if these have been paid in advance, it will be deducted from the relevant rental.

The State will take charge of site clearance and compensation to displaced land users when withdrawing land for use by foreign organisations and individuals and overseas Vietnamese. Foreign investors may enter negotiations directly with the current land users regarding site clearance and compensation.

- **Sale of Apartments**

Under the law, potential buyers of real estate projects include the following:

- Local Vietnamese individuals and organisations;
- Overseas Vietnamese who satisfy legal requirements under the laws to purchase apartments/houses in Viet Nam;
- From 1 January 2009, foreign individuals and companies are also allowed to purchase apartments from residential projects in Viet Nam. The categories of foreigners allowed to purchase apartments in Viet Nam are as follows:
  - foreigners who have direct investments in Viet Nam or holding management position in a company operating in Viet Nam;
  - foreigners who have made contribution to Viet Nam and such contribution has been recognised by the President or the Prime Minister of Viet Nam;



- foreigners who have university degrees or higher education level and are currently working in socio-economic fields, and those who have special knowledge which Viet Nam needs;
- foreigners married to Vietnamese citizens;
- companies with foreign-invested capital operating in Viet Nam which are not a real estate trading companies and have a demand of residential accommodation for its employees.

Foreign individuals are permitted to own apartments for a maximum term of 50 years and foreign companies are permitted to own apartments for a term equal to the term recorded in its investment certificate.

- **Lease of residential houses by foreigners**

Currently, not every foreigner or foreign entity entering Viet Nam is entitled to lease residential houses or apartments. According to Article 131 of the Law on Residential Housing, only the following are eligible to lease residential houses in Viet Nam:

- Foreign organisations and individuals who are allowed to enter Viet Nam for a period of at least three (3) consecutive months;
- Vietnamese residing overseas who currently reside in Viet Nam and have a need to lease a residential house.

## **XII. INVESTMENT PROMOTION AGENCY**

*Foreign Investment Agency*

*Ministry of Planning and Investment (MPI)*

No 6B, Hoang Dieu Street

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Ha Noi, Viet Nam

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<http://fia.mpi.gov.vn>



ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย

## Biography

- Name: Mr. Laliew Angsakunwong
- Education: - Bachelor of Sciences in Statistics, Faculty of Commerce and Accountancy, Chulalongkorn University
- Experiences: - Marketing Officer, Duratic Industrial (2008 –Present)  
 - Analyst of Financial Institutions Strategy Department, Bank of Thailand (2006 – 2008)  
 - Assistant Manager, Canada South East Asia Regional HIV/AIDS Programme (in support of Canada Government) (2005)
- Training: - Honours Diploma in e-Technology, NIIT (THAILAND)  
 - ASIA topic (Corruption in Asia), University of Melbourne (AUSTRALIA)  
 - “Developing entrepreneur for International Business” and “Developing entrepreneur for Business”, Ministry of Commerce  
 - “Management in Agricultural Futures Business”, Agricultural Futures Trading Commission (AFTC)  
 - “Forum on Private sector Partnership: Management of Technology for CEOs of SME”, Korea Productivity Center (Korea)  
 - “Product Design Technique”, Thai-German Institute  
 - “Business Planning for SMEs Workshop”, Bangkok Bank  
 - “Study Meeting on Ecofinance”, China Productivity Center (Taiwan)
- Award: - Testimonial prize of Article competition in King Scholarship, Chulalongkorn University  
 - Second Best “AFET Future Trading Challenge 2005”, Agricultural Futures Exchange of Thailand (AFET)  
 - Second Best “AJF Young Fund Manager award 2005”(Equity fund), AJF