



ASSOCIATION OF SOUTHEAST ASIAN NATIONS

ASEAN INVESTMENT GUIDEBOOK

2009



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The Association of Southeast Asian Nations (ASEAN) was established on 8 August 1967. The Member States of the Association are Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam. The ASEAN Secretariat is based in Jakarta, Indonesia.

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The “ASEAN Investment Guidebook 2009” publication is the result of the efforts of the ten ASEAN Member States representing submissions from their respective Investment Agencies.

This publication is the latest edition of the ASEAN publication previously entitled the “Guidebook for Investing in ASEAN: Update 2004”. This publication is updated from time-to-time, in view of the rapidly changing and dynamic investment environment in ASEAN.

The initiative to publish this Guidebook is taken in the context of ASEAN’s endeavour to promote the region as an attractive investment environment and to provide transparency on the region’s investment regimes. It is also a means of facilitating access by the business community and the public at large to an overview of the business and investment environment in the respective ASEAN Member States. In the on-going efforts to achieve the ASEAN Economic Community, of which the goal is to establish ASEAN as a single market and production base that will make ASEAN more dynamic and competitive as an integrated economic community by 2015, a free and open investment regime is key to enhancing ASEAN’s competitiveness and attracting foreign direct investment as well as intra-ASEAN investment in the region.

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Further investment information on ASEAN can also be found at the ASEAN Homepage (<http://www.asean.org>)





FOREWORD

Since the last edition of the Guidebook in 2004, the ASEAN investment environment has undergone a number of profound and fundamental changes. ASEAN strengthened steps towards regional integration by accelerating the goal of the establishment of ASEAN Economic Community (AEC) to 2015. The AEC will establish ASEAN as a single market and production base, comprising the five core elements of the free flow of goods, services, investment, freer flow of capital and free flow of skilled labour. In this context, an AEC Blueprint for advancing the AEC with clear targets and timelines for the implementation of various measures was put in place in 2007. The AEC Blueprint contains a strategic schedule providing for wide-ranging actions for the liberalisation, facilitation and promotion of investment into ASEAN.

One of the actions under the Blueprint is the enhancement of the legal and regulatory environment for investment. In 2007, the ASEAN Investment Area (AIA) Council of Ministers agreed to revise the 1987 Agreement for the Promotion and Protection of Investments (known as the Investment Guarantee Agreement or “ASEAN IGA”), and the 1998 Framework Agreement on the ASEAN Investment Area (AIA) or the “AIA Agreement”, as well as its two related Protocols. Subsequent negotiations in 2008 culminated in a single consolidated agreement called the **ASEAN Comprehensive Investment Agreement** (ACIA). ACIA was concluded in 2008 and signed in February 2009.

Given the competitive global environment for foreign direct investment, ACIA was drafted with the aim of creating a freer and more open investment regime towards the achievement of ASEAN economic integration, based on international best practices. ACIA would facilitate the transformation of ASEAN into an investment hub that would be able to compete effectively with other emerging economies. The key features of ACIA are:

- comprehensive investment liberalisation and protection provisions
- clear timelines for investment liberalisation in line with the AEC
- benefits extended to foreign-owned ASEAN-based investors; and
- a more liberal, facilitative, transparent and competitive investment environment.

The rapid economic expansion of the ASEAN economies in this period has also seen record levels of Foreign Direct Investment (FDI) flows into ASEAN. ASEAN FDI flows increased from US\$35.3 billion in 2004 to reach a record high of US\$69.9 billion in 2007. However, the impact of the global economic crisis was widespread and this resulted in an overall decline in global FDI flows. ASEAN FDI inflows reached US\$59



billion in 2008. It is expected that progress towards regional integration with the aim of improving ASEAN competitiveness and attractiveness as an investment base will see greater levels of FDI inflows in the coming years.

This edition of the ASEAN Investment Guidebook aims to update on ASEAN Member States' investment laws and policies. This is in line with efforts to promote on ASEAN as a premier investment destination through greater transparency of the investment rules and regulations of Member States. More comprehensive information can be obtained from the focal points of each Member State located in the respective Investment Promotion Agencies. Their contact details are listed at the back of this publication.

ASEAN Secretariat

Jakarta, December 2009



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Brunei Darussalam





BRUNEI DARUSSALAM

I. RELEVANT INVESTMENT LEGISLATION

1. INVESTMENT ACT

- ***Investment Incentives Order 2001***

The Act offers incentives in the form of tax exemption for the following:

- i) Pioneer Industries
- ii) Pioneer Services Companies
- iii) Post-Pioneer Companies
- iv) Expansion of Established Enterprises
- v) Expanding Service Companies
- vi) Production for Export
- vii) Export for Services
- viii) International Trade Incentives
- ix) Foreign Loans for Productive Equipment
- x) Investment Allowances
- xi) Warehousing and Servicing Incentives
- xii) Investment in New Technology Companies
- xiii) Overseas Investment and Venture Capital Incentives

Provides tax advantage and incentives.

The Act encourages the establishment and development of industrial and other economic enterprises, for economic expansion and for incidental and related purposes. The Act outlines the incentive schemes provided to foreign investors with approved investment activities.

The Act covers investment incentives, mainly in the form of tax exemptions, for companies that have been granted Pioneer Status and for the expansion of established enterprises. Any limited company with a Pioneer Status Certificate will be granted an exemption from payment of corporate income tax, normally levied at a rate of 25.5 %, for between five and eight years depending on the level of investments on fixed capital expenditure. The exemption begins on the first day of production and may be extended up to 20 years.



Pioneer Status companies are also exempted from payment of customs duty on plant, machinery, and equipment to be installed on its premises, and raw materials that are not available in Brunei Darussalam and are to be used in the production of the pioneer products.

Under this Act, tax incentives are also provided for the expansion of enterprises already established in Brunei Darussalam, if the expansion is judged to be beneficial to the country and in the public interest.

A copy of the document is available at The Attorney General's Chambers, Prime Minister Department, The Law Building, Km.1 Jalan Tutong, Bandar Seri Begawan BA 1910 Brunei Darussalam.

2. COMPANIES ACT

- ***Companies Act 1956 (also presented in Chapter 39 of the Laws of Brunei Darussalam)***

Provides principal requirements for incorporation and registration of companies in Brunei Darussalam, and lays down the conditions under which companies incorporated outside Brunei Darussalam may conduct business within the country, as well as the functioning of companies within Brunei Darussalam.

3. BUSINESS NAMES ACT

- ***Business Names Act (also presented in Chapter 92 of the Laws of Brunei Darussalam)***

Provides for the registration of firms, individuals and corporations conducting business under business names, but does not cover companies with limited liability. This Act also lays down rules on the use of names, styles, titles or designations under which business can be conducted, together with descriptions of the business.

All companies intending to do business in Brunei Darussalam must be registered with the Registrar of Business Names or Registrar of Companies under the *Business Act* and the *Companies Act*, respectively. The two legal instruments are available at the office of the Attorney General of Brunei. The Miscellaneous Licenses Act requires all business premises/offices to be licensed.



A business may be established under one of four categories: sole proprietorship, partnership, company, or branch of foreign company. Sole proprietorships and partnership may have a maximum of 20 partners and may also be required to register with the Registrar of Business Names. Foreign individuals may hold equity in partnerships but may not register as sole proprietorships. Companies formed as partnerships or proprietorships are not subject to corporate tax in Brunei Darussalam. Foreign companies are required to register under section 229 of the *Companies Act*.

Incorporation of a company in Brunei Darussalam is subject to the *Companies Act* and may include four types of companies, either private or public: companies limited by shares; companies limited by guarantee; companies limited by both shares and guarantees; and unlimited companies. At least half of the board of directors of a company incorporated in Brunei Darussalam must be either nationals of or ordinarily resident in Brunei Darussalam. Registration of the company by the registrar may take place after having complied with conditions required by the Government. Registration fees are graduated depending on the authorised capital of the company.

4. MINIMUM INVESTMENT LEVEL

No minimum investment level requirement.

5. OTHER RELATED INVESTMENT LEGISLATION

- ***Miscellaneous Licenses Act (Chapter 127, Laws of Brunei Darussalam)***

Governs the issuance of licenses to companies engaged in miscellaneous activities (e.g.: motor vehicle dealers and petrol stations, etc.).

II. SECTOR-SPECIFIC LAWS AND POLICIES

Sector specific laws and policies that affect the establishment, expansion or operations of foreign investment:



- **Specific Laws**
 - i) *Companies Act (Cap. 39)*
 - ii) *Miscellaneous License Act (Cap.127)*
 - iii) *Industrial Coordination Order 2001*
 - iv) *Telecommunication Order 2001*
 - v) *Petroleum Mining Act (Cap. 44)*
 - vi) *Architects, Professional Engineers and Quantity Surveyors, Order 2008*
 - vii) *Forest Act (Cap. 46), including its subsidiary legislations*
 - viii) *Fisheries Act (Cap.61), Fisheries Limit Act (Cap.130)*
 - ix) *Land Code (Cap. 40)*
 - x) *Land Strata Act (Cap. 189)*

- **Policies**
 - i) *National Forestry Policy 1990*
 - ii) *RKN 2007-2012*
 - iii) *Wawasan 2035*

III. **INVESTMENT APPLICATIONS**

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

- ***Ministry of Industry and Primary Resources (MIPR)***

The MIPR is responsible for approving investment projects especially in areas related to the primary sectors such as agriculture, fisheries and forestry activities. It is also responsible for the granting of incentives under the Investment Incentives Order 2001. The MIPR, through the Project Implementation and Technical Committee, can consider any application for Pioneer Status.

The MIPR through one of its departments, the Brunei Industrial Development Authority (BINA), provides SMEs with 9 industrial sites and 3 industrial complexes. The 9 industrial sites cover around 568 hectares, which provides facilities such as infrastructure (e.g. roads, drainage and sewerage facilities), electricity, telecommunications and water supply. Currently, Kuala Lurah Industrial Site Phase 1 is still an on-going project, which will be completed in 2010, covering 36 hectares.

- ***Brunei Economic Development Board (BEDB)***

The BEDB is a statutory board established by His Majesty, the Sultan and Yang Di-Pertuan of Brunei Darussalam, in November 2001 to be the leading economic development agency for Brunei Darussalam. It functions as a first-stop agency to attract, retain and add value to both local and foreign investments and coordinating with relevant ministries and agencies to maximise the benefits generated by both local and foreign direct investment through the strengthening of policy, legal and institutional framework and human resources development for investment and improving investment promotion capabilities.

BEDB initiatives in attracting FDI into Brunei Darussalam are centered on industrial clusters around the Sungai Liang Industrial Park (SPARK), Centre, and Pulau Muara Besar (PMB). These clusters maximise on projects, based on Brunei Darussalam's strengths, such as petrochemical, metal production, tourism, Islamic businesses, waste management and ICT.

- ***Brunei International Financial Centre (BIFC)***

The BIFC was established in 2000 to diversify financial services in Brunei and to establish Brunei as an off-shore banking and trading centre for the region offering both conventional and Islamic financial services. The Centre also issues licenses to both conventional and Islamic financial institutions. Both types of financial institutions are subject to the requirements prescribed in the appropriate orders. The legislation that accompany the formation of the BIFC, seeks to introduce measures against money laundering activities and to bring Brunei Darussalam's standards in conformity with international standards, thereby improving transparency and attracting companies to the BIFC.

2. CONDITIONS INCLUDING TIMETABLE FOR PROCESSING OF APPLICATIONS

Registration with the Registrar of Companies is required prior to application.

Miscellaneous Licenses are required for certain businesses, such as retail businesses, furniture factories, financial institutions, etc. Miscellaneous licenses are renewable annually.



There are a number of procedures to be observed to start up a business venture, regardless of whether the business is a sole proprietorship, a partnership or a limited company.

The list of licenses includes registration of business names or companies (for limited companies) from the Attorney General's Chambers, Miscellaneous Licenses (District Offices, Municipal Boards and the Economic Development Board), Labour Licenses or quotas (Labour Department) and Employment Pass/Visa (Immigration Department).

The average time period for considering/approving investment applications is normally within 2 or 3 months from the official date of submission of the application.

3. SPECIAL SERVICES FOR EXPEDITING APPLICATIONS

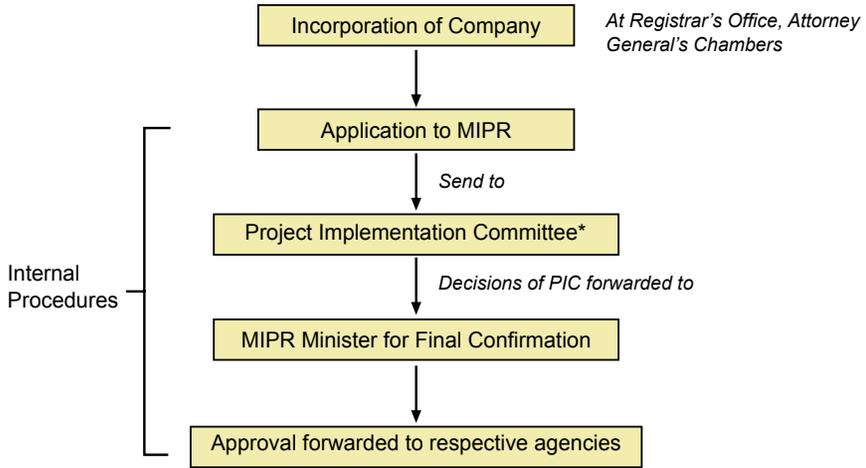
The Brunei Industrial Development Authority (BINA), under the Ministry of Industry and Primary Resources, accepts business proposals from SMEs and foreign investors that wish to rent the industrial sites and complexes. The business proposals will be brought to Pre PIC meeting committee within BINA (for recommendation) and will then be passed to PIC meeting committee in the Ministry of Industry and Primary Resources (for final decision making).

The Brunei Industrial Development Authority (BINA) also provides support services in terms of passing recommendation to the companies which rent industrial sites and complexes. These include among others:

- coordination with the Labour Department for Labour licenses
- coordination with the Immigration Department for Employment Pass/ Visa

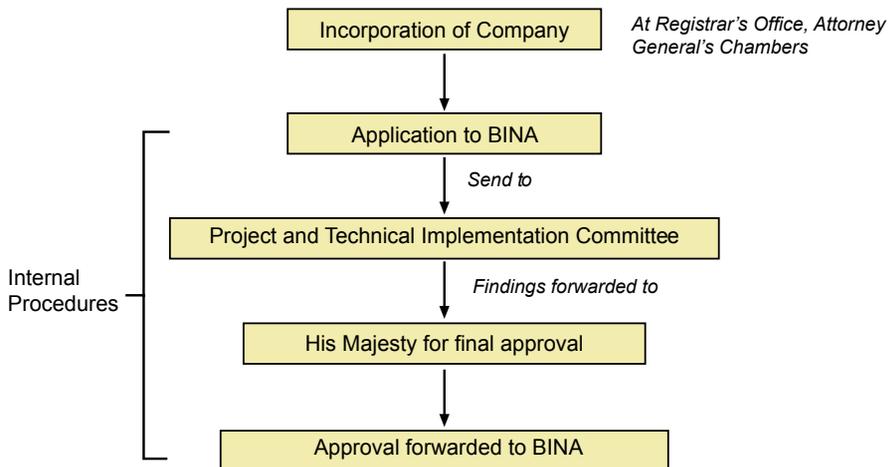
4. PROCEDURES FOR INVESTMENT APPLICATIONS

FLOW CHART FOR PROJECT APPROVALS UNDER MIPR



* PIC meets twice weekly

FLOW CHART FOR THE APPLICATION FOR INDUSTRIAL SITES UNDER BINA



IV. INVESTMENT PROTECTION

1. FOREIGN EXCHANGE REGIME

The Brunei dollar is a convertible currency. The Government does not maintain any currency controls or limit remittances, loan and lease payments. Exchange rates are determined on the basis of demand and supply conditions in the exchange market.

2. EXPROPRIATION AND COMPENSATION

Laws, regulations and policies relating to expropriation and compensation:

- i) A signatory of *1987 ASEAN Agreement for Promotion and Protection of Investment*.
- ii) Provision for expropriation and compensation is usually included in Bilateral Investment Agreements.

There has been no instance of expropriation and compensation of foreign investment in the country.

3. INVESTMENT GUARANTEE AGREEMENTS

Bilateral Investment Treaties have been signed between Brunei and the following countries:

- i) ASEAN Countries
- ii) Germany
- iii) Oman
- iv) Republic of South Korea
- v) The People's Republic of China
- vi) Ukraine
- vii) Bahrain
- viii) India
- ix) Kuwait

4. INTELLECTUAL PROPERTY RIGHTS (IPR)

- i) *Invention Law* (Chapter 72, *Law of Brunei Darussalam of 1951*) revised edition 1984



- ii) *Trade Mark Act* (Chapter 98, *Law of Brunei Darussalam of 1951*) revised edition 2000
- iii) *Emergency (Industrial Designs) Order 1999* and *Industrial Designs Rules 2000*
- iv) *Berne Convention for the Protection of Literary and Artistic Work* 30 August 2006
- v) Membership of WIPO (1994), WTO (1995), TRIPS (1995)

5. DISPUTE SETTLEMENT

- i) *Arbitration Act* (Cap 173)

The Act incorporated the *Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention)*

- ii) Brunei Darussalam is also a party to BITS and the *International Centre for Settlement of Investment Disputes* (ICSID)
- iii) Relevant Agency:

Attorney General's Chambers

The Law and Court Building

KM 1, Jalan Tutong

Brunei Darussalam

Telephone : (673) 2231200, 2220382, 2231193/4/6

Fax : (673) 2231230

Website : www.agc.gov.bn

Email : infor@agc.gov.bn

V. PERFORMANCE REQUIREMENTS

There are no provisions on any non WTO-inconsistent restrictions or requirements as per its WTO commitments under TRIMS, 1995.

VI. FOREIGN EQUITY POLICIES

Equity Regulations

Full and majority foreign ownership and minority foreign ownership are allowed depending on the type of industry and activity.



100% foreign equity ownership may be permitted in certain industries and activities which the Government promotes. Activities relating to national food security and those activities requiring the use of local resources, including government sites (i.e. agriculture, fisheries, and food processing) must have at least 30% local equity participation.

VII. INVESTMENT INCENTIVES

1. CORPORATE INCOME TAX/INCOME TAX ALLOWANCE

Under the *Investment Incentives Order 2001* administered by the Ministry of Industry and Primary Resources, incentives are offered in the form of tax exemptions for different types of company set-ups:

i) Pioneer Industries

Any Limited Company which has been granted pioneer certificate will be given the pioneer incentives provided the following requirements are met:

- The Minister is satisfied that it is expedient in the public interest to do so.
- The industry has not been carried out in Brunei Darussalam on a scale adequate to the economic needs of Brunei Darussalam.
- There are favourable prospects for development, to be a pioneer industry and any specific product of that industry to be pioneer product.

Tax Relief Period

The tax relief period of pioneer industry will begin on its production day. The tax relief period is as follows:

Fixed Capital Expenditure	Tax Exemption Period
\$500,000 - \$2.5 million	5 years
\$2.5 million or over	8 years
Located in Hi Tech Park	11 years
Extension	3 years at one time but not exceeding 11 years in total
Extension located in Hi Tech Park	5 years at one time but not exceeding 20 years in total

Investment Incentives

- Exemption from Income Tax. The 25.5% corporate tax is exempted for a pioneer industry.
- Exemption from taxes on imported duties on machinery, equipment, component parts, accessories or building structures.
- Exemption from taxes on imported raw materials. A pioneer company is exempted from paying import duties on raw materials not available or produced in Brunei Darussalam intended for the production of the pioneer products.
- Carry forward losses and allowances.

ii) Pioneer Services Companies

When the Minister considers it expedient in the public interest and where a company is engaged in any qualifying activity as follows:

- Engineering or technical services including laboratory, consultancy and research and development activities;
- Computer-based information and other computer related services;
- Development or production of any industrial design;
- Services and activities which relate to the provision of leisure and recreation;
- Publishing services;
- Services which relate to the provision of education;
- Medical services;
- Services and activities which relate to agricultural technology;
- Services and activities which relate to the provision of warehousing facilities;
- Services which relate to the organisation or management of exhibitions and conferences;
- Financial services;
- Business consultancy, management and professional services;
- Venture capital fund activity;
- Operation or management of any mass rapid transit system;
- Maintaining and operating a private museum; and
- Such other services or activities as the Minister may prescribe.

Tax Relief Period

The tax exemption period of a pioneer service company, shall commence on the commencement day and depending on the fixed capital expenditure. Exemption period for 8 years but extension not exceeding 11 years in total.



Investment Incentives

- Exemption from income tax
- Carry forward losses and allowance

iii) Post Pioneer Companies

- A pioneer company on or after 1 May 1975
- A pioneer enterprise or pioneer service company
- An export enterprise which had been a pioneer enterprise immediately before its tax relief period as an export enterprise

Tax Relief Period

Tax relief period of Post Pioneer Company shall commence on its commencement day and shall continue for a period not exceeding 6 years and may be extended but not more than 11 years in total.

Investment Incentives

- Exemption from income tax
- Deduction of losses
- Adjustment of capital allowances and losses

iv) Expansion of Established Enterprises

Any company intending to incur new capital expenditure for the purpose of the manufacture or increased manufacture of an approved product may apply to the Minister for an expansion certificate.

To qualify for an expansion certificate:

- The company must incur a new capital expenditure in the purchase of productive equipment exceeding B\$1 million.
- Where the expenditure is less than B\$1 million but exceeds \$500,000 and will result in an increase of not less than 30% in value at the original cost of all the productive equipment of the company.

Tax Relief Period

New Capital Expenditure	Tax Exemption Period
Up to \$1 million	3 years
More than \$1 million	5 years
Extension	3 years at any one time and not exceeding 15 years in total

Investment Incentive

- Exemption from income tax

v) Expanding Service Companies

Tax relief period of expanding service company:

- i. Commence on its expansion day; or
- ii. If the expansion day falls within the tax relief period specified in any certificate previously issued to the company for the same or similar qualifying activity, tax relief period will begin immediately after the expiry of the existing tax relief period.

The extension period not exceeding 5 years at any one time and may be extended but not more than 20 years in total.

Tax Relief Period	Tax Exemption Period
For expanding service company i and ii	11 years
Extension 5 years at one time but not exceeding 20 years in total	

Investment Incentive

- Exemption from income tax

vi) Production for Export

The Minister may, on application in prescribed form of any company which is manufacturing or proposes to manufacture any export product or is engaged or proposes to engage in agriculture, forestry and fishery activities either wholly or partly for export, approve the company as an export enterprise and issue the company an export enterprise certificate subject to such terms and conditions may be deemed fit.

Every export enterprise shall specify the accounting period in which it is expected that the export sales of the export product or export produce:

- will not be less than 20% of the value of its total sales
- will not be less than \$20,000



Tax Relief Period	Tax Exemption Period
Not a pioneer enterprise	8 years
Pioneer enterprise	6 years
Extension not more than 11 years in total	

Where an export enterprise has incurred or is intending to incur a fixed capital expenditure of:

- not less than \$50 million
- not less than \$500,000 but less than \$50 million and more than 40% of paid-up capital of export enterprise is held by citizens and persons to whom a resident permit has granted under regulations made under *Immigration Act* (Cap. 17) and the export enterprise will promote or enhance the economic technological development of Brunei Darussalam.

Tax Relief Period	Tax Exemption Period
Not a pioneer enterprise	15 years
Pioneer enterprise	15 years

Investment Incentives

- Exemption from income tax
- Exemption from import duties on machinery, equipment, component parts, accessories or building structures
- Exemption from import duties on raw material

vii) Export for Services

Qualifying services are as follows:

- Technical services including construction, distribution, design and engineering services;
- Consultancy, management supervisory or advisory services relating to any technical matter or to any trade or businesses;
- Fabrication of machinery and equipment and procurement of materials, components and equipment;
- Data processing, programming, computer software development, telecommunications and other computer services;
- Professional services including accounting, legal, medical and architectural services;
- Educational and training services; and
- Any other services as the Minister may prescribe.



Tax Relief Period

Tax relief period of an export service shall commence on its commencement day, not exceeding 11 years. The extension shall not exceed 3 years at one time but not in aggregate exceeding 20 years.

Investment Incentives

- Exemption from income tax
- Deduction of allowances and losses

viii) International Trade Incentives

Where a company is engaged in:

- International trade in qualifying manufactured goods or Brunei Darussalam domestic products and export sales, if those goods produce separately or in combination exceed or are expected to exceed \$3 million per annum; or
- Entrepot trade in any qualifying commodities and export sales of those qualifying commodities exceed or are expected to exceed \$5 million per annum.

Tax Relief Period

The tax relief period of an international trading company, in relation to any certificate issued to that company, shall commence on commencement day and shall continue for a period of 8 years.

Investment Incentives

- Exemption from income tax

ix) Foreign Loans for Productive Equipment

There is a 20% withholding tax for interest paid to non-resident lenders. However, the Government may grant tax exemption for any “approved foreign loan” if:

- The loan is utilised for the purchase of productive equipment;
- The credit facilities are obtained through financial agreements with the foreign lending company;
- The amount of loan is not less than B\$200,000.

Investment Incentive

- Exemption of approved foreign loan interest from paying tax.



x) Investment Allowances

Subject to the economic, technical and other merits of the project, an investment allowance may also be applied in respect of the fixed capital expenditure of any of the following:

- for the manufacture or increased manufacture of any product;
- for the provision of specialised engineering or technical services;
- for research and development;
- for construction operation;
- for recycling of domestic industrial waste;
- in relation to any qualifying activity under pioneer services company;
- for promotion of the tourist industry (other than a hotel) in Brunei Darussalam.

Every certificate issued under this section shall specify a date from the investment day.

Where a company proposes to carry out a project, the investment allowance granted for the approved project shall be a specified percentage not exceeding 100% of the amount of fixed capital expenditure incurred on each item specified on an approved project if the fixed capital expenditure is incurred:

- within such period, not exceeding 5 years, commencing from the investment day;
- in the case of for the promotion of tourist industry, not exceeding 11 years commencing from the investment day.

Investment incentive

- Exemption from income tax.

xi) Warehousing and Servicing Incentives

Any company intending to incur fixed capital expenditure of not less than \$2 million for the establishment or improvement or warehousing facilities wholly or mainly for storage and distribution of manufacture goods to be sold and exported by the company, with the processing or the provision of related services; or for the purpose of providing technical or engineering services (or such other services as the Minister may, by notification in the gazette), wholly or mainly to a person not resident in Brunei Darussalam.

Tax Relief Period

Tax relief period of warehousing company or servicing company shall

commence on its commencement day and shall continue but not exceeding 11 years. The extension shall not exceed 3 years at one time but not exceeding 20 years in total.

xii) Investment in New Technology Companies

Any company incorporated in Brunei Darussalam which is desirous of using in Brunei Darussalam a new technology in relation to product, process service may make application provided as follows:

- the technology, if introduced in Brunei, would promote or enhance the economic or technological development in Brunei Darussalam,
- in respect of which not less than 30% of the paid-up capital is beneficially owned by citizens or persons to whom a resident permit has been granted under regulations made under the *Immigration Act* (Chapter 17) throughout the whole of the qualifying period of the technology company.

Investment Incentive

- Carry forward capital allowances during the relief period.

xiii) Overseas Investment and Venture Capital Incentives

Application for and issue of certificate to venture company:

- Any company incorporated in Brunei Darussalam which is desirous of developing or using in Brunei Darussalam new technology in relation to a product, process or service may make an application in the prescribed form to the Minister to be approved as venture company.
- Where the Minister is satisfied that the technology, if introduced in Brunei Darussalam, would promote or enhance the economic or technological development of Brunei Darussalam.

Application for and issue of certificate to technology investment company or overseas investment company:

- Any Company, incorporated and resident in Brunei Darussalam, desirous of investing in an overseas company which is developing or using a new technology in relation to a product, process of services may make an application in the prescribed form to the Minister to be approved as a technology investment company.



- That technology, if introduced in Brunei Darussalam, would promote or enhance the economic or technological development of Brunei Darussalam.
- Any company, incorporated and resident in Brunei Darussalam, desirous of investing in an overseas company for the purpose of acquiring for use in Brunei Darussalam any technology from the overseas company or for the gaining access to any overseas market for its eligible holding company or any subsidiary.

Investment Incentive

- Carry forward of losses.

2. OTHER INCENTIVES

- ***Basic Right and Guarantees to Investors***

Repatriation of capital is not restricted. No restrictions are imposed on remittance of earning profits and dividends on investment.

- ***Carry Forward of Losses***

Losses arising from trade, business, profession or vocation in basis period can be set off against the statutory income of that period.

- ***Carry Forward Capital Allowances during the Relief Period***

Capital Allowances which remain unabsorbed at the end of the tax relief period may be applied against post pioneer profits.

- ***Deduction from Taxable Corporate Income (Depreciation Allowance)***

Depreciation is not an allowable expense and replaced by capital allowance for qualifying capital expenditure. Tax payer is entitled to claim wear and tear allowance calculated as follows:

- ***Industrial Buildings***

An initial allowance of 10% is given in the year of expenditure, and an annual allowance of 2% of the qualifying expenditure is provided on a straight line basis until the total expenditure is written off.



- ***Machinery and Plant***
An initial allowance of 20% of the cost is given in the year of expenditure together with annual allowances calculated on the reducing value of assets. The rate prescribed by the collector of income tax range from 3% to 25% depending on the nature of the asset.
- ***Exemption from Capital Gains Tax***
There is no capital gains tax in Brunei Darussalam.
- ***Other Exemption***
There are no export, sales payroll and manufacturing taxes in Brunei Darussalam.

VIII. PROMOTED AREAS/SECTORS FOR FOREIGN INVESTMENT

Declared Pioneer Industries and Products

The following industries have been declared as pioneer industries and pioneer products:

- ***Pioneer Industries***
 - Aircraft Catering Services
 - Cement Finish Mills
 - Pharmaceuticals
 - Aluminum Wall Tiles
 - Rolling Mill Plants
 - Industrial Chemicals
 - Shipyards
 - Tissue Paper
 - Textiles
 - Canning, Bottling and Packaging
 - Furniture
 - Glass
 - Ceramic and Potteries
 - Wood base
 - Plastic and Synthetic Rubber
 - Fertilisers and Pesticides
 - Toys



- Gas
 - Sheet Metal Forming
 - Manufacture of Electrical Industrial Machinery and Apparatus
 - Supporting services to water transport
 - Slaughtering, preparing and preserving halal meat
 - Related waste industry
 - Manufacture of non-metallic mineral products
 - Manufacture of radio and television and communication equipment and apparatus
- ***Pioneer Products***
 - Various types of food for airlines
 - Cement
 - Various types of medicines, and vitamins, tablets, syrup, etc.
 - Aluminum wall tiles and other decorative tiles
 - Manufacturing/ fabricating iron and steel, steel bars, angle iron, U-channel, etc.
 - Various types of chemicals for the oil and other industries including corrosion inhibitors, scale inhibitors, oxygen scavengers and detergents manufactured or blended in Brunei Darussalam
 - Ship repair and maintenance
 - Tissue paper and kitchen napkins
 - Various types of clothing
 - Various types of canned, bottled and packaged foods and drinks
 - Wooden, rattan and knock-down furniture
 - Sheet glass, scientific laboratory, industrial glassware, optical and photographic glass, lighting and decorative glassware, glass products for household and automatic
 - Tiles, sanitaryware, chinaware, stoneware, potteryware, porcelainware
 - Plywood and wooden construction elements
 - PVC tubing, pipes plastics bottles, containers, various types of medical and surgical and household rubber products
 - Various types of fertilisers and pesticides
 - Mechanical, electronics, wooden, plastics and rubber toys
 - Various types of industrial gas
 - Roofing, metal-furniture, walling, fencing roof trusses, frames, fitting and fixtures, ducting, containers for storage and transport, other related building materials
 - The manufacture, renovation of electric motors, generators and complete turbine-generator and engine generator sets, transformers, switch gear and switchboard apparatus, rectifiers, other electrical transmission and distribution equipment, electrical

- industrial control devices such as motor starters and controllers, electro-magnetic clutches and brakes, electrical welding apparatus and other electrical industrial apparatus
- The provision of services to all kinds of water transport, such as maintenance and operation of piers, docks and associated buildings and facilities, pilot age, maintenance and operation of light houses and other aids to navigation, loading and discharging of vessels, maintenance and operation of canals, salvaging of distressed vessels and cargoes, ship leasing and rental
 - Abattoirs and halal meat packing plants, dressing and packing cattle, sheep, lambs, poultry and rabbits. Included are processing and packing activities such as curing, smoking, salting, pickling, packing in airtight containers and quick-freezing. The manufacture of sausage casing, halal meat soups, halal meat, puddings and pies and other edible halal animal fats are also included
 - Environment products and services, oily waste treatment and recycling center, organic and inorganic hazardous waste material disposal, wastewater treatment and disposal, environment laboratory services, air pollution control and other related services
 - The manufacture of miscellaneous non-metallic mineral products, such as concrete, gypsum, and plaster products, including ready-mixed concrete, glass fibre insulation product, mineral wool, slate products, cut-stone products, abrasives, graphite products, silica and all other non metallic mineral products except asbestos.
 - The manufacture of radio and television receiving sets, sound reproducing and recording equipment, including public address systems, gramophones, dictating machines and tape recorders; gramophone records and pre-recorded magnetic tapes; wire and wireless telephone and telegraph equipment; radio and television transmitting, signaling, and detection equipment and apparatus; radar equipment and installations; parts and supplies specially used for electronic apparatus classified in this group; semi-conductor and related sensitive semi-conductor devices; fixed and variable electronic capacitors and condensers; radiographic, fluoroscopic and other x-ray apparatus and tubes.

The above industries are not exhaustive and can be expanded to include those industries which have been identified under the National Development Plan as well as others as may be determined by the Minister of Industry and Primary Resources.

The types of industries are Export Oriented Products, High Technology Sector, Services, Tourism and Primary Resources.



IX. TAXATION

1. CORPORATE TAX

Under Section 35 of the *Income Tax Act* (Chapter 35), the corporate income tax rate has been reduced from 30% to the following rate as follows:

- For the Year of Assessment 2008 – 27.5%
- For the Year of Assessment 2009 – 25.5%
- For the Year of Assessment 2010 and subsequent years of assessment – 23.5%

- ***Introduction of Income Tax Threshold***

As a measure to reduce the tax liabilities of Small and Medium Enterprises (SMEs), a new tax threshold has also been introduced. The chargeable income shall be computed as follows:

- For the first \$50,000 of chargeable income, only 25% shall be charged at the applicable tax rate (i.e. $\$50,000 \times 25\% \times 25.5\%$);
- For the next \$50,000 of chargeable income (i.e. \$50,001 to \$100,000), only 50% shall be charged at the applicable tax rate (i.e. $\$50,000 \times 50\% \times 25.5\%$);
- The remaining balance of the chargeable income (total chargeable income minus \$100,000), shall be taxed at the applicable tax rate, i.e. 27.5% for Year of Assessment 2008, 25.5% for Year of Assessment 2009, 23.5% for Year of Assessment 2010 and subsequent years of assessment.

For newly incorporated companies in Brunei Darussalam, exemption will be granted for the first \$100,000 of the chargeable income of the company during the first 3 consecutive years of assessment falling within or after year of assessment 2008. However, for the balance of the chargeable income (total chargeable income minus \$100,000) shall be charged with tax at the applicable rate.

Note: First 3 years of assessment in relation to a newly incorporated company means the year of assessment relating to the basis period during which the company is incorporated or registered in Brunei Darussalam and the 2 consecutive years of assessment immediately following that year of assessment.

Profits of all companies and businesses are subject to a corporate tax at the rate of 25.5%.

The following types of corporate income are subject to tax:

- Gains of profits from any trade, business or vocation.
- Dividends received from companies not previously assessed for tax in Brunei Darussalam.
- Interests and discounts.
- Rents, royalties, premiums, and any other profits arising from properties.

2. VALUE ADDED TAX/SALES TAX

There is no Value Added Tax (VAT).

3. WITHHOLDING TAX

- ***Income Subject to Withholding Tax***

Withholding tax shall now be payable on the following payments which are deemed to be derived from Brunei Darussalam or deemed to be sourced in Brunei Darussalam under section 9(4) or section 9(5) or section 37A or section 37B of the *Income Tax Act*:

- Interest, commission, fees and other payments relating to loans;
- Royalties or other lump sum payments for the use of movable property;
- Know-how payments for the use of scientific, technical, industrial or commercial knowledge or information;
- Management fees;
- Technical assistance or service fees;
- Rent for the use of movable property;
- Any remuneration paid by a company to a director who is not resident in Brunei Darussalam.

- ***Withholding Tax Rates***

Tax must be withheld from payments made to a non-resident person on or after 1 January 2008 at the following rates:



Nature of payment	Withholding tax rate		
	Before 2008	2008	2009 onwards
Interest, commission, fee or other payment in connection with any loan or indebtedness	20%	15%	15%
Technical assistance and Service Fees	-	20%	20%
Management Fees	-	20%	20%
Rent or other payments for the use of movable property	-	15%	10%
Non-resident Directors' Remuneration	-	20%	20%

- **Date of Payment**

Pursuant to section 37(7) (b) of *the Income Tax Act (Amendment) Order 2008*, interest shall be deemed to have been paid to the non-resident person on the date on which the interest is “reinvested, accumulated, capitalised, carried to any reserve or credited to any account however designated or otherwise dealt with on behalf of the non-resident person” although it is not actually paid over to that person.

For any payments withheld, the taxpayer is required to notify and pay the tax withheld to the Collector of Income Tax within 14 days after the date of payment of income specified in section 9(4) or 9(5) of *Income Tax Act*.

4. PERSONAL INCOME TAX

Brunei Darussalam does not at present, levy any income tax on individuals or other bodies of persons, apart from companies, including foreign nationals.

Partnership income is apportioned to the partners. Individuals trading in partnerships are not, at present, subject to income tax. Corporate partners, however, are taxed in the same way as a corporation on the corporate partner's share of profits.

5. LAND/PROPERTY TAX

- **Land Tax**

Land duty is charged at B\$25.00 per 0.1 hectare for industrial site.

6. REAL PROPERTY GAINS TAX

Brunei Darussalam has no sales or capital gain taxes. Profits from the sale of capital assets are not taxable and capital losses are not deductible. Profits are only taxable if assets are acquired specifically for resale or the gains from the sale of assets form part of a company's regular business income.

7. ESTATE DUTY

A flat rate of 3%, is levied on an estate valued at over B\$2 million owned by any person deceased on or after 15 December 1988. Estate duties range from 1% on an estate worth between B\$3,000 and B\$5,000 up to a maximum of 20% for an estate of over B\$10,000,000. Estate duty is levied on all immovable property in Brunei Darussalam and movable property wherever situated for persons domiciled in Brunei Darussalam at time of deceased, and on all property situated in Brunei Darussalam for persons not domiciled in Brunei Darussalam at time of deceased.

8. STAMP DUTY

Stamp duty is levied on a variety of documents. Certain types of documents attract an ad valorem duty, whereas duty on documents may vary depending on the nature of documents.

9. IMPORT DUTY

Basic foodstuffs and raw material for industrial use, including Pioneer Industries are exempted from import duties. Minimum duties are levied on electrical equipment and appliances, timber products, photographic materials and equipment, furniture, motor vehicles and spare parts, while cosmetics and perfumes are subject to 30% duty.



10. OTHER TAXES

- ***Municipal Taxes***

Levied (subjects to review) on lands, houses and buildings within any Municipal Board area.

X. FINANCIAL REGULATIONS

1. BORROWING REGULATIONS

Foreign investors may avail themselves of full banking services provided by any of the eight commercial banks operating in the country.

The banks are Citibank, Standard Chartered Bank, Hongkong and Shanghai Banking Corporation, Baiduri Bank Berhad, Bank Islam Brunei Darussalam, Malayan Banking, United Overseas Bank and RHB Bank Bhd.

(See also section on “withholding tax”)

2. FOREIGN EXCHANGE REGULATIONS

The Brunei Association of Banks determines the country’s foreign exchange rates. At present, a system of free interchangeability exists between the Brunei Darussalam and Singapore currencies. Under this arrangement, Brunei and Singapore undertake to accept each other’s currencies and exchange them, at par and without charge, into their own currencies.

3. REPATRIATION OF CAPITAL/PROFITS

Foreign banks are required to obtain the prior approval of the Authority before repatriation.

4. OTHER SPECIAL REGULATIONS

Interest payments on loans and other borrowed funds could be used as a deduction for taxable income.



XI. APPROVAL FOR THE EMPLOYMENT OF FOREIGN WORKERS

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

Regulations and procedures in recruiting foreign workers (ranging from labourers to executive managers), except for clerical and related workers, drivers, securities and related workers whose services could be supplied by nationals, are based on the following conditions:

The Employer (company) must be legally registered with the Legal Department of Brunei Darussalam:

- before recruiting foreign employees, employers must have a Labour License issued by the Commissioner of Labour Brunei Darussalam
- for every foreign worker employed, an Employment Visa and an Employment Pass must first be obtained from the Director of Immigration of Brunei Darussalam.

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

Employment Pass, which could be valid up to 2 years, is required for every foreigner who enters Brunei Darussalam for employment purpose.

Foreigners from countries which do not have Visa exemption arrangements with Brunei Darussalam must obtain an Employment Visa before entry.

Any foreign employee who has an Employment Pass with a validity of more than 3 months is required to register for Brunei Darussalam (Green) Identity Card. The validity of the Identity Card is based on the Employment Pass held and can be renewed upon extension of the Employment Pass.

Foreign employees are required to return to their countries of origin upon completion of their 2-year employment contract.

All foreigners require work permits which are valid for three years. Application must first be made to the Labour Department for a labour license. On recommendation of the Labour Department, the Immigration Department will give permission for the workers to enter Brunei Darussalam. The Labour Department requires either a cash deposit of a banker's guarantee to cover the cost of a one-way airfare to the workers' country of origin.



An approved labour license cannot be altered for at least six months after issue. Applications will not be accepted until formation of a local company or a branch foreign company has been officially approved and registered.

XII. LAND AND BUILDING OWNERSHIP

Regulations on Acquisition of Land and Buildings

Foreign nationals are not allowed to own land except otherwise approved by the Government of Brunei Darussalam. However, permanent residents, and foreigners are allowed to purchase and have outright ownership of units in a multi-storey building which has strata titles.

Companies are allowed to lease land for their industrial activities. Land with facilities are available for industry, agriculture, agro forestry and aquaculture for a lease term of 10 to 30 years and lease can be further extended. Lease rates vary with respect to the location.

XIII. INVESTMENT PROMOTION AGENCIES

Ministry of Industry and Primary Resources (MIPR)

Jalan Menteri Besar

Bandar Seri Begawan BB3910

Brunei Darussalam

Tel : (673-2) 382 822, 381 786, 381 787

Fax : (673-2) 383 811

Website : www.bruneimipr.gov.bn

Brunei Economic Development Board (BEDB)

Block 2K, Bangunan Kerajaan

Jalan Ong Sum Ping

Bandar Seri Begawan BA 1311

Brunei Darussalam

Tel : (673) 2230111

Fax : (673) 2230063

Website : www.bedb.com.bn

Brunei International Financial Centre (BIFC)

Ministry of Finance

Level 14, Ministry of Finance Building

Commonwealth Drive, Jalan Kebangsaan

Bandar Seri Begawan, BB3910

Brunei Darussalam

Tel : (673)2383747

Fa : (673) 2383787

Email : bifc@mof.gov.bnWebsite : www.finance.gov.bn/bifc



Cambodia





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 Sub-products 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 if 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
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

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



Party to Take Action	Process	Condition/Remarks
The CDC or PMIS	Obtains all of the licenses from relevant ministries-entities listed in the CRC on behalf of the Applicant.	<p>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.</p> <p>Any government official who, without proper reason, fails to respond to an Applicant's request by this deadline shall be punished by law.</p>
The CDC or PMIS	Issuance of a "Final Registration Certificate" (FRC)	<p>To be issued within 28 working days of the issuance of the CRC.</p> <p>The date of issuance of the FRC shall be the date of the QIP commencement</p>

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 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-sourced 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 non-fixed 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 / 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-regime) 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

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 long-term 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**

Website : **www.cambodiainvestment.gov.kh**







Indonesia





INDONESIA

I. RELEVANT INVESTMENT LEGISLATION

1. INVESTMENT ACT

- ***Law Number 25 of 2007 on Investment***

Features of *Law Number 25 of 2007 on Investment*:

i) **Equal Treatment**

The Indonesian Government shall accord equitable treatment to all investors of any country that carry out investment activities in Indonesia in accordance with the provisions of its laws and regulations. The Government provides investment facilities including fiscal incentives to domestic as well as foreign investment in Indonesia. The corporate tax obligations are the same for both domestic as well as foreign investment.

ii) **Free to Repatriate Investment and Profit**

Any investor may transfer assets they own to parties of the investors' choice in accordance with the provisions of the laws and regulations.

Any investor shall be granted the following rights to transfer and repatriate in foreign currencies, inter alia:

- capital;
- profits, bank interest, dividends, and other income;
- funds that are needed:
 - to purchase raw materials and components, intermediate goods or finished goods; or
 - to replace capital goods in order to protect the viability of the investments
- additional funds that are needed for investment financing;
- funds for repayment of loans;
- royalties or fees that are payable;
- income of foreign nationals who work for an investment company;
- proceeds of the sale or liquidation of an investment;



- compensation for damages;
- compensation for acquisitions;
- payments made in connection with technical assistance, fees payable for technical and management services, payments made under a project contract, and payments related to intellectual property rights; and
- proceeds of the sale of assets.

iii) Legal Certainty

The principle of legal certainty is the principle by which provisions of laws and regulations laid down by the state form the foundation of any investment policy and measure.

iv) Dispute Settlement

Where an investment dispute arises between the Government and an investor, then such parties shall first settle the dispute through deliberations to reach a consensus.

Where a dispute settlement fails, such a dispute settlement may be made through arbitration or alternative dispute resolution or a court of law in accordance with provisions of laws and regulations.

Where an investment dispute arises between the Government and a domestic investor, then such parties may go to arbitration for settlement based on an agreement of the parties, and if a dispute settlement through arbitration is not agreed on, then the dispute settlement shall be made in a court of law.

Where an investment dispute arises between the Government and a foreign investor, then such parties shall settle the dispute through international arbitration that must be agreed on by the parties.

2. COMPANIES ACT

Based on *Law No. 25 of 2007*, foreign investment must be in the form of limited liability company and subject to Indonesian *Company Law No. 40 of 2007*, which have the following characteristics:



i) Establishment and Capital

Establishing a limited liability company requires at least two shareholders.

Under *Law No. 40 of 2007*, companies are exempted from this provision are: state-owned companies, a company managing the stock exchange; Clearing and Guarantee Institutions; Depository and Settlement Institutions; other institutions regulated under the *Capital Market Law*.

Under *Law No. 40 of 2007*, there is an increase in the minimum authorised capital from Rp.20 million to Rp.50 million and more than Rp.50 million for certain business activities, such as banking, insurance and freight forwarding.

Law No. 40 of 2007 states that all issued shares must be fully paid up by the time of the company's establishment with legitimate deposit receipts.

Changes have also been made to filing or registration deadlines.

ii) Electronic Applications for Legal Entity Status

Law No. 40 of 2007 provides that applications to obtain legal entity status can be submitted by the founders electronically which will no longer require a notary's assistance, unless the founders delegate the task to a notary. The application must at least contain the name and domicile of the company; term of the company; aim and purposes of the company; amount of authorised, subscribed and paid-up capital; and complete address of the company.

To obtain approval from the Minister of Law and Human Rights ("MLHR"), an application must be submitted at the latest 60 days after the deed of establishment has been signed.

The company will obtain its legal entity status as of the date of issuance of the MLHR's Decree approving the legal entity.

iii) Company Registry

Law No. 40 of 2007 regulates the responsibility of the MLHR to organise the Company Registry and publication in the State Gazette.



The Company Registry under *Law No 3 of 1982* will still exist although *Law No. 40 of 2007* also regulates Company Registry.

iv) Crossholdings

Law No. 40 of 2007 prohibits a company from owning shares in another company which owns shares directly or indirectly in the first company. The exception is if the shares are gained by law, gift or will on condition that the shares are transferred to another party within one year.

v) Business Plan and Interim Dividends

One of the new concepts under *Law No. 40 of 2007* is the obligation of the Board of Director (BOD) to prepare a Business Plan prior to commencement of the financial year. However, *Law No. 40 of 2007* does not regulate what the minimum content of the Business Plan is except that it must contain the company's budget. If no Business Plan is prepared, the previous year's business plan will prevail.

Law No. 40 of 2007 now recognises interim dividends and allows a company to distribute interim dividends before the financial year end. If after the financial year end the company has suffered a loss, the interim dividend must be returned. If the company suffers a loss and the shareholders do not return the interim dividend, Directors and Commissioners are jointly and individually liable for the company's loss. *Law No. 40 of 2007* does not provide a mechanism for returning the interim dividend.

vi) Corporate Social and Environmental Responsibility (CSER)

A company doing business related to natural resources or whose business may affect the environment must undertake CSER. This provision differs slightly from the previous draft which imposed the obligation on all companies without specifying particular business fields. The cost of implementing CSER programs must be included in the calculation of the costs of the company.

vii) General Meeting of Shareholders (GMS)

A major change is in the concept of the GMS. *Law No. 40 of 2007* does not place the GMS as the highest organ in the company; the new definition places the GMS at the same level as the Board of Directors (BOD) and Board of Commissioners (BOC).



One of the breakthroughs of *Law No. 40 of 2007* is that the GMS can be held through a teleconference, video-conference or other electronic media which enables all participants to see and hear directly and to participate in the meeting. The minutes still have to be agreed and signed by all GMS participants.

viii) Board of Directors (BOD), Board of Commissioners (BOC) and their Liabilities

Every member of the BOD is liable for losses suffered by the Company. However, members of the BOD are not liable for company losses if they can prove that:

- the losses were not caused by their negligence or fault;
- they have managed the company in good faith and with due care;
- they do not have a direct or indirect conflict of interest in its management thereby causing the losses; and
- they have taken precautionary measures and mitigated the losses.

Every member of the BOC must fulfill his/her duty to supervise and provide advice to the BOD in good faith. As a consequence of failing to carry out his/her duties and thereby causing a loss to the company, the relevant member of the BOC is liable for the loss.

However, if the member can prove that:

- he/she has fulfilled his/her supervisory duties in good faith; according to the aim and purposes of the company;
- he/she does not have any personal interest either directly or indirectly in the actions of the BOD which caused the loss; and
- he/she has provided advice to the BOD to prevent the loss, then he/she will not be held liable for the loss.

The concept of independent commissioners for private companies has been introduced but is not mandatory.

ix) Amendment to Articles of Association (AOA)

Companies have until 16 August 2008 to amend their Articles of Association (AOA) to conform to *Law No. 40 of 2007*.

There will not be too many changes necessary but it will also be possible of course now to include provisions on holding a GMS by conference call and on interim dividends. Amended AOA will not now need to name the shareholders of the company in Article



4 nor are the names of directors and commissioners deemed to be part of the AOA of a company. Certain timing provisions for certain corporate actions may also need to be inserted into the revised AOA.

x) Acquisitions

Of practical importance are the revised provisions relating to ‘acquisitions’. *Law No. 40 of 2007* now makes it mandatory in all acquisitions where there is a change of control in the Board of Directors of the company planning to make the acquisition to announce a summary of the acquisition plan in at least one newspaper and also to announce it in writing to their employees not less than 30 days before the summons of the GMS. Creditors have 14 days from the announcement to object to the acquisition.

xi) Business Segregation

Law No. 40 of 2007 now acknowledges the concept of business “segregation”, being (a) pure segregation and (b) non-pure segregation. This will be further implemented by a Government Regulation.

xii) Dissolution, Liquidation and Termination of Legal Entity Status

Under *Law No. 40 of 2007* there are three other ways a company can be dissolved: (i) the cancellation of bankruptcy status by a final ruling of the commercial court; (ii) due to the bankruptcy assets being insufficient to cover the cost of the bankruptcy; and (iii) the company’s insolvency causing the revocation of its business license. The dissolution of a company does not cause the company to lose its legal entity status until the liquidation process has been completed and the liquidator’s report has been approved by the GMS or court.

3. MINIMUM INVESTMENT LEVEL

No minimum investment level requirement.



4. OTHER RELATED INVESTMENT LEGISLATION

- *Act No. 22 (1957) on Labor Disputes Settlement*
- *Law No. 5 (1999) on the Prohibition on Monopolistic Practices and Unfair Business Competition*

II. SECTOR-SPECIFIC LAWS AND POLICIES

Sector specific laws, regulations and policies that affect the establishment, expansion or operations of foreign investment:

- ***Law No.4 of 2009 concerning Mining Mineral and Coal***

For more details see:

http://www.esdm.go.id/regulasi/uu/cat_view/64-regulasi/75-undang-undang/314-tahun-2009.html

- ***Law No. 20 of 2008 concerning Micro, Small and Medium Enterprises***

For more details see:

http://www.setneg.go.id/index.php?option=com_perundangan&id=2018&task=detail&catid=1&Itemid=42&tahun=2008

III. INVESTMENT APPLICATIONS

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

The Investment Coordinating Board (BKPM) has authority in granting investment licenses. Any investment application, therefore, should be submitted to BKPM.

The Investment Coordinating Board (BKPM)

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2. CONDITIONS INCLUDING TIMETABLE FOR PROCESSING OF APPLICATIONS

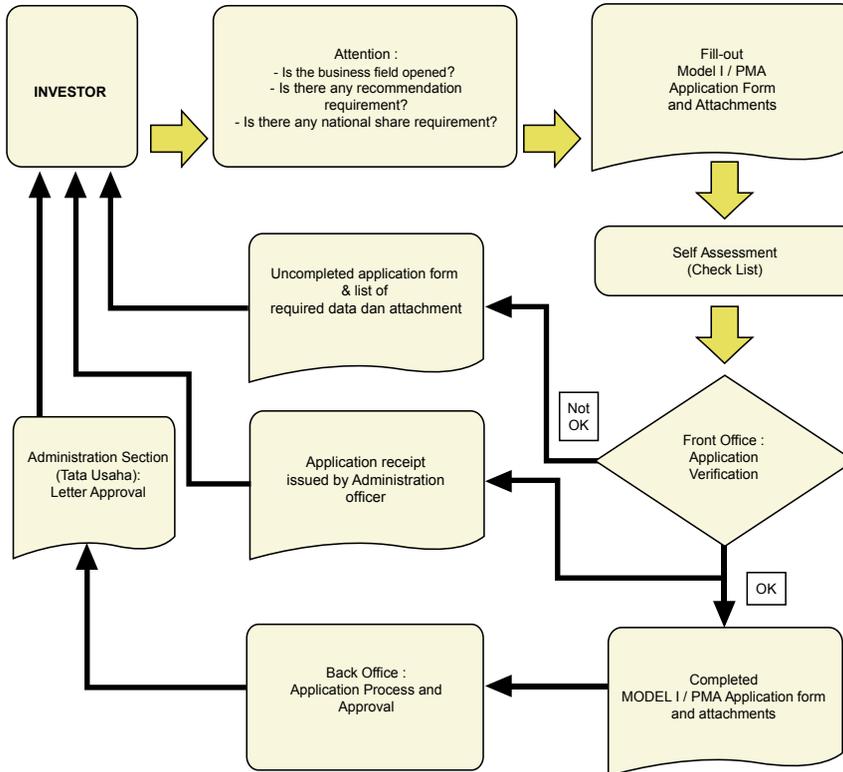
Guidelines for processing and approving investments is referred to “The Decree of the Chairman of the Investment Coordinating Board No. 70/SK/2004 on Guidelines and Procedure of Foreign and Domestic Direct Investment Application”:

- i) For a new project, foreign investors must obtain the Application Form available from BKPM. Once completed, the Application should be submitted to the same office for evaluation.
- ii) Foreign Investors must secure necessary license, named PMA (*Penanaman Modal Asing*), for the establishment of a joint venture with any Indonesian individuals or corporations.
- iii) If submitted correctly, the time period for granting the application and approval is normally 10 working days.
- iv) Validity of approval is 30 years starting from the time of commercial production. In the case of investment for expansion, the validity can be extended up to another 30 years starting from the time of commercial production of the investment for expansion.



3. PROCEDURES FOR INVESTMENT APPLICATIONS

FLOW OF NEW FOREIGN DIRECT INVESTMENT APPLICATION APPROVAL (Maximum Process 10 Days)



IV. **INVESTMENT PROTECTION**

Law No. 25/2007 gives legal certainty to foreign investors that their investment shall be protected and they shall receive equal treatment from the government of Indonesia regardless of their country of origin.

1. **FOREIGN EXCHANGE REGIME**

The swap system to avoid exchange risks caused by the depreciation of the Rupiah is available.

2. **EXPROPRIATION AND COMPENSATION**

Laws relating to expropriation and compensation:

- ***Law No. 25 of 2007***

Based on the law, there are several principles concerning expropriation, which are :

- The Government will not undertake any nationalisation action or take over the ownership rights of the investor, unless by law.
- In the event the government takes action to nationalise or takes over ownership rights as mentioned in paragraph (1), then the government shall grant compensation, the amount which will be specified based on the market value.
- If there is no consensus on the amount of compensation among the parties as stipulated in paragraph (2), the dispute shall be settled through arbitration.

3. **INVESTMENT GUARANTEE AGREEMENTS**

As of 2009, Indonesia has concluded Bilateral Investment Treaties (BITs) with 64 countries.

List of Indonesia's IGAs As of 2009

No	Country	Signing	
		Place	Date
1	Algeria	Alger	21 March 2000
2	Argentina	Buenos Aires	7 November 1995

No	Country	Signing	
		Place	Date
3	Australia	Jakarta	17 November 1992
4	Bangladesh	Dhaka	9 February 1998
5	Belgium	Jakarta	15 January 1970
6	Bulgaria	Jakarta	13 September 2003
7	Cambodia	Jakarta	16 March 1999
8	Croatia	Jakarta	12 September 2007
9	Cuba	Havana	19 September 1997
10	Chile	Santiago	7 April 1999
11	China, People's Rep.	Jakarta	18 November 1994
12	Czech Republic	Prague	17 September 1998
13	Denmark		30 January 1968
		Jakarta	22 January 2007
14	Egypt	Jakarta	19 June 1994
15	Finland	Helsinki	13 March 1996
		Helsinki	12 September 2006
16	France	Jakarta	14 June 1973
17	Guyana	Guyana	30 January 2008
18	Germany	Jakarta	8 November 1968
		Jakarta	14 May 2003
19	Hungary	Jakarta	20 May 1992
20	India	Montego Bay	8 February 1999
21	Iran	Teheran	22 June 2005
22	Italy	Rome	25 April 1991
23	Jamaica	Montego Bay	8 February 1999
24	Japan (IJEPA)	Jakarta	20 August 2007
25	Jordan	Jakarta	12 November 1996
26	Korea, Republic of	Jakarta	16 February 1991
27	Korea, Democratic People's Republic of	Jakarta	21 February 2000
28	Kyrgyz Republic	Jakarta	18 July 1995
29	Lao People's Democratic Republic	Jakarta	18 October 1994
30	Malaysia	Jakarta	22 January 1994
31	Morocco	Jakarta	14 March 1997



No	Country	Signing	
		Place	Date
32	Mauritius	Port Louis	5 March 1997
33	Mongolia	Jakarta	4 March 1997
34	Mozambique	Maputo	26 March 1999
35	Netherlands	Jakarta	6 April 1994
36	Norway	Jakarta	24 November 1969
			26 November 1991
37	Pakistan	Jakarta	8 March 1996
38	Philippines	Jakarta	12 November 2001
39	Poland	Warsaw	7 October 1992
40	Qatar	Doha	18 April 2000
41	Romania	Bucharest	26 June 1997
42	Russia	Jakarta	6 September 2007
43	Saudi Arabia	Jeddah	15 September 2003
		Singapore	16 February 2005
46	Spain	Jakarta	30 May 1995
47	Sri Lanka	Jakarta	10 June 1995
48	Sudan	Khartoum	10 February 1998
49	Syria	Jakarta	27 June 1997
50	Suriname	Paramaribo	28 October 1995
51	Sweden	Jakarta	17 September 1992
52	Switzerland	Jakarta	6 February 1974
53	Tajikistan	Jakarta	28 October 2003
54	Thailand	Jakarta	17 February 1998
55	Tunisia	Denpasar	13 May 1992
56	Turkey	Jakarta	25 February 1997
57	Turkmenistan	Jakarta	2 June 1994
58	Ukraine	Jakarta	11 April 1996
59	United States of America	Jakarta	7 January 1967
60	United Kingdom of Great Britain	London	27 April 1976
61	Uzbekistan	Jakarta	27 August 1996
62	Viet Nam	Jakarta	25 October 1991
63	Yemen	Jakarta	20 February 1998
64	Zimbabwe	Montego Bay	8 February 1999

4. INTELLECTUAL PROPERTY RIGHTS (IPR)

Intellectual Property Laws

- **Act No. 14 on Patents of 2001**

The law and its implementing regulations outline patent applications, procedures, application fees, registration of patent consultants, and patent announcements. Products and production processes are in principle patents and are subject to certain requirements. The law provides protection for a period of 20 years for patents and 10 years for simple patents, both of which cannot be extended.

- **Act No. 6 on Copyrights of 1982 as Amended in 1997**

The law provides protection to people's creations on science, arts and literature. The copyright is valid during the period of the author's life and until 50 years from the date of the author's death. The period of protection is 50 years from the date of the copyright notification for broadcasting creation used such as on TV, radio, video, and movie, created song or music with or without lyrics, recorded voice or sound, arts (painting, statue), cinematography, and for 25 years from the date of copyright notification for photography, computer programmes, and cover designs.

- **Act No. 15 on Trademarks of 2001**

The law is intended to provide greater protection for well-known foreign and Indonesian marks, and to prohibit the use of deceptively similar marks. The law states that trademark rights are determined on a first-file basis rather than on a first-use basis. The trademark is valid for 10 years from the date of trademark filed and it can be extended. After registration, the mark must actually be commercially used.

The deletion of registered trademarks from the general list of trademarks can be done either on request of the trademark holder or by the trademark office if the trademark is not used within 3 years.

5. DISPUTE SETTLEMENT

- **Law No. 25 of 2007**

(Please see Section I.1.on the features of Law No. 25 of 2007 on Investment)



- **Law No. 30 of 1999**

The framework for Indonesia's dispute mediation mechanism is *Law No. 30 of 1999* Concerning Arbitration and Alternative Dispute Resolution. The system is facilitated by the Indonesia National Board of Arbitration (BANI), which has assembled a panel of accredited arbitrators and signed cooperation agreements with similar centers in other countries. Mediation processes may be governed by the rules of BANI or by internationally accepted norms such as the *UNCITRAL Arbitration Rules of 1976*.

V. **PERFORMANCE REQUIREMENTS**

As a member of World Trade Organization (WTO), Indonesia is obliged to follow commitments relating to prohibition of performance requirements as mentioned in the TRIMs (Trade Related Investment Measures) Agreement.

VI. **FOREIGN EQUITY POLICIES**

For joint venture companies, the composition of share ownership is subject to certain business field's requirements as stipulated in *The Presidential Decree No. 111/2007*.

100% foreign equity ownership is allowed in all areas except for certain business fields as stipulated in *The Presidential Decree No. 111/2007*.

VII. **INVESTMENT INCENTIVES**

1. **INVESTMENT INCENTIVES**

- 30% net income reduced from capital investment amount for 6 (six) years period (equal to 5% per annum).
- Accelerated amortisation and depreciation up to 10 years.
- 10% Income tax charged for overseas tax-payer on dividend bill or lower tariff according to the Double Taxation Agreement.
- Loss compensation with the period between 5 to 10 years with some specific stipulations. Investment Allowance (IA): Corporate income tax base is deducted by 30% of investment realisation.
- Total 30% deduction is given in 6 years (5% deduction p.a).
- Illustration: Company X

Investment Realisation : US\$ 1 billion

IA p.a. : 5% X US\$ 1 billion = US\$ 50 million

IA is constantly given for 6 years: 6 X US\$ 50 million = US\$ 300 million

- 10 years losses carry forward
- Expedite depreciation

2. LAND RIGHTS

- Right to Cultivate (HGU) of 35 years and it can be extended for another 25 years
- Right to Build (HGB) of 30 years and it can be extended for another 20 years
- Right to Use (KP) up to 25 years and it can be extended for another 20 year

3. IMMIGRATION

- Limited stay permit up to 2 years
- Permanent stay permit shall be granted to expatriates who have been staying in Indonesia for 2 consecutive years
- Multiple entry permit for a limited stay permit holder for 12 months or 24 months
- Multiple entry permit for a permanent stay permit holder for 24 months

4. IMPORT DUTIES

All investment projects of PMA as well as PMDN projects which are approved by the Investment Coordinating Board or by the Office of Investment in the respective districts, including existing PMA and PMDN companies expanding their projects to produce similar product(s) in excess of 30% of installed capacities or diversifying their products, will be granted the following facilities:

- i) Relief from import duty so that the final tariffs become 5%. In the case of tariffs or import duty which are mentioned in the Indonesian Customs Tariff Book. (BTBMI) being 5% or lower, the effective tariffs shall be those in BTBMI:
 - On the importation of capital goods namely machinery, equipment, spare parts and auxiliary equipment for an import period of 2 (two)



years, starting from the date of stipulation of decisions on import duty relief.

- On the importation of goods and materials or raw materials regardless of their types and composition, which are used as materials or components to produce finished goods for the purpose of two years full production (accumulated production time).
- ii) Exemption from Transfer of Ownership Fee for ship registration deed/certificate made for the first time in Indonesia.

5. TAX FACILITIES

The Government has introduced a *Tax Bill No's 16, 17, 18, 19 and 20 of 2000* and applied since January 1, 2001. Based on this tax law, the domestic and foreign investors will be granted tax allowances in certain sectors and/or areas as follows :

- An Investment Tax Allowance in the form of taxable income reduction by as much as 30% of the realised investment spread in 6 (six) years.
- Accelerated depreciation and amortisation.
- A Loss carried forward facility for a period of no more than 10 (ten) years.
- A 10% income tax on dividends, and possibly being lower if stipulated in the provisions of an existing particular tax treaty.

The Government has also introduced provisions *No's 146 of 2000 and 12 of 2001* on the importation and/or delivery of Selected Taxable Goods, and or the provision of Selected Taxable Services as well as the importation and or delivery of Selected Strategic Goods which are exempted from Value Added Tax.

6. EXPORT MANUFACTURING

There are many incentives provided for exporting manufacture products. Some of these incentives are as follows:

- Restitution (drawback) of import on the importation of goods and materials needed to manufacture the exported finished products.
- Exemption from Value Added Tax and Sales Tax on Luxury goods and materials purchased domestically, to be used in the manufacturing of the exported products.



- The company can import raw materials required regardless of the availability of comparable domestic products

7. BONDED ZONES

The industrial companies which are located in the bonded areas are provided with many incentives as follows:

- Exemption from import duty, excise duty, income tax of Article 22, Value Added Tax on Luxury Goods, importation of capital goods and equipment including raw materials for the production process.
- Allowed to divert products amounting to 50% of exports (in term of value) for the final products, and 100% of exports (in term of value) for other than final products to the Indonesian customs area, through normal import procedure including payment of customs duties.
- Allowed to sell scrap or waste to the Indonesian custom area as long as it contains at the highest, tolerance of 5% of the amount of the material used in the production process.
- Allowed to lend their own machinery and equipment to their subcontractors located outside bonded zones for no longer than 2 (two) years in order to further process their own products.

Exemption of Value Added Tax and Sales Tax on Luxury Goods on the delivery of products for further processing from bonded zones to their subcontractors outside the bonded zones or the other way around as well as among companies in these areas.

VIII. PROMOTED AREAS/SECTORS FOR FOREIGN INVESTMENT

1. PRIORITY/PROMOTED SECTORS OR INDUSTRIES

Based on *Indonesian Investment Roadmap*, there are several priority sectors, such as:

- Food Commodities, which consist of (i) rice; (ii) corn; (iii) soybean; (iv) sugar; (v) CPO; and (vi) cacao.
- Energy Sector, strategic commodities selected as investment priorities comprise of (i) oil; (ii) gas; (iii) coal; and (iv) biofuel resources (cassava and sweet potato).
- Infrastructure Sector, strategic domain of which the main priorities are (i) harbours; (ii) electricity; (iii) irrigation (and agriculture facilities in broad terms); and (iv) public roads.



In addition to determine the major food commodity for this investment, the roadmap also explains comprehensively the strategic locations for investment in the food sector in Indonesia. Therefore, it is expected that this roadmap may not only become a reference for strategic investment, but also provide guidance in determining the most appropriate investments in Indonesia.

2. PROMOTED PRODUCTS

In order to facilitate more private participation in infrastructure provision, Indonesia's National Development Planning Agency (*BAPPENAS*), announces the list of projects that will be developed under public-private partnerships scheme. This effort is a part of government commitment toward transparent and active participation of stakeholders in implementing the national development plan.

There 3 (three) types of projects in this scheme: (i) projects ready to offer, (ii) priority projects and (iii) potential projects.

Each type consists of several sub-sectors, which amongst others are Toll Road, Marine Transportation, Air Transportation, Land Transportation, Railway, Water Supply, Power and Sanitation. (*for more details see: Public-Private Partnership/PPP Book*).

3. RESTRICTIONS

Negative List of Investment

Based on :

- *Presidential Regulation Number 76 of 2007 Concerning Criteria and Requirements for the Determination of Business Fields Closed and Open with Conditions to Investment.*
- *Presidential Regulation Number 111 of 2007, Number 77 of 2007 Concerning List of Business Fields Closed and Open with Conditions on Investment.*

The Negative List stipulated in the *Presidential Regulation No. 111 of 2007* which is an amendment to *Presidential Regulation No. 77 of 2007* concerning



the list of business fields closed and open with conditions to investment could be accessed at BKPM's website <http://www.bkpm.go.id>

This list may be modified accordingly as stipulated in Article 3 *Presidential Regulation No. 77 of 2007*, as follows :

- This Presidential Regulation shall be enforced for (3) years as of the enactment or if deemed necessary, it may be subject to review in accordance with the demand and progress of the condition.
- In the event that the period of three (3) years elapsed and the new list has not been determined, the existing Presidential Regulation shall remain in force.

Principles of Negative List of Investment:

- All types of business fields are open to investment, except those business fields closed or open with conditions to investment.
- A business field closed to investment means a certain type of business prohibited from being carried out by an investor as an investment activity.
- A business field open with conditions to investment is a certain type of business, which may be carried out as an investment activity under certain conditions.

The determination of business fields closed and open with conditions to investment shall apply the following basic principles:

- Simplification
- Compliance with international agreement or commitment
- Transparency
- Legal certainty
- The unitary of the Indonesian territory as a sole market

Attachment of Presidential Regulation Number 111 of 2007

No.	Criteria	Sum of Business Fields	Note
1.	Closed to Investment	23	Attachment I



No.	Criteria	Sum of Business Fields	Note
2.	Open to Investment with Conditions		
	a. Reserved for Micro, Small and Medium-sized Enterprises, and Cooperatives (UMKMK)	43	Attachment II.a
	b. Partnership	36	Attachment II.b
	c. Capital Ownership	97	Attachment II.c
	d. Certain Location	1	Attachment II.d
	e. Special Permit	22	Attachment II.e
	f. 100% Domestic Capital	47	Attachment II.f
	g. Capital Ownership and Location	17	Attachment II.g
	h. Special Permit and Capital Ownership	4	Attachment II.h
	i. 100% Domestic Capital and Special Permit	1	Attachment II.i

Notes: Others than those listed in the above table are opened for foreign direct investment to maximum 100% ownership

For more details see: Presidential Regulation Number 111 of 2007.

IX. TAXATION

1. CORPORATE TAX

The rate of taxable income is progressive and is divided into the following 3 categories:

- up to 50 million Rupiah : 10%
- 50-100 million Rupiah : 15%
- over 100 million Rupiah : 30%



2. VALUE ADDED TAX/SALES TAX

In most cases VAT on imports is charged at 10% rate, however VAT for imported capital goods is exempted.

3. SERVICE TAX

Service Tax is charged at 2% flat rate.

4. WITHHOLDING TAX

Payment of dividends, interests, royalties, and technical & management fees for services performed in Indonesia to Indonesian and non-Indonesian residents are subject to withholding tax. The withholding tax rates may vary, depending on whether it is paid to a resident or non-resident as follows:

- Payments to Indonesian residents: 15% except for technical and management services: 6 %
- Payment to non-Indonesian residents: 20%

5. PERSONAL INCOME TAX

Income Tax in Indonesia is progressive and a self-assessment method is used to calculate the tax. Divided into 5 categories with the following tax rates:

- up to 25 million Rupiah : 5%
- 25-50 million Rupiah : 10%
- 50-100 million Rupiah : 15%
- 100-200 million Rupiah : 25%
- over 200 million Rupiah : 35%

6. LAND/PROPERTY TAX

Land and property taxes are payable annually on land, buildings and permanent structures. The effective rates are nominal, typically not more than one tenth of one percent per annum (0.1%) of the value of the property.



7. REAL PROPERTY GAINS TAX

- **Property Tax**

The acquisition of land and buildings by way of purchasing, grant, exchange, inclusion in a company, or gift is subject to 5 % tax rate.

8. STAMP DUTY

Stamp duty is nominal only at either Rp.3,000 or Rp.6,000 on certain documents. The rate of Rp.6,000 is applicable for letters of agreement and other letters, Notary Deeds and Land Deeds including its copies. For all documents where reference is made to a sum of money, the rate is Rp. 6,000 when the value stated in the document is more than Rp.1 million, and Rp.3,000 when the value is between Rp.500,000 and Rp.1 million. Below Rp. 500,000 is not subject to stamp duty. For cheques, the rate is Rp.3,000 regardless of the money value stated.

9. IMPORT DUTY

All foreign direct investment companies are given customs tariff reduction as fiscal incentive. Normal custom tariffs can be found in The Indonesian Custom Tariff Book (*Buku Tarif Bea Masuk Indonesia/BTBM*).

For detailed information, please contact the following:

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Telex : DJBC

Web site : www.beacukai.go.id

E-mail : perpen@beacukai.go.id

10. OTHER TAXES

- **Provincial/Municipal Taxes**

Provincial Government Taxes: motor vehicles, transfer of rights on motor vehicles, and fuel for motor vehicles.

District/Municipal Taxes: hotels and restaurants, entertainment, advertisement, road lightening, utilisation and processing the Class C Minerals, and utilisation of the underground water and surface water.

- **Luxury Tax**

Sales tax on luxury goods ranging from 10% to 75%.

- **Double Taxation Agreements**

To avoid incidental double taxation on certain income such as profits, dividends, interests, fees and royalties, Indonesia has signed agreements (tax treaties) with 50 countries, as follows :

- | | |
|-------------------|-------------------------|
| 1. Algeria | 26. Norway |
| 2. Australia | 27. Pakistan |
| 3. Austria | 28. Philippines |
| 4. Belgium | 29. Poland |
| 5. Bulgaria | 30. Republic of Korea |
| 6. Canada | 31. Romania |
| 7. Chinese Taipei | 32. Saudi Arabia |
| 8. Czech | 33. Singapore |
| 9. Denmark | 34. South Africa |
| 10. Egypt | 35. Sri Lanka |
| 11. Finland | 36. Spain |
| 12. France | 37. Sudan |
| 13. Germany | 38. Sweden |
| 14. Hungary | 39. Switzerland |
| 15. India | 40. Syria |
| 16. Italy | 41. Thailand |
| 17. Japan | 42. Tunisia |
| 18. Jordan | 43. Turkey |
| 19. Kuwait | 44. United Emirate Arab |
| 20. Luxembourg | 45. Ukraine |
| 21. Malaysia | 46. United Kingdom |
| 22. Mauritius | 47. USA |
| 23. Mongolia | 48. Uzbekistan |
| 24. Netherlands | 49. Venezuela |
| 25. New Zealand | 50. Viet Nam |



X. FINANCIAL REGULATIONS

1. BORROWING REGULATIONS

Any company is allowed to borrow overseas and should report to the Central Bank.

2. FOREIGN EXCHANGE REGULATIONS

The SWAP system to avoid exchange risks caused by the depreciation of the Rupiah is available.

3. SOURCE OF FINANCING

In general, foreign investors are free to search for alternative sources of investment funds. Private sector's offshore borrowings need to be reported to the Indonesian Central Bank (Bank Indonesia).

4. REPATRIATION OF CAPITAL/PROFITS

Foreign investors are guaranteed the right to transfer abroad all company profits, proceeds from the sale of shares, compensation in the case of nationalisation and repatriation of remaining investment capital in the case of liquidation, principal loan, interest, royalty fees, and expenses of expatriates without any restrictions.

XI. APPROVAL FOR THE EMPLOYMENT OF FOREIGN WORKERS

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

Hiring of foreigners for managerial and expert positions that cannot yet be filled by Indonesian nationals is allowed. The stipulation is given more emphasis for companies which is exporting at least 85% of their production.

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

The duration of the foreign expatriate's term of work in Indonesia is subject



to Government regulation, based on expertise and the availability of an Indonesian to replace the expatriate position. The visa extension for a foreign expatriate is based on the extension of a working permit issued by the Regional Investment Coordinating Board (BKPM). The extension of the visa will be issued by the immigration office. To secure working visas, the RPTKA or Manpower Plan should be submitted to BKPM within three months starting from the date of approval.

XII. LAND AND BUILDING OWNERSHIP

1. REGULATIONS ON ACQUISITION OF LAND AND BUILDINGS

The *1960 Basic Agrarian Law and the Presidential Decree No. 34/1993* allow legal entities domiciled in Indonesia, including foreign companies, to obtain the Land Cultivation Right (HGU), the Right of Building on Land (HGB) and Right of Use on Land (HP) subject to government approval. The HGU and the HGB could be used as collateral; the HP could be used as a mortgage. The HGU, HGB and HP could be transferred to a third party subject to government approval as well. Foreigners are not allowed to own land, but if they are domiciled in Indonesia, they are allowed to own a house or apartment.

2. RESTRICTIONS

- ***Land Cultivation Right***

The right to use state-owned land for agriculture purposes, including plantation, etc. is normally valid for 35 years but may be extended up to 60 years. Subsequently, it could be renewed for a maximum period of 35 years if the land is properly maintained and managed.

- ***Right of Buildings***

The right to construct and own buildings is normally valid for 30 years and can be extended for a maximum of 20 years. Subsequently, it can be renewed, at the discretion of the National Agency for Land Affairs, for a maximum 30 years. This Right can also be used as collateral.

- ***Right for Use***

The right to use land for any purpose for a period of 25 years. This Right can be extended for 20 years. It can be used as a mortgage and can also be transferred to another party through government approval.



XIII. INVESTMENT PROMOTION AGENCY

The Investment Coordinating Board (BKPM)

Jln. Gatot Subroto No.44

Jakarta 12190

Indonesia

PO.BOX 3186

Tel : (62-21) 525 008, 525 4981

Fax : (62-21) 525 4945, 522 7609

Web site : www.bkpm.go.id

E-mail : sysadm@bkpm.go.id

The Investment Coordinating Board (*Badan Koordinasi Penanaman Modal* or *BKPM*) is an investment service agency of the Indonesian Government created for the purpose of effectively implementing the enactment of the laws on foreign as well as domestic investment. BKPM is a non-departmental government agency serving under and directly responsible to the President of the Republic of Indonesia. BKPM is chaired by the Head of BKPM.







Lao PDR





LAO PDR

I. RELEVANT INVESTMENT LEGISLATION

1. INVESTMENT ACT

- ***Law on the Promotion of Foreign Investment (No. 11/NA dated 22 October 2004)*¹**

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.

¹A new investment law was promulgated by Lao PDR in 2009. The date of entry into force is to be determined.



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:

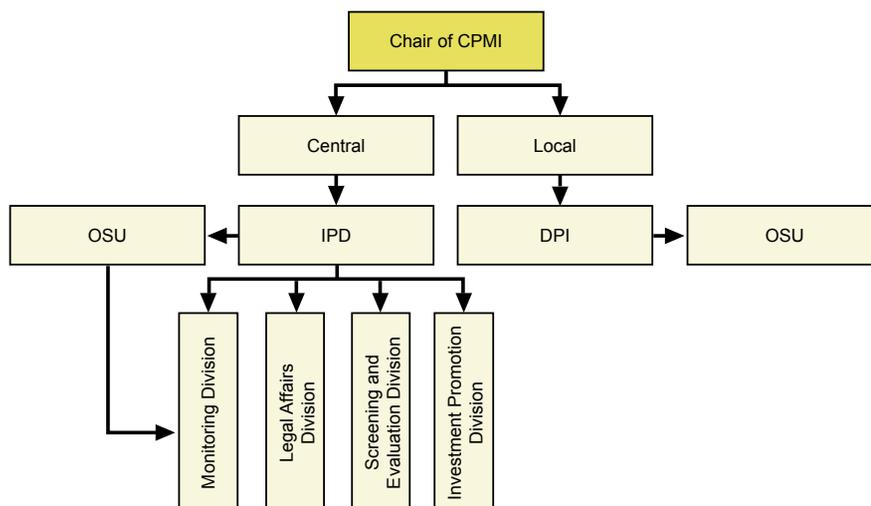
- ***CPMI at central level:*** Minister of Planning and Investment (MPI) is the chair of the CPMI by virtue of his position. There is also an Investment Promotion Department (IPD) acting as a Permanent Office with One-Stop-Service Unit (OSU).

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 Investment².

²Roles 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

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



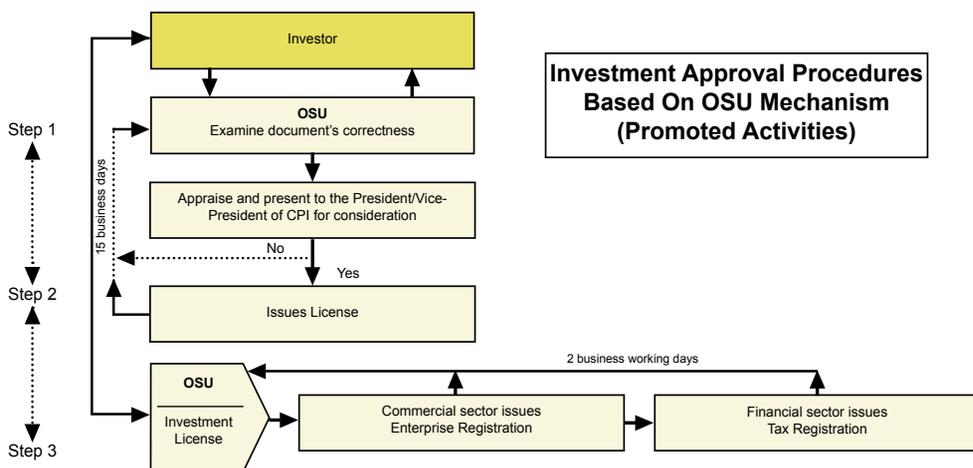
No.	Name(s)	Address(es)
5.	Department for Planning and Investment in Phongsaly	Phoufa Village Phongsaly District and Province Tel : 088-210846 Fax : 088-210713
6.	Department for Planning and Investment in Houa Phanh	Phanxay Village, Phathy Rd Samneua District Houa Phanh Province Tel : 064-312065 Fax : 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

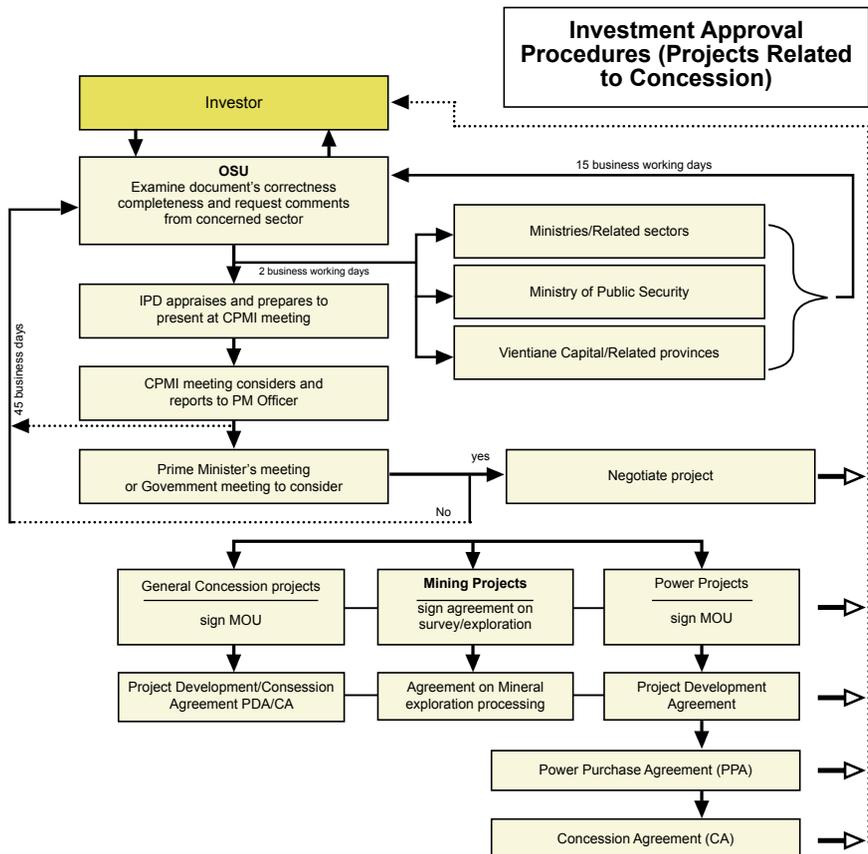
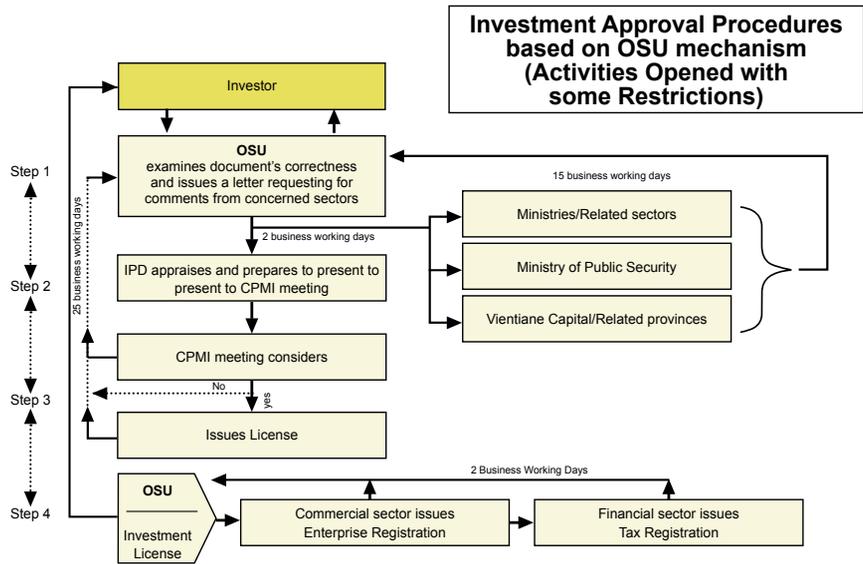


No.	Name(s)	Address(es)
13.	Department for Planning and Investment in Saravane	Saravane Provincial Office Tel : 034-2114477 Fax : 034-211028
14.	Department for Planning and Investment in Xekong	Mai Houa Meuang Village Lamam District, Xekong Province Tel : 038-211015 Fax : 038-211015
15.	Department for 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 Registration³

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.

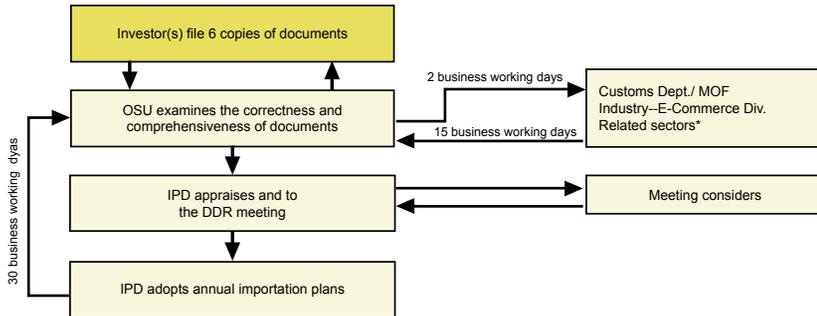
The approved annual importation plans will be transmitted to officials at the border where the importation will take place to monitor and deduct the balance based on actual importation. Approved annual importation plans can be modified once.

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.

³ In case a foreign investment enterprise cannot bring into the Lao PDR 20% of its total registered capital, the enterprise shall receive a temporary domestic tax registration valid for 60 business days. After that, if the company still does not bring the said registered capital into the country, the investment license shall be terminated without any conditions.



Approval Procedures for the Annual Importation Plan



* depending on the investment activities and the type of goods to be imported.

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.

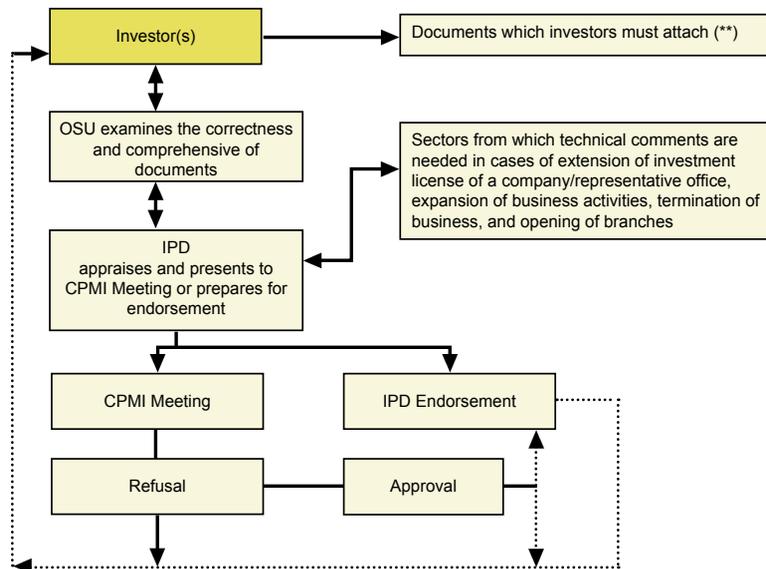
7. REGULATIONS ON CHANGE IN THE LEGAL BASIS

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/activities⁴ 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);

⁴ Except activities related to rights to concession from the Government (mining, hydro power and general activities)



- 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%⁵
 - Excise tax between 5% - 90%⁶
- 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

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

⁶ Provided in Article 28, Part 4 of Tax Law Number 04/NA, dated 19/5/2005



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

Website : www.invest.laopdr.org







Malaysia





MALAYSIA

I. RELEVANT INVESTMENT LEGISLATION

1. INVESTMENT ACT

- *Industrial Coordination Act 1975*

Legislation relating to the licensing of manufacturing activities to ensure a coordinated and orderly development of the manufacturing sector in Malaysia.

2. COMPANIES ACT

- *Companies Act, 1965*

Legislation governing companies in Malaysia. It contains provisions for the incorporation and the conduct of businesses in Malaysia.

3. BUSINESS NAMES ACT

- *Registration of Business Act 1956 (revised 1978)*

4. MINIMUM LEVEL OF INVESTMENT

No minimum level of investment is required.

5. OTHER RELATED INVESTMENT LEGISLATION

- *Free Zones Act, 1990*

Enables companies operating in the zones to enjoy minimum customs formalities and duty-free imports of raw materials, component parts, machinery and equipment used directly in the manufacturing process, as well as minimal customs formalities in the export of their finished products.



II. SECTOR-SPECIFIC LAWS AND POLICIES

There are other specific laws, regulations, and policies relating to investment in other specific sectors, e.g. telecommunications, financial services etc.

III. INVESTMENT APPLICATIONS

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

For the manufacturing sector, the relevant Ministries are:

- ***Ministry of International Trade and Industry (MITI)***

MITI's role is to promote and safeguard Malaysia's interest in the international trade arena, to spur the development of industrial activities, and to further enhance Malaysia's economic growth.

- ***Malaysian Industrial Development Authority (MIDA)***

MIDA is the Malaysian Government's principal agency responsible for the promotion and co-ordination of industrial development in Malaysia. It is the first point of contact for investors intending to set up manufacturing and manufacturing-related services operations in Malaysia.

- ***Ministry of Finance***

The Ministry of Finance is responsible for the formulation, planning and implementation of fiscal and budgetary policies to promote sustainable economic growth, improve national economic resilience and ensure a more equitable sharing of the national wealth.

For other sectors, other relevant Ministries are responsible for administering investment applications such as telecommunications, financial services, etc.



2. CONDITIONS INCLUDING TIMETABLE FOR PROCESSING OF APPLICATIONS

A company which intends to carry on a business in Malaysia must incorporate a company with the Companies Commission of Malaysia under the *Companies Act, 1965*.

All manufacturing companies with shareholders' funds of RM 2.5 million and above or engaging 75 or more full-time employees must also apply for a manufacturing license under the *Industrial Coordination Act, 1975*.

Applications for manufacturing licenses, and for investment incentives/expatriate posts should be made to the Malaysian Industrial Development Authority (MIDA).

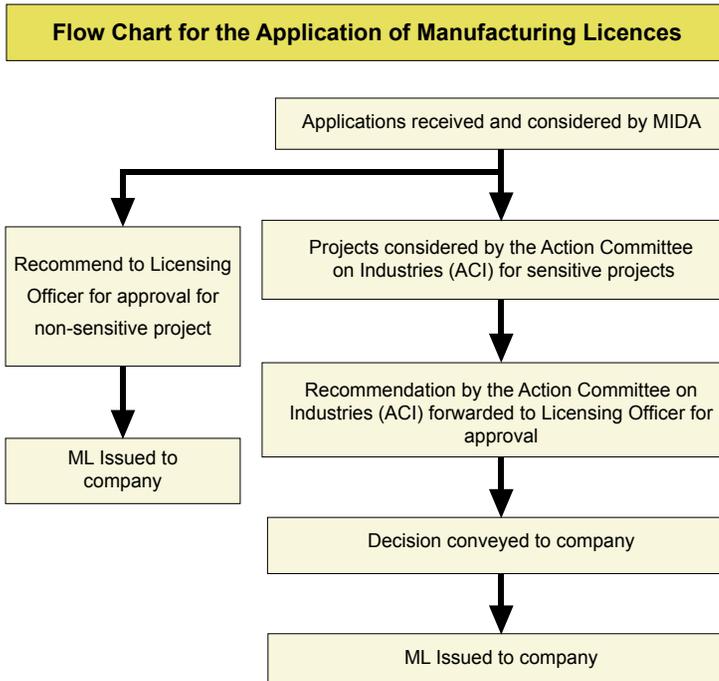
Applications for manufacturing license for new projects and for expansion/diversification projects for non-sensitive industries will be granted automatic approval within 2 working days from the date complete information is received. For applications for license with incentives/expatriate posts, and applications for license for sensitive industries, the average processing time is up to 8 weeks from the date of application.

3. SPECIAL SERVICES FOR EXPEDITING APPLICATIONS

- ***Advisory Services Centre in MIDA***
The Advisory Services Centre is represented by officials from key government departments and agencies. It provides advice and assistance to investors on how to set up a manufacturing project, and in the implementation of the project.
- ***Industry Support Division in MIDA***
The Division pro-actively identifies problems encountered by investors in the implementation and operation of their projects, and offers assistance through consultation and coordination with the relevant authorities at the Federal and State/regional levels.
- ***One-Stop Centers at State/Regional Government Level***
The Centre assists investors in obtaining licenses, permits and approvals as well as to implement their projects at the state/regional level.



4. PROCEDURES FOR INVESTMENT APPLICATIONS



IV. INVESTMENT PROTECTION

1. CONVERSION, REPATRIATION AND TRANSFERS

Foreign investors are free to repatriate their investment including capital, divestment proceeds, profits, dividends, rental and interest.

2. EXPROPRIATION AND COMPENSATION

The relevant laws relating to expropriation and compensation are:

- *Land Acquisition Act 1960*
- *Sabah Land Ordinance 1950*
- *Sarawak Land Code 1958*

Foreign investors are entitled to fair compensation in the event that their private properties are acquired for public purposes.

3. INVESTMENT GUARANTEE AGREEMENTS

Malaysia has concluded Investment Guarantee Agreements with the following groupings and countries (in alphabetical order):

Groupings

- Association of South-East Asian Nations (ASEAN)
- Organisation of the Islamic Conference (OIC)

Countries

Albania	Germany	Pakistan
Algeria	Ghana	Papua New Guinea
Argentina	Guinea	Peru
Austria	Hungary	Poland
Bahrain	India	Romania
Bangladesh	Indonesia	Saudi Arabia
Belgo-Luxembourg	Iran	Senegal
Bosnia-Herzegovina	Italy	Spain
Botswana	Jordan	Sri Lanka
Burkina Faso	Kazakhstan	Sudan
Cambodia	Korea, North	Sweden
Canada	Korea, South	Switzerland
Chile	Kuwait	Taiwan
China	Kyrgyz Republic	Turkey
Croatia	Laos	Turkmenistan
Cuba	Lebanon	United Arab Emirates
Czech Republic	Macedonia	United States of America
Denmark	Malawi	Uruguay
Djibouti	Mongolia	Uzbekistan
Egypt	Morocco	Viet Nam
Ethiopia	Namibia	Yemen
Finland	Netherlands	Zimbabwe
France	Norway	



4. INTELLECTUAL PROPERTY RIGHTS (IPR)

Intellectual property protection in Malaysia covers patents, trademarks, industrial designs, copyright, geographical indications and layout designs of integrated circuits. Malaysia is a member of the World Intellectual Property Organization (WIPO) and a signatory to the *Paris Convention* and *Berne Convention* which governs intellectual property rights.

Malaysia is a signatory to the *WTO Agreement on Trade Related Aspects of Intellectual Property Rights* (TRIPS). Malaysia's intellectual property laws are in conformity with international standards and have been reviewed by the TRIPs Council.

5. DISPUTE SETTLEMENT

To promote and protect foreign investment, the Malaysian government ratified the provisions of the Convention on the Settlement of Investment Disputes in 1966. The Convention, established under the auspices of the International Bank for Reconstruction and Development (IBRD), provides for international conciliation or arbitration through the International Centre for Settlement of Investment Disputes located at IBRD's principal office in Washington.

6. KUALA LUMPUR REGIONAL CENTRE FOR ARBITRATION

The Kuala Lumpur Regional Centre for Arbitration was established in 1978 under the auspices of the Asian-African Legal Consultative Committee (AALCC) – an inter-governmental organisation cooperating with and assisted by the Malaysian government. The Centre serves the Asia Pacific region. It aims to provide a system to settle disputes for the benefit of parties engaged in trade, commerce and investments with and within the region. Any dispute, controversy or claim arising out of or relating to a contract, or the breach, termination or invalidity can be decided by arbitration in accordance with the Rules for Arbitration of the Kuala Lumpur Regional Centre for Arbitration.

V. PERFORMANCE REQUIREMENTS

Malaysia has eliminated performance requirements under *WTO Trade-Related Investment Measures* (TRIMs) Agreement.



VI. **FOREIGN EQUITY POLICIES**

Equity Regulations

- ***Equity Policy Applicable to New Investments, Expansion or Diversification in the Manufacturing Sector***

Foreign investors can hold 100% equity in all new investments, as well as investments in expansion/diversification projects by existing companies. No export requirements will be imposed.

- ***Equity Policy Applicable to Existing Companies in the Manufacturing Sector***

Equity conditions imposed on existing companies will be maintained. However, such conditions imposed can be revised or rescinded based on request, depending on the merits of each case.

- ***Relaxation of Export Conditions for Existing Manufacturers***

Export conditions imposed on existing companies will be maintained. However, companies with export conditions can apply for approval to sell in the domestic market based on the following guidelines:

- up to 100% of their output if the products have nil import duty or are not produced locally
- up to 80% of their output if the domestic supply is inadequate or there is an increase in imports from ASEAN for these products where the CEPT duties are 5% and below.

- ***Equity Policy Applicable for Services Sector***

For the non-manufacturing sector, generally, foreign investors may hold between 30% to 100% equity depending on the sub-sectors. The Government allows higher levels of foreign equity participation in some sub-sectors to enhance their competitiveness. Liberalisation of the services sector is undertaken progressively, taking into account Malaysia's socio-economic development objectives. The equity policy in some of these services sector includes:

i) ***Multimedia Super Corridor (MSC)***

The Multimedia Super Corridor (MSC) aims to spearhead the development of the Information and Communications Technology (ICT) sector in Malaysia.



Companies with MSC status are entitled to enjoy a set of incentives and benefits backed by the Malaysian Government's Bill of Guarantees which:

- Provide a world-class physical and information infrastructure;
- Allow unrestricted employment of knowledge workers from overseas;
- Ensure freedom of ownership of companies;
- Allow freedom of sourcing capital globally for MSC infrastructure and freedom of borrowing funds;
- Provide competitive financial incentives including no income tax for up to 10 years or an Investment Tax Allowance of 100 per cent, and no duties on the import of multimedia equipment;
- Provide for intellectual property protection;
- Ensure no censorship of the Internet; and
- Provide globally competitive telecommunication tariffs.

ii) Manufacturing-Related Services

Up to 100 per cent foreign equity participation is allowed for regional establishments, i.e. International Procurement Centres, Regional Distribution Centres and Operational Headquarters.

iii) Services Sub-Sectors

Effective from 23 April 2009, 27 services sub-sectors have been liberalised with no foreign equity restrictions. These sub-sectors are categorised under computer and related services, health and social services, tourism services, transport services and business services.

VII. INVESTMENT INCENTIVES

Malaysia offers attractive investment incentives to promote the development of promoted/targeted industries and activities in the manufacturing, agriculture and services sectors that can contribute to the future growth and development of the Malaysian economy. Relevant legislations include: *Promotion of Investments Act 1986*, *Income Tax Act 1967*, *Customs Act 1967*, and *Free Zones Act 1990*. The direct tax incentives grant tax exemption/deduction from income for qualifying expenditure for a specified period, while indirect tax incentives are in the form of exemptions from import duty, sales tax, and excise duty.



Information on investment incentives are available at:

- MIDA: <http://www.mida.gov.my>
- Inland Revenue Board: <http://www.hasil.org.my>

VIII. PROMOTED AREAS/SECTORS

1. PROMOTED FIELDS/SECTORS/PRODUCTS

Emphasis is on promoting:

- High-technology, capital-intensive and skills-intensive industries;
- Service sectors;
- Multimedia and information technology industries;
- Research and Development (R&D) activities;
- Ancillary and supporting industries;
- Manufacturing-related services e.g. Operational Headquarters (OHQs), International Procurement Centers (IPCs), Regional Distribution Centers (RDCs), Representatives Offices and Regional Offices;
- Resource-based industries;
- Technical and vocational training;
- Development of the Eastern Corridor of Peninsular Malaysia and the States of Sabah and Sarawak
- Small and medium industries; and
- Special economic development regions, including Iskandar Malaysia, Northern Corridor Economic Region (NCER), East Coast Economic Region (ECER), Sarawak Corridor of Renewable Energy (SCORE), and Sabah Development Corridor (SDC).

List of promoted products/activities are available at the MIDA website:
<http://www.mida.gov.my>

2. RESTRICTIONS

Generally, all industries in the manufacturing sector are open to foreign investment. However, there are a few industries which are closed for investment due to excess capacity, raw material shortage, public safety, health and national security reasons such as sugar refining, liqueurs and alcoholic beverages, tobacco processing and cigarettes, hot rolled steel bars and wire rods, biodiesel and collection, storage, treatment and disposal of hazardous and toxic wastes.



Malaysia will continue to progressively liberalise restrictions in other sectors in line with her socio-economic development objectives.

IX. TAXATION

1. CORPORATE TAX

The corporate income tax rate for the year of assessment 2009 is 25%. For a company carrying on petroleum upstream operations, the applicable tax rate is 38%.

2. VALUE ADDED TAX/SALES TAX

There is no Value Added Tax.

Sales tax is a single stage tax imposed at the import and manufacturing levels. Manufacturers are required to be licensed under the *Sales Tax Act 1972*. Manufacturers whose annual sales turnover do not exceed RM100,000 and Licensed Manufacturing Warehouse (LMW) status companies are exempted from this licensing requirement.

The general rate for sales tax is 10%. However, raw materials and machinery for use in the manufacture of taxable goods are normally exempted from the tax. Inputs for selected non-taxable products are also exempted. Certain non-essential foodstuffs and building materials are taxed at 5% while cigarettes are taxed at 25% and liquor at 20%.

3. SERVICE TAX

A service tax applies to certain prescribed goods and services provided by any taxable person except exported taxable service. Generally, the imposition of service tax is subject to a specific threshold based on an annual turnover ranging from RM150,000 to RM500,000.

4. WITHHOLDING TAX

Non-resident individuals are subjected to a withholding tax which is a final tax.

- Services rendered by the person or his employee in Malaysia in



- connection with the use of property or rights, installation of or operation of any plant, machinery or other apparatus;
- Technical advice, assistance or services rendered in Malaysia in connection with technical management or administration; or
 - Rent or other payments made under any agreement or arrangement for the use of any moveable property.

5. PERSONAL INCOME TAX

All individuals are liable to tax on income accrued in, derived from or remitted to Malaysia. However, a non-resident individual will be taxed only on income earned in Malaysia. The rate of tax depends on the resident status of the individual which is determined by the duration of his stay in the country as stipulated under Section 7 in the *Income Tax Act 1967*. Generally, an individual residing in Malaysia for more than 180 days in a year has resident status.

A resident individual is taxed on his chargeable income at graduated rates from 0% to 27% after the deduction of tax reliefs.

Generally, a non-resident individual is liable to tax at the rate of 27% and he is not entitled to any personal relief. However, he is entitled to claim a tax rebate in respect of the levy paid to the government for the issue of an employment work permit.

6. LAND/PROPERTY TAX

Land tax (Quit rent) is charged by all state/regional governments. The rate varies according to location and land use.

7. REAL PROPERTY GAINS TAX

Effective from 1 January 2010, the tax at a fixed rate of 5% will be imposed on gains from disposal of real property with the collection mechanism and exemptions as follows:

- Tax collected through a withholding mechanism whereby the purchaser withholds 2% of the purchase value and pays to the Inland Revenue Board;
- Exemption up to RM10,000 or 10% of the gains, whichever is higher be given to individuals; and



- Existing exemptions under the *Real Property Gains Tax Act 1976* are retained:
 - gift between parent and child, husband and wife, grandparent and grandchild; and
 - disposal of a residential property once in a lifetime for an individual who is a citizen or permanent resident of Malaysia

8. ESTATE DUTY

None.

9. STAMP DUTY

Stamp duty is chargeable on certain instruments and documents. The rate of duty varies according to the nature of the instruments/documents and transacted values. The rate varies from RM1 per RM100 for the first RM100,000 to RM3 per RM100 for value in excess of RM500,000.

10. IMPORT DUTY

Import duties are mostly imposed ad valorem, although specific duties are imposed on some products. Over the years, import duties on a wide range of raw materials, components and machinery have been abolished.

Malaysia is committed to the ASEAN Common Effective Preferential Tariff (CEPT) Scheme of the ASEAN Free Trade Area. Under the CEPT, import duties imposed on goods from ASEAN countries have been reduced to 0-5% and will be abolished by 2010.

Tariffs on a wide range of products have been reduced or eliminated unilaterally. Malaysia has also liberalized import tariffs in line with her commitments in her bilateral and regional Free Trade Agreements (FTAs).

11. MUNICIPAL TAXES

Municipal taxes (assessment) are charged by local authorities. The rate of assessment varies according to the location and type of building.



12. OTHER TAXES

- **Excise Duty**

Levied on selected products manufactured locally i.e. cigarettes, liquors, playing cards, mahjong tiles and motor vehicles.

To encourage the export of locally manufactured goods, companies with Licensed Manufacturing Warehouse (LMW) status that manufacture goods subject to excise duty are exempted from being licensed under the *Excise Act 1976*.

X. FOREIGN EXCHANGE ADMINISTRATION

1. BORROWING REGULATIONS

- **Ringgit Borrowings**

Foreign investors are free to obtain any amount of ringgit borrowings from licensed onshore banks¹, resident companies² or individuals to finance activities in the real sector in Malaysia.

Resident companies, which include foreign-owned companies in Malaysia, are free to obtain:

- any amount of ringgit borrowings from domestic sources (licensed onshore banks and other residents);
- any amount from their non-resident non-bank parent companies to finance activities in the real sector in Malaysia; and
- up to RM1 million in aggregate from other non-resident non-bank companies or individuals for use in Malaysia.

- **Foreign Currency Borrowings**

Foreign investors are free to obtain any amount of foreign currency borrowings from licensed onshore banks and licensed International Islamic Banks (IIBs).

Resident companies, which include foreign-owned companies in Malaysia, are free to borrow:

¹ Licensed onshore banks refer to commercial banks or investment banks licensed under the Banking and Financial Institutions Act 1989 or Islamic banks licensed under Islamic Banking Act 1983.

² "Resident companies" include foreign-owned companies in Malaysia.



- any amount in foreign currency from:
 - their non-resident non-bank parent companies³
 - other resident companies within the same corporate group in Malaysia;
 - licensed onshore banks and licensed IIBs; and
- up to the equivalent of RM100 million in aggregate on a corporate group basis from other non-residents as well as through the issuance of foreign currency denominated bonds/sukuk onshore and offshore

2. FOREIGN EXCHANGE

Foreign investors and resident companies may buy or sell foreign currencies with licensed onshore banks.

Resident companies, which include foreign-owned companies in Malaysia, are free to retain their foreign currency funds onshore and offshore.

3. SOURCE OF FINANCING

Foreign investors and resident companies which includes foreign-owned companies in Malaysia may source financing from domestic sources, including borrowing from licensed onshore banks, through initial public offerings, issuance of sukuk/bonds and trade credits.

4. REPATRIATION OF CAPITAL/PROFITS

Foreign investors are free to repatriate their investment including capital, divestment proceeds, profits, dividends, rental and interest.

5. OTHER SPECIAL REGULATIONS

Any transactions with Israel residents or in the currency of Israel require prior permission of the Controller of Foreign Exchange.

Please refer to the Bank Negara Malaysia (The Central Bank of Malaysia) website for further details at <http://www.bnm.gov.my/fxadmin>

³ "Non-resident non-bank parent companies" is defined as: i) non-resident companies with more than 50% shareholding in a resident company based in Malaysia; or ii) the ultimate non-resident parent company of the resident company, which is not a bank or an investment holding company owned by a bank or a stockbroking company.

XI. APPROVAL FOR THE EMPLOYMENT OF FOREIGN WORKERS

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

In order to attract FDI as well as to enhance technology transfer and development of local talents/skills, Malaysia has adopted a liberal policy on the employment of expatriates.

- i) The guidelines on the employment of expatriates in the manufacturing sectors are as follows:
 - (a) Manufacturing companies with foreign paid-up capital of US\$2 million and above:
 - (i) Automatic approval is given for up to ten expatriate posts including five key posts.
 - (ii) Expatriates can be employed for up to a maximum of 10 years for executive posts, and five years for non-executive posts.
 - (b) Manufacturing companies with foreign paid-up capital of more than US\$200,000 but less than US\$2 million:
 - (i) Automatic approval is given for up to five expatriate posts, including at least one key post.
 - (ii) Expatriates can be employed for up to a maximum of 10 years for executive posts, and five years for non-executive posts.
 - (c) Any company with foreign paid-up capital of less than US\$200,000 will be considered for both expatriate posts based on the current guidelines as follows:
 - (i) key posts can be considered where the foreign paid-up capital is at least RM500,000;
 - (ii) time posts can be considered for up to a 10 years for executive posts, and 5 years for non-executive posts; and
 - (iii) the number of key posts and time posts approved depends on the merits of each case.



- (d) For Malaysian-owned companies, automatic approval for the employment of expatriates for technical posts, including R&D posts, will be granted as requested.
 - (e) Additional expatriate posts can be considered based on the merits of the case.
- ii) For regional operations, i.e. OHQ, IPC and RDC, the number of expatriate posts, (both key posts and time posts) will be approved based on the company's requirements.
 - iii) In order to meet the demand for labour, employment of foreign workers is allowed in the construction, plantation, agricultural, services (domestic servants, restaurants, hotel industry, trainers and instructors) and manufacturing sectors.

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

An employment pass is issued to any foreigner who enters the country to take up a contract of employment with a minimum period of 2 years or earn a monthly income of not less than RM3,000. Other types of passes for the purpose of business visits are as follows:

i) Visit Pass (Professional)

This is issued to foreigners who wish to enter the country for the purpose of engaging on short-term contract with any agency.

ii) Visit Pass (Temporary Employment)

This is issued to persons who enter the country to take up employment for less than 24 months or earn a monthly income of less than RM3,000.

iii) Dependent's Pass

This is issued to wives and children of foreigners who have been issued with an employment pass. This pass may be applied for together with the application for an employment pass or after the employment pass is approved. Wives and children of foreigners who enter the country on a visit pass (temporary employment or professional) will be issued a visit pass (social).

XII. LAND AND BUILDING OWNERSHIP

1. REGULATIONS ON ACQUISITION OF LAND AND BUILDINGS

Acquisition of land is subject to the approval of the Federal or State/regional governments. Foreigners can buy industrial land. Industrial land are developed by the State Economic Development Corporations (SEDC), other government authorities and also by the private sector.

The Foreign Investment Committee (FIC) will process transactions involving the dilution of Bumiputera interests and/or Government interests in properties valued at RM 20 million and above, whether bought directly or indirectly (through acquisition of companies owning properties). All other property transactions shall no longer require the approval of FIC. Except in the event of a dilution, foreign interests will no longer be required to apply for approval to FIC for the acquisition of properties. However, foreign interests cannot acquire properties below specified threshold limits. The threshold amounts for commercial properties will be RM500,000. For the purchase of residential properties, the present threshold of RM250,000 is maintained until the end of 2009, and with effect 1 January 2010, it will be RM500,000.

For FIC guidelines on acquisition of property, see <http://www.epu.gov.my>

2. RESTRICTIONS

Ownership of industrial land is generally on a leasehold basis, ranging from 30 to 99 years. Freehold land is also available for industrial purposes.

XIII. INVESTMENT PROMOTION AGENCY

Malaysian Industrial Development Authority (MIDA)

Block 4, Plaza Sentral
Jalan Stesen Sentral 5
Kuala Lumpur Sentral
50470 Kuala Lumpur
Malaysia

Tel : (603) 2267 3633

Fax : (603) 2274 7970

Website : www.mida.gov.my

E-mail : investmalaysia@mida.gov.my



MIDA is the one-stop agency responsible for promoting and facilitating foreign and domestic investments in the manufacturing and related services sectors. Besides a global network of offices, MIDA has branch offices at the various states/regional levels to assist investors in the establishment and operation of their projects. MIDA provides assistance to investors from the pre-establishment stage (e.g. in obtaining approvals and incentives) through to the post-establishment stage (e.g. overcoming any problems that may arise in the implementation and operation of the projects).

Up-to-date information pertaining to Malaysia's investment regime is available on the websites of the Malaysian Industrial Development Authority (www.mida.gov.my) and Ministry of International Trade and Industry (www.miti.gov.my). The websites are also linked to relevant major ministries/agencies, Chambers of Commerce/industry associations and regional and international organisations (e.g., ASEAN, APEC and WTO).







Myanmar





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 requirement 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**

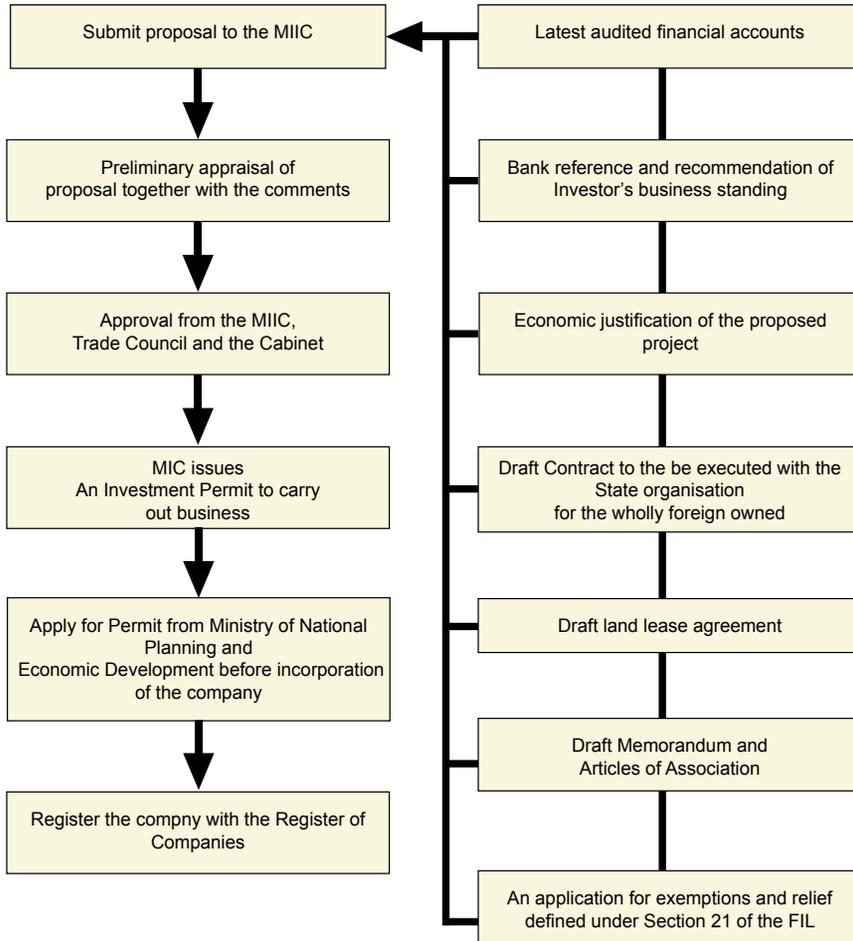
The following are the application procedures:

- 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 non-residents 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 organisations, 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

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)







Philippines





PHILIPPINES

The government has made it an official policy to attract, promote and welcome productive investments from foreign individuals, partnerships, corporations and governments. As a general rule, there are no restrictions on the extent of foreign ownership of export-oriented enterprises.

I. RELEVANT INVESTMENT LEGISLATION

1. INVESTMENT ACTS

- ***Foreign Investments Act of 1991 (RA¹ No. 7042 as amended by RA No. 8179)***

Governs the entry of foreign investments and the conduct of doing business in the Philippines.

- ***Omnibus Investments Code of 1987 (EO² No. 226)***

Provides the investment incentives rules by which foreign and local investments may qualify.

- ***Bases Conversion and Development Act of 1992 (RA No. 7227, as amended by RA No. 9400), Special Economic Zone Act of 1995 (RA No. 7916), Cagayan Economic Zone Act of 1995 (RA No. 7922), An Act Creating the Philippine Veterans Investment and Development Corporation PD³ No. 243 as amended by PD No. 353), Creating the Philippine Retirement Park System (EO No. 1037, s. 1985), Zamboanga City Special Economic Zone Act of 1995 (RA No. 7903), Establishing the Aurora Economic Zone in the Province of Aurora (RA No. 9490)***

Provides for incentives to enterprises located in economic, freeport, and special zones.

- ***Build Operate Transfer Law (RA No. 7718, as amended)***

Increases the opportunity for wholly foreign-owned corporations to undertake infrastructure projects and allows for variations of Build-Operate-Transfer schemes in undertaking such projects.

¹ Refers to a Republic Act issued by the Congress of the Philippines.

² Refers to an Executive Order issued by the President of the Philippines.

³ Refers to a Presidential Decree issued by the President of the Philippines.



2. COMPANIES ACT

- ***Corporation Code of the Philippines (BP⁴ Blg. 68)***

Provides the rules for the registration, licensing, regulation and supervision of all corporations and partnerships organised in the Philippines.

- ***Business Names Law (Act No. 3883, as amended by RA No. 4147 and RA No. 893)***

Registers the business name of entities.

3. MINIMUM INVESTMENT LEVEL REQUIREMENT

Foreign-owned small and medium-sized enterprises whose products/ services are intended for the domestic market with paid-in equity capital more than the equivalent of Two Hundred Thousand US dollars (US\$200,000.00) are allowed.

If, (1) they involved advanced technology; or (2) they employ at least fifty (50) direct employees, then a minimum paid-in capital of One Hundred Thousand US dollars (US\$100,000.00) shall be allowed.

II. SECTOR-SPECIFIC LAWS AND POLICIES

1. TELECOMMUNICATIONS

The Policy to Improve the Provision of Local Exchange Carriers Service (EO No. 109, s. 1993) opened up the telecommunications sector to new players to participate in the supply of telecommunication facilities all over the country.

2. MINING

Philippine Mining Act of 1995 (RA No. 7942) allows exploration, development and utilisation of mineral resources up to 40% foreign equity. However, 100% foreign equity is allowed for purposes of granting exploration permit, financial or technical assistance agreement or mineral processing.

⁴ Refers to a *Batas Pambansa* issued by the Congress of the Philippines



3. AUTOMOTIVE

Motor Vehicle Development Program (EO No. 156, s. 2002) allows foreign-owned enterprises to engage in the manufacture/assembly of motor vehicles for the primary purpose of establishing and/or expanding production facilities to increase the export of CBUs and its parts and components.

4. RENEWABLE ENERGY

An Act Promoting the Development, Utilization and Commercialization of Renewable Energy Resources (RA No. 9513) provides for the accelerated development and advancement of renewable energy resources and the implementation of a strategic program to increase its utilisation.

5. TOURISM

Tourism Act of 2009 (RA No. 9593) provides for the development of the country as a prime tourist hub in Asia by promoting sustainable development and encouraging private sector participation.

III. INVESTMENT APPLICATIONS

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

Agency	Contact Person/Address/ Telephone/Fax	Functions
Board of Investments (BOI)	Ms. Lucita P. Reyes Executive Director Industry & Investments Bldg. 385 Gil J. Puyat Ave., Makati City Tel : (63 2) 895-3983 Fax : (63 2) 895-3978 Email : LPReyes@boi.gov.ph URL : http://www.boi.gov.ph	Implementation of the Omnibus Investments Code (E.O. No. 226) On-line capability



Agency	Contact Person/Address/ Telephone/Fax	Functions
Department of Trade and Industry- National Capital Region (DTI-NCR)	Mr. Ferdinand Manfoste Director 12/F Trafalgar Plaza, H. V. dela Costa St., Salcedo Village, Makati City Tel : (63 2) 811-8231 Fax : (63 2) 890-4854 E-mail : itbdc@netasia.net URL : http://www.dti.gov.ph	Licensing
Securities and Exchange Commission (SEC)	Atty. Benito Cataran Director SEC Bldg., EDSA, Greenhills Mandaluyong City Tel : (63 2) 584-5813 Loc. 212 Fax : (63 2) 584-5319 E-mail : benito.cataran@sec.gov.ph	Implementation of the Foreign Investments Act of 1991 (RA No. 7042) Name verification and reservation on-line capability
Philippine Economic Zone Authority (PEZA)	Atty. Lilia B. De Lima Director General PEZA Bldg., Roxas Boulevard cor. San Luis St., Pasay City Tel : (63 2) 551-3432 Fax : (63 2) 891-6380 E-mail : dqibl@peza.gov.ph	Implementation of the Special Economic Zone Act (RA No. 7916)
Subic Bay Metropolitan Authority (SBMA)	Mr. Armand C. Arreza Administrator and CEO Building 229, Waterfront Road, Subic Bay Freeport Zone, Subic Zambales, Olongapo City Tel : (63 47) 252-4895 Fax : (63 47) 252-3014 E-mail : acarreza@sbma.com	Implementation of the Bases Conversion and Development Act of 1992 (RA No. 7227)

Agency	Contact Person/Address/ Telephone/Fax	Functions
Clark Development Corporation (CDC)	Mr. Benigno N. Ricafort President and CEO Bldg. 2122 C.P. Garcia St., Clark Freeport Zone, corner Quirino St., Clarkfield, Pampanga Tel : (63 45) 599-2092, 599-4902 Fax : (63 45) 599-2506, 599-2507 E-mail : BNR@clark.com.ph	Implementation of the Bases Conversion and Development Act of 1992 (RA No. 7227, as amended by RA No. 9400)
Bases Conversion Development Authority (BCDA)	Gen. Narciso L. Abaya (ret.) – President 2 nd Floor Bonifacio Technology Center 31 st St., Crescent Park West, Bonifacio Global City, Taguig, Metro Manila Tel : (63 2) 816-6666 Fax : (63 2) 816-0996	Implementation of the Bases Conversion Development Act of 1992 (RA No. 7227)
Cagayan Economic Zone Authority (CEZA)	Mr. Jose Mari B. Ponce Chairman & CEO Tel : (63 2) 636-5776 Fax : (63 2) 631-3997 Cagayan : (63 78) 846-2165	Implementation of the Cagayan Economic Zone Act of 1995 (RA No. 7922)
Philippine Veterans Investment Development Corporation (PHIVIDEC)	Ms. Ninfa U. Along-Albania Administrator Mobile : (0916) 366-0068 Tel : (63 88) 567-0260 Email : nalbania@phividecauthority.com.ph	Implementation of the PD No. 243 as amended by PD No. 353



Agency	Contact Person/Address/ Telephone/Fax	Functions
Philippine Retirement Authority (PRA)	Gen. Reynaldo De Leon Lingat (Ret) General Manager Tel : (63 2) 848-1412 loc 106 Fax : (63 2) 848-7106 Email : oic_gm@pra.gov.ph	Implementation of the EO No. 1037, s. 1985
Zamboanga Economic Zone (Zambo Ecozone)	Ms. Georgina P. Yu Chairman and Administrator Tel : (63 62) 992-2012 Fax : (63 62) 992-2012 Email : ecozone@zambofreepport.com.ph	Implementation of the Zamboanga City Special Economic Zone Act of 1995 (RA No. 7903)
Aurora Special Economic Zone (ASEZA)	Amb. Joseph D. Bernando Chairman 2/F SSS Makati Bldg., 6782 Ayala Ave., Makati City Tel : (63 2) 813-4381 Fax : (63 2) 813-3674	Implementation of the Act Establishing the Aurora Economic Zone in the Province of Aurora (RA No. 9490)
Export Development Council (EDC)	Mr. Senen M. Perlada Executive Director 3/F, Dept. of Trade and Industry International Building 375 Sen. Gil J. Puyat Ave. Makati City Tel : (63 2) 897-7608 / (63 2) 890-4641 Fax : (63 2) 890-4645 E-mail : sperlada@dti.gov.ph	Implementation of the Export Development Act (RA No. 7844)

All agencies that administer investment applications and grant incentives are also responsible for handling complaints and related appeals thereon. In addition, the Office of the Resident Ombudsman can receive and act on reports or complaints against officials and employees of the above agencies.

Opportunities for comment (foreign and domestic) on existing foreign investment regulations, or for proposed changes to the foreign investment regime

The Philippines maintains transparency in all its actions as part of the democratic process. Public hearings or consultations are usually conducted in the formulation of policies and in the enactment of laws (e.g., investment liberalisation laws). The private sector and civil society have representation in certain government councils/committees. As a general rule, laws and rules and regulations shall take effect after 15 days following the completion of their publication in the Official Gazette or in a newspaper of general circulation in the Philippines unless otherwise provided.

Other national agencies involved in the approval process and their roles in the approval process:

Agency	Contact Person/Address/ Telephone/Fax	Functions
Housing and Land Use Regulatory Board (HLURB)	NHA Compound, Elliptical Road, Diliman, Quezon City <i>Contact Person:</i> Atty. Romulo Q. Fabul CEO and Commissioner Tel : (63 2) 924-3378 Fax : (63 2) 924-3378 E-mail : esg@hlurb.gov.ph	Issues certificate of registration and license to sell for condominium and subdivision developers.
Department of Agrarian Reform (DAR)	Elliptical Road, Diliman Quezon City <i>Contact Person:</i> Mr. Nasser Pangandaman Secretary Center for Land Use Policy and Planning Implementation	Issues certificate for land-use conversions on individual landholdings.
Department of Environment and Natural Resources (DENR)	Visayas Avenue, Diliman Quezon City <i>Contact Person:</i> Mr. Julian D. Amador Director Environmental Management Bureau Telefax : (63 2) 927-1517/18 E-mail : emb@emb.gov.ph	Issues environmental clearance certificate.



2. CONDITIONS INCLUDING TIMETABLE FOR PROCESSING OF APPLICATIONS

Regular Processing and Express Lane

- *Securities and Exchange Commission (SEC)* – for partnership/corporation
 - Regular: two (2) working days
 - Express: one (1) working day
- *Department of Trade and Industry (DTI)* – one (1) working day for sole proprietorship
- *Board of Investments (BOI)*
 - Regular: twenty (20) working days
 - For micro and small enterprises: one (1) working day
- *Philippine Economic Zone Authority (PEZA)* - minimum of one (1) day and maximum of fourteen (14) days

3. SPECIAL SERVICES FOR EXPEDITING APPLICATIONS

Assistance to Micro, Small and Medium-Sized Projects

The BOI extends the following:

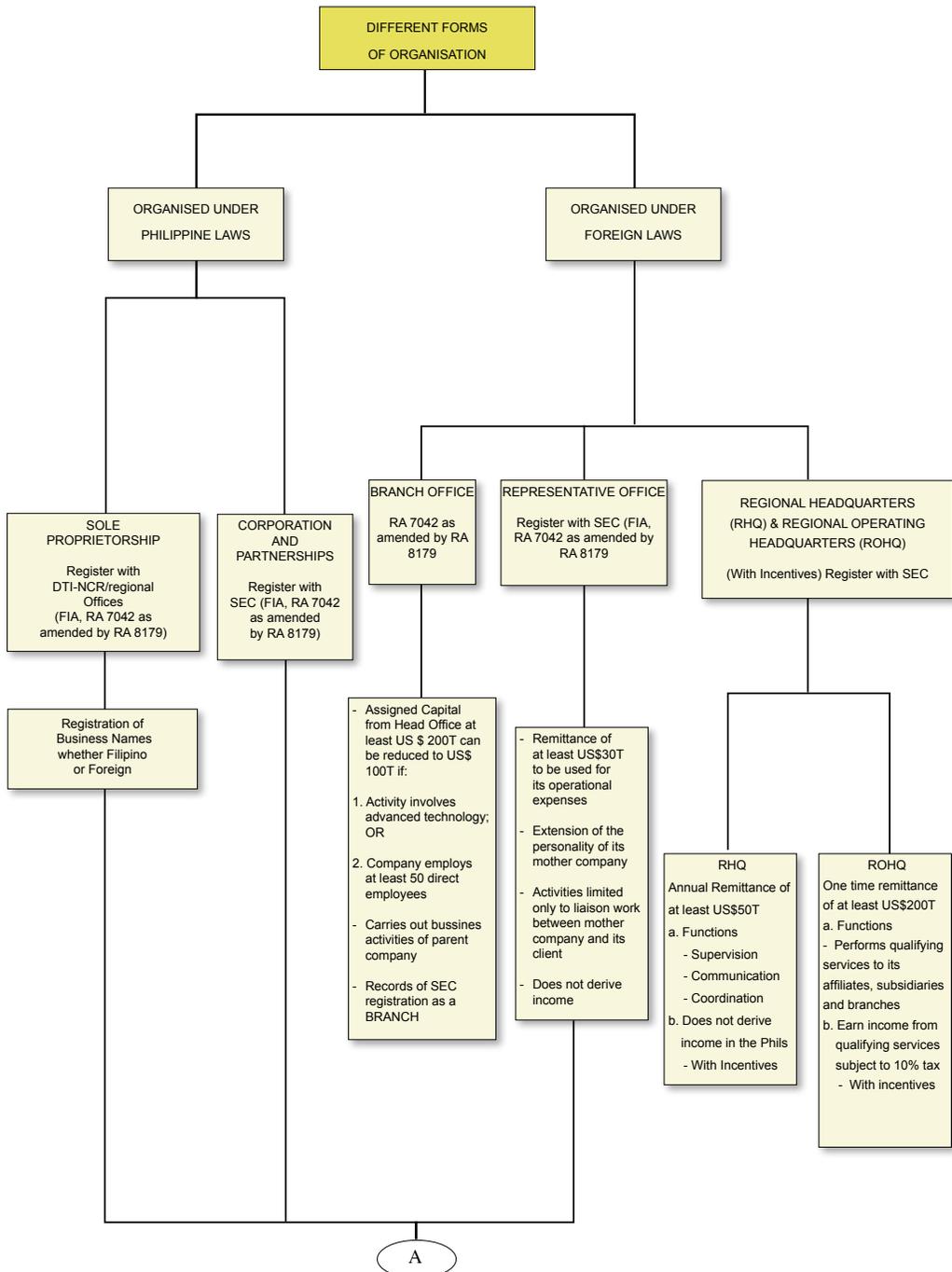
- Preparation of simplified project application for BOI registration
- Identification of MSME support companies
- Sourcing financing support

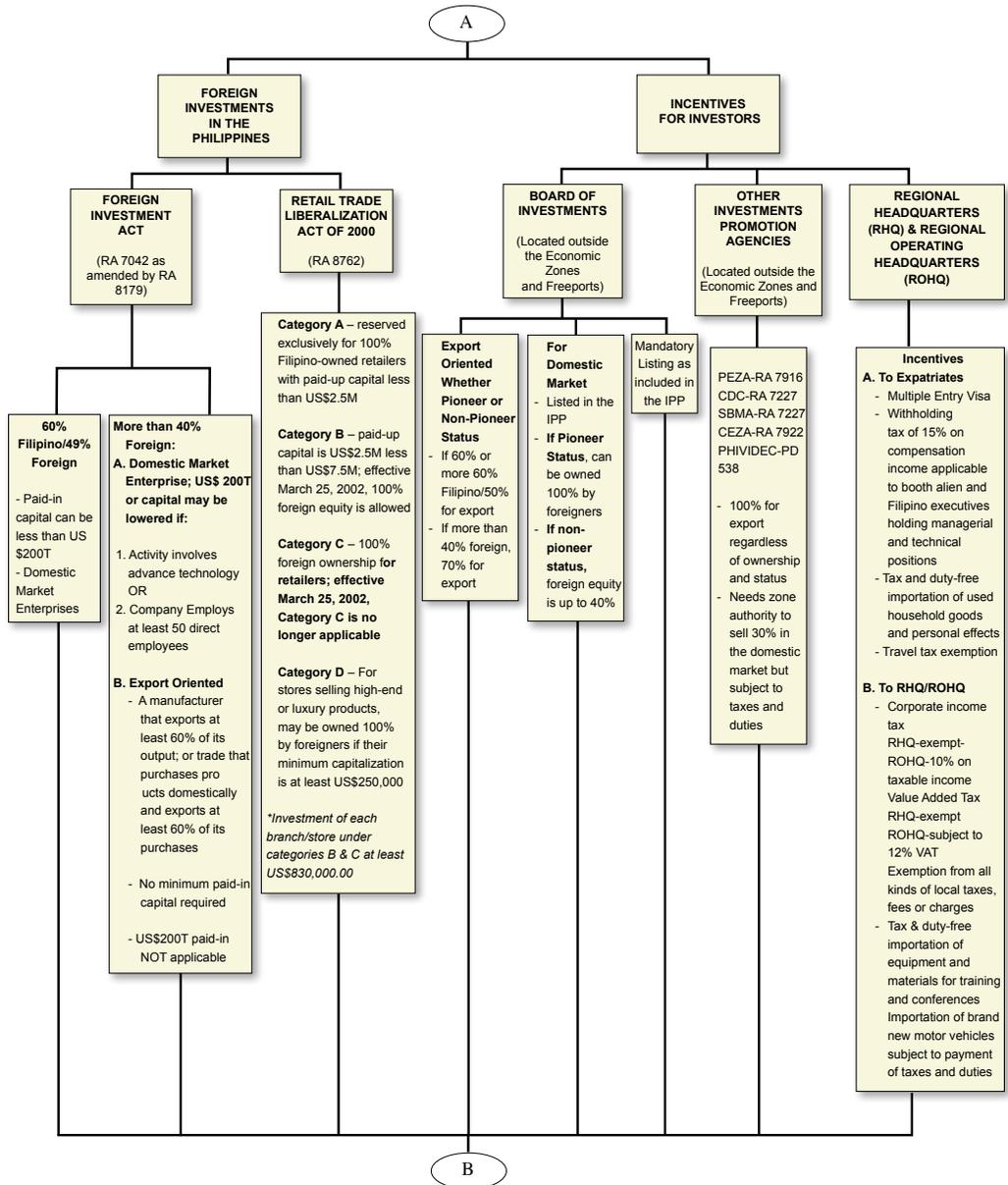
In addition, the following are the assistance provided to micro and small enterprises:

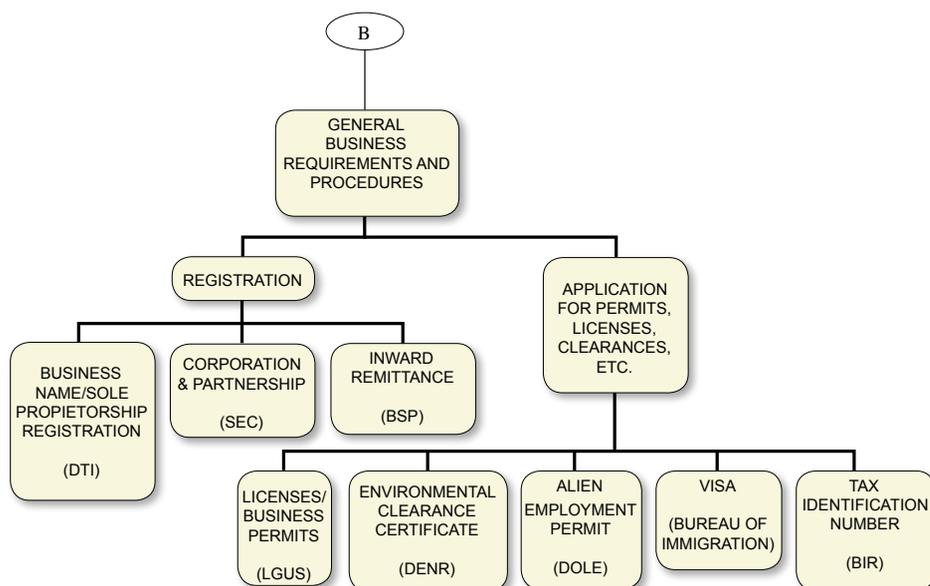
- Exemption from application and registration fees for micro enterprises
- Seventy five percent (75%) reduction in application and registration fees for small enterprises
- Exemption from the twenty five percent (25%) equity requirement
- Simplified reportorial requirements
- Simplified application for incentives
- One-day processing of application for registration
- Reduced fees for incentives availment



4. PROCEDURES FOR INVESTMENT APPLICATIONS







IV. INVESTMENT PROTECTION

1. **CONVERSION, REPATRIATION AND TRANSFERS**

The Philippines has adopted a floating rate system where the determination of the peso to dollar exchange rate is left to market forces. The Bangko Sentral ng Pilipinas (BSP) occasionally intervenes in the foreign exchange market by selling or buying dollars with the intention of smoothing out sharp fluctuations in the exchange rate, providing indicative guidance and ensuring stability in the foreign exchange market.

As a general policy, foreign investments need not be registered with the BSP. The registration of a foreign investment with the BSP is only required if the foreign exchange needed to service the repatriation of capital and remittance of dividends, profits and earnings accruing on said foreign investments shall be sourced from the domestic banking system. Given this general policy, BSP-registered foreign investments enjoy full and immediate repatriation of capital and remittance of dividends, profits, and earnings that accrue thereon.



2. EXPROPRIATION AND COMPENSATION

There shall be no expropriation by the government of the property represented by investments or of the property of the enterprise except for public use or in the interest of national welfare or defense and upon payment of just compensation. In such cases, foreign investors or enterprises shall have the right to remit sums received as compensation for the expropriated property in the currency in which the investments was originally made and at the exchange rate at the time of remittance.

3. INVESTMENT AGREEMENTS

The Philippines signed investment promotion and protection agreement with forty-one (41) countries, namely: Argentina, Australia, Austria, Bahrain, Bangladesh, Belgium/Luxembourg, Cambodia, Canada, Chile, China, Chinese Taipei, Czech Republic, Denmark, Equatorial Guinea, Finland, France, Germany, India, Indonesia, Iran, Italy, Japan, Kingdom of Saudi Arabia, Korea, Kuwait, Lao People's Democratic Republic, Mongolia, Myanmar, Netherlands, Pakistan, Portugal, Romania, Russia, Spain, Sweden, Switzerland, Thailand, Turkey, United Kingdom of Great Britain and Northern Ireland, Venezuela, Viet Nam.

4. INTELLECTUAL PROPERTY RIGHTS (IPR)

i) Intellectual Property Laws

RA No. 8293, also known as the *Intellectual Property Code of the Philippines (IP Code)*, codified the minimum IPR system committed under the WTO Agreement, in particular the *Agreement on Trade-Related Aspects of IPR (TRIPs)*.

The IPRs recognised by the law are: patents (inventions, utility models and industrial designs), copyright and related rights, trademarks and service marks, geographical indications, industrial designs, lay-out designs of integrated circuits and undisclosed information.

ii) Enforcement Efforts

Since the launching in 2005 of a comprehensive and concerted IPR strategy, the Philippine government has significantly improved its performance in all critical areas of its "Strengthening the IPR Regime Strategy", as follows: (1) Public Outreach; (2) Institution and Capacity



Building; (3) IPR Enforcement; (4) Judicial and Adjudication Reforms; (5) Legislation and Policy Reform; and (6) International Cooperation.

iii) Enforcement Procedures and Penalties for Infringement

Infringement cases may be filed before the regular trial court regardless of amount claimed. The Bureau of Legal Affairs (BLA) of the Intellectual Property Office of the Philippines can take cognizance of administrative complaints for violations involving intellectual property rights when the total damages claimed are not less than Two Hundred Thousand pesos (P200,000.00). Other administrative penalties may be imposed by the Director of Legal Affairs for violations of laws on intellectual property rights.

Without prejudice and in addition to administrative penalties, the Intellectual Property Code provides for criminal actions that may be prosecuted before the regular courts. If found guilty, imprisonment and/or fine shall be imposed upon the infringer.

iv) International Treaties

The Philippines is a signatory to several international treaties on intellectual property rights:

- *Berne Convention for the Protection of Literary and Artistic Works (since 1951)*
- *Paris Convention for the Protection of Industrial Property (since 1965)*
- *Convention Establishing the Intellectual Property Organization (since 1980)*
- *Budapest Treaty on the International Recognition of the Deposit of Microorganisms for Purposes of Patent Procedure (since 1981)*
- *Rome Convention (Performers, Producers of Phonographs and Broadcasting Organizations (since 1984)*
- *Agreement on Trade-Related Aspects of Intellectual Property Rights (since 1995)*
- *Patent Cooperation Treaty (since 2001)*
- *WIPO Copyright Treaty (since 2002)*
- *WIPO Performances and Phonograms Treaty (since 2002)*

Other related laws:

- *RA No. 8792 (Electronic Commerce Act, June 2000)*
- *RA No. 9150 (An Act Providing for the Protection of Layout*



- *Designs or Topographies of Integrated Circuits, August 2001)*
- *RA No. 9168 (An Act to Provide Protection to New Plant Varieties and Establishing the National Plant Variety Protection Board, June 2002)*
- *RA No. 9239 (An Act Regulating Optical Media, Reorganizing for This Purpose the Videogram Regulating Board, Providing Penalties Therefor and for Other Purposes, February 2004)*

5. DISPUTE SETTLEMENT

Dispute settlement and processing of grievances existing under laws, regulations and administrative procedures to which foreign investors have recourse:

i) Disputes between Governments

The Philippines subscribes to the WTO dispute settlement procedures as the primary and ultimate mechanism to settle disputes between governments in matters related to the formal jurisdiction of the WTO.

ii) Disputes between Private Parties and Government

Bilateral investment promotion and protection agreements entered into by the Philippines provide for the amicable settlement through negotiations of disputes between a contracting party and a national of a contracting party. It also provides an option for the submission of disputes to a competent court of a contracting party or the International Center for the Settlement of Investment Disputes (ICSID).

iii) Disputes between Private Parties

The Philippines recognises various forms of alternative dispute resolution. Commercial disputes may be settled through negotiation, mediation/conciliation and arbitration.

Existing laws on disputes between private parties include:

- RA No. 9285 (*Alternative Dispute Resolution Act of 2004*) provides for the use of ADR as an efficient tool and an alternative procedure for the resolution of appropriate cases;
- RA No. 876 (*Arbitration Law*) prescribes the procedures for arbitration in civil controversies;
- PD No. 1746 authorises the Philippine Domestic Construction Board to adjudicate and settle claims and disputes in the



- implementation of public and private construction contracts;
- EO No. 1008 (*The Construction Industry Arbitration Law*) establishes the Construction Industry Arbitration Commission, the body which has original and exclusive jurisdiction over disputes arising from or connected with contracts entered into by parties involved in construction in the Philippines, whether government or private contracts;
- RA No. 8293 (*The Intellectual Property Code of the Philippines*) provides for a dispute settlement mechanism for disputes between parties to a technology transfer payments. It also provides the Director-General of the Intellectual Property Office with the original jurisdiction to resolve disputes relating to the terms of license involving the author's right to public performance or other communication of his work.

The Philippine Dispute Resolution Center Inc. (PDRCI) of the Philippine Chamber of Commerce and Industry (PCCI) promotes and encourages the use of arbitration as an alternative mode of settling commercial transaction disputes and provides dispute resolution services to the business community.

V. PERFORMANCE REQUIREMENTS

Local content requirement under the soap and detergent industry

EO 259 requires the use of at least 60% locally produced cocochemical surfactant. With RA No. 8970, soap and detergent manufacturers are now allowed to use soft surfactants that are not necessarily coconut-based.

VI. FOREIGN EQUITY POLICIES

100% foreign equity ownership is allowed in all areas except those identified in the Regular Foreign Investment Negative List in effect at the time of investment.

As a general rule, there are no restrictions on the extent of foreign ownership of export enterprises with at least 60% export.

Non-Filipino companies registered with the Board of Investments are required to become Filipino companies within 30 years by reducing foreign ownership ratio to less than 40% except for export-oriented enterprises.



VII. INVESTMENT INCENTIVES

1. INCENTIVES OFFERED UNDER THE OMNIBUS INVESTMENTS CODE OF 1987

- i) Income Tax Holiday (ITH) or Exemption from Corporate Income Tax for four (4) years (for “Non-Pioneer” projects) or six (6) years (for “Pioneer” projects), extendable to a maximum of eight (8) years.
- ii) Additional deduction for labour expense equivalent to 50% of the wages of additional skilled and unskilled labour force.
- iii) Tax and duty free importation of breeding stocks and genetic materials.
- iv) Tax credit on domestic breeding stocks and genetic materials.
- v) Simplified customs procedures for the importation of equipment, spare parts, raw materials and supplies and exports of processed products.
- vi) Importation of consigned equipment.
- vii) Employment of foreign nationals in supervisory, technical or advisory positions. Foreign nationals may hold indefinitely the position of president, general manager and treasurer (or their equivalent) of foreign-owned registered enterprises.
- viii) Tax credit for taxes and duties paid on raw materials, supplies and semi-manufactured products used in the manufacture of export products and forming part thereof.
- ix) Access to bonded manufacturing/trading warehouse system.
- x) Exemption from wharfage dues and export tax, duty, impost and fees.
- xi) Exemption from taxes and duties on imported spare parts.
- xii) Additional deduction for necessary and major infrastructure works.



2. INCENTIVES OFFERED UNDER THE SPECIAL ECONOMIC ZONE ACT OF 1995

The Philippine Economic Zone Authority (PEZA) grants the following incentives to registered ecozone companies:

- i) Income Tax Holiday (ITH) or Exemption from Corporate Income Tax for four (4) years (for “Non-Pioneer” projects) or six (6) years (for “Pioneer” projects), extendable to a maximum of eight (8) years.
- ii) Upon expiry of the ITH, exemption from all local and national taxes, and in lieu thereof, payment of the special tax of 5% on Gross Income.
- iii) Exemption from duties and taxes on imported capital equipment, spare parts, supplies and raw materials.
- iv) Zero % Value Added Tax (VAT) on local purchases of goods and services, including telecommunications, power and water bills.
- v) Exemption from payment of local government fees such as Mayor’s Permit, Business Permit, etc.
- vi) Exemption from export tax, imports, fees and wharfage dues.
- vii) Simplified import and export procedures.
- viii) Employment of foreign nationals.
- ix) Special non-immigrant visa with multiple-entry privileges for foreign investors and employed foreign nationals and immediate family members.

3. INCENTIVES OFFERED UNDER THE BASES CONVERSION AND DEVELOPMENT ACT OF 1992

The Subic Bay Metropolitan Authority and the Clark Development Corporation grant the following incentives to registered enterprises located at the Subic Special Economic Zone (SSEZ) and Clark Freeport Zone (CFZ), respectively.

- i) Exemption from all national and local taxes but in lieu thereof, payment of a final tax of 5% of their gross income earned from sources within the economic zone or freeport.



- ii) Tax and duty free importation of raw materials and capital equipment.

VIII. PROMOTED AREAS/SECTORS

1. PRIORITY/PROMOTED SECTORS OR INDUSTRIES (FOR FOREIGN INVESTMENT)

- i) Agriculture/Agribusiness and Fishery
- ii) Infrastructure
- iii) Engineered Products
- iv) Tourism/Health and Wellness
- v) Business Process Outsourcing
- vi) Creative Industries
- vii) Strategic Activities
- viii) Research and Development
- ix) Export Activities
- x) Mining
- xi) Renewable Energy

For an updated list of the annual Investment Priorities Plan (IPP), visit the website: <http://www.boi.gov.ph>

2. RESTRICTIONS

Most Favored Nation Treatment

The Philippines does not discriminate against any investment source economy.

National Treatment

The Philippines does not apply national treatment to certain investments areas as specified by its *Constitution and the Foreign Investments Act* (FIA) of 1991 (RA No. 7042, as amended by RA No. 8179, 1996).

The FIA provides the rules and regulations for foreign investments without incentives. The law states that the domestic market is open to foreign



investors as long as the activity is not included in the foreign investment negative list. For an export enterprise, which exports 60% or more of its output, there are no restrictions on the extent of foreign ownership unless the activity falls within the negative list.

The current negative list, the 7th Regular Foreign Investment Negative List (EO No. 584 dated 08 December 2006), and its update may be accessed at this website: http://www.neda.gov.ph/references/files2007/7thRFINLEO584_pager.pdf

IX. TAXATION

1. INCOME TAX

Income Tax is a tax on a person's income, emoluments, profits arising from property, practice of profession, conduct of trade or business or on the pertinent items of gross income specified in the *Tax Code* of 1997 less the deductions and/or personal and additional exemptions, if any, authorised for such types of income, by the *Tax Code* or other special laws.

2. VALUE ADDED TAX

Value-Added Tax is a form of sales tax. It is a tax on consumption levied on the sale of goods and services and on the importation of goods into the Philippines. It is an indirect tax, which can be passed on to the buyer.

3. PERCENTAGE TAX

Percentage tax is a business tax imposed on persons or entities who sell or lease goods, properties or services in the course of trade or business whose gross annual sales and/or receipts do not exceed One Million Five Hundred pesos (P1,500,000.00) and who are not VAT-registered.

4. DOCUMENTARY STAMP TAX

Documentary Stamp Tax is a tax on documents, instruments, loan agreements and papers evidencing the acceptance, assignment, sale or transfer of an obligation, right or property incident thereto.



5. TAX TREATIES

The Philippines has effective tax treaties with thirty-seven (37) countries namely, Australia, Austria, Bahrain, Bangladesh, Belgium, Brazil, Canada, China, Czech, Denmark, Finland, France, Germany, Hungary, India, Indonesia, Israel, Italy, Japan, Korea, Malaysia, Netherlands, New Zealand, Norway, Pakistan, Poland, Romania, Russia, Singapore, Spain, Sweden, Switzerland, Thailand, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United States of America, and Viet Nam.

X. FINANCIAL REGULATIONS

1. BORROWING REGULATIONS

i) Foreign Firm's Access to Peso

Peso financing of Authorized Agent Banks (AABs)⁵ to non-residents is disallowed unless permitted by the Bangko Sentral ng Pilipinas (BSP). This is in reference to the General Policy on Loans and Guarantees, Section 22 of BSP's Manual of Regulations on Foreign Exchange Transactions.

In the event that an AAB is given authorisation to extend peso financing to a non-resident, their capacity to borrow and the amount that they can take as loan will be assessed by the individual financial institutions according to their own processes. Residents also undergo this assessment.

A key consideration by banks in extending loans, credit accommodations, and guarantees to any person, partnership, association, corporation or other entity is the Single Borrower's Limit (SBL). This places the maximum value on the said activities to twenty five percent (25%) of the net worth of a bank. The SBL is detailed under Circular No. 425 series of 2004 issued by the BSP.

ii) Access to Foreign Loans

Loans shall be registered with the BSP to be eligible for servicing using foreign exchange purchased from AABs or their subsidiary/affiliate foreign exchange corporations. All public and private sector publicly guaranteed obligations from foreign creditors, offshore banking units,

⁵Authorized Agent Banks (AABs) refer to all categories of banks (except offshore banking units) duly licensed by the BSP

foreign currency deposit units (FCDU)/expanded foreign currency deposit units (EFCDU) shall be referred to the BSP for prior approval, unless otherwise indicated in relevant BSP regulations. Other private sector loans from these creditors and other financing schemes/arrangements shall require prior approval and/or registration by the BSP if these will ultimately involve foreign exchange purchased from AABs or their subsidiary/affiliates foreign exchange corporations.

iii) Loans Requiring Prior Bangko Sentral Approval

Prior Bangko Sentral approval shall be required for the following loans:

- (a) Loans of the following public sector entities irrespective of maturity, creditor and source of foreign exchange for servicing thereof except short-term FCDU/EFCDU loans:
 - National Government, its agencies and instrumentalities;
 - Government-owned/controlled corporations;
 - Government financial institutions, except short-term normal interbank borrowings;
 - Local governments; and
 - Other public sector entities
- (b) Loans of the private sector irrespective of maturity, creditor and the source of foreign exchange for servicing thereof if:
 - Guaranteed by government corporations and/or government financial institutions;
 - Covered by foreign exchange guarantees issued by AABs; and
 - To be granted by FCDUs/EFCDUs and specifically or directly funded from or collateralised by offshore loans or deposits.
- (c) Loans with maturities in excess of one year to be obtained by private non-bank financial institutions intended for relending to public or private sector enterprises.
- (d) Other private sector loans, irrespective of maturity and currency if to be serviced using foreign exchange purchased from the banking system.



iv) Loans Not Requiring Prior Bangko Sentral Approval

- (a) The following loans may be granted without prior approval of the Bangko Sentral:
- Loans of resident private sector borrowers from FCDUs/EFCDUs/offshore sources, irrespective of maturity, to be serviced using foreign exchange purchased from outside of the banking system;
 - Loans of non-residents from FCDUs/EFCDUs, irrespective of maturity, provided that the loan shall be serviced using foreign exchange purchased from outside the banking system;
- (b) Short-term (with maturity not exceeding one year) loans of financial institutions, both public and private, for normal interbank transactions, e.g., interbank call loans.
- (c) Short-term loans of the private sector in the form of export advances from buyers abroad.
- (d) Short-term loans of the following private and public sector borrowers from FCDUs/EFCDUs:
- Commodity and service exporters – provided these loans are used to finance export-related import costs of goods and services as well as peso cost requirements.
 - Producers/manufacturers, including oil companies and public utility concerns – provided the loans are used to finance import costs of goods and services necessary in the production of goods by the borrower concerned.
- (e) Short-term loans of private exporters/importers from Offshore Banking Units (OBUs) and foreign banks with branches in the Philippines, provided that:
- The loans are not covered by a guarantee from a government financial institution/corporation;
 - The loans shall be exclusively used to finance specific trade transactions, i.e., to liquidate/pay for import obligations and/or in the case of export financing transactions, to fund the borrower's pre-export financing requirements and shall not

- be refinanced by a medium-/long-term foreign currency loan;
- Proceeds of loans intended to pay for foreign exchange requirements shall be paid directly to the supplier/creditor, while amounts intended to fund pre-export peso costs shall be inwardly remitted and sold to the banking system;
 - Drawdown and registration requirements shall be complied with;
 - Any assignment of the loan by the creditor concerned shall be reported to BSP within five days from date of assignment;
 - Creditor banks shall submit the following reports to BSP:
 - Their short-term lending program for private sector borrowers for the next six months indicating their proposed credit limit together with a list of prospective borrowers/beneficiaries; and
 - Monthly report on loans granted to eligible borrowers.
 - The borrowers shall submit monthly reports on transactions and status of their short-term loans within three (3) banking days after end of reference month.
- (f) Short-term loans of private exports/importers from other offshore sources/creditors provided that all provisions of Sec. 24.5 are complied with, except item (F), and that the loans shall be granted against BSP approved short-term relending programs of foreign creditors.
- (g) Private sector loans not guaranteed by foreign governments/ official export credit agencies covering importations of freely importable commodities under deferred Letters of Credit (L/ Cs) or open account/documents against acceptance (OA/DA) arrangements with a term of more than one (1) year.
- (h) Private sector loans granted by foreign companies to their local branches/subsidiaries, irrespective of amount and maturity, provided these are used to finance eligible projects/costs.



2. FOREIGN EXCHANGE REGULATIONS

The country adopts a floating rate system where the determination of the peso to dollar exchange rate is left to market forces. The BSP occasionally intervenes in the foreign exchange market by selling or buying dollars with the intention of smoothing out sharp fluctuations in the exchange rate, providing indicative guidance and ensuring stability in the foreign exchange market.

3. REPATRIATION OF CAPITAL/PROFITS

As a general policy, foreign investments need not be registered with the BSP. The registration of a foreign investment with the BSP is only required if the foreign exchange needed to service the repatriation of capital and the remittance of dividends, profits and earnings shall be sourced from the AABs or their subsidiary/affiliate foreign exchange corporations. For purposes of registration, foreign investments may be in the form of: (1) foreign direct investment in Philippine firms or enterprises; (2) investments in peso-denominated government securities; (3) investments in securities listed in the Philippine Stock Exchange (PSE); (4) investments in peso-denominated money market instruments; and, (5) investments in peso time deposits with AABs with a minimum maturity of ninety (90) days. BSP-registered foreign investments enjoy full and immediate repatriation of capital and remittance of profits, dividends, and other earnings which accrue thereon.

4. OTHER SPECIAL REGULATIONS

Capital Exports

Regulations/institutional measures that limit capital or the outflow of foreign investment:

A Philippine resident may invest abroad only if:

- The investment are funded by withdrawals from the resident investors' foreign currency deposit units/accounts; or
- The funds to be invested are not among those required to be sold to the banking system for pesos; or
- The funds to be invested are sourced from the banking system but in amounts of less than US\$30 million per investor per year.



XI. APPROVAL FOR THE EMPLOYMENT OF FOREIGN WORKERS

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

Foreign nationals who wish to come to the Philippines can enter as a tourist without visa under EO No. 408, or secure a temporary visitor's visa under Section 9(a) of the *Philippine Immigration Act*, as amended, before any Philippine consular posts abroad. Section 9(a) visa can either be for business, pleasure, or health and normally entitles the alien to an initial stay of fifty-nine (59) days, extendable to a year.

While in the Philippines, the Bureau of Immigration (BI) allows the alien to convert his immigration status from tourist/temporary visitor to another visa category without the necessity of leaving the country to secure the new visa.

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

i) Alien Employment Permit (AEP)

Article 40 of the *Labor Code* provides that any alien seeking admission to the Philippines for employment purposes and any domestic or foreign employer who desires to engage an alien for employment in the Philippines shall obtain an employment permit from the Department of Labour and Employment. An Alien Employment Permit (AEP) is a document issued by the Department of Labour and Employment authorising a foreign national to work in the Philippines.

(a) Foreign nationals required to apply for an AEP

- Foreign nationals seeking employment in the Philippines whether they are non-residents or refugees;
- Foreign professionals who are allowed to practice their profession in the Philippines under reciprocity and other international agreements and in consultancy services pursuant to Section 7(j) of the Professional Regulation Commission (PRC) Modernization Act of 2000.
- Holders of Special Investors Resident Visa (SIRV), Special



Retirees Resident Visa (SRRV), Treaty Traders Visa (9d) or Special Non-Immigrant Visa (47(a)2) for as long as they occupy any executive, advisory, supervisory, or technical position in any establishment.

(b) Exempted from securing an AEP

- Resident Foreign Nationals employed or seeking employment in the Philippines (Department Order (DO) 41-03);
- Members of the diplomatic services and foreign government officials accredited by the Philippine government;
- Officers and staff of international organisations of which the Philippine government is a cooperating member, and their legitimate spouses desiring to work in the Philippines;
- Foreign nationals elected as members of the Governing Board who do not occupy any other position, but have only voting rights in the corporation;
- All foreign nationals granted exemption by special laws and all other laws that may be promulgated by the Congress;
- Foreign nationals who come to the Philippines to teach, present and/or conduct research studies in universities and colleges as visiting, exchange or adjunct professors under formal agreements between universities or colleges in the Philippines and foreign universities or colleges; or between the Philippine government and foreign government; provided that the exemption is on a reciprocal basis (DO 41-03);
- Owners and representatives of foreign principals, whose companies are accredited by the Philippine Overseas Administration (POEA), who come to the Philippines for a limited period solely for the purpose of interviewing Filipino applicants for employment abroad.

ii) Multiple Entry Visa Holder Requirements

The expatriates of BOI-registered firms who qualify for special non-immigrant visa under Section 47(a)(2) of the *Philippine Immigration Act* may apply for multiple entry visa by securing Emigration Clearance Certificate (ECC) and multiple Special Return Certificate (SRC) before departure from the Philippines with the Bureau of Immigration. ECCs serve as their Exit Clearance while SRC's enable them to be admitted upon their return to the country under the same category when they left.

Any alien, except nationals classified restricted by the Department of Foreign Affairs and who meets the following qualifications may be issued the following types of visas:

(a) *Special Investors Resident Visa (SIRV)*

- Investment of at least Seventy Five Thousand US dollars (US\$75,000.00)
- Holder of the special visa has the privilege to reside in the Philippines for as long as his/her investment exists
- Investor's spouse and unmarried children under twenty-one (21) years of age who are joining him in the Philippines may be issued the same visa

(b) *Pre-arranged employment Visa under Sec. 9(g) of the Philippine Immigration Act*

- Employment in any technical, executive or managerial position

(c) *International Treaty Investors Visa under Sec. 9(d) of the Philippine Immigration Act*

- Investment of at least Three Hundred Thousand pesos (P300,000.00). Only Germans, Japanese and Americans are parties with the Philippines to this treaty

(d) *Special Non-Immigrant Visa under Presidential Decree (PD) No. 1034*

- Granted to foreign personnel of offshore banks duly licensed by the Bangko Sentral ng Pilipinas to operate as an offshore banking unit
- Entitled to multiple entry privileges and are exempt from the payment of immigration fees, fingerprinting, and registration with the Bureau of Immigration

(e) *Special Non-Immigrant Visa under Section 47(a)(2)*

- Enterprises registered under EO No. 226 and RA No. 7916 allowed to employ foreign nationals in supervisory, technical, or advisory position under Section 47(a)(2) of *Philippine Immigration Act* during its first five years of registration



- Majority foreign-owned registered enterprises may employ foreign nationals as President, treasurer and general manager beyond the five (5)-year period

(f) Special Non-Immigrant Visa under RA No. 8756

- Provides for the issuance of special non-immigrant multiple entry visas to foreign national executives of Regional Headquarters or Regional Operating Headquarters of Multinational Companies

(g) Special Subic Work Visa

- Granted to foreign nationals employed as executives of Subic Bay Freeport zone enterprises and other foreign nationals possessing highly technical skills

iii) Regulations relating to personnel management of foreign firms, e.g. minimum wage laws, minimum requirements for training or employment of local staff

The *Wage Rationalization Act (RA No. 6727, effective July 1989)* created regional tripartite wage and productivity boards to determine and fix minimum wage rates on the regional, provincial and industry levels.

The *Labour Code of the Philippines* sets the minimum conditions of employment in its Book III and the health, safety and social welfare benefits in its Book IV.

The Occupational Safety and Health Standards promulgated pursuant to Article 162 of the *Labour Code* prescribe the different rules for the protection of workers from workplace hazards.

XII. LAND AND BUILDING OWNERSHIP

Regulations on Acquisition of Land and Buildings

1. LAND OWNERSHIP

Ownership of alienable lands of public domain is limited to Filipino citizens. Ownership of private lands is limited to Filipino citizens except by hereditary succession and in cases of a natural born citizen of the Philippines who lost Filipino citizenship.



Corporations/associations/partnerships with maximum 40% foreign equity can own private land.

2. LEASE OF LAND

- **Private Lands**

Any foreign investor investing in the Philippines shall be allowed to lease private lands for a period of twenty five (25) years, renewable for another period of twenty five (25) years in accordance with domestic laws and subject to certain conditions.

- **Public Lands**

Corporations/associations/partnerships with maximum of 40% foreign equity are allowed to lease the following public lands for a period of twenty five (25) years, renewable for another period of twenty-five (25) years in accordance with domestic laws and subject to certain conditions and participation in any agreement or arrangement with the government:

- Agricultural and Foreshore Lands
- Forest/Timber Lands
- Mineral Lands
- Foreshore lands under Fishpond Lease Agreement

For lands covered by the *Comprehensive Agrarian Reform Program*, no foreign equity is allowed.

XIII. INVESTMENT PROMOTION AGENCIES

Contact Details of Investment Promotion Agencies' Frontlines:

Agency	Contact Details
1. National Economic Research and Business Assistance Center (NERBAC)-Board of Investments (BOI)	Industry and Investments Bldg. 385 Sen. Gil Puyat Ave., Makati City Tel: (63 2) 897-2116 Fax: (63 2) 895-8322 Contact person: Dir. Ramon L. Rosales Email: RLRosales@boi.gov.ph



Agency	Contact Details
2. One-Stop Processing Center Bureau of Customs	Manila International Container Port Isla Puting-bato, Tondo, Manila Tel: (63 2) 245-4101 local 2156 Fax: (63 2) 247-8020 Contact Person: Ms. Chato Balais
3. One-Stop Shop Tax Credit Center Department of Finance (DOF)	3/F, Executive Tower BSP Complex, Roxas Boulevard, Manila Tel: (63 2) 523-9217 Fax: (63 2) 526-0076 Contact Person: Atty. Villamor Ventura S. Plas
4. One-Stop Action Center Garments and Textile International (GTI)	4/F, Industry and Investments Bldg. 385 Sen. Gil Puyat Avenue, Makati City Tel: (63 2) 890-9609 / 890-9256 Contact Person: Ms. Becky Salvador







Singapore





SINGAPORE

I. RELEVANT INVESTMENT LEGISLATION

1. INVESTMENT ACT

- **1967 Economic Expansion Incentives Act**
Law which principally consolidates investment incentives.

2. COMPANIES ACT

- **Business Registration Act and Companies Act**
Indicates requirements and procedures for business registration of foreign companies.
- **The Companies Act**
Has been amended in phases after a review completed in October 2002 by the Company Legislation and Regulatory Framework Committee set up to look into how Singapore's regulations and corporate practices can keep up with international best practices and remain conducive to business.
- **Partnership Act**
- **Limited Liability Partnership Act**

3. BUSINESS NAMES ACT

- **Business Registration Act**

4. MINIMUM INVESTMENT LEVEL

No minimum investment level requirement.

5. OTHER RELATED INVESTMENT LEGISLATION

- **1968 Employment Act and 1966 Industrial Relation Act**
Regulates employment and labour relations.



Details of all Singapore laws mentioned are available at:
<http://statutes.agc.gov.sg>

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

License requirements, if any, stem mainly from special conditions of the specific sector, mostly financial activities, such as banking, insurance and stock-broking and manufacture of a small number of items, such as:

- optical discs listed in the *Manufacture of Optical Discs Act*
- beer and stout, cigars and cigarettes, drawn steel products, chewing gum and matches listed in the *Control of Manufacture Act*
- *Securities and Futures Act*
- *Banking Act*
- *Finance Companies Act*
- *Monetary Authority of Singapore Act*

Joint ventures may take the form of equity investment in a limited liability company, unlimited partnership or limited liability partnership. The laws of companies or partnerships apply where appropriate.

M&As in Singapore are subject to non-statutory rules in *Singapore Code on Takeovers and Mergers* which is administered and enforced by the Securities Industry Council.

Details of all Singapore laws mentioned are available at:
<http://statutes.agc.gov.sg>

III. **INVESTMENT APPLICATIONS**

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

Economic Development Board (EDB), Infocomm Development Authority of Singapore (IDA), International Enterprise (IE) Singapore, Monetary Authority of Singapore (MAS), and Standards, Productivity and Innovation Board (SPRING)

2. CONDITIONS INCLUDING TIMETABLE FOR PROCESSING OF APPLICATIONS

There is no screening of potential foreign investments in Singapore. Hence, no screening forms are issued. Investors need only to register their businesses with the Accounting and Corporate Regulatory Authority (ACRA) formed on 1 April 2004 with the merger of the Registrar of Companies and Businesses and the Public Accountants Board. No authorisation is required on threshold in value of investment in Singapore. With the exception of foreign equity limits for sectors outlined in section 6, guidelines, conditions, requirements, laws and regulations apply to investors irrespective of nationality.

Every new business in Singapore must be registered. The requirement also applies to any firm, individual or corporation conducting business as a nominee, trustee or agent for any foreign corporation. Business registration and guidelines are available online at <http://www.business.gov.sg>

A branch of a foreign company would also need to register with ACRA and have two local agents appointed to accept notices served on the branch. These must be natural persons (not necessarily citizens) resident in Singapore.

A foreign company may establish a representative office in Singapore to undertake promotional and liaison activities on behalf of its parent company. Representative offices from the manufacturing, trading, trade logistics and trade-related services sectors may register with the International Enterprise Singapore online at <http://www.roms.iesingapore.gov.sg> Representative offices from the finance-related industries may register with the Monetary Authority of Singapore. Forms are available at <http://www.mas.gov.sg>

Licenses, if required under specific sectors, may be obtained from the respective organisations at their websites. Entrepreneurs can also apply for licenses online at <http://www.business.gov.sg> through a step-by-step license search facility. Reasons for rejection of a license are given. An applicant can make an appeal for review with the same organisation. It may take between 14 days to 2 months to get all the necessary licenses and approvals to form a business.



3. SPECIAL SERVICES FOR EXPEDITING APPLICATIONS

Since 1961, the Economic Development Board (EDB) has been steering the growth of industry, in manufacturing and traded services. The EDB provides one-stop investment facilitation, from setting up in Singapore, securing infrastructure and manpower, to linking with the business community. EDB's mission is to develop Singapore into a vibrant and robust global hub of knowledge-driven industries in a knowledge-based economy.

4. PROCEDURES FOR INVESTMENT APPLICATIONS

A step-by-step guide to registering a business or company in Singapore is provided at http://www.business.gov.sg/EN/HowToGuide/regbiz_cohow.htm

IV. INVESTMENT PROTECTION

1. FOREIGN EXCHANGE REGIME

The Singapore dollar is freely convertible. There are currently no currency exchange controls. Singapore residents (individuals and corporations) are free to move funds, import capital or repatriate profits without restriction.

Primarily with the objective of promoting price stability as a sound basis for sustainable economic growth, the Monetary Authority of Singapore manages the Singapore dollar against a basket of currencies.

2. EXPROPRIATION AND COMPENSATION

Under the *Land Acquisition Act*, the Singapore Government is empowered to acquire land for any public purpose and for residential, commercial and industrial purposes. The Act provides for payment of compensation to the owners of such land and for appeals against awards of compensation made by the Collector of Land Revenue. Appeal Boards hear appeals from such awards.

Other than *Land Acquisition Act*, the provision for expropriation and compensation is usually included in bilateral investment guarantee agreements and in investment chapters of FTAs.



3. INVESTMENT GUARANTEE AGREEMENTS

In bilateral investment guarantee agreements with [35] countries and the [11] FTAs that Singapore has signed, there is provision to guarantee to investors the free transfer of their capital and the returns from their investments on a non-discriminatory basis.

4. INTELLECTUAL PROPERTY RIGHTS (IPR)

Intellectual Property (IP) in the form of patents, trademarks, registered designs, copyrights, layout designs of integrated circuits, trade secrets and confidential information are protected in Singapore.

The Intellectual Property Office of Singapore (IPOS) is the lead agency that formulates and regulates IP laws, promotes IP awareness and provides the infrastructure to facilitate greater development of IP in Singapore. IPOS processes all applications for patents, trademarks, and registered designs in Singapore. Applications may be filed online at <http://www.ipos.gov.sg>.

Singapore is a member of the following international bodies/treaties: WIPO, TRIPS, *Patent Cooperation Treaty*, *Paris Convention for the Protection of Industrial Property*, *Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure*, *Berne Convention for the Protection of Literary and Artistic Works*, *Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks*, *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks*, *International Convention for the Protection of New Varieties of Plants since 2004*, *Hague Agreement Concerning the International Registration of Industrial Designs*, *WIPO Copyright Treaty*, *WIPO Performance and Phonograms Treaty*, *Singapore Treaty on the Law of Trademarks*.

For further information see: <http://www.ipos.gov.sg>

5. DISPUTE SETTLEMENT

Singapore has acceded to the following conventions:

- *Convention on the Settlement of Investment Disputes (the ICSID Convention) in 1968*
- *Convention on the Recognition and Enforcement of Foreign Arbitral Awards (The New York Convention) in 1986*



Singapore enacted the *Arbitration Act* to provide for the conduct of arbitration, the *Arbitration (International Investment Disputes) Act* to implement the *ICSID Convention* and the *International Arbitration Act* to make provision for the conduct of international commercial arbitrations based on the *Model Law on International Commercial Arbitration* adopted by the UNCITRAL and conciliation proceedings and to give effect to the *New York Convention*.

Singapore joined ASEAN to strengthen the available formal dispute settlement mechanism with the *ASEAN Protocol on Enhanced Dispute Settlement Mechanism* (signed in November 2004).

The Singapore International Arbitration Centre was established in 1991 as an independent non-profit organisation to meet the demands of the international business community for a neutral, efficient and reliable dispute resolution institution.

The Singapore Mediation Centre was set up in 1997 as a non-profit organisation to promote mediation and to provide a full range of alternative dispute resolution services.

For further information see: <http://www.siac.org.sg> and <http://www.mediation.com.sg>

V. PERFORMANCE REQUIREMENTS

Singapore does not have an approval process for foreign investments; investors need only to register their businesses with the Accounting and Corporate Regulatory Authority (see section III. 2.). Singapore does not impose any local content or export requirements.

VI. FOREIGN EQUITY POLICIES

Equity Regulations

With exceptions for national security purposes and in certain industries, no restrictions are placed on foreign ownership of Singapore corporations.

The following sectors are some of the exceptions:

- Airlines
- Shipping
- Public utility services-electricity, gas and water



- Telecommunications
- Newspaper publishing
- Arms and ammunitions are subject to a government approval.

VII. INVESTMENT INCENTIVES

1. CORPORATE INCOME TAX/INCOME TAX ALLOWANCE

Tax incentives may be granted for the creation of new industries or capabilities in Singapore.

2. OTHER INCENTIVES

Grants may be granted for certain research and development and capability upgrading activities in Singapore.

3. FOREIGN LOAN

There is a 15% withholding tax for interest paid to non-resident lenders. However, the government may grant tax exemption for any 'Approved foreign loan' if the loan is utilised for the purchase of productive equipment.

VIII. PROMOTED AREAS/SECTORS

Singapore is open to foreign investment in almost all industries, except those with national security, health or social implications. The sectors/areas that have proven to be attractive to foreign investors include electronics, logistics, chemicals, communications and pharmaceuticals.

IX. TAXATION

Tax System

Up to 31 December 2002, Singapore adopted an imputation system under which tax assessed on a company resident in Singapore in respect of its normal chargeable income was passed on as tax credit to its shareholders upon the distribution of dividends.



With effect from 1 January 2003, Singapore adopts a one-tier corporate tax system. Under this system, tax paid by a company on its chargeable income is final and all dividends paid are exempt from tax in the hands of its shareholders.

A company is taxed at a flat rate on its chargeable income.

Residential Status of a Company in Singapore

A company is resident in Singapore if the control and management of its business is exercised in Singapore.

A resident company is entitled to the benefits conferred under the *Avoidance of Double Taxation Agreements* which Singapore has concluded with treaty countries.

Basis of Taxation

Singapore adopts a territorial basis of taxation. Only income derived from Singapore, or income derived overseas but received in Singapore, are subject to tax.

Group relief provisions will be introduced from the year of assessment 2003. Inter-company transactions must be concluded at an arms' length basis.

The tax year is known as a year of assessment and runs from 1 January to 31 December. Tax is imposed on a preceding year basis, i.e. profits for a financial year ending in 2001 are taxed in the year of assessment 2002.

1. CORPORATE TAX

The corporate tax rate is 17% with effect from the year of assessment 2009. It applies to both Singapore-incorporated subsidiaries as well as branches of foreign companies. It applies equally to resident and non-resident companies.

2. VALUE ADDED TAX/SALES TAX/SERVICE TAX

A Goods and Services Tax (GST) at a rate of 7% is imposed on the supply of goods and services in Singapore and on the importation of goods into Singapore.



3. WITHHOLDING TAX

Dividends: Not taxable*

Interest: 15%

Royalties: 10%

Withholding taxes at the corporate income tax rate also apply to certain other payments to non-residents, such as technical assistance fees and management fees.

**A one-tier corporate taxation system took effect on 1 Jan, 2003. It replaced the imputation system of taxing dividends, where taxes paid by a company can be imputed or passed on to shareholders.*

4. PERSONAL INCOME TAX

Graduated personal income tax rates of 0-20%, depending on the income tax bracket.

5. LAND/PROPERTY TAX

Property tax is calculated as a percentage of the annual value of all houses, lands, buildings and tenements. Annual value is defined as the gross annual rental value of the property. It is not dependent on the type of industry the property is used for.

The common methods of determining the annual value are:

- Using the rental value of comparable properties in similar locations.
- Applying a reasonable return on the capital investment in the property (commonly used for properties with no alternative use).
- Adopting 5% of the market value for vacant land or land with insignificant buildings.

The rate for industrial and commercial properties is 12%. Owner-occupied residential properties are taxed at a concessionary rate of 4%.

6. ESTATE DUTY

The estate duty has been removed with effect from 15 February 2008.



7. STAMP DUTY

This is imposed on commercial and legal documents relating to stock and shares and immovable property.

8. OTHER TAXES

Customs & Excise Duties

Singapore is a free port and has relatively few excise and import duties. All dutiable goods imported into or manufactured in Singapore are subject to Customs duty in accordance with the Schedule to the Singapore Customs Duties Order.

Where the goods are dutiable, ad valorem or specific rates may be applied. An ad valorem rate is a percentage of the assessed value of the imported goods such as 31% ad valorem. A specific rate is a specified amount per unit of weight or other quantity such as \$130 per kg.

Excise duties are imposed principally on tobacco, petroleum products and liquors. Also, very few products are subjected to import duties. The duties are mainly on motor vehicles, tobacco, liquor and petroleum products.

Note: More information is available on the Customs & Excise Duties website at www.customs.gov.sg

Motor Vehicle Taxes; Betting Taxes

Note: More information on taxation is available on the Inland Revenue Authority of Singapore website www.iras.gov.sg

X. FINANCIAL REGULATIONS

1. FOREIGN EXCHANGE REGULATIONS

There are no foreign exchange controls.

2. SOURCE OF FINANCING

Sources of financing for foreign investors include share or bond flotation,



loans for banks and other financial institutions, and trade credits. Foreign investors may also use sources derived from their enterprises, such as undistributed profits, funds borrowed from shareholders, and new issues of equity shares.

3. REPATRIATION OF CAPITAL/PROFITS

No capital controls on flow of investment proceeds

Note: More information is available on the Monetary Authority of Singapore website www.mas.gov.sg

XI. APPROVAL FOR THE EMPLOYMENT OF FOREIGN WORKERS

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

The Employment Pass Department of the Ministry of Manpower handles the Employment Pass function and issues both P and Q workpasses under the workpass system for foreigners working in Singapore. *(Please refer to Section XI.2 for definition of P and Q workpasses).*

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

The different work passes are issued in accordance with applicant's tertiary/professional/technical qualifications and basic monthly salary level.

- **P passes** for those who hold administrative, professional and managerial jobs, entrepreneurs and investors, as well as specialist talent such as world class artists and musicians
- **Q passes** for those skilled workers and technicians:
- **Work Permits** are issued to foreigners to work in Singapore if he draws a monthly salary of up to S\$2000.
- **Professional Visit Passes**
Professional visit passes are issued to foreigners permitted to engage in short term professional assignments/activities in Singapore eg. speakers at seminars/conferences.



- **Business or Social Visit Visas**
Business or Social Visit Visas are required for nationals of some countries.

Note: More information is available on the Ministry of Manpower website www.mom.gov.sg and the Singapore Immigration & Registration website at www.ica.gov.sg

XII. LAND AND BUILDING OWNERSHIP

1. REGULATIONS ON ACQUISITION OF LAND AND BUILDINGS

In principle, foreign companies use land in the form of lease from the government. The lease term, initially 30 years can be extended to 60. Lease rates vary with respect to the locations. It is possible to buy factory buildings.

2. RESTRICTIONS

Land ownership

- Non-citizens cannot own land
- Non-citizens are restricted from purchasing certain residential properties.

XIII. INVESTMENT PROMOTION AGENCIES

- ***Economic Development Board (EDB)***

Set up in 1961 to spearhead Singapore's economic development and as a one-stop agency to lead Singapore's industrialisation drive by attracting and facilitating inward investment.

Singapore Economic Development Board

250 North Bridge Road
#28-00 Raffles City Tower
Singapore 179101
Tel : 65-68326832
Fax : 65-68326565
<http://www.sedb.com>

- ***International Enterprise (IE) Singapore***

The agency spearheading the development of Singapore's external economic wing. Its mission is to promote the overseas growth of Singapore-based enterprises and international trade. At the same time, the agency also works to position Singapore as a base for foreign businesses to expand into the region in partnership with Singapore-based companies.

International Enterprise Singapore

230 Victoria Street #10-00
Bugis Junction Office Tower
Singapore 188024
Tel: 65-63376628
Fax: 65-63376898
www.iesingapore.com

- ***Standards, Productivity and Innovation Board (SPRING Singapore)***

The agency working to enhance the competitiveness of enterprises for a vibrant Singapore economy. Its focus is to champion enterprise formation and growth and to nurture a host of dynamic and innovative enterprises, including small and medium joint ventures.

SPRING Singapore

2 Bukit Merah Central
Singapore 159835
Tel : 65-62786666
Fax : 65-62786667
<http://www.spring.gov.sg>





Thailand





THAILAND

I. RELEVANT INVESTMENT LEGISLATION

The Thai Board of Investment has revised its policy pursuant to Announcement No. 1/2543 (1/2000) dated August 1, 2000. The highlights are:

- Introduce a performance-based system, in line with good governance, that requires promoted investors to submit evidence of qualified performance before claiming the benefits from their incentives
- Strengthen competitiveness (require international-standard certification)
- Previous conditions on exports and use of local materials are repealed so that the criteria for promotion will be in line with international trade and investment agreements
- Continue decentralisation
- Promote small and medium industries
- Place priority on promoting agriculture and agricultural products and activities with technological and human resource development, basic transportation, infrastructure and services, environmental protection and conservation and targeted industries

Full details of updated relevant information on investment promotion, including the above Announcement on investment promotion policy can be found on the Thai Board of Investment (BOI) website www.boi.go.th.

On Announcements, choose “*About BOI*” and then “*Law and Regulation*”. Important Announcements include Announcement No. 1/2543 (1/2000), No. 2/2543 (2/2000), No. 7/2547 (7/2004) and No. 2/2551 (2/2008) (Thailand Investment Years 2008-2009).

For information about doing business in Thailand, choose “*Online Services*” followed by “*Publications*” and then “*A Business Guide to Thailand*”.

For information about BOI, choose “*Online Services*” followed by “*Publications*” and then “*A Guide to the Board of Investment*”.



1. INVESTMENT ACT

- ***Investment Promotion Act B.E. 2520 (1977), as amended by the Investment Promotion Act (Revision 2) B.E. 2534 (1991) and the Investment Promotion Act (Revision 3) B.E. 2544 (2001)***

Sets forth tax and non-tax incentives for both local and foreign investors in areas promoted by the Government. Further information on incentives could be found at the website address of the Thai Board of Investments (BOI) (choose “About BOI” and subsequently “Incentives”):

<http://www.boi.go.th/english/>

2. COMPANIES ACT

Under Thai law there are various forms of business. Partnerships and private limited companies are registered according to the provisions of the Civil and Commercial Code. The operation of a public limited company is addressed under the provisions of the Public Limited Company Act. Co-operatives are under the Co-operative Act.

A concise account of *Types of Business Organizations* can be found on BOI website www.boi.go.th in “A Business Guide to Thailand” Chapter 1: *Procedures for Establishing a Company*.

See also *Type of Business Organization* in the website of Department of Business Development; choose “Business Registration” under “Public Services”: <http://www.dbd.go.th/mainsite/index.php?id=102&L=1>

- ***The Factory Act of 1969 (amended in 1972, 1975, 1979, and 1992)***

Stipulates regulations for factory construction, operation and expansion, and safety requirements. The latest revision of the Act also imposes strict controls on industrial pollution. The Act is administered by the Ministry of Industry.



The following website addresses provide information on Thailand business laws:

- <http://www.dbd.go.th>
- <http://www.boi.go.th>
- <http://www.ieat.go.th>
- <http://www.diw.go.th>
- <http://www.meechailaw.com>

- ***Industrial Estate Authority of Thailand***

The Industrial Estate Authority of Thailand Act B.E.2522 [1979] was enacted by the Industrial Estate Authority of Thailand (I-EA-T). To improve effectiveness and efficiency as a potential and performance-enhancing tool for investors and operators in industrial estates, the Act was amended and re-enacted as the Industrial Estate Authority of Thailand Act B.E.2550 [2007] to meet the needs of today's dynamic marketplace and obligations under World Trade Organization (WTO) agreements. <http://www.ieat.go.th>

3. BUSINESS NAMES ACT

Steps for company registration are as follows:

- Corporate Name registration.
- Filing a Memorandum of Association
- Convening a statutory meeting
- Registration
- Registering for tax document

The first step of the company registration process is the reservation of the company's name. To reserve the name, one of the promoters is required to submit a signed Name Reservation Form to the Department of Business Development of the Ministry of Commerce.



A promoter is required to supply the requested company name together with two alternate names. The registrar will then examine the application in order to ensure that:

- No similar company names have previously been reserved
- The names do not violate any ministerial rules

If the applicant's intended name is in conflict with either of the above, that name will be rejected, and the registrar will consider the alternative names submitted. This process can normally be completed within two or three days. If all three names submitted are rejected the applicant will be required to re-submit the form with three new names.

The registrar has considerable discretion with regard to the consideration of company names. Many times, the first name or even the first two names are rejected for violating one of the two rules stated above. Once approved, the corporate name reservation is valid for 30 days, with no extensions.

For a brief account on the registration process, please refer to Chapter 1: *Procedures for Establishing a Company* in "A Business Guide to Thailand" on the BOI website www.boi.go.th

See also "Business Registration" under "Public Services" on the website of Department of Business Development:
<http://www.dbd.go.th/mainsite/index.php?id=40&L=1>

4. MINIMUM INVESTMENT LEVEL

Under the Board of Investment's criteria for promotion, a minimum capital of one million Baht (excluding cost of land and working capital) is required.

5. OTHER RELATED INVESTMENT LEGISLATION

- ***Foreign Business Act B.E. 2542 (1999)***

The 1972 Alien Business Law was replaced with The Foreign Business



Act B.E. 2542 (1999). The Act, which is more liberal, entered into force on 3 March 2000. It provides the lists of prohibited and restricted businesses, namely, List 1, List 2, and List 3. It introduces the minimum capital requirement for businesses; both listed and not listed in the Act.

The Act regulates the activities in which companies designated as “foreign” may engage in. While some activities are completely prohibited, some may be engaged in with prior approval from a designated government agency, and some do not required any special approval at all.

According to the Act, a company is foreign if it is registered under the laws of:

- another country (including all branches, representative offices, and regional offices of overseas companies opening in Thailand).
- Thailand, and 50 percent or more of its shares are held by non-Thais (individuals or business entities).

The Foreign Business Act of 1999 has identified three lists of activities in which foreign participation may be prohibited or restricted.

Activities stated in List 1 are designated as “business not permitted for foreigners to operate due to special reasons”. Foreign companies are completely restricted from engaged in the activities contained in List 1.

Activities stated in List 2 are designated as “business related to national safety or security, or affecting arts and culture, traditional and folk handicraft, or natural resources and environment”. Foreign companies may only be engaged in activities stated in List 2 with prior Cabinet approval.

Activities stated in List 3 are designated as “business [in] which Thai nationals are not yet ready to compete with foreigners”. To engage in activities stated in List 3, the foreign company must apply for and obtain a Foreign Business License prior to commencing the activities.



For List 2 or List 3, a foreign company may obtain an *exemption* from the above stated rule if it is promoted under the Investment Promotion Act or permitted under the law governing Industrial Estate Authority of Thailand or other laws.

The three Lists mentioned in the Foreign Business Act could be obtained from the following website address:

<http://www.dbd.go.th/mainsite/index.php?id=720&L=1>

Alternatively, please refer to Chapter 5 of “A Business Guide to Thailand” at the BOI website.

Note: the official collection of all Thai laws is also available in Thai language at the website of the Office of the Council of State, <http://www.krisdika.go.th/>

Office of the Council of State

1 Phra Arthit Road, Khet Phranakorn

Bangkok 10200

Tel : (662) 222 0206 - 9, (662) 221 5306, (662) 221 4344,
(662) 221 5376, (662) 221 5395

Fax : (662) 226 6201

The Lawyer’s Council of Thailand can provide a list of law firms that specialises in the establishment of foreign businesses on request. They can be contacted at **legalaid@lawyerscouncil.or.th** or by phone at (662) 629-1430.

II. SECTOR-SPECIFIC LAWS AND POLICIES

Some of Thailand’s important sector-specific laws include the following sectors:

- The Lists in Foreign Business Act, Air Transport, Banking, Education, Finance Companies, Food and Drugs, Insurance, Maritime Transport, Mining, Road Transport Service, Telecommunications, Tourism, Real Estate (Land Ownership and Foreign Investor, Land Code, Investment Promotion Act B.E. 2520, Industrial Estate Authority of Thailand, Petroleum Act, Land

Lease, Condominium Ownership, etc), Cinema, Tobacco Product, Playing Cards.

Please refer to information in Thailand's latest Individual Action Plan on the APEC-IAP website: <http://www.apec-iap.org>

Note : Please see also Section VIII. 3. on Restrictions.

III. INVESTMENT APPLICATIONS

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

- ***The Board of Investment (BOI)***

The BOI is the government agency responsible for providing incentives to stimulate investment in Thailand. In addition, the BOI conducts extensive investment flow promotion activities, both in Thailand and abroad.

2. CONDITIONS INCLUDING TIMETABLE FOR PROCESSING OF APPLICATIONS

To qualify for incentives, an investor shall file its application with the Office of the Board of Investment (OBOI). A wide range of activities including both manufacturing and service sectors are eligible for promotion.

The approval process will normally take 15-60 working days, from the submission of the complete project application documentation, for projects under 750 million baht and 90 working days for larger projects.

Please refer to BOI's website for the application form (choose "Online Services") <http://www.boi.go.th/english/services/guide07.pdf>



3. SPECIAL SERVICES FOR EXPEDITING APPLICATIONS

BOI Thailand offers one-stop service which provides a wide range of services including Investment Opportunities.

The Investment Services Center maintains comprehensive information on investment opportunities in Thailand, both by sector and by region. Information and investment advice are readily available to both Thai and foreign investors at no charge. BOI Thailand offers one-stop service which provides wide ranges of services including:

- ***Assistance in Setting Up a Business***

The BOI offers a wide range of valuable business-related services to investors, including helping investors obtain official permits and documents required and permanent residence permits, industrial subcontracting and investment matchmaking. BOI Thailand also assists investors to gain access to public utilities such as water, electricity and telecommunications.

- ***One-Stop Service for Visas and Work Permit***

The processing of visa/work permit applications or renewals could be completed within 3 hours, assuming all required documents are provided. Investors or experts granted privileges under the *Investment Promotion Act* who are allowed to stay in Thailand on a temporary basis to undertake investment or business activities can also have access to the services provided by the One-Stop Center.

The Center is located at:

16th Floor, Rasa Tower 2, 555 Phaholyothin Road

Chatuchak, Bangkok, 10900

Tel : (662) 937 1155

Fax : (662) 937 1191

E-mail : visawork@boi.go.th



- ***Foreign Expert Services Unit***

The unit provides both foreign and Thai companies with expedited services related to bringing in expatriates to work on BOI-promoted projects.

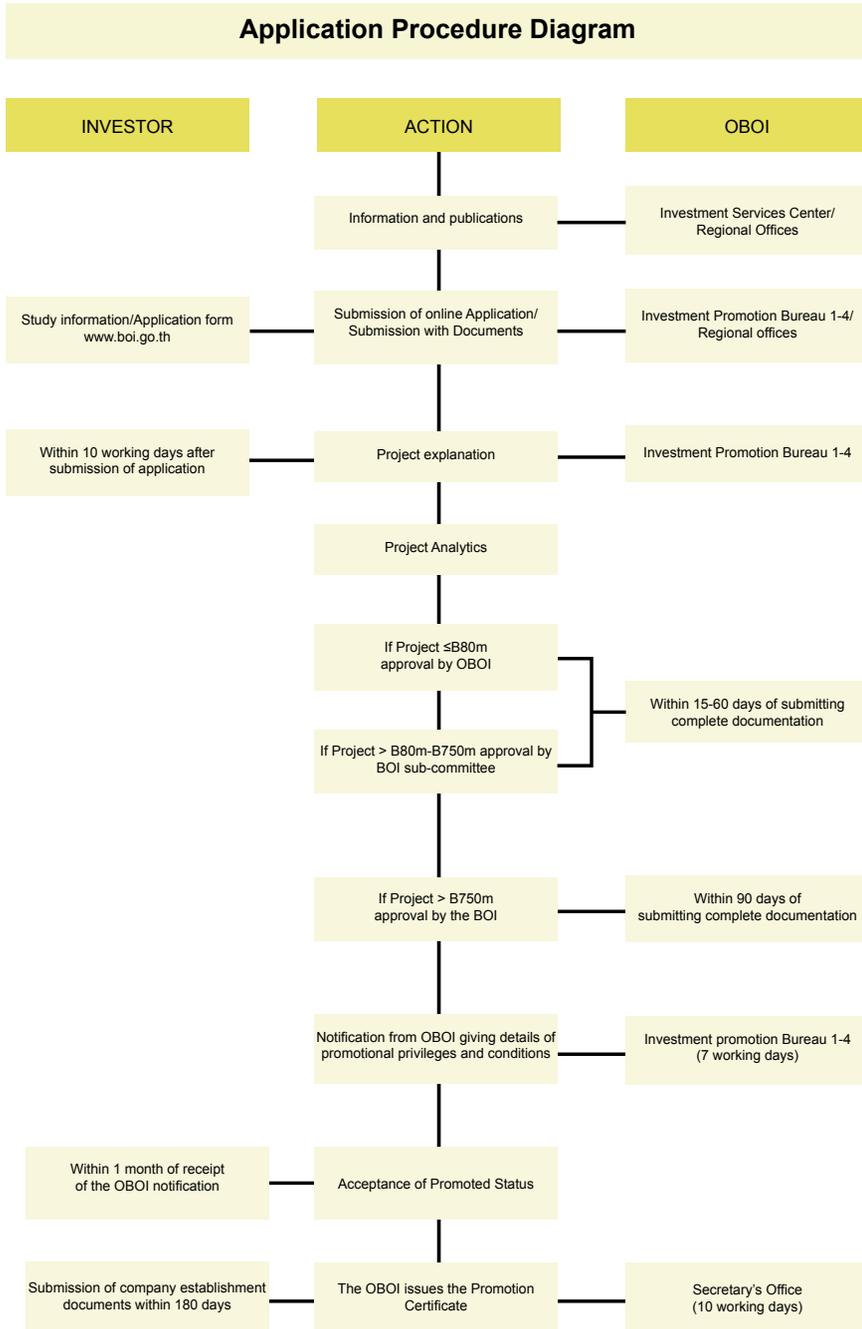
- ***ASEAN Supporting Industry Database (ASID)***

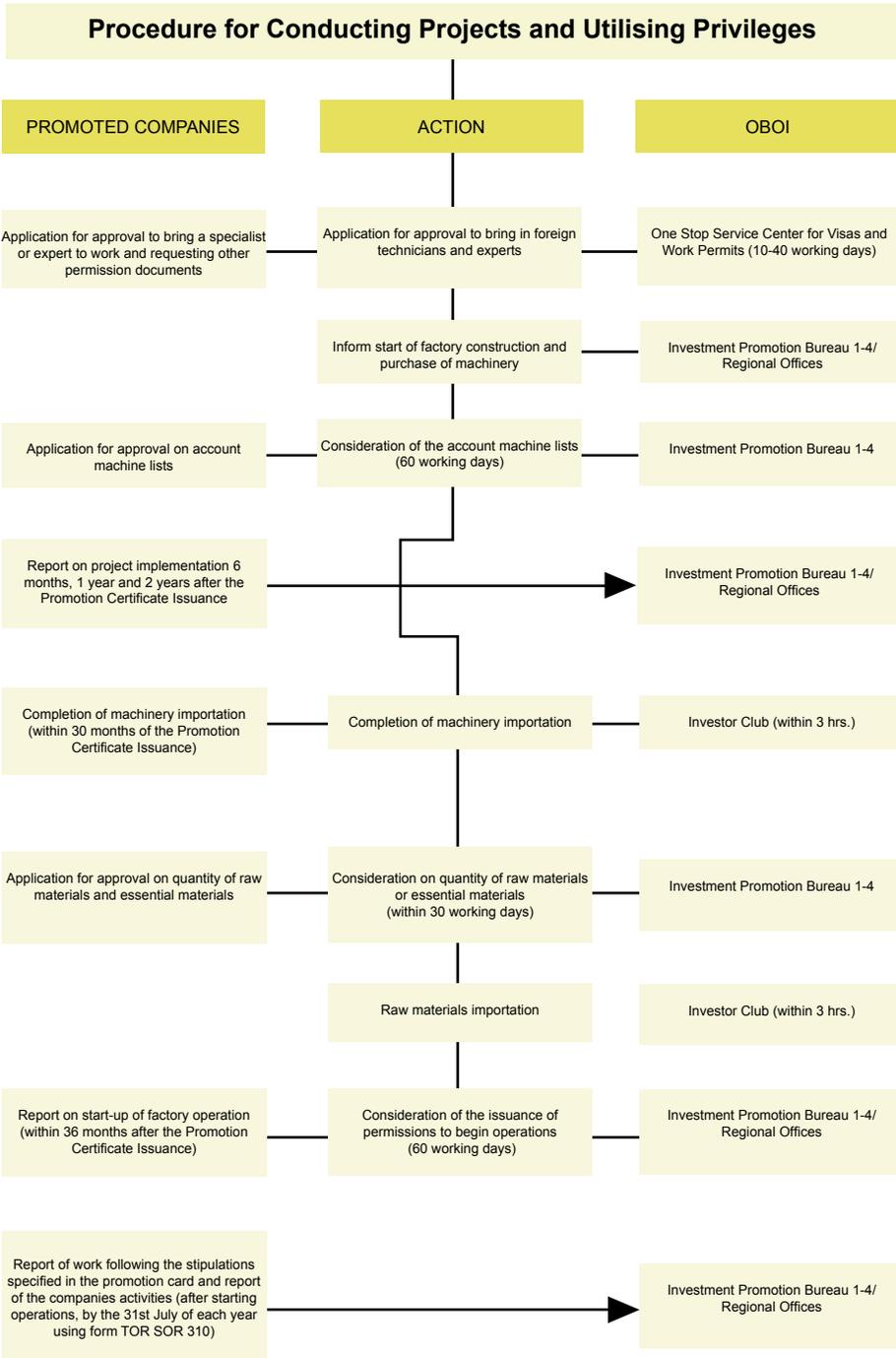
ASID provides a free online service at www.asidnet.org. This website contains information on supporting industry companies in ASEAN Member States. It serves as a regional “Yellow Pages” through which businessmen can shop for cost-effective products and enables investors to make informed sourcing decisions. The extensive database consolidates a full range of information and profiles of supporting industries and manufacturers of parts and components in the 10 ASEAN Member States. ASID creates a strong business link between buyers from around the world and manufacturers in the ASEAN Member States.



4. PROCEDURES FOR INVESTMENT APPLICATIONS

<http://www.boi.go.th/english/services/guide07.pdf>





IV. INVESTMENT PROTECTION

1. FOREIGN EXCHANGE REGIME

The *Exchange Control Act, B.E. 2485 (A.D. 1942)*, as amended, governs all matters involving foreign exchange.

The Exchange Control Act of 1942 governs all matters involving foreign exchange. In general, the Bank of Thailand is in charge of foreign currency regulations, permission and requirement. Since 1990, the Bank of Thailand has considerably liberalised capital transfer of foreign investors. Foreign investors can bring in capital to invest in Thailand without any restrictions and repatriate capital and earnings freely by presenting documents as identified in the Act.

Since July 1997, Thailand has adopted the managed-float exchange rate regime, which is also consistent with the inflation targeting regime that has been in place since 2000. Under the inflation targeting framework and the managed-float, the value of the baht is allowed to be determined by market forces, reflecting demand and supply for the baht in the foreign exchange market.

Under the managed float, the Bank of Thailand: (1) does not target a fixed level for the exchange rate, (2) stands ready to intervene in the case of excess volatility, particularly resulting from speculative capital flows, in a manner consistent with the Bank's inflation targeting framework, and instances where supply and demand may be at a disequilibrium, leading to excessive volatility in the value of the baht. The Bank of Thailand aims to ensure that the value of the baht is allowed to fluctuate under the following conditions: (1) the Bank of Thailand stands ready to intervene in the foreign exchange market such that volatility of the exchange rate is at a level that the economy can tolerate, (2) maintaining national competitiveness, as measured through the Nominal Effective Exchange Rate (NEER), which comprises currencies of important trading partners and not just the US Dollar, and (3) any intervention does not go against economic fundamentals



which would otherwise lead to further imbalances.

The new *Bank of Thailand Act, B.E. 2551 (2008)* was enacted on 3 March 2008. The new BOT Act clearly states the Bank of Thailand's objectives and responsibilities as the nation's central bank, in maintaining monetary stability, stability of the financial system, and stability of the payments system.

For further information on the transfer of capital, please contact:

Bank of Thailand
(Exchange Control Section)
273 Samsen Road
Bangkhunprom
Bangkok 10200
Thailand
Tel : (662) 283-5171
Fax : (662) 280-0449, 280-0626
Website : <http://www.bot.or.th>

2. EXPROPRIATION AND COMPENSATION

The Expropriation of Immovable Property Act of 1987 sets the guidelines for expropriation of immovable property. According to the Act, immovable property may be expropriated for the purpose of public interests such as public utility, national defense, agricultural development, etc. The Act also outlines the compensation of immovable property, expropriation methods and appeals which are consistent with international principles.

The *Investment Promotion Act* provides investment projects promoted by the Board of Investment the guarantee against:

- nationalisation
- competition from new state enterprises
- monopolisation of sales of similar products
- price control
- export restrictions



- duty-free imports by government agencies or state enterprises

Foreigners can actually acquire land ownership in Thailand for business purposes in accordance with four Thai laws, namely, the *Land Code*, the *Investment Promotion Act B.E. 2520 (1977)*, the *Industrial Estate Authority of Thailand Act B.E. 2522 (1979)* and the *Petroleum Act B.E. 2514 (1971)*.

Further, foreigners can also own land in Thailand for residential purpose in accordance with two Thai laws - the *Land Code* and the *Investment Promotion Act B.E. 2520 (1977)*.

The Board of Investment Announcement No. 2/2546 (2/2003) which became effective on April 8, 2003 permits foreign promoted juristic entities to own land, as follows:

- Office of promoted entity – not more than 5 rai (1 rai = 0.4 acres),
- Residences of executives or experts - not more than 10 rai,
- Residences of employees – not more than 20 rai.

The Land Code Amendment Act (No.8) B.E. 2542 (1999) allows foreigners who bring in a minimum investment of not less than 40 million baht (about US\$900,000) to acquire land of not more than one rai (1 rai = 1,600 square meters = 0.4acres), no matter where it is, for residential purpose. Such acquisition must be made in accordance with procedures and conditions prescribed in Ministerial Regulations.

- ***Expropriation of Immovable Property Act B.E. 2530 (1987)***
- ***Investment Promotion Act B.E. (1977)***

3. INVESTMENT GUARANTEE AGREEMENTS

Since October 2000, Thailand has become a member of the Multilateral Investment Guarantee Agency (MIGA) - <http://www.apec.org/>

4. INTELLECTUAL PROPERTY RIGHTS (IPR)

The following laws govern intellectual property rights in Thailand:

- ***Trademark Act B.E. 2534 (A.D. 1991)***

The *Trademark Act* provides legal protection through registration of:

- Trademark
- Service mark
- Certification mark
- Collective mark

The *Trademark Act of 2000* came into force on 30 June 2000. Most recently, the *Act on Protection of Layout-Designs of Integrated Circuits of 2000* came into force on 10 August 2000.

- ***Copyright Act B.E. 2537 (A.D. 1994)***

The *Copyright Act of 1994* protects literary, artistic works and performance rights by making it unlawful to reproduce or publish such works without the owner's permission. The *Copyright Act* protects works in the categories of:

- literary work, including computer programs;
- dramatic, artistic and musical work;
- audiovisual material, cinematic film, recorded material;
- disseminated pictures or disseminated sound; or
- any other works in the fields of literature, science or fine arts.

The *Copyright Act* protects computer software against reproduction or adaptation, publicity and rental of such software. Algorithms are not, however, protected.

The "copyright" as defined by the Act means "the exclusive right to take any action concerning the work created or made by the creator". The Act also defines the word "creator" as meaning the person who does



the work or creates the work.

A copyright belongs to the creator of a work, subject to the following conditions:

- In the case of unpublished work, the creator must be of Thai nationality or reside in Thailand or be a national of or reside in a country which is a member of the *Convention on the Protection of Copyright*, of which Thailand is a member, provided that the residence at all times or most of the time is spent on the creation of the work.
- In the case of published work, the first publication must be made in Thailand or in a country that is a member of the *Convention on the Protection of Copyright*. In the case where the first publication was made outside Thailand or in a country which is not the member of the *Convention on the Protection of Copyright*, the work created must have been published in Thailand or in a country which is a member of the Convention within 30 days from the first publication, or the creator must have the qualification as prescribed above at the first time of the first publication.
- In the case where the creator is required to be a person of Thai nationality, and the creator is a juristic person, such juristic person must be established under the *Civil and Commercial Code of Thailand*.

In general, copyright subsists for life of the author and for an additional period of 50 years after his death. If the author is a juristic person, copyright subsists for a period of 50 years after the work is first published or, if unpublished, after its creation.

The *Copyright Act of 1994* has become effective on 22 March 1995.

- ***Patent Act B.E. 2522 (A.D. 1979), as amended***

Thailand promulgated its first patent law, the *Patent Act*, in 1979, with significant amendments added in 1992. The Act protects both



inventions and product designs and pharmaceuticals. In 1997, a new intellectual property and international trade court began operations, which has significantly improved enforcement. Appeals procedures at the trademark and patent offices have also been streamlined.

In January 2008, the National Legislative Assembly approved Thailand's plan to join the *Paris Convention and the Patent Cooperation Treaty*. Thailand successfully became a party to the *Paris Convention* on August 2, 2008 and is in the process of carrying out the necessary legal procedures for accession to obtain membership in the *PCT*. It is generally expected that adhesion to the *PCT* will occur in the near future.

Since Thailand is a member of the *Paris Convention*, the World Trade Organization (WTO) and thus the *Agreement on Trade-Related Aspects of Intellectual Property Rights* (TRIPs), nationals of the *Paris Convention* and WTO member countries will receive the same protection accorded to Thai nationals.

The *Patent Act* provides for the protection of inventions and designs. The patent holder has the exclusive right to the use of the patent. This includes the right to use, sell, possess for sale, offer for sale or import into Thailand the product or process. A patent must be registered. Business methods/processes are patentable if they are new, involve an inventive step, and are capable of industrial application.

Term of patent is 20 years from the filing date for inventions and 10 years for designs. The *Patent Act* was amended and came into force on 27 September 1999.

For more details, please refer to Chapter 4 Patents, Trademarks, A Consumer Protection of "A Business Guide to Thailand" on BOI website or contact:

***Department of Intellectual Property
Ministry of Commerce***

44/100 Nonthaburi 1 Road

Amphor Muang, Nonthaburi 11000, Thailand

Tel.: (662) 547 4621 to (662) 547 4625

Website: <http://www.ipthailand.org/ipthailand/index.php?lang=en>



5. DISPUTE SETTLEMENT

Thailand provides many mechanisms for resolving disputes. Regarding disputes between state/government and state/government, Thailand has adopted the dispute settlement mechanism as embodied in the Bilateral Investment Treaties (BITs) with other economies including the ASEAN Investment Area Agreement. Such disputes relate to issues concerning the application and interpretation of the treaties.

As for disputes between state/government and private entities, under BITs, Thailand has allowed international arbitration as a dispute settlement mechanism including in many instances in accordance with the *International Convention on the Settlement of Investment Dispute between States and Nationals of other States (ICSID Convention)*, provided that Thailand must first become State Party to the said Convention by ratification.

On a regional level, Thailand is a Contracting Party to the ASEAN Investment Area Agreement. Under this agreement, disputes arising from investment between investors and governments of ASEAN may be submitted to dispute settlement mechanism under ICSID additional facilities, namely, arbitration/conciliation or arbitration under *Arbitration Rules of the United Nations Commission of International Trade Law or UNCITRAL Rules*.

Moreover, as for disputes between private entities, Thailand has made efforts in finding alternative dispute resolution, in addition to traditional local remedy under the judicial system. In order to promote the expansion of trade and investment in this country, Thailand has been a Contracting Party to the *Convention on the Recognition and Enforcement of Foreign Arbitral Award (The New York Convention)* since 1960. The aforesaid measures are contained in the present *Arbitration Act of 2002 (B.E. 2545)*, and Regulation of the Office of the Prime Minister on Compliance with Arbitration Award (B.E. 2544) to give force of law to the obligations under the said Convention. This Act enables domestic courts to recognise and enforce awards given by foreign or international arbitration. It also adapts the provision of the *UNCITRAL Model Law of International Council Arbitration*.



The Dispute Resolution Office is an institute in Thailand well known for resolving disputes by various methods, namely Mediation, Conciliation and Arbitration. In order to promote and develop alternative dispute resolution, the Office organises seminars for the public every year. Besides, the Office serves as an information center, giving advice on various methods of dispute resolution and providing services and facilities for conciliation and arbitration cases.

Regarding the arbitration, no administrative fee is charged to the parties. The Office provides conference rooms with full audio equipment, office equipment and an experienced team of competent officers free of charge. Only arbitrators' fees, consumption of materials, catering and telecommunication costs will be charged.

In addition, the Dispute Resolution Office, in cooperation with the Department of Export Promotion of the Ministry of Commerce, has a primary role to act as an intermediary between the parties in order to assist them in resolving disputes amicably.

V. PERFORMANCE REQUIREMENTS

Previous conditions on exports and use of local materials are repealed so that the criteria for promotion will be in line with international trade and investment agreements.

Under the FBA referred to in the section 1 (v), foreign investors who are permitted to operate businesses in Lists 2 or 3 with foreign majority ownership may be requested to comply with conditions.

Under the *Investment Promotion Act B.E. 2520 (1977)*, as amended by the *Investment Promotion Act (no.2) B.E. 2534 (1991)*, and the *Investment Promotion Act (No.3) B.E. 2544 (2001)*, the BOI may stipulate conditions in the promotion certificate for compliance by the promoted person in one or more areas.

In 2000, the Ministry of Industry and the Board of Investment have lifted the local



content requirement to be in line with the *TRIMs Agreement* under the WTO.

The new investment promotion policy launched by the Board of Investment on August 1, 2000 abolishes both the local content and export requirements for investment promotion. <http://www.apec.org/>

VI. FOREIGN EQUITY POLICIES

1. EQUITY REGULATIONS

To relax the limitations on foreign shareholdings in manufacturing activities and to facilitate investors in their investment, the BOI set up the following criteria for *BOI promoted activities* :

- i) To engage in projects in agriculture, animal husbandry, fishery, mineral exploration and mining, and service businesses under List 1 of the *Foreign Business Act B.E. 2542*, Thai nationals must hold shares totaling not less than 51% of the registered capital;
- ii) For manufacturing projects in all zones (see Section 7 for information on Zones), foreign investors may hold a majority or all shares in promoted projects;
- iii) The Board may specifically fix the shareholdings of foreign investors on some promoted projects when it is deemed appropriate.

Note: please refer to "A Guide to the Board of Investment" available on BOI's website.

See also Section VIII. 3 for equity requirements on activities in List 2 and List 3 of Foreign Business Act if they are not exempted either under BOI, IEAT or other laws.

2. CONDITIONS/RESTRICTIONS

Please see Section VIII (Promoted Areas/Sectors).



VII. INVESTMENT INCENTIVES

BOI Criteria for Granting Tax and Duty Privileges as Investment Zones

(Please refer to “A Guide to the Board of Investment” in Thai BOI website for more details)

1. CORPORATE INCOME TAX

- **Zone 1**

3 years exemption for projects located within industrial estates or promoted industrial zones, provided that such projects with capital investment of 10 million baht or more (excluding cost of land and working capital) obtain ISO 9000 or similar international standard certification within 2 years from its start-up date, otherwise the corporate income tax exemption will be reduced by 1 year.

(Zone 1 consists of 6 Central provinces with high income and good infrastructure: Bangkok, Nakhon Pathom, Nonthaburi, Pathum Thani, Samut Prakan, and Samut Sakhon).

- **Zone 2**

3 years exemption, increased to 5 years for projects located within industrial estates or promoted industrial zones, provided that such projects with capital investment of 10 million baht or more (excluding cost of land and working capital) obtain ISO 9000 or similar international standard certification within 2 years from its start-up date, otherwise the corporate income tax exemption will be reduced by 1 year.

(Zone 2 consists of 12 provinces: Ang Thong, Ayutthaya, Chachoengsao, Chon Buri, Kanchanaburi, Nakhon Nayok, Ratchaburi, Samut



Songkhram, Saraburi, Suphan Buri, Phuket, and Rayong).

- **Zone 3**

8 years exemption, for one of the 58 projects listed below; provided that such projects with capital investment of 10 million baht or more (excluding cost of land and working capital) obtain ISO 9000 or similar international standard certification within 2 years from its start-up date, otherwise the corporate income tax exemption will be reduced by 1 year.

(Zone 3 consists of the remaining 58 provinces which are designated as Investment Promotion Zones as follows: Chai Nat, Chaiyaphum, Chanthaburi, Chiang Mai, Chiang Rai, Chumphon, Kamphaeng Phet, Khon Kaen, Krabi, Lamphang, Lamphun, Loei, Lop Buri, Mae Hong Son, Mukdahan, Nakhon Ratchasima, Nakhon Sawan, Nakhon Si Thammarat, Nong Khai, Phangnga, Phattalung, Phetchabun, Phetchaburi, Phitsanulok, Pichit, Prachin Buri, Prachuab Khiri Khan, Ranong, Sa Kaew, Sing Buri, Songkhla, Sukhothai, Surat Thani, Tak, Trang, Trat, Udon Thani, Ubon Ratchathani, Uthai Thani, Uttaradit, Amnat Charoen, Buri Ram, Kalasin, Maha Sarakham, Nakhon Phanom, Nan, Narathiwat, Nong Bualamphu, Pattani, Phayao, Phrae, Roi Et, Sakhon Nakhon, Sathun, Si Sa Ket, Surin, Yasothon, and Yala).

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

- **Zone 1**

50% reduction of import duty on machinery that is subject to import duty of not less than 10%.

- **Zone 2**

50% reduction of import duty on machinery that is subject to import duty of not less than 10%.

- **Zone 3**

100% exemption.



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

- **Zone 1**

1 year exemption of import duty on raw or essential materials used in the manufacturing of export products.

- **Zone 2**

1 year exemption of import duty on raw or essential materials used in the manufacturing of export products.

- **Zone 3**

5 years exemption of import duty on raw or essential materials used in the manufacturing of export products.

For more details, see BOI Zoning, Criteria for Granting Tax and Duty Privilege as Investment Zones and Summary of Basic Tax Incentives according to BOI Announcement No. 1/2543 and 7/2547 of “A Guide to The Board of Investment” on BOI website.

VIII. PROMOTED AREAS/SECTORS

1. PROMOTED SECTORS OR INDUSTRIES

“*Promoted person*” means one that is granted a promotion certificate under the *Investment Promotion Act B.E. 2520 (1977)*, amended by *Investment Promotion Act (No. 2) B.E. 2534 (1991)* and *Investment Promotion Act (No. 3) B.E. 2544 (2001)*. Their investments must fall under the list of activities eligible for promotion prescribed by two main announcements of the Board of Investment No. 1/2543 (1/2000) and 2/2543 (2/2000) and other relevant announcements (publicised through the BOI website) including:



- agriculture and agricultural products
- mining, ceramics and basic metals
- light industry
- metal products, machinery and transport equipment
- electronic industry and electrical appliances
- chemicals, paper and plastics
- services and public utilities

However, the BOI will also consider additional activities, if a promising proposal is received. Privileges shall be granted to projects that actually benefit the economy and good governance shall be used for managing and supervising the application of tax and duty privileges. The privileges are applied equally to both local and foreign companies.

The *promoted person* must also follow other regulations as prescribed under the announcements related to policy issues which are publicised through the BOI website. Important announcements are No. 1/2543 (1/2000), 2/2543 (2/2000), No. 2/2545 (2/2002), No. 7/2547 (7/2004), No. 2/2551 (2/2008) (Thailand Investment Years 2008-2009).

A *promoted person* must be a limited company, foundation or co-operative established in accordance with the respective laws. Promoted persons may be exempted from import duties for machinery, essential materials, and corporate income tax on net profits for a period of no more than 8 years from the date that income is first derived from such activities.

For further information, please contact:

Investment Services Center

Office of the Board of Investment

555 Vibhavadi-Rangsit Rd., Chatuchak,
Bangkok 10900 Thailand

Tel : (662) 537-8111

Fax : (662) 537-8177

Website : <http://www.boi.go.th>

Please refer to relevant Announcements and “A Guide to the Board of Investment” on BOI’s website.



2. PRIORITY ACTIVITIES/THAILAND INVESTMENT YEARS 2008-2009

- ***BOI's Incentives for Priority Activities***

- Exemption of import duties on machinery for all zones
- Eight-year corporate income tax exemption for all zones (subject to the corporate income tax exemption cap)
- Other relevant location-based incentives

Please consult *List of Activities Eligible for Promotion and their Conditions* collated from relevant Announcements in “A Guide to the Board of Investment” in the website of Thai BOI for priority activities. Possible update and revision of Announcements on activities eligible for promotion are also available in the same website.

- ***Thailand Investment Years 2008-2009***

To achieve the targets outlines in the policies of Thailand Investment Years 2008-2009, the Board of Investment announces the following measures:

- All areas throughout the country, except Bangkok, are Investment Promotion Zones, until 31 December 2009
- Activities entitle to the special investment Promotion incentives are categorised into three groups, namely:
 - Activity group related to conservation of energy
 - High-technology group
 - Manufacture activity group related to eco-friendly materials and products
- For rights and benefits for the above activities, please refer to *Announcement No. 2/2551 (2/2008)* on BOI website.

3. RESTRICTIONS

According to *Foreign Business Act B.E. 2542 (1999)*, businesses are



classified into 3 categories: List 1, List 2, and List 3.

List 1: consists of businesses strictly prohibited to aliens.

List 2: prohibited to aliens unless permission is granted by the Commerce Minister by and with the resolution of the Cabinet. Alien juristic entities allowed to engage in the businesses in List 2 must meet the following 2 qualifications:

- At least 40% of all the shares are held by Thai persons or non-alien juristic entities. (The minimum threshold may be lowered to 25% given reasonable grounds.)
- Two-fifths of the members of the Board of Directors are Thai.

List 3: prohibited to aliens unless permission is granted by the Director-General of the Department of Business Development, Ministry of Commerce, by and with approval of the Foreign Business Board.

An alien can engage in businesses in List 2 and/or List 3 if he is a promoted investor in accordance with either the *Investment Promotion Act*, *Industrial Estate Authority of Thailand Act*, or other laws.

To obtain information on the three lists, please refer to Department of Business Development's website, at www.dbd.go.th. The lists are in the last part of the *Foreign Business Act*.

See also Section VI on Foreign Equity Policies for activities that are promoted by the Board of Investment.

IX. TAXATION

1. CORPORATE TAX

The corporate income tax rate in Thailand is 30% on net profits. However, the rates vary depending on types of taxpayers



Taxpayer	Tax Base	Rate
1. Small company ¹	<ul style="list-style-type: none"> - Net profit not exceeding 1 million baht - Net profit over 1 million baht but not exceeding 3 million baht - Net profit exceeding 3 million baht 	<ul style="list-style-type: none"> 15% 25% 30%
2. Companies listed in Stock Exchange of Thailand (SET)	<ul style="list-style-type: none"> - Net profit for first 300 million baht - Net profit for the amount exceeding 300 million baht 	<ul style="list-style-type: none"> 25%² 30%
3. Companies newly listed in Stock Exchange of Thailand (SET)	Net Profit	25% ³
4. Company newly listed in Market for Alternative Investment (MAI)	<ul style="list-style-type: none"> - Net Profit for first 5 accounting periods - Net Profit after first 5 accounting periods 	<ul style="list-style-type: none"> 20 % 30 %
5. Bank deriving profits from International Banking Facilities (IBF)	Net Profit	10 %
6. Foreign company engaging in international transportation	Gross receipts	3%
7. Foreign company not carrying on business in Thailand receiving dividends from Thailand	Gross receipts	10%
8. Foreign company not carrying on business in Thailand receiving other types of income ⁴ apart from dividend from Thailand	Gross receipts	15%

¹ Small company refers to a company with paid-up capital less than 5 million Baht at the end of each accounting period.

² Effective for accounting periods commencing on or after 1 January 2008

³ The reduced rate applies for currently listed companies for 5 accounting periods beginning on or after 6 September 2001

⁴ The reduced rate applies for newly listed companies (registered within 6 September 2001-5 September 2005) for 5 accounting periods beginning on or after 6 September 2001.



Taxpayer	Tax Base	Rate
9. Foreign company disposing profit out of Thailand	Amount disposed	10%
10. Profitable association and foundation	Gross receipts	2% or 10%

2. VALUE ADDED/SALES TAX

VAT or Sales Tax is 7 % starting from 1 April 1999 till 31 September 2010 (the ending date could be extended). Those who are affected by this tax rate are the: producers, providers of services, wholesalers, retailers, exporters and importers.

Special exemption from VAT:

- Operators earning less than 1.8 million baht per year.
- Sale or import of agricultural products, livestock and agricultural inputs, such as fertiliser, feed and chemicals.
- Sale or import of published materials and books.
- Auditing, legal services, health services and other professional services.
- Cultural and religious services.
- Educational services.
- Services provided by employees under employment contracts.
- The sale of goods as specified by Royal Decree.
- Goods exempt from import duties, under the *Industrial Estate Authority to Thailand (IEAT) Act*.
- Domestic transportation (excluding airlines) and international transportation (excluding air and sea lines).

3. WITHHOLDING TAX

Certain types of income paid to companies are subject to withholding tax at source. The withholding tax rates depend on the types of income and the tax status of the recipient. The payer of income is required to file the



return (Form CIT 53) and submit the amount of tax withheld to the District Revenue Offices within seven days of the following month in which the payment is made. The tax withheld will be credited against final tax liability of the taxpayer.

The following are the withholding tax rates on some important types of income:

- Dividends 10%
- Interest
 - If paid to associations or foundations 10%
 - In other cases 1%
- Royalties
 - If paid to associations or foundations 10%
 - In other cases 3%
- Advertising fees 2%
- Service and professional fees
 - If paid to Thai company or foreign company having permanent branch in Thailand 3%
 - If paid to foreign company not having permanent branch in Thailand 5%
- Prizes 5%

Government agencies are required to withhold tax at the rate of 1% on all types of income paid to companies.

4. PERSONAL INCOME TAX

Personal income tax rates applicable to taxable income are as follows.

- Taxable income (Tax Rate):
 - 0-150,000 Baht (Exempt)
 - 150,001-500,000 Baht (10%)
 - 500,001-1,000,000 Baht (20%)
 - 1,000,001-4,000,000 Baht (30%)
 - 4,000,001 Baht and over (37%)



See “*Personal Income Tax*” by choosing “*Tax Structures*” on website of Revenue Department at <http://www.rd.go.th/publish/6045.0.html>

See also *Chapter 2 Taxation in Thailand* of “*A Business Guide to Thailand*” on BOI website.

5. LAND/PROPERTY TAX

Owners of land and/or building in designated areas may be subject to annual taxes under either the *Local Development Tax Act B.E. 2508 (1965)*, under which rates per unit vary according to the appraised land value, or the *House and Land Tax Act, B.E. 2475 (1932)*, under which annual tax is levied at the rate of 12.5% of the actual or assessed annual assumed rental value of the property.

6. REAL PROPERTY GAINS TAX

There is no real property gains tax.

7. ESTATE DUTY

There is no estate duty.

8. STAMP DUTY

The *Revenue Code* contains the Stamp Duty Schedule listing transactions subject to stamp tax. Rates depend on the nature of the transaction, and fines for failure to stamp documents are very high.

The Revenue Department

90 Revenue Department Building

Phaholyothin Road, Soi 7, Bangkok 10400

Tel : (662) 6173000-9, (662) 2728000

Website : <http://www.rd.go.th>



9. IMPORT DUTY

The majority of imported articles are subject to two different taxes: Tariff duty is computed by multiplying the CIF value of the goods by the duty rate. The duty thus determined - is added to the value of the goods determined with reference to the CIF price. VAT is then levied on the total sum of the CIF value, and excise tax, if any.

The duties are based on CIF price according to GATT price system and duty rate according to CEPT rate. The Notification of Import Duty by the Ministry of Finance is used for import duty.

Further information is available at the Customs department's website, www.customs.go.th

The Custom Department has improved its services by computerising procedures with the Electronic Data Interchange (EDI) system. The EDI system helps entrepreneurs save costs and time because they can rapidly submit entry data for preliminary verification by customs officers, which take no more than 5 minutes. Entrepreneurs will only need to meet customs officers for document verification; the rest will be processed through the EDI system.

10. OTHER TAXES

- ***Municipal Taxes***

Municipal taxes can be divided into the following categories:

- Land/Property tax (see this Section No. 5)
- Signboard tax

This tax is levied at rates specified in the *Signboard Tax Act, B.E. 2510 (1967)* (depending on location).



The contacting office depends on location. For those in Bangkok, please contact:

Revenue Division

Finance Department

Bangkok Metropolitan Administration
173 Dinso Road, Phra Nakhon District
Bangkok 10200
Tel.: (662) 2213811
Website: <http://www.bma.go.th>

- ***Local Development Tax***

This tax is levied according to the average cost of land in each area at different rates.

The contacting office depends on location. For those in Bangkok, please contact:

Bangkok Metropolitan Administration

173 Dinso Road, Phra Nakhon District
Bangkok 10200
Tel.: (662) 2213811
Website: <http://www.bma.go.th>

- ***Specific Business Tax***

A specific business tax is imposed, in lieu of VAT, on the following services sectors:

- Banking, Finance and Credit Fancier Businesses 3.0%
- Life Insurance 2.5%
- Pawnshop Brokerage 2.5%
- Sales of Securities in the Stock Exchange 0.1%
- Sales of Immovable Property, Real Estate 0.1%
- Businesses with Regular Transactions Similar to Commercial Banking 3.0%



X. FINANCIAL REGULATIONS

1. IMPORTATION OF FUNDS

- ***Non-Residents***

Individuals in transit may normally bring foreign currencies and negotiable instruments into Thailand without any limits. They may also freely take out of the country all the foreign currencies they had brought in, without limit. Individuals in transit, however, may not take out Thai currency exceeding 50,000 Baht per person except for trips to Myanmar, Lao PDR, Cambodia, Malaysia and Viet Nam, where an amount of up to 500,000 Baht is allowed. There are no restrictions on the amount of Thai currency that can be brought into the country.

- ***Residents***

There is no restriction on the amount of foreign currency a resident may bring into Thailand. However, all such currency must be sold to, or deposited into a foreign currency account in, a commercial bank within seven days of receipt or entry into the country.

- ***Investors***

There is no restriction on the import of foreign currencies, such as investment funds, offshore loans, etc. Such foreign currencies, however, must be sold or exchanged into Thai Baht, or deposited into a foreign currency account with an authorised bank, within seven days from the date of receipt or entry into the country. An application form F.T. 3 or F.T. 4 must be submitted to an authorised bank for each transaction involving the sale, exchange, or deposit of such funds in an amount exceeding US\$5,000 or its equivalent.



2. REPATRIATION OF FUNDS

- ***Foreign Currency Accounts of Thai Residents***

Thai individuals and juristic persons in Thailand may maintain foreign currency accounts under the following conditions:

- The accounts are opened with authorised banks in Thailand and deposited with funds that originate from abroad or from foreign currency borrowings
- The depositor must submit evidence showing obligations to pay in foreign currency to persons abroad, authorised banks, the Export and Import Bank of Thailand or the Industrial Finance Corporation of Thailand within three months from the date of deposit. The depositor can deposit no more than the amount of the above obligations
- The deposit of foreign currency notes and coins must not exceed US\$2,000 per day
- Debits to the accounts are permitted for payment of any external obligations upon submission of supporting evidence or for conversion into baht at authorised banks
- The total daily outstanding balances in all accounts must not exceed US\$5,000,000 for a juristic person and US\$500,000 for an individual.

- ***Foreign Currency Accounts for Non-Thai Residents***

Non-residents can open and maintain foreign currency accounts with authorised banks in Thailand. The deposits must come from funds originating from abroad. Balances on such accounts may be transferred without restrictions.



- **Non-Resident Baht Account**

- Non-residents may open an account with any authorised bank in Thailand provided they show proof of identity, such as valid passport. They may freely credit the account with:
 - Proceeds from the sale of foreign currencies that originated from abroad or foreign currencies from non-residents' foreign currency accounts
 - Amounts transferred from other non-resident baht accounts
 - Obligations between residents and non-residents

- **Imports**

Importers may freely purchase or draw foreign exchange from their own foreign currency accounts for import payment.

- **Exports**

Exports are free from any foreign exchange restrictions. However, proceeds of exports valued at more than 500,000 Baht or its equivalent per transaction must be received within 120 days from the date of export and must be surrendered to an authorised bank or deposited in a foreign currency account with an authorised local bank within seven days of receipt.

No restrictions are imposed on items of non-capital nature, such as service fees, interest, dividends, profits and royalties, provided supporting documents are presented to an authorised bank. Travelling expenses or education expenses of residents are also freely permitted on submission of supporting evidence. Proceeds from invisibles must be surrendered to an authorised bank or deposited in a foreign currency account with an authorised bank in Thailand within seven days of receipt.

Please refer to Chapter 5 Legal Issues for Foreign Investors in "A Business Guide to Thailand" available in BOI website for additional related information.



XI. APPROVAL FOR THE EMPLOYMENT OF FOREIGN WORKERS

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

Under the *Investment Promotion Law*, aliens are allowed to come to Thailand to conduct research on investment opportunities, or for other matters which might benefit investment. In this regard, the BOI will grant permission to stay in Thailand for not more than six months at a time.

A promoted company will be allowed by BOI to bring in foreign personnel such as skilled technicians and experts together with their families. The duration of one year at a time for the work permit will be allowed except for positions, which have been approved in the promoted company which can be for a duration of more than two years. However, BOI encourage the employment of Thai nationals as managers or technicians.

Since 1 July 1997, BOI has set up a One-Stop Center to handle all aspects of visa extensions and issuance of work permits, including work permit extensions, issuance of reentry permits, and changes in type of visa to non-immigrant. The Center endeavours to process extensions of visas and work permits within three hours, assuming all necessary supporting documents are provided.

Foreigners choosing Thailand to conduct research on investment opportunities, or for other matters which might benefit investment, may apply for privileges provided under section 24 of the *Investment Promotion Act*, which applies to individuals but not to their families.

The applicant must inform the One-Stop Service Center for Visas and Work Permits in writing, giving details of the foreigner's name, position, professional certificates, and the type of business. At the same time, he should obtain a 90-day non-immigrant visa from a Royal Thai Embassy or Consular Office abroad, prior to entering the country.

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

The *Alien Occupation Law*, adopted in 1973, requires all aliens working in Thailand to obtain a Work Permit prior to starting work in the Kingdom. The



Work Permit will be subject to renewal in accordance with the renewed or extended visa. The Labor Ministry will in principle grant an initial duration of one year for the Work Permit. A Work Permit must be renewed before its expiry date or it will automatically lapse.

XII. LAND AND BUILDING OWNERSHIP

REGULATION ON ACQUISITION OF LAND AND BUILDINGS

Under the *Land Code*, non-Thai individuals and companies are generally not allowed to own land. However, a promoted company with 50 percent or more of its shares held by foreigners may apply for land ownership, as per section 27 of *the Investment Promotion Act 1977* and the BOI Announcement 2/2546. In fact, the *Land Code* provides for non-Thai individuals or companies to own land by the virtue of treaty provisions or by ministerial permission.

The *Condominium Act* allows foreign individuals and companies to own condominium units provided that the total condominium units owned by foreign entities do not exceed 49% of the total floor area of each condominium.

XIII. INVESTMENT PROMOTION AGENCY

The Board of Investment is working to be your one-stop shop for service. The BOI helps investors in three key ways: To reduce the risks associated with investment, to reduce initial investment costs and to improve the overall rate of return on investment; and to provide support services at all times.

Office of the Board of Investment

555 Vibhavadi- Rangsit Road, Chatuchak
Bangkok 10900, Thailand

Tel : (662) 537 8111 / 55

Fax : (662) 537 8177

E-mail : [**head@boi.go.th**](mailto:head@boi.go.th)

Website : [**www.boi.go.th**](http://www.boi.go.th)





Viet Nam





VIET NAM

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.

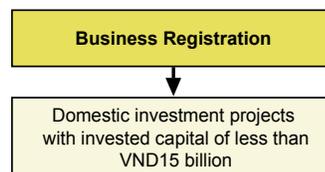
- ***Decree No. 139/2007/ND-CP dated 29 September 2007*** of the Government provides detailed provisions and guidelines for the implementation of the *Enterprise Law*.

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):

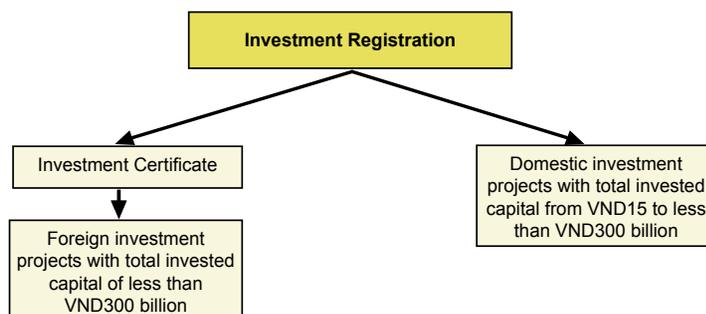
Domestic enterprises with an invested capital of less than VND15 billion that do not operate in the conditional sectors are required to follow the “business registration” procedures.



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
Foreign Investment			
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 dated 29/8/2006	Government	Decree on business registration
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 Viet Nam
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
Foreign Exchange Control			
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
Labour			
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
Land			
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

No.	Legal Document	Issuing Authority	Content of Legal Document
Intellectual Property			
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
Import - Export			
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 Law No.42/2005/QH11 dated 14 June 2005	National Assembly	Law on Customs
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
Various Taxes			
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



No.	Legal Document	Issuing Authority	Content of Legal Document
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
List of Document Relating to the Sectors in which Investment is Conditional Applicable to Investors			
Real Estate Business			
36	Law No. 63/2006/QH11 dated 29/6/2006	National Assembly	Law on Real Estate Business
37	Law No. 56/2005/QH11 dated 29/11/2005	National Assembly	Law on Resident Housing
Education			
38	Law No. 38/2005/QH11 dated 14/6/2005	National Assembly	Education Law

No.	Legal Document	Issuing Authority	Content of Legal Document
39	Decree 06/2000/ ND-CP dated 6/3/2000	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 14/4/2005	Ministry of Education & Training – Ministry of Planning & Investment	Providing guidance to the implementation of Decree 06
Post & Telecommunication			
41	Ordinance dated 43/2002/PL-UBTV QH 10	National Assembly	Post & Telecommunication
Transportation			
42	Law No. 35/2005/ QH11 dated 14/6/2005	National Assembly	Law on Railways
43	Law No. 66/2006/ QH11 dated 29/6/2006	National Assembly	Law on Civil Aviation
44	Law No. 40/2005/ QH11 dated 14/6/2005	National Assembly	Maritime Law
45	Decree 10/2001/ ND-CP dated 19/3/2001	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 notarised 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 authorised 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:

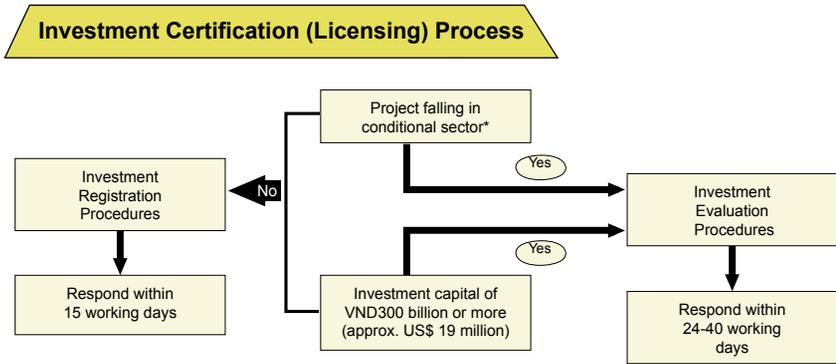
- (a) where the parent company so requests;
- (b) where the parent company terminates its operations;



- (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.

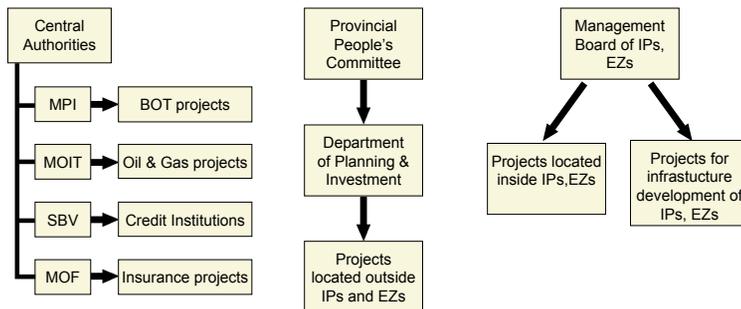
For making an investment in Viet Nam, a foreign investor must obtain an Investment License from one of the abovementioned agencies depending on the type of project.



* 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.108 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, Viet Nam 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 nationalised 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 Integrated Circuits	Three dimensional circuit elements and their interconnections in the integrated circuit which is original and not widely known in the relevant field	The earlier of: (i) 10 years from the date of grant; (ii) 10 years from the date of the first commercial use by owner or an assignee; (iii) 15 years from the creation of the design.



Type	Brief Description	Duration of Protection
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)
Copyright-related rights	Moral and material rights in respect of performance show, audio record, visual record, radio program, and satellite program-coded signal	50 years



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 Certificate¹ within 15 working days from the receipt of the application.

¹Certificate of ownership rights over copyright works

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 protection² 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;

²Certificate of ownership rights over inventions, utility solutions, industrial designs and trademarks, and the right to use an appellation of origin of goods



- 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) high-tech; 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, bio-technology 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; large-size 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, ocean-going 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, specialised 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

No	Province	Regions with specially difficult socio-economic conditions	Regions with difficult socio-economic conditions
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 Binh, Trang Dinh, Van Lang and Van Quan districts	Bac Son, Chi Lang and Huu Lung 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	Island districts of Bach Long Vy 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



No	Province	Regions with specially difficult socio-economic conditions	Regions with difficult socio-economic conditions
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

No	Province	Regions with specially difficult socio-economic conditions	Regions with difficult socio-economic conditions
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 districts
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



No	Province	Regions with specially difficult socio-economic conditions	Regions with difficult socio-economic conditions
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

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 sub-leased.

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/TT-BTC* 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 (b) For services (c) For production, construction, transportation and other business activities	1 5 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, air-conditioners, 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/m²/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/m²/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:

$$\begin{array}{l} \text{Land rent rate} \\ \text{per year} \\ \text{(USD/m}^2 \\ \text{per year)} \end{array} = \begin{array}{l} \text{the minimum} \\ \text{rate applicable} \\ \text{to each land} \\ \text{category} \\ \text{(USD/m}^2 \\ \text{per year)} \end{array} \times \begin{array}{l} \text{the} \\ \text{location} \\ \text{co-efficient} \end{array} \times \begin{array}{l} \text{the} \\ \text{infra-} \\ \text{structure} \\ \text{co-efficient} \end{array} \times \begin{array}{l} \text{the industry} \\ \text{sector} \\ \text{co-efficient} \end{array}$$

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 account³ 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.

³Specialised capital deposit account of an FIC or a foreign party to a BCC



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 organisations 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 duty-free 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 non-governmental 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 authorised agency to obtain a work permit for that expatriate. MOLISA or its authorised 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**

An 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, Articles 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.

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List of ASEAN Investment Agencies





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