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1. INTRODUCTION

Cambodia is located in Southeast Asia and it is bordered by Thailand, Laos, Vietnam, and the Gulf of Thailand, making it an ideal country for import and export operations. Cambodia's economy is pivoting towards sectors such as import and export, and is attracting increased investment. Real GDP growth is projected to reach 4.5% in 2022. Furthermore, as the government reopens the country, important sectors such as tourism, hospitality, as well as wholesale and retail, are beginning to recover.

Amid the backdrop of the pandemic, numerous investment projects have nevertheless been permitted by the government to operate in Cambodia. According to the latest available data, there were 134 investment project proposals approved in the first nine months of 2021 by the Council for the Development of Cambodia (CDC), of which 33 were established inside special economic zones. The Ministry of Industry, Science, Technology, and Innovation (MISTI) also approved 124 new industrial projects in 2021, from January to September. It brought the total of investment factories operating in Cambodia to 1,843. Furthermore, there was a significant increase in the import of raw materials for the garment sector in the first eight months of 2021. It is clear to see through the establishment of these new projects that there is positive progress regarding investment in Cambodia, despite the challenging global conditions.

The recently promulgated Law on Investment will assist the new economic recovery plan. Cambodia has also ratified Cambodia-China Free Trade Agreement (taking effect on 1st January 2022), and the Regional Comprehensive Economic Partnership (RCEP); the world's largest free trade agreement, covering nearly a third of the global population and about 30 per cent of the global gross domestic product - taking effect on 1st January 2022. In addition, the Cambodia-Republic of Korea Free Trade Agreement was signed in October 2021. These agreements should also play a role in attracting increased FDI in Cambodia alongside the new Investment Law.

2. WHY INVEST IN CAMBODIA

Cambodia is a member of the Association of Southeast Asian Nations (ASEAN). Whilst it currently has lower traffic on most goods traded within the bloc, and is in the process of integrating its legal system with those of the other members of ASEAN, investment in Cambodia is very favorable for three main reasons:

2.1. Preferential Market Access

As a WTO member state, having joined in October 2014, Cambodia benefits from preferential access to a number of developed markets around the world. Cambodia has also benefited from very low tariffs on most goods traded with its neighbors as a result of its ASEAN membership and the AFTA (ASEAN Free Trade Area) Agreement. Cambodia has also concluded over a dozen multilateral agreements and bilateral investment protection agreements.

2.2. Open Economy

Cambodia offers investors one of the most liberal incentive schemes in Southeast Asia, with low tax rates, tax incentives, a one-stop service for investment applications, and the ability to develop new businesses within Special Economic Zones.

2.3. Competitive Assets

Tourism has traditionally attracted the majority of foreign investment. Led by the world-class destination of Angkor Wat, Cambodia draws millions of international visitors a year. Whilst temple

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tourism has already drawn significant foreign investment; significant potential remains in eco-tourism and other areas. Furthermore, the Cambodian labor office offers a competitive advantage for many firms. It is not just investment in tourism that can benefit from this, as with low labor costs and rapidly increased education levels, the country can offer lucrative returns for investors in labor-intensive manufacturing.

3. THE ESTABLISHMENT OF THE COMPANY

Currently, the available forms of business entities that can be established and registered legally in Cambodia are governed by the Law on Commercial Rules and Commercial Register, promulgated on 26 June 1995, the Law on the Amendment of the Law on Commercial Rules and Commercial Register, adopted on 18 November 1999 and the Law on Commercial Enterprises, adopted on 26 April 2005. There are no bars to foreign ownership of any form of business entity in Cambodia, other than the bar to owning land. The available forms of business in Cambodia are expanded upon below:

3.1. Sole Proprietorship

A sole proprietorship is an enterprise established and operated by a single natural person who owns all of its capital and is responsible for all obligations and liabilities related to the business operations solely and exclusively.

3.2. Partnership

The partnership is the favored method of business organization for many professionals, such as doctors and accountants. The partnership can be either a general partnership or a limited partnership.

3.3. Limited Company

A Limited company in Cambodia has three different forms; a Private Limited Company, a Single Member Private Limited Company and a Public Limited Company, in order to carry out business in the Kingdom of Cambodia.

3.3.1. Private Limited Company

For most types of businesses, a “Private Limited Company” is the most suitable corporate form. Under the Law on Commercial Enterprises, a Private Limited Company is a form of a limited company that has 2 to 30 shareholders. A private company can have one or more directors and will be managed by a chairman of the board. A private limited company has restrictions on the transfer of shares. The company may not offer its shares or other securities to the public generally, but may offer them to shareholders, family members and the manager, with this restriction pertaining to the transfer of each class of shares.

3.3.2. Single Member Private Limited Company

A natural person can establish a Single Member Private Limited Company, and they may convert into a Private Limited Company after granting their approval to include one or more additional persons or legal entities as shareholders of the company.

3.3.3. Public Limited Company

A Public Limited Company (PLC) is a form of a limited company that the law authorizes to issue securities to the public. Unlike private limited companies, it must have more than 30 shareholders.

3.4. Foreign Business in Cambodia

According to the Law on Commercial Enterprises, a foreign business is a legal person, formed under the laws of a foreign country, which conducts business in Cambodia. It is subject to registration at the Ministry of Commerce. Existing foreign businesses can enter Cambodia without setting up the entities by creating either a representative office, a branch office or a subsidiary.

3.4.1. Representative Office

An eligible foreign investor may establish a Representative Office (RO) to facilitate the operation of local goods and services on behalf of its parent company. The RO is responsible for promoting and marketing the parent company's goods and services. Furthermore, in reality, the RO is not subject to tax under the Cambodian tax laws as it does not derive any income from its activities, but is responsible for withholding tax on salaries, patent tax and an annual business operation tax.

3.4.2. Branch Office

A foreign company can operate as a branch office and can undertake the same business activities as a Cambodian-owned Company, with the notable exception of land ownership. However, the foreign parent company will be liable for the losses and debts of a branch as its assets shall be the assets of the parent company. A branch shall be managed by one or more managers appointed and removed by the decision of its parent company.

3.4.3. Subsidiary

A subsidiary is a company that is incorporated by a foreign company with at least fifty- one (51) percent of its capital that is held by the foreign company. A subsidiary has a legal personality separate from its parent company from the date of its registration. In addition, it may be incorporated in the form of a partnership or limited company, and may regularly carry on business in the same manner as a local company.

4. THE 2021 LAW ON INVESTMENT

Promulgated on 15 October 2021, the new Law on Investment (New LoI) aims to establish an open, transparent, predictable and favorable legal framework to attract and promote quality, effective and efficient investment by Cambodian nationals or foreigners. This is to enable socio-economic development in the Kingdom of Cambodia, by increasing Cambodia's competitiveness, increasing the productivity of local industries, establishing an investment incentives regime and providing protection to investors' rights.

The 2021 LoI replaces the 1994 Law on Investment and the Amendment of the Law on Investment 2003. The LoI includes 12 chapters and 42 articles which apply to all investment projects registered with the CDC or the Municipal Provincial Investment Sub-committees. These registered investment projects comprise the following:

- “Qualified Investment Projects” (QIPs): A QIP is an investment project that has received a registration certificate from the CDC or a Municipal Provincial Investment Sub Committee.
- Expanded Qualified Investment Projects” (EQIPs): An EQIP is an expansion of a QIP in any form, including expansion of existing production, expansion through product line diversification within the same lines, expansion through the use of new technologies that enhance productivity or protect the environment, expansion of infrastructure to serve basic telecommunications services, or expansion in any other forms to be determined by the Sub Decree.
- “Guaranteed Investment Projects”: A GIP is an investment project registered with the CDC or a Municipal Provincial Investment Sub Committee, and is clearly mentioned as an investment project that is not eligible for tax incentives.

4.1. The Sectors for Investment Incentives

There are 18 sectors that are entitled to be incentivized as QIPs, which are contained in Article 24 of the new legislation. They include high-tech industries involving innovation, research, agriculture, environment, green energy alongside other sectors such as education, health, tourism and special economic zones.

The investment projects in Article 24 which are not on the Negative List of ANNEX 1 (“Negative List”) of the “Sub-Decree No. 111” shall receive basic tax and/or customs duty incentives, in whole or in part, after their Registration Certificate certifying their QIP status has been issued.

The investment incentives that are provided under the new law, are classified into three types; basic incentives, additional incentives and special incentives.

4.2. Basic Incentives

Investors who register as a QIP have the right to choose between two (2) packages of basic incentives, which are:

Option 1: Tax Exemption Period

An income tax exemption for 3 to 9 years, depending on the sector and investment activities, commencing from the time of first earning income. The period of income tax exemption that each sector and investment activity will receive shall be determined by the law on financial management and/or the future LoI Sub-Decree. After the income tax exemption period has expired, the QIP's income tax will increase gradually over 6 years, at a progressive rate proportional to the total tax due as follows: 25% for the first 2 years, 50% for the next 2 years and 75% for the final 2 years. Furthermore, this option includes:

- A Prepayment Tax exemption during the income tax exemption period;
- A Minimum Tax exemption, provided that an independent audit report has been carried out, and;
- An Export Tax exemption, unless otherwise provided for in other laws and regulations.

Option 2: Special Depreciation

- Deduction of capital expenditure through special depreciation, as stated in the tax regulations in force;
- Eligibility of deducting up to 200 (two hundred) percent of specific expenses incurred for up to 9 (nine) years. Sectors and investment activities, specific expenses, as well as the deductible period, shall be determined in the Law on Financial Management and/or the Sub-Decree;
- Prepayment Tax exemption for a specific period of time based on sectors and investment activities to be determined in the Law on Financial Management and/or the Sub-Decree;
- Minimum Tax exemption, provided that an independent audit report has been carried out;
- Export Tax exemption, unless otherwise provided in other laws and regulations.

Additionally, both an export QIP and a supporting QIP are eligible to receive customs duty exemptions and excise tax and VAT exemptions for the import of construction equipment and materials, production equipment and materials and production inputs. A domestic QIP is only eligible for customs duty exemptions and excise tax and VAT exemptions for the import of construction equipment and materials and production equipment and materials.

Additional Incentives

In addition to the basic incentives, investment activities registered as QIP receive additional incentives, as follows:

- Value-added tax exemption for the purchase of locally made Production Inputs for the implementation of the QIP.
- Deduction of 150% from the tax base for any of the following activities:
 - Research, development and innovation;
 - Human resource development through the provision of vocational training and skills to Cambodian workers/employees;
 - Construction of accommodation, food courts or canteens where reasonably priced foods are sold, nurseries and other facilities for workers/employees;
 - Upgrade of machinery to serve the production line; and
 - Provision of welfare for Cambodian workers/employees, such as comfortable means of transportation to commute from their homes to factories, accommodation, food courts or canteens where foods are sold at reasonable prices, nurseries and other facilities.
- Entitlement to income tax exemption for the Expansion of QIP which will be determined in the Sub-Decree.

4.4. Special Incentives

Any specific sector and investment activities having high potential to contribute to Cambodia's national economic development may receive specific special incentives. The eligible sectors and activities are to be set out in the Law on Financial Management.

• Comparison between the Previous Law and the New Law on Investment

Both laws indicate some important clarifications in the Articles which still remain and change as below:

Similarities:

- Investment incentives: Any investment project that wishes to receive QIP status must not be on the Negative List (Sub-Decree 111).
- Investment guarantees: Both laws contain similar protection focusing on a non-discriminatory approach to foreign investors, other than that relating to foreign ownership of land, which is barred as per the Constitution of the Kingdom of Cambodia. In addition, the State cannot undertake any nationalization action that would affect the assets of the investors, and cannot fix the price of products or services. Investors also have the right to purchase foreign currencies through the bank system and can hire foreign employees .
- The approved incentives: The approved incentives granted by the CDC cannot be transferred or assigned to a third party by an investor, but they can be transferred through acquisition, sale and merger of the investment project.
- Dispute settlement: The new law does not provide a significant change in the dispute settlement mechanisms. When a dispute occurs between investors, the process is settled through conciliation by the CDC or the Municipal-Provincial Investment Sub-Committee and in accordance with the written request of the parties. The CDC or the Municipal-Provincial Investment Sub-Committee will begin the process of conciliation within 30 days. If the dispute cannot be settled, the process will be referred to national or international arbitration, or the relevant courts of the Kingdom of Cambodia.

Differences

Differences	Old LOI	New LOI
Investment incentives	Provides incentives to encourage investment in only 9 important fields.	Provides increased priorities and encouragement for 18 different fields, mostly focusing on research, development and innovation.
Tax exemption	Provides a tax exemption from 3 years to 9 years.	Provides a tax exemption from 3 years to 9 years, and after the expiration of that term the new law provides an additional 6 years and other special incentives.
Investment guarantees	Provides less investment guarantees. The investors have the right to hire foreign employees but it does not provide the additional rights to obtain a temporary long-term stay permits for oneself, a spouse and children.	Provides more investment guarantees. There is compensation for losses as a result of civil war, armed conflict and a state of national emergency, fair treatment for domestic and foreign investors, protection against expropriation, and intellectual property protection. Furthermore, the new law states that investors have the right to hire foreign employees and investors have additional rights to obtain a temporary long-term stay permits for oneself, a spouse and children who are minors during the period that the investment project is operating. They have the same right to request temporary long-term stay permits for foreign employees and their spouse and children who are minors during the valid period of the employment contract.
Registration procedures	The registration procedure for a QIP was made through the submission of a hard copy application to the CDC for review and a decision, with a maximum period of 31 working days.	The new law introduces an online registration process for the submission of an application of a QIP. Investors shall submit application to the CDC or a Municipal-Provincial Investment Sub-Committee. The new law provides duties to MPIS to handle this with the CDC in order to lighten the load of pending work for the registration process. The timeline to issue a registration certificate is now 20 working days.
Small and medium-sized enterprise (SMEs)	The previous law did not mention or encourage small and medium enterprises to cooperate with big industries.	The new law will provide more opportunities for SMEs, which can encourage them to process raw materials or semi-finished products to supply the large-sized industries that are operating in Cambodia, or will be coming to invest in Cambodia in the future. Therefore, the small and medium enterprises will have increased chances to develop their business, and will create more job opportunities and therefore potentially benefit the national economy of Cambodia. The minimum criteria of an SME will be stipulated in an additional Sub-Decree. There is no clear definition of an SME at this stage, but several factors will be considered including the industry, the size and the turnover. The priority sectors of SMEs are to be clarified in a further Sub-Decree, however the expectation is they will be similar to the other sectors listed in Article 24.
Green Energy	The old law does not provide tax incentives for activities related to green energy.	Green energy producers are now eligible for these tax incentives, an area where there has been a lack of investment due to, among other factors, the high start-up costs. The expectation is that being incentivized in the new law will accelerate green energy investment in Cambodia.

5. UPCOMING DEVELOPMENTS

The Law on Concessions had some notable omissions, and was inconsistent with international standards and the actual conditions of the management and implementation of Public and Private Partnership (PPP). It was replaced by the Law on the Public and Private Partnership (PPP), adopted on 18 November 2021, to promote, encourage and attract more local or foreign investors in Cambodia and it will apply alongside with the new Investment Law. Moreover, the law makers will adopt new legal legislation and frameworks to conduct and clarify the new Law on Investment, specially to adopt a new Negative List in order to replace the current Sub-Decree. Regarding dispute settlements, in order to improve the current dispute settlement mechanisms and to attract increased investment, the government is planning to establish the Commercial Court, which will be competent to enforce the new LoI.

*The information provided here is for information purposes only and is not intended to constitute legal advice. Legal advice should be obtained from qualified legal counsel for all specific situations. For more details or any question related to **Legal Update on Entry Regulations for Derivative related Business in Cambodia**, please contact our professionals via cambodia@bnlegal.com, ipr@bnlegal.com.*