

DRAFT

**LAW ON INVESTMENT
OF THE KINGDOM OF CAMBODIA**

Dated 29/03/2002

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Unofficial translation-The Khmer version is the official version of
the Law on Investment of the Kingdom of Cambodia

KINGDOM OF CAMBODIA
Nation Religion King

THE NATIONAL ASSEMBLY

PREAH REACH KRAM (ROYAL DECREE)
N° [...]

**I, PREAHBATH SAMDECH PREAH NORODOM SIHANOUK VARMAN REACH
HARIVONG UPHATO SUCHEAT VISOTHIPONG AKAMOHABORASRAT
NIKARASOM THAMMIK MOHAREACHE ATHIREACH BOROMANEAT
BOROMABOPIT PREAH CHAU KRONG KAMPUCHEA THIPDEY**

- *Seen the Constitution of the Kingdom of Cambodia promulgated on September 24, 1993;*
- *Seen the Royal Decree dated November 1, 1993 on the Appointment of the Royal Government;*
- *Seen The Law on Investment of the Kingdom of Cambodia and its promulgation by Royal Decree (Kram) dated August 5, 1994; and*
- *With the request of the Council of Ministers*

CHAPTER 1: GENERAL PROVISIONS

Article 1: All provisions of the Law on Investment of the Kingdom of Cambodia promulgated by Royal Decree 03 NS94 dated August 5 1994 shall be considered null and void and replaced by the provisions of this Law.

Article 2: This Law applies to all Qualified Investment Projects and regulates the process by which any person establishes a Qualified Investment Project. Only Qualified Investment Projects are entitled to the benefits and subject to the obligations of this Law.

Article 3: In this Law, unless the context otherwise requires :

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

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

“Conditional Registration Certificate” means the document issued by the Council under Article 8.3 of this Law.

"Council " means the Council for the Development of Cambodia.

"Export QIP " means a Qualified Investment Project whose production is exported in accordance with the provisions of the Sub-Decree;

"Final Registration Certificate" means the document issued by the Council under Article 8.7 of this Law."

"Investment Proposal" means the proposal submitted by any person to the Council with the purpose to establish a QIP.

"Investor" means any person who carries on a Qualified Investment Project;

"Person" means any natural or juridical person.

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

"Supporting Industry QIP" means a Qualified Investment Project which has its entire production (100%) supplying exporters as substitution for the latter's regular import of raw materials or accessories.

"Working day" means any calendar day which is an official working day of the Royal Government of Cambodia by law.

CHAPTER II: THE COUNCIL FOR THE DEVELOPMENT OF CAMBODIA

Article 4: The Council for the Development of Cambodia is the sole and One-Stop Service organization responsible for the Rehabilitation, Development and the oversight of investment activities. The Council for the Development of Cambodia is the Royal Government's "Etat-Major" responsible of the evaluation and the decision-making on all Rehabilitation, Development and Investment project activities.

Article 5: The Council for the Development of Cambodia comprises the following boards:

1. The Cambodian Rehabilitation and Development Board;
2. The Cambodian Investment Board;

Article 6: The organization and functioning of the Council for the Development of Cambodia shall be specified by Sub-Decree.

CHAPTER III: INVESTMENT PROCEDURES

Article 7: All persons wishing to establish a QIP shall apply to the Council by submitting an Investment Proposal in the form and according to the procedures provided in this Law and the Sub-Decree.

Article 8:

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

2. The Council shall issue the Conditional Registration Certificate if the Investment Proposal contains all the information required under the Sub-Decree, and if the proposed activity is not in the Negative List set out in the Sub-Decree. If the Investment Proposal does not satisfy such criteria, the Council shall issue a Letter of Non-Compliance to the Applicant.
3. The Conditional Registration Certificate shall specify the approvals, authorizations, clearances, licenses, permits or registrations required for the QIP to operate, as well as the government entities responsible to issue such approvals, clearances, licenses, permits or registrations. The Conditional Registration Certificate shall also confirm the incentives that the QIP is entitled to under Article 14 of this Law and confirm the statutes of the legal entity which will undertake the QIP.
4. If the Council fails to issue a Conditional Registration Certificate or Letter of Non-Compliance within three working days, the Conditional Registration Certificate shall be considered to be automatically issued in the form set out in the Sub-Decree.
5. The Council shall obtain all of the licenses listed in the Conditional Registration Certificate on behalf of the Applicant.
6. All government entities responsible for issuing an authorization, clearance, license, permit or registration listed on the Conditional Registration Certificate shall issue such document no later than the 28th working day from the date of the Conditional Registration Certificate. Any government official who, without proper legal justification, fails to process and respond to an Applicant's request by this 28 working day deadline shall be punished by law.
7. The Council shall confirm the Conditional Registration Certificate within 28 working days of its issuance by issuing a Final Registration Certificate. Issuance of the Final Registration Certificate does not release the QIP from obtaining any other approvals required by law. A QIP is formed upon issuance of the Final Registration Certificate.
8. All Letters of Non-Compliance shall clearly state, in detail, the reasons why the Investment Proposal was not satisfactory, as well as the additional information required to enable the Council to issue a Conditional Registration Certificate. The Council has 10 working days to issue a Conditional Registration Certificate or Letter of Non-Compliance after receipt from the Applicant of the information requested in any Letter of Non-Compliance.

CHAPTER IV: INVESTMENT GUARANTEES

Article 9: 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 Constitution of the Kingdom of Cambodia.

Article 10: The Royal Government shall not undertake nationalization policy, which shall adversely affect private properties of investors in the Kingdom of Cambodia.

Article 11: The Royal Government shall not impose price control on the products or services of a QIP.

Article 12: In accordance with the relevant laws and regulations issued and published to the public by the National Bank of Cambodia, the Royal Government shall permit investors with investments in Cambodia to purchase foreign currencies through the banking system and to remit abroad these currencies for the discharge of financial obligations incurred in connection with their investments. This concerns the following payments:

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

CHAPTER V: INVESTMENT INCENTIVES

Article 13: The Royal Government shall make available incentives under this Chapter to Qualified Investment Projects.

Article 14: Incentives shall include the exemption, in whole or in part, of custom duties and taxes as follow :

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

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

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

2. The entitlement of a QIP under Sub-article 14.1 shall be subject to the QIP obtaining from the Council an annual certificate of compliance in accordance with the provisions of the Sub-Decree.
3. A QIP shall be subject to a profit tax rate after its tax exemption period as determined in the Law on Taxation
4. A QIP which uses the entitlement under Sub-Article 14.1 shall not be entitled to claim any special depreciation under the Law on Taxation.
5. A domestically oriented QIP shall be entitled to import production equipment, construction materials, exempt of duty in accordance with the provisions of the Sub-Decree.
6. An export QIP other than an Export QIP which elects or which has elected to use the Customs Manufacturing Bonded Warehouse, shall be entitled to import production

equipment, construction materials, and production input materials exempt of duty in accordance with the provisions of the Sub-Decree.

7. A “Supporting Industry” QIP shall be entitled to import production equipment, construction materials, and production input materials exempt of duty in accordance with the provisions of the Sub-Decree.
8. A person which has acquired, or merged with, an investor, may on application to the Council inherit all, and any, guarantees, rights, privileges and obligations from the investor’s QIP, subject to the merger or acquisition per procedures stipulated in the Sub-Decree.
9. A QIP which is located in a designated SPZ or EPZ listed in a development priority list issued by the Council shall be entitled to the same incentives and privileges as other QIPs stipulated in this law.
10. A QIP shall be entitled to 100% exemption of export tax, except for activities specifically mention in the Law on Customs.
11. A QIP is entitled to obtain visas and work permits for the employment in the Kingdom of foreign citizens as managers, technicians and skilled workers, and residency visas for the spouses and dependants of those foreign nationals as authorized by the Council and in compliance with the Immigration and Labor Laws.

Article 15: The rights, privileges and entitlements of a QIP may not be transferred or assigned to any third party except by acquisition or merger as stipulated in Article 14.8.

CHAPTER VI: LAND OWNERSHIP AND USE

Article 16: In accordance with the Constitution and relevant laws and regulations pertaining to the ownership and use of land:

1. 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.
2. Use of land shall be permitted to investor, including concessions, unlimited long-term leases and, limited short-term leases which are renewable upon request... The concession of the public owned land is permitted for a period up to 99 years.
3. Investors shall have the right to own and pledge as security the real and personal property situated upon the land which the QIP uses, as permitted by Law.

CHAPTER VII: EMPLOYMENT PRACTICES

Article 17: Investors in the Kingdom of Cambodia shall be free to hire Cambodian nationals and foreign nationals of their choosing in compliance with the labor and immigration laws.

Article 18: Investors shall be allowed to hire foreign employees provided that :

1. The qualification and expertise are not available in the Kingdom of Cambodia among the Cambodian populace. In the event of such hiring, appropriate documentation including photocopies of the employee's passport, certificate and/or degree and a curriculum vitae shall be submitted to the Council,
2. Investors shall have the obligation to provide adequate and consistent training to Cambodian staff,
3. Promotion of Cambodian staff to senior positions will be made over time.

Article 19: Foreign employees shall be allowed to remit abroad their wages and salaries earned in the Kingdom, after payment of appropriate tax, in foreign currencies obtained through the banking system.

CHAPTER VIII: DISPUTES AND DISSOLUTION

Article 20: Any dispute relating to a QIP concerning its right and obligations set forth in the law shall be settled amicably as far as possible through consultation between the Council, the investors and any other party involved in the dispute.

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

- Conciliation before the Council which shall provide its opinion, or
- Adjudication by the courts of the Kingdom of Cambodia, or
- Resolution by arbitration in or outside of Cambodia under international rules as agreed by both parties.

Article 21: If an investor intends to end its activities in the Kingdom of the Cambodia, it shall inform the Council through either a registered letter or a hand delivered letter stating the reason of such a decision, and signed by the investor or his attorney-in fact.

Article 22: If an investor intends to stop the activity of its QIP without judicial procedures, the investor shall provide proof to the Council that the QIP has properly settled its debts, including any complainants and claims from the Ministry of Economy and Finance, before the investor is allowed to officially stop the activities of the QIP or dissolve according to the applicable commercial law.

Article 23: Once the QIP is allowed to stop its activity either within the judicial procedures or not, the investor can transfer the remaining proceeds of their assets overseas or use them in the Kingdom of Cambodia. However, in the event that the QIP had used machineries and equipment that were imported duty free for less than five years, the QIP shall have the obligations to pay the duties applicable to those machineries and equipment, per the terms of the Sub-Decree.

CHAPTER IX : TRANSITIONAL PROVISIONS

Article 24:

1. All investments authorized under the Law on Investment promulgated in 1994 and its implementing sub-decree shall be considered to be Qualified Investment Projects subject to this Law and the Sub-Decree.
2. An QIP entitled to a tax on profit rate of 9% before the promulgation this Law and which has commenced the investment activity in respect of which the approval was granted, shall be entitled to that 9% tax rate for five tax years commencing from the tax year after the promulgation of this Law, subject to the QIP submitting in each tax year a certificate of compliance in accordance with the Sub-Decree.
3. A QIP entitled to an exemption of tax on profit before promulgation of this Law, and whose entitlement has been confirmed in writing by the Council, shall continue to be entitled to that profit tax exemption, subject to the QIP submitting in each tax year after promulgation of this Law a certificate of compliance in accordance with the Sub-Decree.

Article 25: Where the QIP violates or fails to comply with the conditions stipulated by the Council, the Council shall have the power to withdraw the privileges and incentives granted to him, in whole or in part.

CHAPTER X: FINAL PROVISIONS

Article 26: Any provisions contrary to this Law shall be considered null and void.