

Filename: 45 RKM-94-Law on Investment.doc

THE NATIONAL ASSEMBLY

KINGDOM OF CAMBODIA

LAW ON THE INVESTMENT OF THE KINGDOM OF CAMBODIA

*This law is adopted by the National Assembly in Phnom Penh
on August 4, 1994 during the extraordinary session of the first legislature.*

CHAPTER I: GENERAL PROVISIONS

ARTICLE 1:

This Law governs all investments projects made by investors who are Cambodian citizens and/or foreigners within the Kingdom of Cambodia.

ARTICLE 2:

Investor can be either a natural person or a legal entity.

CHAPTER II: THE COUNCIL FOR THE DEVELOPMENT OF CAMBODIA

ARTICLE 3:

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

ARTICLE 4:

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

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

ARTICLE 5:

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

CHAPTER III: INVESTMENT PROCEDURES

ARTICLE 6:

Investors have to submit investment applications to the Council for the Development of Cambodia for review and decision.

ARTICLE 7:

The Council for the Development of Cambodia shall provide a response as to its decision to all investor/applicants within a period of a maximum of forty five (45) days following the date of submission of the complete investment application.

If without proper justification, any Government officials who refuse to review and respond to investors application past the above mentioned period of time shall be punished by law.

CHAPTER IV: INVESTMENT GUARANTEES

ARTICLE 8:

Investors shall be treated in a non-discriminatory manner as set by law, except for ownership of land as set forth in the Constitution of the Kingdom of Cambodia.

ARTICLE 9:

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

ARTICLE 10:

The Royal Government shall not impose price control on the products or services of investors who have received prior approval from the Government.

ARTICLE 11:

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

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

CHAPTER V: INVESTMENT INCENTIVES

ARTICLE 12:

The Royal Government shall make available incentives to encourage investments in such important fields as :

1. Pioneer and/or high technology industries,
2. Job creation,
3. Export-oriented,
4. Tourism industry,
5. Agro-industry and Transformation industry,
6. Physical infrastructure and energy,
7. Provincial and rural development,
8. Environmental protection, and
9. Investments in Special Promotion Zone (SPZ) as shall be created by Law.

ARTICLE 13:

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

ARTICLE 14:

Incentives shall consist of the following:

1. A corporate tax rate of 9% except the tax rate on the exploration and exploitation of natural resources, timber, oil, mines, gold, and precious stones which shall be set in other laws.
2. A corporate tax exemption of up to 8 years depending on the characteristics of the project and the priority of the government which shall be mentioned in a Sub-Decree. Corporate tax exemption shall take effect beginning from the year the project derives its first profit. A 5-year loss-carried forward shall be allowed. In the event the profits are being reinvested in the country, such profits shall be exempted from all corporate tax.
3. Non-taxation on the distribution of dividends or profits or proceeds of investments, whether they will be transferred abroad or distributed in the country.
4. 100% import duties exemption on construction materials, means of production, equipments, intermediate goods, raw materials and spare parts used by:
 - a. An export-oriented project with a minimum of 80% of the production set apart for export, and
 - b. Located in a designated Special Promotion Zone (SPZ) listed in a development priority list issued by the Council;
 - c. Tourism industry
 - d. Labour-intensive industry, transformation industry, agro-industry,
 - e. Physical Infrastructure and energy industry

These 100% exemption of duties and taxes mentioned above shall be in effect according to the terms of the agreement or requirement book of the investment projects which will produce goods for export in minimum of 80% of overall productivities as stipulated in the above point (4) a and for the investment projects which located in Special promotion Zone (SPZ) as in (4) b.

Beside the kinds of investment projects in the above points (4) a and (4) b the 100% exemption of duties and taxes shall only be authorized for an arrangement of construction period of enterprises, factories, building and the first year of operation of business production.

5. 100% exemption of export tax, if any;
6. The permission to bring into the Kingdom of Cambodia foreign nationals who are:
 - Management personnel and experts
 - Technical personnel
 - Skilled workers
 - Spouses and dependents of the above persons as authorized by the Council for Development of Cambodia and in compliance with the immigration and labour law.

ARTICLE 15:

The approval and incentives granted by the Council for Development of Cambodia shall not be transferred or assigned to any third parties.

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 for the purpose of carrying on promoted investment activities shall be vested only in natural persons holding Cambodian citizenship or in legal entities in which more than 51% of the equity capital are directly owned by natural persons or legal entities holding Cambodian citizenship.
2. Use of land shall be permitted to investors, including long-term leases of up to a period of 70 years, renewable upon request. Upon such use may include the right of ownership of real and personal property situated on the land as may be permitted by the 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 labour and immigration law.

ARTICLE 18:

The investors shall be allowed to hire foreign employees who are listed in Article 14 (6) 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 the 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 employees,
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 promoted investment established in the Kingdom by a Cambodian or a foreign national concerning its rights and obligations set forth in the Law shall be settled amicably as far as possible through consultation between the parties in dispute.

Should the parties failed to reach an amicable settlement within two month 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
- refer the matter to the court of the Kingdom of Cambodia, or
- refer to any international rules to settle the disputes as agreed by both parties.

ARTICLE 21:

In the event a promoted company intend to end its activity in the Kingdom of Cambodia, it will have to inform the Council through either a registered letter or a hand delivered letter stating the reasons of such a decision, which letter shall be signed by the investor or his attorney-in fact.

ARTICLE 22:

In the event of a proposal for a dissolution of a company without judicial procedures, the investor shall provide proofs to the Council that the company has properly settled its potential creditors, complainants and claims from the Ministry of Economy and Finance before the investor is allowed to officially dissolve his company or enterprise according to the applicable commercial law.

ARTICLE 23:

Once the investor is allowed to offically dissolve his company or enterprise either within the judicial procedures or not, the investor can transfer the remaining proceeds of its assets overseas or use them in the Kingdom of Cambodia. However, in the event that the dissolving company had used machineries and equipment which were imported duty free for less than five years, the company will have the obligations to pay the duties applicable to those machineries and equipment.

CHAPTER IX: FINAL PROVISIONS

ARTICLE 24:

Investments authorized under the previous “Law on Investment” of the State of Cambodia and its Sub-Decrees shall be subject to the same benefits and obligations as stated under this Law. This law is not retroactive.

ARTICLE 25:

In the case where the promoted company violates or fails to comply with the conditions stipulated by the Council, the Council shall have the power to withdraw the rights and benefits granted to him, in whole or in part.

ARTICLE 26:

This Law shall be promulgated immediately.

This law is adopted by the National Assembly of the Kingdom of Cambodia in Phnom Penh on August 4, 1994 during the extraordinary session of the first legislature.

Phnom Penh, August 4, 1994

The Acting Chairman of the National Assembly
LOY SIM CHHEANG