

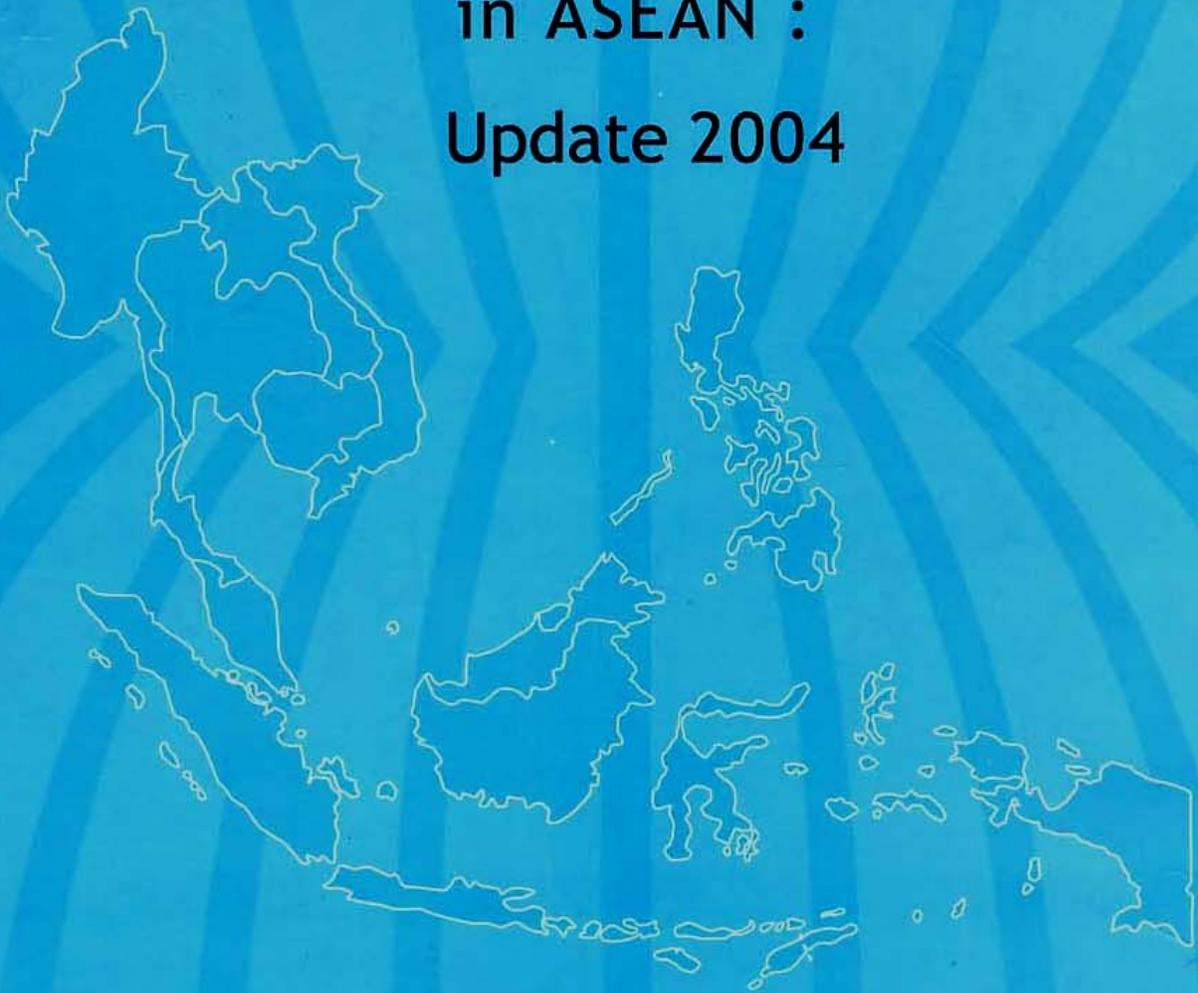


Guide Book

for Investing

in ASEAN :

Update 2004



Ten Nations One Community
ASEAN Secretariat



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

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Cataloging-in-Publication Data

GUIDEBOOK FOR INVESTING IN ASEAN: UPDATE 2004

Jakarta : ASEAN Secretariat, November 2004

Vii ; 229 p. ; 24.5 cm

1. Investments
2. Investments – Asia, Southeastern – Handbooks, manuals, etc

332.678
ISBN : 979-3496-01-0

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ACKNOWLEDGEMENTS

The publication of the “Guidebook for Investing in ASEAN: Update 2004” is an output from all the respective ASEAN Investment Agencies. This edition was prepared, and coordinated by the Investment and Enterprise Unit, ASEAN Secretariat. The contribution and advice of all the ASEAN Investment Agencies is gratefully acknowledged.

Given the dynamic of the investment sector and the rapidly changing investment environment, the Guidebook will be updated from time to time to provide investors, business community and private enterprises, within and outside ASEAN, with a better understanding of the investment instruments agreed among the ASEAN countries. The initiative to publish this guidebook is taken in the context of ASEAN’s endeavours to provide greater transparency of the region’s investment regimes to investors and public.

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Copies of this publication, together with other investment information on ASEAN, can also be found at the ASEAN Homepage (<http://www.aseansec.org>) at the ASEAN Secretariat.

INTRODUCTION

The rapid growth of ASEAN has attracted, and been facilitated by, foreign direct investment (FDI). FDI flows have increased substantially in recent decades in tandem with removal of restrictions and the implementation of policies to attract FDI flows. The contribution of FDI to development is a widely recognised trend. Investments may be in the form of new enterprise, the expansion of an existing enterprise, and/or come through a merger or an acquisition and the potential benefits of FDI inflows extend far beyond financial resources.

ASEAN Member Countries signed and agreed to provide investment protection and guarantee, and to work together in establishing the ASEAN Investment Area (IAI) by 2010. Under the Framework Agreement on the AIA, which was signed on 7 October 1998, each ASEAN country is to open up and extend national treatment to investments from other ASEAN countries. The AIA covers an investment area comprising a total market size of over 500 million people and a combined gross domestic product (GDP) of over US\$680 billion and a total trade of US\$712 billion in 2003. Today, the ASEAN region represents one of the fastest growing markets in the world.

To enhance transparency and to make ASEAN investment environment better known to investors, the ASEAN Secretariat is pleased to publish the “Guidebook for Investing in ASEAN: Update 2004” (previously called Compendium of Investment Policies and Measures in ASEAN Countries). This revised guidebook brings together updated key information on legislation, policies, measures, procedures and conditions concerning investment in individual ASEAN countries.

This publication is divided into individual Member Countries sections, each addressing specific investment policies, measures and requirements. It illustrates the investment policy development at national level, and should allow the readers to better appreciate the commitment by each ASEAN Member Countries’ commitment to investment liberalisation and their collective efforts in attracting FDI.

This publication aims to provide investors with up-to-date information on the investment regimes, laws, policies and measure in the region. Investors and businessmen who wish to obtain more details of the relevant legislation, Acts, policies or measures of the ASEAN countries, should consult the specific documents highlighted in the guidebook. The relevant documents or summaries of the legal instruments could be obtained from or through the respective investment agencies.

The ASEAN Investment Agencies and the ASEAN Secretariat will continue to disseminate meaningful and timely information, targeted primarily at existing and potential investors, to enable them to better appreciate the investment opportunities and the congenial investment environment in the region.

I. RELEVANT LEGISLATION

1. INVESTMENT ACT

- *Investment Incentives Order 2001*

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

- a. Pioneer Industries
- b. Pioneer Services Companies
- c. Post-Pioneer Companies
- d. Expansion of Established Enterprises
- e. Expanding Service Companies
- f. Production for Export
- g. Export for Services
- h. International Trade Incentives
- i. Foreign Loans for Productive Equipment
- j. Investment Allowances
- k. Warehousing and Servicing Incentives
- l. Investment in New Technology Companies
- m. Overseas Investment and Venture Capital Incentives.

Provides tax advantage and incentives.

The Act encourages the establishment and development of industrial and other economic enterprises and for economic expansion. 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 30 %, for between two and five years depending on the level of investments on capital assets. 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 enterprise 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 control 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 individual 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 compliance are 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 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. APPLICATION

1. AGENCY/IES INVOLVED IN ADMINISTERING INVESTMENT APPLICATION AND GRANTING OF INCENTIVES

The Ministry of Industry and Primary Resources is responsible for approving investment projects especially in areas related to the primary sectors such as agriculture, fisheries and forestry activities.

The Ministry of Industry and Primary Resources through Technical Committee can consider any application for Pioneer Status.

The Ministry of Industry and Primary Resources through the Brunei Industrial Development Authority (BINA), manages all industrial sites and acts as a one stop shop for all investors wishing to make use of the country's industrial sites and facilities. There are nine industrial sites/estates in Brunei Darussalam, covering around 375 hectares, which provide facilities such as infrastructure (e.g. roads, drainage and sewerage facilities), electricity, telecommunications and water.

2. CONDITIONS INCLUDING TIMETABLE FOR PROCESSING OF APPLICATION

- Registration with the Registrar of Companies is required prior to application.
- Miscellaneous Licenses are required for certain businesses, such as retail business, 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 sole proprietorship, partnership or a limited company.

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

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

3. SPECIAL SERVICES

The Ministry of Industry and Primary Resources (BINA) Multi-Purpose Agency coordinates all industrial development activities and will liaise with other agencies and expedite applications for those requiring Government facilities and assistance.

The Ministry realises the importance of time frames and clear decision making process. The entire procedure has only four stages:

- Approval of the concept
- Approval of firm proposal
- Approval of physical plans
- Approval to operate

The Multi-Purpose Agency also coordinates with the Labour Department for Labour licenses and with the Immigration Department for Employment Pass or Visa.

III. PROMOTED AREAS/SECTORS

PROMOTED FIELD/SECTORS

Foreign Investment is encouraged in certain priority sectors, including leather products and footwear, electrical and electronic machinery, ships and boats, clothing, and metal and non-metal products. The following industries and products are considered as pioneer:

Industries

- Aircraft Catering Services
- Cement Finish Mill
- Pharmaceutical
- Aluminium Wall Tile
- Rolling Mill Plant
- Industrial Chemical
- Shipyard

- Tissue Paper
- Textile
- 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

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 napkin
- 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 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 appropriate government officials.

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

IV. FOREIGN EQUITY POLICIES

EQUITY REGULATIONS

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

The Investment Incentives Order 2001, administered by the Ministry Of Industry and Primary Resources allows investors to hold up to 100 % of the equity ownership in certain industries and activities which the Government promotes.

Activities relating to national food security and those activities requiring the use of local resources (i.e. agriculture, fisheries, and food processing) must have at least 30 % local equity participation.

V. INCENTIVES

1. CORPORATE INCOME TAX / INCOME TAX ALLOWANCE

Under the Investment Incentives Order 2001 administered by the Ministry of Industry and Primary Resources offers incentives in the form of tax exemption to different types of company set-ups:

(A) 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.

The tax relief period of pioneer industry will begin on its production day. The tax relief periods are 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 in 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 30% 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 material.
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.

(B) PIONEER SERVICES COMPANIES

- When the Minister considers it expedient in the public interest
- Where a company is engaged in any qualifying activity as follows:
 - a. Any engineering or technical services including laboratory, consultancy and research and development activities;
 - b. Computer-based information and other computer related services;
 - c. The development or production of any industrial design;
 - d. Services and activities which relate to the provision of leisure and recreation;
 - e. Publishing services;
 - f. Services which relate to the provision of education;
 - g. Medical services;
 - h. Services and activities which relate to agricultural technology;
 - i. Services and activities which relate to the provision of warehousing facilities;

- j. Services which relate to the organisation or management of exhibitions and conferences;
- k. Financial services;
- l. Business consultancy, management and professional services;
- m. Venture capital fund activity;
- n. Operation or management of any mass rapid transit system;
- o. Maintaining and operating a private museum; and
- p. 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

(C) POST PIONEER COMPANIES

- a pioneer company on or after 1st 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 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

(D) 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

(E) EXPANDING SERVICE COMPANIES

Tax relief period of expanding service company

- a. Commence on its expansion day; or
- b. 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	Period
a & b	11 years
Extension	5 years at one time but not exceeding 20 years in total

Investment Incentives

Exemption from income tax

(F) PRODUCTION FOR EXPORT

- The Minister may approve the company proposes to engage in agriculture, forestry and fishery activities either wholly or partly for export, as an export enterprise and issue the certificate if he thinks that it is expedient in the public interest to do so.
- Every export enterprise shall specify the accounting period in which it is expected that the export sales of the export product or export produce:
 - a. Will not be less than 20% of the value of its total sales
 - b. Will not be less than \$20,000

Tax Relief Period	Exemption Period
Not a pioneer enterprise	8 years
Being a 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:

- Nor 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 (Chapter 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

(G) EXPORT FOR SERVICES

Qualifying services are as follows:

- a. technical services including construction, distribution, design and engineering services;

- b. consultancy, management supervisory or advisory services relating to any technical matter or to any trade or businesses;
- c. fabrication of machinery and equipment and procurement of materials, components and equipment;
- d. data processing, programming, computer software development, telecommunications and other computer services;
- e. professional services including accounting, legal, medical and architectural services;
- f. educational and training services; and
- g. any other services as the Minister may prescribe.

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

(H) INTERNATIONAL TRADE

Where a company is engaged in:

- International trade in qualifying manufactured goods or Brunei Darussalam domestic product and export sales if those goods or 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.

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.

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 agreement 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.

(I) 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
- 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 of warehousing company or servicing company

The relief period of warehousing 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.

(J) 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.

(K) OVERSEAS INVESTMENT AND VENTURE CAPITAL INCENTIVES

Application for and issue of certificate to venture company:

- (i) 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.
- (ii) 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.

- (i) 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 product, process of services may make an application in prescribed form to the Minister to be approved as a technology investment company.

- (ii) That technology, if introduced in Brunei Darussalam, would promote or enhance the economic or technological development of Brunei Darussalam
- (iii) 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.

(L) OTHER TYPES OF PROJECTS/ACTIVITIES

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:

- (i) For the manufacture or increased manufacture of any product;
- (ii) For the provision of specialised engineering or technical services;
- (iii) For research and development;
- (iv) For recycling of domestic industrial waste;
- (v) In relation to any qualifying activity under pioneer services company;
- (vi) 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.

Investment Allowance

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 the promotion of tourist industry, not exceeding 11 years commencing from the investment day.

Investment Incentive

Exemption from corporate tax.

2. OTHER INCENTIVES (I.E. GRANTS, DOMESTIC LOANS, SUBSIDIES, ETC.)

- 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:

a) 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.

b) 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

3. FOREIGN LOAN

Please refer to **TAXATION SECTION 3.**

VI. TAXATION

1. CORPORATE TAX

Profits of all companies and businesses are subject to a corporate tax at the rate of 30%.

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 VAT.

3. WITHHOLDING TAX

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 intended for the purchase of productive equipment, or if the loan is obtained through financial agreement with the foreign lending company; and the amount of the loan is at least B\$200,000.

4. PERSONAL INCOME TAX

Brunei Darussalam does not at present, levy any income tax on individuals or other bodies of persons, apart from company, 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 who 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. MUNICIPAL TAXES

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

VII. FINANCIAL REGULATIONS

1. BORROWING

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

The banks are Citibank, Standard Chartered Bank, Hongkong and Shanghai Banking Corporation, Baiduri Bank Berhad, Islamic Bank Of Brunei, Islamic Development Bank of Brunei, and Malayan Banking, United Overseas Bank and RHB Bank Bhd.

(See also section on “withholding tax”)

2. FOREIGN EXCHANGE

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. SOURCE OF FINANCING

N.A

4. REPATRIATION OF CAPITAL/PROFITS

There is no restriction on repatriation of funds related to investments such as profits, dividends, royalties, loan repayments and liquidation.

5. OTHER SPECIAL REGULATIONS

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

VIII. EMPLOYMENT FOR APPROVAL OF FOREIGN WORKERS

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

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 to be employed, Employment Visa and Employment Pass must first be obtained from the Director of Immigration of Brunei Darussalam.

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

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 Employment Visa before entry.

Any foreign employee who has 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 years 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 of a branch foreign company has been officially approved and registered.

IX. LAND AND BUILDING OWNERSHIP

REGULATION ON ACQUISITION OF LAND AND BUILDING

Foreign nationals are not allowed to own land except otherwise approved by the Government of Brunei Darussalam.

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 rates vary with respect to the location.

I. RELEVANT LEGISLATION

LATEST INVESTMENT REGULATIONS IN CAMBODIA SINCE 2000-2003:

Cambodia has approved the Law on the Amendment to the Law on Investment of the Kingdom of Cambodia on 3 February 2003, which governs all Qualified Investment Projects (QIP) and defines procedures by which any person establishes a Qualified Investment Project.

Our policy will be concentrated on seven main points. They are:

- 1- Continue to develop labor intensive industries such as garment, toys and foot-wear
- 2- Promote the development of agribusiness by strengthening legal framework for longer-term land management. The government will provide incentives to establish factories to process agricultural products, such as cotton, jute, sugar, palm oil, cashew nuts, rubber, cassava and fruits
- 3- Develop industries based on the utilisation of basic natural resources, mainly by processing the existing natural resources in the country such as fish, meat, cement production, brick and tiles
- 4- Promote small and medium enterprises (SMEs), micro-enterprises and handicraft. The critical issue for SMEs is to provide micro-financing, streamlining procedures, providing marketing services and supplying information on sectoral development
- 5- Encourage the transfer of technology and diversification of export products by promoting the assembly of electrical and electronic appliances
- 6- Establish an environment conducive for full development in which the private sector has been identified and entrusted as the engine for growth with the Government playing the role of policy maker and facilitator for an accelerated and expanded private sector involvement in the rehabilitation and development of the country
- 7- Encourage the corporate sector and SMEs as its partners in engineering growth and to be the locomotive to pull our economy on the right track. We aim to take maximum benefit from economic integration and foreign trade by maintaining the current liberal-trading regime, which allows Cambodia to integrate economically with the rest of the world.

The adoption of these strategies and meant attract and promote more investment to Cambodia and further expand international markets for Cambodian products and more importantly will speed up the liberalisation and modernisation of the national economy and upgrade its competitiveness to meet regional and international standards.

1. INVESTMENT ACT

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

- *Law on Investment of the Kingdom of Cambodia No. 03/NS, 4 August 1994.*
- *The amendment to law on investment of the Kingdom of Cambodia, 24 March 2003 (Khmer/English).*
- *Sub-Decree No. 70 ANK.BK on the Organisation and Functioning of the Council for the Development of Cambodia (CDC), 27 July 2001.*
- *Sub-Decree No. 048 ANKR-KB on the amendment of the Sub-Decree on the Organisation and Functioning of the CDC, 21 May 1999.*
- *Sub-Decree No 88 ANK-BK on the Implementation of the Law on Investment of the Kingdom of Cambodia, 29 December 1997.*
- *Sub-Decree No. 053 ANKR-KB on the amendment of the Sub-Decree on the Implementation of the Law on Investment of the Kingdom of Cambodia, 11 June 1999.*
- *Sub-Decree No. 80 ANK/BK on Measures Restricting Certain Investment Sectors, 27 August 1999. Sub-decree No. 51 ANKR.BK on the organisation and functioning of the Council for the Development of Cambodia dated June 26, 1995*
- *Sub-decree No 130 ANKR/BK 26 December 2001 on the amendment to sub-decree No 53ANKR/BK of 11 June 1999 (incentives for telecommunication sector) (Khmer/English).*

2. MINIMUM INVESTMENT LEVEL

Investment capital should be in excess of US\$500,000 for any national or foreign investment project to enjoy investment incentives.

3. OTHER LEGISLATION

The below laws and regulations are available in our website:
<http://www.cambodiainvestment.gov.kh>

- *Sub-Decree on Management of Forest Concession (2000)*
- *Law on Financial Management for Year 2000 (1999)*
- *Sub-Decree Value Added Tax (1999)*
- *Law on Banking and Financial Institutions (1999)*
- *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)*
- *Labour Law (10 January 1997)*
- *Intellectual Property Laws*
- *Law on Foreign Exchange (22 August 1997)*
- *Law on Immigration (26 August 1994)*
- *Law on Nationality (20 August 1996)*
- *Fiscal Law (08 January 1997)*
- *Law on Environmental Protection and Natural Resources Management (18 November 1996)*
- *Sub-decree on Environmental Impacts Assessment (EIA) (Source at Ministry of Environment)*
- *Sub-decree on water Pollution Control (Source at Ministry of Environment)*
- *Sub-decree on Solid waste Management (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 dated 30 August 2001*
- *Law on Trademark dated 7 February 2002*
- *Law on Pattern dated 6 Dec, 2002.*

II. APPLICATION

1. AGENCY/IES INVOLVED IN ADMINISTERING INVESTMENT APPLICATION AND GRANTING OF INCENTIVES

Council for the Development of Cambodia (The Cambodian Investment Board)

The Council for the Development of Cambodia is the sole and One-Stop Service organisation 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. Process applications for investment projects, providing investment advice, administering investment activities.

2. CONDITIONS INCLUDING TIMETABLE FOR PROCESSING OF APPLICATION

- 1) Within three (3) 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. However, if the Investment Proposal does not satisfy the above condition, the Council shall issue a Letter of Non-Compliance to the Applicant.
- 3) 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 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 new Article 14 of this Law and recognise the statutes if the legal entity which will undertake the QIP.
- 4) If the Council for the Development of Cambodia fails to issue a Conditional Registration Certificate or Letter of Non-Compliance

within three working days, the Conditional Registration shall be considered to be automatically approved.

- 5) All government entities responsible for issuing an authorisation, 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.
- 6) The Council for the Development of Cambodia 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 clear 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

CDC offers 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.

III. PROMOTED AREAS/SECTORS

PROMOTED FIELD/SECTORS

Sectors in which investment is strongly encouraged:

- Pioneer and/or high-technology industries,
- Job creation,

- Export-oriented industries,
- Tourism industry,
- Agro-industry and processing industry,
- Infrastructure and energy,
- Provincial and rural development,
- Environmental protection,
- Investment in the Special Promotion Zone (SPZ).

Note: The New Amended LOI (2003) would provide a wide range of all investment sectors to be encouraged exclude sectors state in the Negative List of new sub-decree. New Sub-Decree will be introduced soon.

IV. FOREIGN EQUITY POLICIES

EQUITY REGULATIONS

There is no restriction on foreign equity participation in all economic sectors, except the ownership of land.

V. INCENTIVES

1. CORPORATE INCOME TAX / INCOME TAX ALLOWANCE

Incentives (in 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 follow:

1. *A 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. Priority Period shall be determined in the Financial Management Law.

The maximum 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 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.*
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 the paragraph 1 above, 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 and production input construction materials, exempt of duty, which shall be specified by the Sub-Decree.*
6. *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.*
7. *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.*
8. *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.*
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 as stipulated in laws in effective.*
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 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 from payment of import duties is available for most investment projects for the construction period and the first year of operation. Investment projects exporting at least 80% of their production or located in a Special Promotion Zone may receive duty exemption for a longer period of time. The types of investments eligible for duty exemption are listed in **Sector A of the Sub-Decree 88**. In addition the exemption only applies to those types of goods listed in **Section B of Sub-Decree 88**.

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

Exemption from payment of import duties is available for most investment projects for the construction period and the first year of operation. Investment projects exporting at least 80% of their production or located in a Special Promotion Zone may receive duty exemption for a longer period of time. The types of investments eligible for duty exemption are listed in **Sector A of the Sub-Decree 88**. In addition the exemption only applies to those types of goods listed in **Section B of the Sub-Decree 88**.

Annex for above references:

Section A:

LIST OF INVESTMENT sectors to which incentives shall apply

1. Crop Production
 - 1.1 Paddy farming greater than 1,000 ha.

- 1.2 All types of cash crops greater than 500 ha.
- 1.3 Vegetables greater than 50 ha.
2. Livestock Production
 - 2.1 Livestock more than 1,000 heads
 - 2.2 Dairy farming more than 100 heads
 - 2.3 Poultry & eggs for 10,000 heads
3. Fisheries
 - 3.1 Hatcheries more than 2 ha.
 - 3.2 Shrimp farming and other aqua-culture production greater than 10 ha.
4. Manufacture and Processing of Food & Related Products
 - Investment Capital Greater Than 500,000 USD
 - 4.1 Beverages
 - 4.2 Fats & oils
 - 4.3 Sugar confectionery
 - 4.4 Meat products
 - 4.5 Dairy products
 - 4.6 Preserved fruits and vegetables
 - 4.7 Grain mill products
 - 4.8 Bakery products
 - 4.9 Animal feed products
5. Manufacture of Textile Mill Products
 - Investment Capital Greater Than 1,000,000 USD
 - 5.1 Weaving mill cotton, wool and man-made material
 - 5.2 Narrow fabric mills
 - 5.3 Floor covering mills
 - 5.4 Knitting mills
6. Manufacture of Apparel and Other Textiles
 - Investment Capital Greater Than 500,000 USD
7. Manufacture of Furniture & Fixtures
 - Investment Capital Greater Than 500,000 USD
 - 7.1 Household furniture
 - 7.2 Office furniture
 - 7.3 Building partitions and fixtures
8. Manufacture of Paper & Allied Products
 - Investment Capital Greater Than 1,000,000 USD
 - 8.1 Tree plantations for paper and pulp mills
 - 8.2 Paper production

- 8.3 Paperboard mills
- 8.4 Paperboard containers
- 9. Manufacture of Chemicals & Allied Products
 - Investment Capital Greater Than 500,000 USD
 - 9.1 All types of chemicals including agricultural chemicals
 - 9.2 Plastics and other synthetics
 - 9.3 Drugs
 - 9.4 Cleaning products
 - 9.5 Paint & allied products
- 10. Manufacture of Rubber & Miscellaneous Plastics
 - Investment Capital Greater Than 500,000 USD
- 11. Manufacture of Leather & Other Products
 - Investment Capital Greater Than 500,000 USD
- 12. Manufacture of Fabricated Metal Products
 - Investment Capital Greater Than 500,000 USD
- 13. Manufacture of Electrical and Electronic Equipment
 - Investment Capital Greater Than 500,000 USD
- 14. Manufacture of Transportation Equipment
 - 14.1 Automobiles and spare parts
 - 14.2 Aircraft and spare parts
 - 14.3 Constructions and means of water transports
 - 14.4 Equipments and means of rail transports
 - 14.5 Bicycles and motorcycles
- 15. Highway & Bridge Construction
- 16. Exploitation of minerals, ore, coal, oil and natural gas
- 17. Production of machineries and industrial equipment
 - Investment Capital Greater Than 1,000,000 USD
- 18. Production of consumption goods
- 19. Hotel construction
 - Three stars classification or higher
- 20. Medical complex of International standards, Educational facilities of International standards, Vocational training centers.

21. Physical infrastructure facilities to support the tourism and cultural sectors.
22. Production and exploitation activities to protect the environment.

Section B:

LIST OF INVESTMENT SECTORS TO WHICH INCENTIVES SHALL NOT APPLY

1. All Types of Trading Activities
2. All Forms of Transportation Services
3. Duty-free Shops
4. Restaurant, Karaoke, Bars and Massage Parlors; outside the premises of international standard hotels
5. Shopping Mall
6. News and Media-related Activities (Radio, TV, Newspapers)
7. Retail and Wholesale
8. Professional Services

Subject to change: when new sub-decree of New Amended Law on Investment takes place and ratify, all above investment sectors would be applicable to get incentive and treats the same.

4. OTHER INCENTIVES (I.E. GRANTS, DOMESTIC LOANS, SUBSIDIES, ETC.)

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.

VI. TAXATION

1. CORPORATE TAX

Corporate Income Tax: 9%.

Tax on Profit

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

The following are the applicable profit tax rates as of January 1999:

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

Cambodian residents are taxable on worldwide income/profits, while non-residents are taxable only on Cambodian-sourced income/profits. Residents earning foreign-sources income/profits are entitled to receive credits for foreign taxes incurred. Cambodian residents include companies that are "organised and managed" in Cambodia or that have their "principal place of business" in Cambodia.

2. VALUE ADDED TAX/SALES TAX

There are 2 rates of VAT as follows:

0% : Applies only to goods exported to Cambodia and services “consumed” outside Cambodia.

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, and*
- *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, and
- 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 I Riel (3800 Riel=US\$1)	Rate
500,000 (\$132) – 1,250,000 (\$329)	5%
1,250,001 (\$329) – 8,500,000 Riel (\$2,237)	10%
8,500,001 (\$2,237) – 12,500,000 (\$3,289)	15%
Above 12,500,000 (\$3,289)	20%

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

5. LAND/PROPERTY TAX

Tax on House and Land Rent

Businesses (other than real-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. STAMP DUTY

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).

8. IMPORT DUTY

Varies.

Please Refer to “Customs Department” for Further Information

Custom and Exile Department

6, Norodom Blvd, Phnom Penh

Cambodia

Fax: 855 23 214 065

E-mail: custom@camnet.com.kh

Website: <http://www.camnet.com.kh/TEST/custom>

9. OTHER TAXES

Turnover Tax

Since 1 January 1999, Turnover Tax has been levied at the flat rate of 2%. Until 31 December 1998, 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, Turnover Tax 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 UD\$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 Riel 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.

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

2%, 10%, 20% or 30%, depending on the item.

VII. FINANCIAL REGULATIONS

1. BORROWING

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

2. FOREIGN EXCHANGE

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:

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

VIII. EMPLOYMENT FOR APPROVAL OF FOREIGN WORKERS

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

Under *the 1994 Investment Law*, businesses are permitted to employ foreign nationals and bring in their dependents, on the condition that such qualification and expertise needed cannot be found in Cambodia.

Investors are permitted to bring into Cambodia foreign nationals who are:

- Qualified managerial personnel
- Technical personnel
- Skilled workers

Based on *the Law on Immigration* dated 16 August 1994 article 28, foreigners who have already received a "letter of investment approval" from the CDC, will be allowed to stay in Cambodia, together with their families, for a period stated in the letters of investment approval.

According to ***the 1997 Labour Law***, only foreigners satisfying the following conditions may be lawfully employed:

- hold a “Labour Book” and “Work Permit” issued by the Ministry of Social Affairs, Labour and Vocational Training
- have entered Cambodia legally;
- hold a valid passport;
- have the right to reside in Cambodia;
- have good reputation and good behavior;
- have the physical qualifications for the job; and
- have no communicable diseases.

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

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 labor and immigration laws.

The 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.

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.

IX. LAND AND BUILDING OWNERSHIP

1. REGULATION ON ACQUISITION OF LAND AND BUILDING

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 investor, 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.

I. RELEVANT LEGISLATION

LATEST INVESTMENT REGULATIONS IN INDONESIA SINCE 2000-2004:

The Presidential Decree No. 96/2000 as amended by No. 118/2000 regulates direct investment entrance. There are 11 business fields closed for any investment, domestic as well as foreign direct investment, such as cultivation and processing of marijuana, collection/utilisation of sponges and industries of harmful chemicals. There are 9 business fields opened for direct investment on the condition of joint venture between foreign and domestic company, such as developing and operating harbor, electricity production, transmission and distribution.

With respect to foreign direct investment, 8 business fields are closed: (1) germ plasma cultivation; (2) concessions for natural forests; (3) contractors in the field of lumbering; (4) taxi/bus transport services; (5) small-scale sailing; (6) trading and trading supporting activities except for large scale retailers (malls, supermarkets, department stores, shopping centers), wholesale trading (distributors/wholesalers, exporters and importers), exhibition/convention service providers, quality certification service providers, market research service providers, warehouse service outside seaports, and after-sale services; (7) radio and television broadcasting service providers ; (8) film industry.

The Presidential Decree No. 29/2004 regulates one-roof service system. One-roof service system is a system for granting direct investment approval and operational license in a government institution in charge of direct investment. The Investment Coordinating Board (BKPM) is a government institution in charge of direct investment in the framework of foreign and domestic direct investment.

1. INVESTMENT ACT

The Law No. 1/1967, as amended by Law No. 11/1970, on Foreign Direct Investment states the following:

- A) Foreign investment in this law is limited to Foreign Direct Investment (FDI), in the sense that the owner of the capital is directly in charge of handling the risk of the investment.

- B) Foreign Capital means:
- a. foreign exchange which does not form part of the foreign exchange resources of Indonesia, and which with the approval of the Government is utilised for financing an company in Indonesia
 - b. equipment for an company, including rights to technological developments and materials imported into Indonesia, provided the said equipment is not financed from Indonesian foreign exchange resources
 - c. that part of the profits which in accordance with this Law is permitted to be transferred, but instead is utilised to finance an company in Indonesia
- C) A foreign investment company is a legal entity organised under Indonesian law and has its domicile in Indonesia.
- D) A foreign investment company is allowed to bring in and employ foreign managerial and expert personnel in positions that cannot yet be filled by Indonesian citizens.
- E) A foreign investment company is required to conduct and provide regular and systematic training and educational facilities in Indonesia and/or abroad for Indonesian citizens with the aim of gradually replacing foreign employees with Indonesian citizens.
- F) The permit for a foreign investment company specifies the duration of its validity, a duration that must not exceed 30 years.
- G) A foreign investment company is granted the right to transfer the following, in the original currency of the invested capital, at the prevailing exchange rate at the time of the transfer:
- a. Company profits;
 - b. Proceeds from the sale of shares;
 - c. Compensation in case of nationalisation and repatriation of remaining invested capital in case of liquidation;
 - d. Principal loans, interest, royalty fees and license fees;
 - e. Expenses of expatriate employees.

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.

Government Regulation No. 20/1994 on Share Ownership in Foreign Direct Investment as amended by Government Regulation No. 83/2001 states the following:

- A) A foreign investment company may be established as a joint-venture undertaking between a foreign and an Indonesian partner. There is no requirement on minimal amount of investment (equity plus loan). The amount is left to the parties concerned to determine, based on the economy of scale and business consideration.
- B) A foreign investment company may be established as a straight investment, which means that 100% of the shares is owned by foreign citizen and/or entities. However, it is required that no later than 15 years from the commencement of commercial production, some of the company's shares should be sold to Indonesian citizen and/or business entities, through direct placement and/or indirectly through domestic capital market.
- C) A foreign investment company in infrastructure projects, namely: ports; generation, transmission and distribution of electricity; telecommunications; shipping; airlines; potable water; public railways; and nuclear electric power generation, should be established by way of joint venture between foreign and Indonesian partner(s) where the Indonesian partner (s) owns at least 5% of the issued capital of the company.
- D) A foreign investment company, which has commenced commercial production, may apply for extension of the existing production capacity, to produce additional products of the same/or different kind of the current ones, by investing additional capital in the production facilities.
- E) A foreign investment company which has commenced commercial production may establish a new company and/or purchase the shares of existing domestic company, through the domestic stock exchange.
- F) A foreign company may purchase the shares of existing domestic company including the existing FDI company, through direct placement as well as through the domestic stock exchange.
The requirements that purchase of share mentioned in point F be made to "rescue and restore" the company is no longer valid.

- G) The purchase of shares of existing domestic company in point E and F can only be carried out if the fields of investments are open to foreign direct investment at the time of the purchase.

The Decree of the Minister for Investment / Chairman of the Investment Coordinating Board. No. 15/SK/1994 on Implementation Guidelines of the Government Regulation No. 20/1994

States that the foreign company, either straight investment company and/or foreign citizen may purchase the existing domestic company including the existing foreign investment company which has the form of the limited liability company under Indonesian Law. The shares of Indonesian party in the existing domestic company shall be at least 5% of the total issued capital of the company.

Presidential Decree No. 127/2001 on Sectors Reserved for Small-scale Business and Sectors Open for Medium and Large-Scale Business with Partnership Condition

This decree has revoked the Presidential Decree No. 99 of 1998 concerning List of Sectors that are reserved for small-scale business and sector open for medium and large-scale business with partnership condition. This decree still shows the Government's commitment to encourage the growth of small-scale businesses along with medium-large scale ones. There are several business lines, which are opened to medium and large-scale businesses, by domestic or foreign investor, on the condition of partnership with domestic small-scale businesses. The partnership may take the forms of share ownership, sub-contracting, franchising, agent, or others. In implementing the partnership the medium or large scale company must provide guidance for its partner to be able to expand business opportunity and management expertise in one or more aspects of production, processing, marketing, human resources, technology, raw materials, business management and financing.

The Presidential Decree No. 96/2000

Lists those Business Fields that are Closed and are Open to Investments on Certain Conditions (see Section III on Promoted Areas/Sectors).

The Presidential Decree No. 118/2000

Amends the ***Presidential Decree No. 96/2000*** (see Section III on Promoted Areas/Sectors).

2. COMPANIES ACT

Law No. 1/1995 on Limited Liability Companies states that following:

- A) Foreign Company has to be established in the legal form of an Indonesian Limited Liability Company (Perseroan Terbatas).
- B) Limited companies should be established by at least two parties.
- C) The corporate components are the general shareholders' meeting, the directors, and the commissioners. The general shareholders' meeting has the highest authority in the company and retains all powers that are not delegated to the directors or the commissioners.
- D) The directors and commissioners are appointed by the general shareholders' meeting for a certain period with the possibility to be reappointed
- E) One or more companies may merge with another existing company to form a new company.
- F) The merger or consolidation can only be carried out if the general shareholders' meetings of the respective companies approve the programme for consolidation or merger.

3. INCENTIVES / EQUITY

The Law No. 17/2000 on Income Tax states the following:

Investment in certain industry and or in certain region will be granted tax allowances as follows:

- A) The reduction of Taxable income up to 30 % of the value of realised investment spread in 6(six) years
- B) Accelerated depreciation and amortisation

- C) Loss carried forward facility for period of no more than 10 years
- D) A 10 % income tax on dividends except for the case if the tax rate according to prevailing tax treaty is lower.

The Minister of Finance Decree No. 135/KMK.05/2000 states that all investment projects in producing products or services approved by the Board of Investment including existing companies which are expanding their projects to produce similar product(s) in excess of 30% of installed capacities or diversifying their products, will be granted import duty relief on the importation of their capital goods, goods, and materials so that their final customs tariffs become as low as 5 %.

4. MINIMUM INVESTMENT LEVEL

No minimum investment level requirement.

5. OTHER LEGISLATION

Act No. 22 (1957) on Labor Disputes Settlement

- ***Law No. 5 (1999) on the Prohibition on Monopolistic Practices and Unfair Business Competition***

- ***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 announcement. Products and production processes are in principle patent able subject to certain requirements. The law provides protection for a period of 20 years for patent and 10 years for simple patent, both of them 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 until 50 years from the date of the author's death. For 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 lyric, recorded voice or sound, arts (painting, statue), cinematography. For 25 years from the date of copyright notification for photography, computer program, and cover design.

- **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 right 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 trademark from the general list of trademark can be done either on request of the trademark holder or by trademark office if the trademark is not used within 3 years.

II. APPLICATION

1. **AGENCY INVOLVED IN ADMINISTERING INVESTMENT APPLICATION 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)

Jln. Gatot Subroto No.44, Jakarta 12190, Indonesia

PO.BOX 3186

Telp. (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

2. **CONDITIONS INCLUDING TIMETABLE FOR PROCESSING OF APPLICATION**

Guidelines for processing and approving investments is refer 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:

- 1) For a new project, foreign investors must obtain the Application Form from BKPM. Once completed, the Application should be submitted to the same office for evaluation.
- 2) Foreign Investors must secure necessary license, named PMA (*Penanaman Modal Asing*), for the establishment of a joint venture with any Indonesian individuals or corporations.
- 3) If submitted correctly, the time period for granting the application and approval is normally 10 working days.
- 4) 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.

III. PROMOTED AREAS/SECTORS

1. PROMOTED FIELD/SECTORS

Indonesia offers a vast array of investment opportunities in various business fields. However, foreign direct investments are restricted in some sectors or are allowed with some conditions:

a. List of Sectors Reserved for Small-scale Business *)

*) Closed for medium/large domestic as well as foreign company

1. Pedigree chicken husbandry
2. Catching fishery using vessels with weight less than 30 GT/90 HP which is performed in waters territory up to 12 sea miles
3. Cultivation fishery cover: fish nursery and raising in fresh blackfish, and sea water
4. Catching of fresh water decoration fish

5. Forestry:
 - 1) Apiculture exploitation
 - 2) Exploitation of sugar palm, sago, rattan, candlenut, tree, bamboo, and cinnamon plant forest
 - 3) Exploitation of swallow nests in the nature
 - 4) Exploitation tamarind estates by small holders (tamarind seeds collection and processing)
 - 5) Exploitation of charcoal producing plant forest
 - 6) Exploitation of tree sap producing plant forest
 - 7) Exploitation of atsiri oil producing plant forest (pine oil, lawang oil, tengkawang oil, cajuput oil, kenanga oil, fragrant root oil, and other)
6. Small holder mining
7. Processed food and drink industry which makes conservation through process of salting, salt-giving, sweetening, fumigating, drying, boiling, frying, and fermentation by means of traditional methods.
8. Yarn improving industry from natural and imitation fiber to be motif/dipped, binding yarn using devices generated by hand.
9. Textile and textile product industry encompasses wearing, knitting, batik making, and embroidery which have the feature that is done by ATBM, or the device that is generated by hand, including batik, cap hat, and others of the kind.
10. Processing of forest and non-food category garden products:
 - 1) Building/household materials: bamboo, thatch palm, slate roof, charcoal, husk (coconut fiber)
 - 2) Industrial materials: tree sap, wood rind, natural silk, betel nut.
11. Hand appliance industry which is manually or semi mechanically processed for craftsmanship and cutting
12. Hand appliance industry for agriculture which is required for land tilling, production process, harvesting, post harvest, and processing, except hoes and scoops
13. Pottery industry which is both glazed and non glazed for household necessities.

14. Maintaining and repairing service industry which covers automotives, vessels below 30 GT, electronics, and house hold appliances operated manually or semi automatically.
15. Handicraft industry which has regional culture treasures, art values that use natural and imitation raw materials.
16. Small scale trade and informal business.
17. Hand rural, river, lake and ferry transportation by using vessels with 30GT weight.
18. Telecommunications services covers telecommunication shop, internet shop, cable installations to houses and buildings.
19. Health/Medical service/Pharmaceutical Services Profession :
 - 1).Individual practice by medical personnel.
 - 2).Group personnel practice by medical personnel.
 - 3).Basic Medical service facilities.
 - 4).Medical research Center/Institute/Station.
 - 5).Dispensary, Pharmacist's profession practice.
 - 6).Maternity hospitals.
 - 7).Traditional Medical Service Practice (acupuncture, reflection massage, traditional massage parlor).
20. Medicine and food trade services :
 - 1) Drug stores,
 - 2) Traditional Medicine Retailers, Toting, Medical Hers (Jamu gendong), Medical Herbs Kiosks/Shops,
 - 3) Simplisia collectors.

b. Sectors Opened for Medium or Large-scale Business that required Partnership with Small-scale Business *)

*) Partnership requirement is applied to medium/large domestic as well as foreign company

1. Year group farming exploration
2. Cultivation fishery covers white kakap (scale) kerapu, pearl, bandeng, shrimp, labi-labi, nila, sidat, and kodok lembu fish rising.
3. Natural silk and timber estate exploitation.

4. Small scale mining
5. Milk powder and condensed milk industry, processed food industry from cereals, yam group, sago, melinjo and copra.
6. Stamp Batik Industry.
7. Raw rattan processing and leather ready made goods industry.
8. Clay made goods for building materials, and goods industry from calcium.
9. Silver Handicraft Industry.
10. Wooden vessel industry for maintenance tourism, and for fish catching.
11. Agricultural machinery equipment industry which use medium technology such as paddy thresher, corn huller, and hand tractor.
12. Industry and hand pump, bicycle accessories, electric appliances (various types of clamp, anchor and track anchor) and other components and industry of drinking water box/case.
13. Large scale retailing and other services trade cover modern markets, among other: mall supermarket, hypermarket, department store, shopping center, and other things of the kinds, as well as restaurant services in tourist areas and/or those being integrated to hotel operation.
14. Tourism industry encompasses ;
 - 1).Tourism Service Operation: among others tourism travel bureau, Convention Center, incentive travel, tourism consultation service show, tourism information service.
 - 2).Tourism Facility Operation : among others jasmine hotel, caravan call, tourism transportation, food and bar service, tourism area, public recreation and entertainment such as recreation park, swimming center, golf course, bowling center, billiard house, steam-batch center, adroitness center, tourism village and public entertainment service.
 - 3).Tourism Object Service Operation: namely cultural tourism, special interest tourism and nature tourism that requires special expertise and skill.

15. Stevedoring operation, and forwarding agency operation, small-holder shipping operation and trusting (consignment) services operation.
Skill courses encompass: variety of technical vocational skills, trading system, languages, tourism, management, information technology, arts and agriculture.

2. RESTRICTIONS

There are 11 business fields that are absolutely closed to any investment (either domestic or foreign). These are as follows:

1. Cultivation and processing of marijuana and the kinds
2. Collection/utilisation of sponge
3. Industries of chemical products harmful to the environment, like Penta Chlorophenol, Dichloro Diphenyl Trichloro Ethane (DDT), Dieldrin, Chlordane, Carbon Tetra Chloride, Chloro Fluoro Carbon (CFC), Methyl Bromide, Methyl Chloroform, Halon, etc
4. Industries of chemical products stipulated in the Schedule – 1 of the chemical weapon convention (Sarin, Soman, Tabun, Mustard, Levisite, Ricine and Saxitoxin)
5. Industries of weapons and components
6. Industries of Cyclimate and Saccharine
7. Industries of alcoholic drinks (liquor, wine and drinks containing malt)
8. Operations of casinos/gambling
9. Air traffic system providers (ATS providers) as well as ship statutory and classification surveys
10. Management and operation of Radio Frequency Spectrum and Satellite Orbit Monitoring Stations
11. Mining of radioactive minerals

There are 8 business fields which are closed to foreign investments (even joint venture with local partner is not possible) are as follows:

1. Germ Plasma Cultivation
2. Concessions for natural forest
3. Contractors in the field of lumbering
4. Taxi/bus transport services
5. Small-scale sailing
6. Trading and trading supporting services, except:
Large-scale retailers (malls, supermarkets, department stores, shopping centers), wholesale trading (distributors/wholesalers, exporters and importers), exhibition/convention service providers, quality certification service providers, market research service providers, warehousing service providers other than Line I and seaports, and after-sale service providers.
7. Radio and television broadcasting service providers, radio and television broadcasting subscription service providers and print media
8. Film industry (film making businesses, film technical service providers, film export and import businesses, film distributors and movie house operators and/or film showing service.

There are 9 business fields which are open to investments on condition of joint venture between foreign and domestic capital such as:

1. Building and operation of seaports
2. Electricity production, transmission and distribution
3. Shipping
4. Processing and provision of clear water for the public
5. Public railway services
6. Atomic power plants

7. Medical services, covering the building and operation of hospitals, medical check-ups, clinical laboratories, mental rehabilitation services for health aid and evacuation of patients in emergency condition, hospital management services and services for testing, maintenance and repair of medical equipment
8. Telecommunication
9. Regular/non regular commercial airliners

There are business fields which are open to investments on certain conditions:

1. Cultivation of fish in fresh waters:
 - a. Open to foreign investments for freshwater turtles, nila gift, sidat, kodok lembu, freshwater giant shrimps and thillapya sp;
 - b. In cooperation with smallholders fishery businesses
2. Fishing of demersal fish (big fish, grouper and other sea fish)
 - Except ZEEI areas of the Malacca Straits and Arafura Sea
3. Industries of Pulp made of wood
 - a. Raw material coming from imported chips or guarantee of material supply from industrial timber estates (HTI);
 - b. Other than sulfonating and/or chlorination (CI2)
4. Industries of pulp made of other cellulose fibers or other materials
 - Other than sulfonating and/or chlorination (CI2)
5. Chloro alkali producing industries
 - Other than those using mercury
6. Processing of finished/semi-finished goods of mangrove wood
 - Raw material coming from mangrove cultivation
7. Money printing industry
 - must secure operational licenses from BOTASUPAL- BAKIN and approval from Bank Indonesia

8. Special printing industries (postal stamps, duty stamps, Bank Indonesia negotiable papers, passports and stamped postal matters)
 - must secure operational licenses from BOTASUPAL- BAKIN
9. Milk processing industry (powder and sweetened condensed milk)
 - processing, not merely repacking
10. Plywood and rotary veneer industries
 - Only for the Papua Province
11. Sawn Timber industries
 - a. Only for the Papua Province
 - b. Outside the Papua Province, only using logs from non natural forests
12. Ethyl alcohol industries
 - Technical grade, being only used as raw materials and auxiliary materials of other industries
13. Industries of raw materials for explosives (Ammonium Nitrates)
 - must be in cooperation with business entities securing recommendations from the Ministry of Defense
14. Industries of explosives and components for industrial (commercial) needs
 - a. must be in cooperation with business entities securing recommendations from the Ministry of Defense
 - b. Only manufacturing activities, while storage and distribution are executed by companies appointed by the government
15. Electricity planning and supervision consulting services
 - Open to foreign investments with the provisions that:
 - a. PLTA (hydro power plant) with a capacity of above 50 MW;
 - b. PLTU (steam power plant) with a capacity of above 100 MW;
 - c. PLTP (geothermal power plant) with a capacity of above 55 MW;
 - d. Transmission networks with a voltage of above 500 KV.
16. Electricity equipment construction, maintenance, installation services, development of technology supporting the supply of electricity and testing of electricity installation.

- Open to foreign investments with the provision that:
 - a. Main electrical relay stations with a voltage of above 500 KV;
 - b. Transmission networks with a voltage of above 500 KV
- 17. Petroleum and natural gas drilling services
 - Open to foreign investments with the provision that:
 - a. Only for offshore drilling
 - b. Especially for locations outside the Eastern Indonesian Region, must cooperate with national partners operating in the similar business field.
- 18. Power plant business
 - Open to locations outside Java, Bali and Madura
- 19. Restaurants
 - Open to foreign investment with the special provision that they must be located in tourism area/zones and/or integrated with hotels
- 21. Games services
 - Open to foreign investment with the special provision that they must be located in tourism area/zones and/or integrated with hotels

IV. FOREIGN EQUITY POLICIES

EQUITY REGULATIONS

- For joint venture company, the composition of share ownership is determined by the investor.
- 100% foreign equity ownership is allowed in all areas except for certain sectors those stipulated in The Presidential Decree No. 96/2000 and No. 118/2000
- 100% foreign equity is allowed as long as the project would form a joint cooperation with an Indonesian national small-scale industry/cooperative for the latter to serve as a supplier, sub-contractor, agent, general trade or other forms of partnerships (Presidential Decree No. 127/2001)

- Foreign equity ownership in infrastructure projects such as seaports generation as well as distribution of electricity for public use, telecommunications, airlines, potable water, public railways, atomic energy reactors could be allowed if it enters into a Joint Venture with an Indonesian national. National equity should be at least 5%.

V. INCENTIVES

1. CORPORATE INCOME TAX / INCOME TAX ALLOWANCE

Investments in certain business fields and or in certain regions may be granted taxable income reduction. The reduction of taxable income amounts up to 30 % of the value of realised investment which is spread in 6 years

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

All foreign direct investment companies are given customs tariff reduction for imported capital goods. For capital goods with tariffs greater than 5 %, their final custom tariffs are reduced to 5%.

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

All foreign direct investment companies are given customs tariff reduction for imported raw materials for two years of production. For raw materials with tariffs greater than 5 %, their final custom tariffs are reduced to 5%.

4. OTHER INCENTIVES (I.E. GRANTS, DOMESTIC LOANS, SUBSIDIES, ETC.)

- Restitution (Drawback): Any export-oriented manufacturing company that has paid import duties for imported goods and raw materials can apply to the Government for reimbursement.
- Any export oriented - manufacturing company is exempted from the Value Added Tax and Sales Tax for luxury goods and materials purchased domestically for the manufacture of the products for exports.

- All companies can import raw materials required for their investment projects regardless on the availability of comparable products/materials produced domestically.
- Any manufacturing company located in bonded areas is given the following facilities:
 - a) Exemption from import duty, excise, income tax of Article 22, Value Added Tax and Sales Tax on Luxury Goods on the importation of capital goods and equipment including raw materials used for production.
 - b) Allowed to lend their own machineries and equipment to their subcontractors located outside the bonded zone, for no longer than two years, in order to manufacture their products.
 - c) Exemption of Value Added Tax and Sales Tax on Luxury Goods on products that are to be further processed by their subcontractors located either inside or outside the bonded zone.
- All PMA or PMDN investment projects approved by the Investment Coordinating Board (BKPM) , including existing PMA and PMDN companies with approvals to expand their production capacity in less than 30% of their current installed capacities or those who diversify their products, will be granted the following facilities:
 - a) Relief from import duty on the following imports so that their final customs tariffs become 5%:
 - b) Capital goods such as machinery, equipment, spare parts and auxiliary equipment. Relief of import duty would be valid for an import period of 2 years starting from the date the relief was approved by the government.
 - c) Goods and materials or raw materials (regardless of their types and compositions) that are used to produce the final product(s). Relief of import duty would be valid for 2 years full production period (accumulated production time).

- d) In cases where the tariffs of the above (a) and (b) are already 5% or even lower, the effective tariffs shall be those stated in the Indonesian Customs Tariff Book (BTBMI)
- e) Exemption from Transfer of Ownership Fee for ship registration deed/certificate made for the first time in Indonesia.

5. FOREIGN LOAN

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

VI. 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. WITHHOLDING TAX

Withholding tax is levied on dividends, interests, royalties, technical, management fees for services performed in Indonesia to Indonesian and non-Indonesian residents, based on the following classification:

- a. Payment to residents (except for technical and management services 6%) = 15%
- b. Payment to Non-residents = 20%

4. 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%

5. LAND/PROPERTY TAX

Land and Building tax is 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 property as listed in their billing statement.

6. REAL PROPERTY GAINS TAX

Property tax

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

7. 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 Deed and Land deed including its copies. For all documents bearing a sum of money, the rate is Rp. 6,000 when money 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 money value stated.

8. IMPORT DUTY

All foreign direct investment companies are given customs tariff reduction as fiscal incentive (See V.2 and V.3). Normal custom tariffs can be found in The Indonesian Custom Tariff Book (*Buku Tarif Bea*

Masuk Indonesia/BTBM). For detail information, please contact to the following addresses:

**Deputy Chairman for Investment Services
The Investment Coordinating Board (BKPM)**
Jln. Gatot Subroto No.44, Jakarta 12190, Indonesia
PO.BOX 3186
Telp. (62-21) 525 008, 525 4981
Fax. (62-21) 525 4945, 522 7609
Web site : www.bkpm.go.id
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Directorate General of Customs
Jl. Jenderal A. Yani No.108, Jakarta 13220, Indonesia
PO. Box 108, Jakarta 10002
Tel. (021) 489 0308, 4897511, Fax.(012) 4890871
Telex : DJBC
Web site : www.beacukai.go.id
E-mail : perpen@beacukai.go.id

9. PROVINCIAL / MUNICIPAL TAXES

- Provincial government taxes: motor vehicles, transfer of rights on motor vehicles, and fuel for motor vehicles.
- District/municipal taxes: hotel and restaurant, entertainment, advertisement, road lightening, utilisation and processing the Class C Minerals, and utilization of the underground water and the surface water.

10. OTHER TAXES

- 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 |
| 1. Australia | 27. Pakistan |
| 2. Austria | 28. Philippines |
| 3. Belgium | 29. Poland |

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

VII. FINANCIAL REGULATIONS

1. FOREIGN EXCHANGE

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

2. 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).

3. 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.

VIII. EMPLOYMENT FOR APPROVAL OF FOREIGN WORKERS

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

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

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

The duration of the foreign expatriate's term to 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) concerned. 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 to secure visas within three months starting from the date of approval.

IX. LAND AND BUILDING OWNERSHIP

1. REGULATION ON ACQUISITION OF LAND AND BUILDING

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 domicile 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. The right title is normally valid for 35 years but may be extended up to 60 years. Subsequently, it could and it can be renewed for a maximum period of 35 years if the land is properly maintained and managed.

Right of Building

The right to construct and own buildings. The Right 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. The Right can also be used as a collateral.

Right for Use

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

DECENTRALISATION OF FOREIGN INVESTMENT MANAGEMENT POWER

After more than 15 years of experience in promoting and managing foreign direct investment, the Lao Government decided to decentralise foreign investment management power, giving local authorities opportunities to attract investment to their governed territories as seen appropriate.

On the 23rd of April 2003, the Prime Minister signed Decree No. 64/PM on the Roles, Responsibilities and Rights of the Committee for Investment Management, Foreign Cooperation and Domestic Investment at Central and Local Levels.

According to the newly released decree, the Committee for Investment and Cooperation (CIC) comprises two levels of organisational structure: Central CIC and Local CIC. Central CIC shall be chaired by chairman of the Committee for Planning and Cooperation (CPC). Vice-chairman of the CPC directly in charge of investment affairs and foreign cooperation shall also be the vice-chairman of Central CIC. Other vice-chairmen of the CPC should be members of the board of Central CIC. At local level, governors of provinces, municipalities and special zones are chairmen of CICs in those areas. Vice-governors of the provinces, municipalities and special zones who are directly in charge of economic affairs are vice-chairmen of the local CICs. Other vice-governors of the provinces, municipalities and special zones are members of boards of the local CICs.

The CIC has supporting organisations as follows:

At Central Level:

- 1) The Department for Promotion and Management of Domestic and Foreign Investment;
- 2) The Department for Foreign Economic Cooperation; and
- 3) The Cabinet of the CPC as the Secretariat of the Central CIC.

At Local Level:

Departments for Planning and Cooperation of provinces, municipalities and special zones as secretariats of local CICs.

**Some rights of each CIC level and rights of concerned ministries/agencies:
Central CIC has some rights as follows:**

- 1) To consider every matter concerning domestic and foreign investment and foreign economic cooperation nationwide;
- 2) To approve:
 - foreign investment projects under the promoted activities with capitals of less than 10,000,000 USD (ten million US dollars);
 - and issue certificates for incentives to domestic investments with capitals of less than 100,000,000,000 kips (100 billions kips);
 - concerning foreign and domestic investment projects that local authorities have the rights to approve, as mentioned in Article 6 of the decree, investors have the right to choose whether they would like to apply for investment licenses or certificates for incentives from central CIC or from local CICs;
 - grant aid projects from other countries, which will be specifically identified in the rules governing international grant aids and loans;
 - concerning foreign investment projects with capitals of equal or higher than 10,000,000 USD (ten million US dollars) or domestic investment projects with capitals of equal or higher than 100,000,000,000 kips (100 billion kips) and/or projects requesting concession rights to exploit natural resources of Lao PDR, after being considered and agreed in principles by Central CIC considers, the projects will be submitted to the Central Government for consideration and approval as seen appropriate.
- 3) To sign investment projects:
 - after the projects have been considered and approved by a Central CIC meeting:
 - Chairman of Central CIC has the right to sign investment projects with capitals of equal or higher than 5,000,000 USD (five million US dollars);
 - Vice-chairman of Central CIC has the right to sign investment projects with capitals of less than 5,000,000 USD (five million US dollars)

Local CICs have some rights as follows:

- 1) To approve: - foreign investment projects under the promoted activities (as specified in Prime Minister's Decree No. 46/PM, dated 23rd March 2001) with capitals of equal or less than 1,000,000 USD (one million US dollars); and issue certificates for incentives to domestic investments with capitals of equal or less than 10,000,000,000 kips (ten billion kips).

- CIC chairmen of Vientiane Municipality, Savannakhet, Champasack and Luang Prabang Provinces have the rights to approve foreign investment projects under the promoted activities with capitals of equal or less than 2,000,000 USD (two million US dollars) and the rights to issue certificates for incentives to domestic investments with capitals of equal or less than 20,000,000,000 kips (twenty billion kips)
- 2) Chairmen of local CICs have the rights to sign investment licenses and issue certificates for incentives in the amounts of capitals as mentioned above, after which a copy of each investment license/certificate for incentives shall be sent to Central CIC within five working days.
- 3) To directly manage foreign and domestic investment projects and foreign cooperation within their administrative territories and regularly report to Central CIC.
- 4) To study and comment on investment projects to be established in their administrative territories, which do not fall under their approval rights.

Concerned ministries/agencies have some rights as follows:

- 1) To study possible strategies to attract investment and cooperation within their fields in order report to CIC for consideration and approval;
- 2) To cooperate and provide technical comments on projects to CIC for consideration and approval or rejection of proposed investment projects;
- 3) To encourage, promote and attract more investment and cooperation into their sectors.

This decree is to replace Decision No. 28/PM dated 18th of August 2000 and Decision No. 013/PM, dated 27th February 2002, and will be effective after 30 days from the date of signature onward.

COMPARISON OF INVESTMENT INCENTIVES GIVEN TO FOREIGN INVESTMENT

Law on the Promotion and Management of Foreign Direct Investment in Lao PDR (1994)	President's Decree on Incentives (2003)
<ul style="list-style-type: none"> - 2 forms of FDI: <ul style="list-style-type: none"> a) A Joint Venture with one or more domestic Lao investors, and b) A 100% foreign-owned enterprise; - Exemption from import duties for intermediate components and raw materials imported for processing and re-export; - Exemption from export for exported finished products - Uniform flat rate of 1% of import value of equipment, means of production, spare parts and other materials used in operation of investment projects; - Uniform flat rate of 1% of import value of vehicles directly used in investment operation; 	<ul style="list-style-type: none"> - 2 forms of FDI: <ul style="list-style-type: none"> a) A Joint Venture with one or more domestic Lao investors, and b) A 100% foreign-owned enterprise; - Exemption from import duties for intermediate components and raw materials imported for processing and re-export; - Exemption from export for exported finished products - Exemption from import duties for imported equipment, means of production, spare parts and other materials directly used in operation of investment projects; - Vehicles directly used in investment operations will be exempted from imported duties. Vehicles indirectly used in investment operations will be taxed 1% of their imported values. Foreign and domestic enterprises that have agreements with the Central Government and provincial authorities are entitled to temporarily imported vehicles. Quantities of vehicles allowed depend on size of investment capitals, zones and activities. (Refer to Articles 12-16 of the Decree for more details).

<p>Law on the Promotion and Management of Foreign Direct Investment in Lao PDR (1994)</p>	<p>President's Decree on Incentives (2003)</p>																														
<ul style="list-style-type: none"> - Annual profit tax at a uniform flat rate of 20% - Special privileges, including reduction or exemption from the profit-tax rate, are given based on the large size of investments and significant positive impacts such investments have on the socio-economic development of Lao PDR; - Freedom to expatriate their earnings back home or to third countries; - Right to employ skilled and expert foreign personnel; - Personal income tax at a flat rate of 10%. 	<ul style="list-style-type: none"> - 3 investment zones: <ol style="list-style-type: none"> 1) Zone One: remote areas with poor infrastructure. Annual profit tax at 10% 2) Zone Two: areas with some infrastructure. Annual profit tax at 15% 3) Zone Three: cities in provinces, municipalities and special zone. Annual profit tax at 20% Tax holidays: <ol style="list-style-type: none"> 1) Zone One <table border="0" style="margin-left: 20px;"> <thead> <tr> <th style="text-align: left;">Reg. Capital (US\$)</th> <th style="text-align: left;">Tax Holiday</th> <th style="text-align: left;">Profit Tax</th> </tr> </thead> <tbody> <tr> <td>100.000</td> <td>1 year</td> <td>10%</td> </tr> <tr> <td>500.000</td> <td>2 year</td> <td>10%</td> </tr> <tr> <td>1.000.000</td> <td>4 year</td> <td>10%</td> </tr> </tbody> </table> 2) Zone Two <table border="0" style="margin-left: 20px;"> <tbody> <tr> <td>200.000</td> <td>1 year</td> <td>15%</td> </tr> <tr> <td>2.500.000</td> <td>4 year</td> <td>15%</td> </tr> <tr> <td>4.500.000</td> <td>5 year</td> <td>15%</td> </tr> </tbody> </table> 3) Zone Three <table border="0" style="margin-left: 20px;"> <tbody> <tr> <td>500.000</td> <td>2 year</td> <td>20%</td> </tr> <tr> <td>5.500.000</td> <td>6 year</td> <td>20%</td> </tr> <tr> <td>10.000.000</td> <td>7 year</td> <td>20%</td> </tr> </tbody> </table> - Freedom to expatriate their earnings back home or to third countries; - Right to employ skilled and expert foreign personnel; - Personal income tax at a flat rate of 10%. 	Reg. Capital (US\$)	Tax Holiday	Profit Tax	100.000	1 year	10%	500.000	2 year	10%	1.000.000	4 year	10%	200.000	1 year	15%	2.500.000	4 year	15%	4.500.000	5 year	15%	500.000	2 year	20%	5.500.000	6 year	20%	10.000.000	7 year	20%
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I. **RELEVANT LEGISLATION**

LATEST INVESTMENT REGULATIONS IN MALAYSIA:

To enhance Malaysia's investment climate, effective from 17 June 2003, equity holdings in manufacturing projects were liberalised. Foreign investors can hold 100 percent equity in investments in new projects, as well as investments in expansion/diversification projects irrespective of the level of exports.

1. **INVESTMENT ACT**

- Industrial Coordination Act 1975

Provides for licensing requirements to ensure coordinated and orderly development of manufacturing activities in Malaysia. The Act is administered by MITI/MIDA.

2. **COMPANIES ACT**

- Companies Act, 1965

The legislation governing companies in Malaysia. It contains provisions for incorporation and conduct of businesses in Malaysia.

Two websites that provide information for incorporation and conduct of businesses are:

- i. MIDA: <http://www.mida.gov.my>
- ii. Companies Commission of Malaysia:
<http://www.kpdnhq.gov.my>

3. **INCENTIVES/EQUITY**

- In Malaysia, tax incentives, both direct and indirect, are provided for in the Promotion of Investments Act 1986, Income Tax Act 1967, Customs Act 1967, Sales Tax Act 1972, Excise Act 1976 and Free Zones Act 1990.

These legislations cover investments in the manufacturing, agriculture, tourism (including hotel) and approved services sectors, including R&D, training and environmental protection activities.

The information on tax laws and tax incentives are available in the MIDA and Inland Revenue Board websites as follows:

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

4. MINIMUM INVESTMENT LEVEL

No minimum investment level requirement.

5. OTHER 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 formalities in the export of their finished products.

- Patents Act, 1983 and Patents Regulation, 1996

Provides for inventions to be patented if it is new, involves an inventive step and is industrially applicable. The Act provides patent protection for a period of twenty years from the date of filing of an application. For utility innovation, the utility innovation certificate is given for an initial duration of ten years protection from the date of filing an application.

- Trade Marks Act, 1976, and Trade Marks Regulations, 1997

Provides for adequate protection for registered trade marks and service marks. The period of protection is 10 years, which is renewable for a period of every 10 years thereafter.

- Copyright Act, 1987

Provides for comprehensive protection for copyrightable works. There is also provision for enforcement of the Act.

- *Industrial Designs Act, 1996*

Provides for protection of industrial designs in Malaysia. Industrial designs that can be registered must be new and does not include a method of construction or design that is dictated solely by function.

II. APPLICATION

1. AGENCY/IES INVOLVED IN ADMINISTERING INVESTMENT APPLICATION AND GRANTING OF INCENTIVES

a. 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.

b. Malaysian Industrial Development Authority (MIDA)

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

c. 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 national wealth.

2. CONDITIONS INCLUDING TIMETABLE FOR PROCESSING OF APPLICATION

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

- Applications for manufacturing licences and for incentives should be made to the Malaysian Industrial Development Authority (MIDA).
- Approval for manufacturing licences for new projects and for expansion/diversification projects for non-sensitive industries are granted fast track approval i.e. within 7 working days from the date complete information is received. For other cases, the average time for approvals is 8 weeks from the date of application.
- A company which intends to carry on a business in Malaysia must also incorporate a company or register a branch with the Companies Commission of Malaysia under the **Companies Act, 1965**.

3. SPECIAL SERVICES

Advisory Services Centre in MIDA

Represented by officials from key government departments and agencies, it provides advice and assistance in the setting up of manufacturing projects and their eventual implementation.

Industry Support Division in MIDA

Pro-actively identifies problems encountered by new and existing companies in the implementation and operation of their projects, and offers assistance through direct consultation and cooperation with the relevant authorities at both the Federal and State levels.

One-Stop Centres at State Level

Assist investors in obtaining licenses, permits and approvals as well as to implement their projects at the state level.

III. PROMOTED AREAS/SECTORS

1. PROMOTED FIELD/SECTORS

Emphasis is on:

- High-technology, capital-intensive and skills-intensive industries

- 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 Centres (IPCs), Regional Distribution Centres (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

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

2. RESTRICTIONS

Malaysia maintains a liberal and open investment regime. All industries in the manufacturing sector are open to foreign investment. There are a few exceptions, i.e. where approval for manufacturing license may not be granted for reasons of excess capacity, raw material shortage, public safety, health and national security.

IV. FOREIGN EQUITY POLICIES

EQUITY REGULATIONS

1.1 Equity Policy Applicable to New Investments, Expansion or Diversification

- Effective from 17 June 2003, foreign investors can hold 100% equity in all new investments, as well as investments in expansion/diversification projects by existing companies, irrespective of the level of exports.

1.2 Equity Policy Applicable to Existing Companies

- Equity condition imposed on companies prior to 17 June 2003 will also be maintained. However, flexibility would be given to remove the conditions, based on request, depending on the merits of each case.

1.3 Relaxation of Export Conditions for Existing Manufacturers

- Export condition imposed prior to 17 June 2003 will also 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.

1.4 Acquisition, Mergers, and Takeovers

The acquisition of assets, mergers or takeovers of companies are governed by the Foreign Investment Committee (FIC) Guidelines except for those activities which are under the purview of specific Ministries and Agencies which have been exempted from the Guidelines.

In order to provide greater flexibility on foreign equity participation, and further enhance Malaysia's competitiveness in attracting FDI, Malaysia has revised the FIC guidelines on mergers, acquisition and takeovers effective 21 May 2003 which includes:

- (i) For acquisitions by Malaysian and foreign interests, the only equity condition imposed will be Bumiputera equity of at least 30 per cent. In the case of acquisitions by foreign interests, the remaining equity can be held either by local interest, foreign interests or jointly by foreign and Malaysian interests.
- (ii) The threshold level for acquisitions by foreign and Malaysian interests which is exempted from FIC approval has been raised from RM5 million to RM10 million.

Acquisition and control by foreign interests below the RM10 million threshold are not subject to FIC rules subject to the proviso that any proposed acquisition does not amount to more than 15 per cent by any one foreign interest or associated group or in the aggregate more than 30 per cent of the equity/voting power of a Malaysian company or business.

- (iii) In line with the liberalisation, foreign interests are allowed to acquire properties exceeding RM150,000 per unit with no limit on the number of properties acquired.

The details of the FIC Guidelines are available at <http://www.epu.ipm.my>

V. INCENTIVES

1. CORPORATE INCOME TAX / INCOME TAX ALLOWANCE

Pioneer Status

- The current corporate tax rate is 28%. However, a company granted Pioneer Status will enjoy partial exemption from the payment of income tax. It will only have to pay income tax (i.e. 28%) on 30% of its statutory income. The period of tax exemption is five years, commencing from the production day.
- As an added incentive to encourage companies to locate in promoted areas in Malaysia, companies located in the states of Sabah, Sarawak and the Federal Territory of Labuan⁺ and the designated 'Eastern Corridor'⁺⁺ of Peninsular Malaysia, will only have to pay tax on 15% of their statutory income during the tax exemption period of five years. This additional incentive is applicable for all applications received by 31 December 2005.
- In order to promote certain targeted investment e.g. strategic projects, high tech industries, R&D activities, projects to strengthen industrial linkages, and multimedia industries, full income tax exemption for a period of 5 to 10 years is available.

⁺ Only applicable to the hotel business and tourist industry in the Federal Territory of Labuan.

⁺⁺ The 'Eastern Corridor' of Peninsular Malaysia covers the states of Kelantan, Terengganu, Pahang and the district of Mersing in the State of Johor.

Investment Tax Allowance (ITA)

- As an alternative to Pioneer Status, a company may apply for Investment Tax Allowance. A company granted Investment Tax Allowance will be given an allowance of 60% in respect of qualifying capital expenditure incurred within five years from the date on which the first qualifying capital expenditure is incurred. The allowance can be utilised to offset against 70% of the statutory income in the year of assessment. Any unutilised allowance can be carried forward to subsequent years until the whole amount has been used up. The remaining 30% of the statutory income will be taxed at the prevailing income tax rate.
- To encourage investment in the promoted areas i.e. the States of Sabah, Sarawak and Federal Territory of Labuan⁺ and the designated 'Eastern Corridor'⁺⁺ of Peninsular Malaysia, applications received from 13 September 2003 from companies located in these areas will enjoy an allowance of 100% on the qualifying capital expenditure incurred within a period of five years. The allowance can be utilised to offset against 100% of the statutory income for each year of assessment. Companies which have been granted approval for this incentive but have not commenced commercial production, or applications under consideration, are also eligible. All project applications received by 31 December 2005 will be eligible for this enhanced incentive.

The Pioneer Status or Investment Tax Allowance incentive is only applicable to “promoted activities” or “promoted products”.

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

2. OTHER INCENTIVES (I.E. GRANTS, DOMESTIC LOANS, SUBSIDIES, ETC.)

Other Incentives provided to encourage investments include:

- Reinvestment Allowance
- Incentives for Strategic Projects
- Incentives for Small-Scale Companies
- Incentives for High Technology Industries
- Incentives for Training
- Incentives for R&D

- Incentives for Operational Headquarters
- Incentives for International Procurement Centres
- Incentives for Representatives Offices and Regional Offices
- Incentives for Regional Distribution Centres
- Incentives for Software Development
- Incentives to Strengthen Industrial Linkages
- Incentives for Promoting Malaysian Brand Names
- Incentives for Storage, Treatment and Disposal of Toxic and Hazardous Wastes
- Incentives for the Agricultural Sector
- Incentives for the Tourism Industry
- Incentives for the Manufacture of Machinery and Equipment
- Incentives for Manufacturing Related Services
 - Integrated Logistics Services (ILS)
 - Integrated Market Support Services (IMS)
 - Integrated Central Utility Facilities (CUF)
- Incentives for the Shipping and Transportation Industry
- Incentives for Information and Communication Technology (ICT)
- Incentives for Accommodation and Child Care Facilities of Employees
- Additional Incentives for the Food Industry
 - Incentives for Food Production
 - Incentives for Companies providing Cold Chain Facilities and Services for Food Products
- Incentives for Environmental Protection
- Incentives for Acquiring Proprietary Rights
- Incentives for Approved Service Projects

Some of these are generally variations of the PS/ITA incentive, including higher or full tax exemption/allowance or longer tax exemption periods.

For details please refer to MIDA's publication 'Malaysia: Investment in the Manufacturing Sector - Policies, Incentives and Facilities,' or see MIDA's Internet Homepage: <http://www.mida.gov.my>

3. EXEMPTION FROM IMPORT DUTY AND SALES TAX ON MACHINERY AND EQUIPMENT

Most machinery and equipment which are not produced locally are not subject to import duty and sales tax. However, machinery and equipment with import duty and sales tax can be considered for duty/tax exemption if used:

- directly in the manufacturing or agricultural processes, approved services projects, film and music production houses or manufacturing related services;
- for environmental protection, energy conservation, biomass energy, waste recycling, storage, treatment and disposal of toxic and hazardous waste;
- for approved R&D activities;
- for approved training programmes;
- for maintenance and quality control;
- in the plantation sector

Companies can also obtain sales tax exemption for machinery and equipment that are produced locally.

4. EXEMPTION FROM IMPORT DUTY ON RAW MATERIALS/COMPONENTS

Full exemption from import duty can be considered on raw materials/components used in the manufacturing of products irrespective of whether the finished products are sold in the domestic market or export market.

Manufacture of Goods for Export Market

- Full exemption from import duty on raw materials that are used directly in the manufacturing process are normally granted, provided the raw materials/components are not manufactured locally or, where they are manufactured locally, are not of acceptable quality and price.

Manufacture of Goods for the Domestic Market

- Full exemption from import duty on raw materials and components that are not manufactured locally can be considered.
- Full exemption from import duty can also be considered if the finished product made from dutiable raw materials/components is not subject to any import duty.

Hotel and tourism projects qualify for full exemption of import duty and sales tax on identified imported materials/equipment and exemption of sales tax and excise duty on identified locally purchased equipment.

VI. TAXATION

1. CORPORATE TAX

The corporate income tax rate is 28%. In the case of 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.

3. SALES TAX

This is an ad valorem single stage tax imposed at the import and manufacturing levels. Manufacturers are required to be licensed under the ***Sales Tax Act 1972***. However, manufacturers whose annual sales turnover do not exceed RM100,000 are exempted from licensing.

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%.

4. SERVICE TAX

This tax is a consumption tax levied and charged on any taxable 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 RM300,000.

5. WITHHOLDING TAX

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

- Special classes of income: 10%.
 - use of movable property

- technical advice, assistance or services
- installation services on the supply of plant, machinery, etc.
- personal services associated with the use of intangible property
- Royalty : 10%
- Services of a public entertainer : 15%
- Interest: 15%.

6. 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 28% after the deduction of tax reliefs.

Generally, a non-resident individual is liable to tax at the rate of 28% 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.

7. LAND/PROPERTY TAX

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

8. REAL PROPERTY GAINS TAX

Real Property Gains Tax

- Capital gains are generally not subjected to tax in Malaysia. Real property gains tax is charged on gains arising from the disposal of real property situated in Malaysia or of interest, options or other rights in or over such land as well as the disposal of shares in real property companies. The rates of tax are as follows:
 - Disposal within 2 years: 30%

- Disposal in the 3rd year: 20%
 - Disposal in the 4th year: 15%
 - Disposal in the 5th year: 5%
 - Disposal in the 6th year and thereafter for company: 5% and individual: nil.
- For individuals who are citizens or permanent residents, gains from the disposal of real properties after five years are not subject to this tax. They are also entitled to an exemption of RM 5,000 or 10% of the gains, whichever is greater. In addition, they also enjoy a one-time tax exemption on the gains arising from the disposal of one private residence.
 - For non-citizens and non-permanent resident individuals, gains from the disposal of real property within 5 years are subject to tax at a flat rate of 30%. However, disposal in the sixth year and thereafter will be taxed at 5%.

9. ESTATE DUTY

None

10. 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 RM 1 per RM 100 for the first RM 100,000 to RM 3 per RM 100 for values in excess of RM 500,000.

11. IMPORT DUTY

Import Duty

- Import duties are imposed either at ad valorem or specific rates. The ad valorem rates vary from 2% to 150%. 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 for the ASEAN Free Trade Area. Under the CEPT, import duties imposed on goods from ASEAN countries has been reduced to 0-5% by the year 2003.
- Tariffs on a wide range of products have also been reduced in accordance with Malaysia's commitments under the World Trade Organisation (WTO).

12. MUNICIPAL TAXES

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

13. 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 Duty Act 1976.

VII. FINANCIAL REGULATIONS

1. BORROWING

1.1 Credit facilities in Ringgit to NRCCs Operating in Malaysia

A Non-resident Controlled Company (NRCC) in Malaysia is freely permitted to obtain from domestic sources:

- Credit facilities of up to RM 50 million in aggregate per corporate group or on a single entity basis;

- Any amount of forward foreign exchange contracts for trade purposes, performance guarantees and short-term trade financing facilities; and
- Any amount of guarantees to secure the repayment of offshore borrowings, subject to the registration and submission of information on the guarantees to the Controller of Foreign Exchange (the Controller) for each guarantee which has values above the equivalent of RM5.0 million.

For borrowing in Malaysia exceeding RM 50 million in aggregate, the NRCC must obtain prior permission of the Controller. The 3:1 gearing ratio requirement would be applicable only for the amount of credit facility in excess of the initial RM50 million borrowing. The RM50 million threshold excludes short-term trade financing facilities where the tenure of credit facility does not exceed 12 months and foreign currency credit facilities.

1.2 Borrowing in Foreign Currency

Residents may borrow in foreign currency from banks in Malaysia and non-residents up to a total of RM 5 million equivalent in aggregate without the permission of the Controller.

Where the aggregate amount exceeds the equivalent of RM 1 million, the resident must provide the Controller with information on the credit facilities.

Residents may also obtain trade financing of any amount in foreign currency from onshore commercial banks and Islamic banks (licensed banks) or licensed merchant banks provided the tenure of the credit does not exceed 12 months.

2. FOREIGN EXCHANGE

Foreign exchange administration is administered by Bank Negara Malaysia (Central Bank) in accordance with the provisions of the ***Exchange Control Act, 1953***.

The present foreign exchange administration regime applies uniformly to all transactions with all countries except Israel, Serbia and Montenegro, against which special restrictive rules apply.

Remittance Abroad

Foreign direct investors are freely allowed to repatriate their investment, including capital, profits, dividends, rental and interest.

Payments for overseas investment including the extension of a loan to a non-resident and placement of funds abroad by residents require the prior permission of the Controller if the amount exceeds the equivalent of RM10,000.

Export Proceeds

All export proceeds are required to be repatriated back to Malaysia in accordance with the payment schedule specified in the sales contract, which in any case should not be later than six months from the export date.

The export proceeds must be received in foreign currency and must be sold for ringgit or retained in approved foreign currency accounts with onshore licensed banks, up to an aggregate overnight limit of between US\$30 million and US\$100 million depending on the average monthly export receipts.

Exporters are also given the option to merge their export and non-export foreign currency accounts in accordance with the overnight limits imposed on the export foreign currency accounts.

Inter-Company Accounts

A resident company is freely allowed to operate one or more inter-company accounts with any non-resident company. However, to maintain inter-company accounts with entities in or in the currencies of Israel, Serbia and Montenegro, prior permission of the Controller is required.

The prior permission of the Controller is also required for a resident company to offset payables against receivables that are export proceeds or external credit facilities extended to the resident company.

A resident company maintaining an inter-company account with a non-resident company is required to submit Statement IA to the Controller within 10 days from the end of the month being reported.

External Accounts of Non-Residents

Financial institutions are freely allowed to open accounts in ringgit known as External Accounts for non-residents without any limit. There is no restriction on the operation of the ringgit accounts of non-residents working in Malaysia, embassies, consulates, high

commissions, supranational or international organisations recognised by the Malaysian Government.

Multimedia Super Corridor (MSC) Status Companies

A MSC Status company, upon application to the Controller of Foreign Exchange, will be exempted from foreign exchange administration rules for transactions undertaken on its own account. However, prior permission should be obtained to deal with Specified Persons and in the restricted currencies of Israel, Serbia and Montenegro.

3. SOURCE OF FINANCING

Both domestic and foreign firms have access to financing by domestic financial institutions. These include loans or credits from onshore licensed banks, merchant banks, finance companies, licensed offshore banks in Labuan or through the securities market. There is also an export credit insurance company that offers export insurance cover and guarantees.

4. REPATRIATION OF CAPITAL/PROFITS

There are no restrictions for non-residents to repatriate their investment, including capital, profits, dividends, rental and interest.

5. OTHER SPECIAL REGULATIONS

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

VIII. EMPLOYMENT FOR APPROVAL OF FOREIGN WORKERS

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

In order to attract FDI as well as to promote technology transfer and inflows of foreign talents/skills, particularly in the promoted manufacturing and related services sectors, Malaysia has further liberalised the policy on the employment of expatriates in these sectors 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 RM 500,000;
 - (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 as under the current practice.
- (f) In the manufacturing related services sector in the areas of OHQ, IPC and RDC, the number of expatriate posts, (both key posts and time posts) will be approved as requested based on company's requirements.

- (g) Employment of foreign workers is allowed in the construction, plantation, service (domestic servants, restaurants, hotel industry, trainers and instructors) and manufacturing sectors.

Applications from companies in the manufacturing sector located in Peninsular Malaysia should be submitted to the Ministry of International Trade and Industry. Only nationals from the Philippines, Vietnam, Thailand, Nepal, Laos, Turkmenistan, Kazakhstan, Myanmar, Uzbekistan, Cambodia and Indonesia can be employed.

Applications from companies in the other sectors should be submitted to the Foreign Workers Division of the Ministry of Home Affairs. Only nationals from the Philippines, Vietnam, Thailand, Nepal, Laos, Turkmenistan, Kazakhstan, Myanmar, Uzbekistan, Cambodia, India and Indonesia can be employed.

Approval is based on the merits of each case and subject to conditions that will be determined from time to time. An employer's application to employ foreign workers will only be considered after efforts to find qualified local citizens and permanent residents have failed.

To ensure that foreign labour is employed only when necessary, an annual levy on foreign workers is imposed. The rate of levy on foreign workers involved in the manufacturing, services and a construction sector is RM 100 per month. For workers in the domestic help and plantation sectors, the rate is RM 30 per month.

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

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 RM 2,500. 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 RM2,500.

(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).

IX. LAND AND BUILDING OWNERSHIP

1. REGULATION ON ACQUISITION OF LAND AND BUILDING

Acquisition of land is subject to the approval of the Federal and/or respective State governments.

Foreigners can buy industrial lands which are usually developed by the State Economic Development Corporations (SEDC), other government authorities and by the private sector.

Foreigners are also allowed to acquire properties for business and residential purposes. In line with the liberalisation, foreign interests are allowed to acquire properties exceeding RM150,000 per unit with no limit on the number of properties acquired. The details of the FIC guidelines are available at <http://www.epu.jpm.my>

2. RESTRICTIONS

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

I. RELEVANT 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:

1. 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.
2. 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.
3. 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 he

wishes to be considered for incentives and exemptions under the Foreign Investment Law. The application procedure is as follows:

A 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:

**653, 651 Marchant Street, Pabandon Township,
Yangon, 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 calculation 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;
 - prospects of foreign exchange savings.

Notes:

- i. 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 enterprise in the respective field must also be attached;

- ii. If the proposed project is a joint-venture, a draft contract between the foreign investor and the local counterpart must also be attached;
- iii. If the proposed project involves leasing of land, a draft lease agreement must also be attached; and
- iv. 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 the 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 an equity.

3. INCENTIVES / EQUITY

If a joint venture is formed under the Foreign Investment Law, at least 35% of total equity could be owned by foreign investor.

4. MINIMUM INVESTMENT LEVEL

- US\$ 500,000 for manufacturing;
- US\$ 300,000 for services.

5. OTHER LEGISLATION

- ***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.

(See Section III.2 on Restriction)

- ***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)***

This Law 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)***

This is to encourage wider participation of foreign investors and to promote exports.

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

This is to encourage 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 policy regarding the protection of wildlife and natural plants and conservation of natural areas.

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

This Law 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 promotion of production and exports by the private sector.

- Myanmar Pearl Law (1995)

Implements the policy of the Government relating to 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)

The Law 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 insurance business in Myanmar to meet the growing demand for more sophisticated insurance needs in the country.

II. APPLICATION

1. AGENCY/IES INVOLVED IN ADMINISTERING INVESTMENT APPLICATION 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 APPLICATION

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 formed as a limited company, it must apply for Permit to Trade from the Ministry of National Planning and Economic Development through the Company Registration Office.

- After being granted a Permit to Trade, 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 complete Proposal Form attached. (Refer to Section 1 “Procedures relating to ***the Union of Myanmar Foreign Investment Law***”).

III. PROMOTED AREAS/SECTORS

PROMOTED FIELD/SECTORS

- A. 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
 - Foodstuff
 - Textile
 - 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.

- B. If **investment** proposals not specified in the above mentioned list are submitted, they will be considered on a case-by-case basis by MIC.

IV. **FOREIGN EQUITY POLICIES**

EQUITY REGULATIONS

- 100% foreign equity ownership is allowed **according to the Foreign Investment Law (without any condition)**
- Foreign investor 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. **INCENTIVES**

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

Foreign investors are granted a minimum of 3 year corporate income tax exemption, extendible 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 the commenced date of commercial operation for approval. After getting MIC approval, the investor can enjoy the exemption on imported raw materials.

It is necessary to mention the performance of the project in applying the above incentives.

4. OTHER INCENTIVES (I.E. GRANTS, DOMESTIC LOANS, SUBSIDIES, ETC.)

Other incentives are also provided such as:

- 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. TAXATION

1. CORPORATE TAX

Corporations incorporated in Myanmar are treated as resident 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 interests, royalties, and on contracts are subject to the different following rates of withholding tax:

- Interests:
 - 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 to foreign contractor:
 - 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 DUTY**

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, Myanmar
Fax: 095-01-281 847

VII. **FINANCIAL REGULATIONS**

1. **BORROWING**

Domestic borrowing in foreign currency is not available.

Domestic borrowing in local currency can be provided by the commercial banks operating in the country.

2. **FOREIGN EXCHANGE**

There is a 15% withholding tax for interest paid to non-resident lender.

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

Remittance of profit and capital repatriation are subject to prior approval of MIC and are also subject to Exchange Control regulations

VIII. EMPLOYMENT FOR APPROVAL OF FOREIGN WORKERS

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

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 proficiency in their work and promotion to higher ranks of services.

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

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 appointment and stay-permit.

- With the endorsement of MIC, a company has to apply for work permit to the Directorate of Labour under the Ministry of Labour, and for stay permit and visa to the Immigration and National Registration Department under the Ministry of Immigration and Population.

IX. LAND AND BUILDING OWNERSHIP

1. REGULATION ON ACQUISITION OF LAND AND BUILDING

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.

A. BACKGROUND ON THE FOREIGN INVESTMENT REGIME

The State shall pursue an independent foreign policy. In its relations with other States the paramount consideration shall be national sovereignty, territorial integrity, national interest and the right of self-determination.

Under the Foreign Investments Act of 1991 as amended by R.A. 8179, the government has made it an official policy to attract, promote and welcome productive investments from foreign individuals, partnerships, corporations and governments. The objective of this policy is to channel this investment into activities contributing significantly to the process of industrialisation and socioeconomic development within the Philippines, while at the same time remaining within the limits set by the Constitution and laws of the country. Foreign investment is encouraged in enterprises that significantly expand employment opportunities for Filipinos; enhance the economic value-added of agricultural products; promote the welfare of Filipino consumers; expand the scope, quality and volume of exports and their access to foreign markets; aid the transfer of relevant technologies in the agricultural and industrial sectors, together with the supporting services sector. Foreign investment is encouraged not only in the development of the export-oriented sector but is also welcome as a supplement to Filipino capital and technology in those enterprises serving mainly the domestic market.

As a general rule, there are no restrictions on the extent of foreign ownership of export-oriented enterprises. For domestic market enterprises, foreigners can invest as much as 100% of total equity except in those areas specified in the negative list provided the paid-up capital is at least \$200,000.00 or US\$100,000.00 if it involves advance technology or hiring of 50 direct employees.

B. REGULATORY FRAMEWORK/INVESTMENT FACILITATION

1. Transparency

Relevant laws, regulations, administrative guidelines and policies pertaining to investment

Citation	Summary
1. The Omnibus Investments Code of 1987 (Executive Order No. 226) as amended by RA 8756	Provides the rules by which foreign and local investments in the Philippines may qualify for certain incentives.
2. The Foreign Investments Act of 1991 (Republic Act No. 7042) as amended by R.A. 8179	Governs the entry of foreign investments and doing of business by foreigners without incentives. The Act was amended to ease restrictions on foreign investment by decreasing the minimum paid-up equity for new enterprises from Five Hundred Thousand Dollars (US\$500,000) to Two Hundred Thousand

Citation	Summary
	Dollars (US\$200,000) or One Hundred Thousand Dollars (US\$100,000) provided they involve advanced technology or hire fifty direct employees, and shortening the Negative List.
3. Bases Conversion and Development Act of 1992 (Republic Act No. 7227)	Provides for incentives to enterprises located within the Subic Bay Freeport Zone, the Clark Special Economic Zone, and their extensions.
4. The Special Economic Zone Act of 1995 (Republic Act No. 7916)	Provides for incentives to enterprises located within the Special Economic Zones as defined in RA 7916.
5. Export Development Act of 1994 (Republic Act No. 7844)	Provides for incentives to enterprises in the export business.
6. Investors' Lease Act (Republic Act No. 7652)	Allows qualified foreign investors to lease private lands for an initial period of up to 50 years, renewable for up to 25 additional years.
7. An Act Liberalizing the Entry and Scope of Operations of Foreign Banks in the Philippines (Republic Act 7721, 1994)	Eased the restrictions on the entry and operations of foreign banks in the Philippines.
8. Amendment of the Build-Operate-Transfer Law (R.A. 7718, 1994)	Allows for variations of Build-Operate-Transfer schemes, eases the restrictions on government financing including the setting of tolls and charges, and increases the opportunity for wholly foreign-owned corporations to undertake such projects.
9. An Act to Amend Article 7(13) of Executive Order 226, otherwise known as the Omnibus Investments Code of 1987 (Republic Act No. 7888, 1995)	Allows the President of the Philippines to suspend the nationality requirements under the Omnibus Investments Code in cases of investments by ASEAN nationals, regional ASEAN or multilateral financial institutions in preferred projects.

Guidelines/conditions that apply for screening investment proposals

Proposals	Guidelines/Conditions
Merger (Yes)	Compliance with the Corporation Code and the Foreign Investments Act requirements.
Acquisition (Yes)	Compliance with the Corporation Code and the Foreign Investments Act requirements.
Greenfield investment	Compliance with the Corporation Code and the

Proposals		Guidelines/Conditions
	(Yes)	Foreign Investments Act requirements.
Real estate/land	(Yes)	Subject to the provision of the Foreign Investment Act and the Constitution.
Joint venture	(Yes)	Compliance with the Corporation Code and the Foreign Investments Act requirements.
Other - management contracts	(Yes)	Compliance with the Corporation Code requirements.
Telecommunications	(Yes)	Foreign Equity of up to 40% only.
Media	(Yes)	No Foreign Equity.
Transport	(Yes)	Foreign Equity of up to 40% only.
Agriculture	(Yes)	Subject to the provision of the Foreign Investment Act and the Constitution.
Other - mining	(Yes)	Subject to the provisions of the Revised Mining Act of 1995, the Constitution and the Foreign Investment Act.
- infrastructure	(Yes)	Subject to the provisions of P.D. 1594 and BOT Law, the Constitution and the Foreign Investment Act.

Application/approval forms required for screening purposes

- S.E.C. Form No. F-100 (for new corporations with more than 40% Foreign Equity/ provided that the areas of economic activities are not in the Foreign Investments Negative List).
- S.E.C. Form No. F-103 (for licensing a branch office of a foreign corporation).
- BOI registration form.
- PEZA registration form.

Copies of the relevant documentation can be obtained from the contacts listed in Section B1(2)(d) below.

Contact point(s) to which applications should be made

Agency	Address/telephone/fax
1. Board of Investments (BOI) <i>Contact Person –</i> Ms. Florina A. Vistal Executive Director Investment Promotion Group	Industry and Investment Bldg. 385 Sen. Gil J. Puyat Avenue, Makati City Telephone: (63 2) 896-9212 Fax: (63 2) 897-2181 Email: FAVistal@boi.gov.ph

Agency	Address/telephone/fax
<p>2. One-Stop-Action Center (OSAC) <i>Contact Person</i> – Mr. Dennis R. Miralles Director</p>	<p>Board of Investments Industry and Investment Bldg., 385 Sen. Gil J. Puyat Avenue, Makati City Telephone: (63 2) 899-3586 / 896-7342 Fax: (63 2) 895-8322 Email: DRMiralles@boi.gov.ph</p>
<p>3. Securities and Exchange Commission (SEC) <i>Contact Persons</i> - Atty. Benito A. Cataran Director Company Registration and Monitoring Department Atty. Ferdinand B. Sales Corporate and Partnership Registration Division</p>	<p>SEC Building E. de los Santos Ave. Mandaluyong City Telephone: (63 2) 727 2011 Fax: (63 2) 724 1319 E-mail: benito.cataran@sec.gov.ph</p>
<p>4. Philippine Economic Zone Authority (PEZA) <i>Contact Person</i> - Atty. Lilia B. De Lima Director-General</p>	<p>Almeda Building Roxas Boulevard cor. San Luis St. Pasay City Telephone: (63 2) 551-3436 / 551 3438 Fax: (63 2) 551-3435</p>
<p>5. Bases Conversion Development Authority <i>Contact Person</i> – Mr. Rufo B. Colayco President and CEO</p>	<p>BCDA Corporate Center Gozar cor. Lucas Street, Villamor Air Base, Pasay City Telephone: (63 2) 510-0408 Fax: (63 2) 510-0414 E-mail: rcolayco@bcda.gov.ph</p>
<p>6. Bureau of Internal Revenue (BIR) <i>Contact Person</i> – Mr. Antonio I. Ortega Director Revenue Region VIII, Makati City</p>	<p>Atrium Building Makati City Telephone: (63 2) 811-4393 / 811-4390 Fax: (63 2) 811-4055 E-mail: tony.ortega@bir.gov.ph</p>
<p>7. Bangko Sentral ng Pilipinas (BSP) <i>Contact Person</i> – Ms. Celia M. Gonzalez Director International Operations Department</p>	<p>Corner A. Mabini & P. Ocampo Sr. Streets, Malate, Manila 1004 Telephone: (63 2) 536-6077 Fax: (63 2) 536-0053 E-mail: cgonzalez@bsp.gov.ph</p>

Agency	Address/telephone/fax
8. Social Security System (SSS) <i>Contact Person –</i> Ms. Corazon S. de la Paz President and CEO	SSS Bldg., East Avenue, Diliman Quezon City Telephone: (63 2) 921-2022/922-2995 Fax: (63 2) 924-8470 E-mail: cdelapaz@globenet.com.ph
9. Subic Bay Metropolitan Authority (SBMA) <i>Contact Person -</i> Mr. Felicito Payumo Chairman and Administrator	Building 229 Waterfront Road, Subic Bay Freeport Zone, Olongapo City Telephone: (63 47) 252-4381/4383 Fax: (63 47) 252-3014 E-mail: fcpayumo@sbma.com
10. Clark Development Corporation (CDC) <i>Contact Person –</i> Mr. Emmanuel Y. Angeles President and CEO	Bldg. 2122, C.P. Garcia Street, corner Quirino Street Clark Field, Pampanga Telephone: (63 45) 599-9000, 599-2043 Fax: (63 45) 599-2506 to 07 E-mail: eya@clark.com.ph

Website information and whether there is that capacity to apply for approvals on-line

Agency	Website Address	Available Information	Capacity for On-line Applications
Board of Investments (BOI)	http://www.boi.gov.ph	<ul style="list-style-type: none"> - Basic Facts about the Philippines - Cost of Doing Business - Incentives - Investment Opportunities - Statistics - Industry Features - New Investments 	None
Philippine Economic Zone Authority (PEZA)	http://www.peza.gov.ph	<ul style="list-style-type: none"> - Performance Indicators - Registration Procedures 	None

Agency	Website Address	Available Information	Capacity for On-line Applications
		<ul style="list-style-type: none"> - PEZA Firms - Economic Zones - Circulars/Board Resolutions/Issuances 	
Subic Bay Development Authority (SBMA)	http://www.sbma.com	<ul style="list-style-type: none"> - Business/Investment Opportunities - Tourism/Recreation - Demography - Site Map 	None
Bases Conversion Development Authority (BCDA)	http://www.bcda.gov.ph	<ul style="list-style-type: none"> - Subsidiaries and Affiliates 	None
Clark Development Corporation (CDC)	http://www.clark.com.ph	<ul style="list-style-type: none"> - Business Advantages - Investment Opportunities - Investment Support Services - Locators - Frequently-Asked Questions 	None
Securities and Exchange Commission (SEC)	http://www.sec.gov.ph	<ul style="list-style-type: none"> - Securities Regulation Code and its Implementing Rules and Regulations - Memorandum Circulars/Orders/Advisory/Notice to the Public - Guide to SEC Registration 	Name verification and reservation
Bureau of Internal Revenue (BIR)	http://www.bir.gov.ph	<ul style="list-style-type: none"> - Issuances and Rulings - Tax Information - BIR Updates - Legal Matters - Tax Code 	<ul style="list-style-type: none"> - Filing and payment of tax return - Confirmation of receipt of tax payment

Agency	Website Address	Available Information	Capacity for On-line Applications
		- Tax Calendar	- Verification of Tax Identification Number
Bangko Sentral ng Pilipinas (BSP)	http://www.bsp.gov.ph	- Statistics - Regulations - News	None
Social Security System (SSS)	http://www.sss.gov.ph	- Services - Laws - How to Register	None

Average period from the formal submission of all relevant/required documentation to final approval/rejection

Regular Processing and Express Lane

Under the 1987 Omnibus Investments Code, the BOI will render its decision within 20 working days after official acceptance of the application for registration. Application shall be acted upon within 10 days after official acceptance of the application.

Under the Foreign Investments Act, the Securities and Exchange Commission (SEC) in cases of corporations/partnership shall act within two (2) working days. The DTI-NCR in cases of sole proprietorship, shall act on the same within one (1) working day.

The SEC is a government agency responsible for the registration, licensing, regulation and supervision of all corporations and partnerships organised in the Philippines, including foreign corporations licensed to engage in business or to establish branch/representative offices in the Philippines. The processing period from official acceptance of various types of applications are provided hereunder:

- Partnership/corporation under the Express Lane - one (1) day
- Those with more than 40% foreign equity - two (2) days

In case of PEZA, the processing and evaluation of application by the appropriate department usually takes a week and the decision on the project is made during the bi-monthly meetings of the PEZA board.

List of agencies responsible for dealing with appeals in cases where a proposal is denied or modification of the proposal is requested

Agency	Consultation Process	Action Time	Address/Telephone/Fax
Securities and Exchange Commission (SEC) - office dealing with applications for incorporation that require amendments and inquiries pertaining to denied applications for incorporation	Consultation/ conference with the examiner or processing lawyer at the Securities and Exchange Commission, Company Registration and Monitoring Department	Upon advice on the applicant	SEC Building, EDSA near Ortigas, Mandaluyong City Tel: (63 2) 726-9245 Fax: (63 2) 724-1319

Agencies that consider foreign investment related complaints and the types of complaints that the agency deals with

Agency	Address/telephone/fax	Type of Complaint
Securities and Exchange Commission (SEC) Corporate and Legal Department	SEC Bldg., EDSA, near Ortigas, Mandaluyong City Tel: (63 2) 726-0931 Fax: (63 2) 724 1319	Violation of Corporate Code of the Philippines, and RA 7042 (Foreign Investments Act)
Bureau of Trade Regulation and Consumer Protection (BTRCP)	361 Sen. Gil Puyat Ave., Makati City Tel: (63 2)890 4872 Fax: (63 2) 890-9363	Violation of consumer protection of sole proprietorship
Office of the Resident Ombudsman	Board of Investments Industry and Investments Building 385 Sen. Gil Puyat Avenue, Makati City <i>Contact Person:</i> Atty. Virgilio Gaite Tel. No.: (63 2) 899-3587 Fax: (63 2) 528-1463	Violation of the Anti-graft and Corrupt Practices Act

Agencies responsible for monitoring/enforcing compliance with foreign investment laws/regulations and the functions in relation to enforcement for which they are responsible

Agency	Contact Person/ Address/ Telephone/Fax	Functions
1. Board of Investments (BOI)	Lucita P. Reyes Executive Director Industry & Investments Bldg. 385 Gil J. Puyat Ave., Makati City Tel: (63 2) 896-7895 Fax: (63 2) 895-3978 Email: LPReyes@boi.gov.ph	Implementation of the Omnibus Investments Code (E.O. 226)
2. Department of Trade and Industry-National Capital Region	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	Licensing
3. Securities and Exchange Commission (SEC)	Atty. Benito Cataran Director SEC Bldg., EDSA, Mandaluyong City Tel: (63 2) 727-2011 Fax: (63 2) 724-1319 E-mail: benito.cataran@sec.gov.ph	Implementation of the Foreign Investments Act of 1991 (R.A. 7042)
4. Philippine Economic Zone Authority (PEZA)	Atty. Lilia B. De Lima Director General Roxas Boulevard cor. San Luis St., Pasay City Tel (63 2) 551-3436 to 38 Fax: (63 2) 551-3435	Implementation of the Special Economic Zone Act (R.A. 7916)
5. Subic Bay Metropolitan Authority (SBMA)	Atty. Arlene Pangan Head, Legal Department Building 229, Waterfront Road, Subic Bay Freeport Zone, Olongapo City Tel: (63 47) 252-4093 Fax: (63 47) 252-4780 Email: apangan@subic.com	Implementation of the Bases Conversion and Development Act of 1992 (R.A. 7227)

Agency	Contact Person/ Address/ Telephone/Fax	Functions
6. Export Development Council (EDC)	Emalita Z. Mijares Executive Director 6/F, New Solid Building 357 Sen. Gil J. Puyat Ave. Makati City Tel: (63 2) 897-4708 Fax: (63 2) 890-4704/890-4645 Email: edc@dti.gov.ph	Implementation of the Export Development Act (R.A. 7844)
7. Clark Development Corporation (CDC)	Mr. Emmanuel Y. Angeles President and CEO Bldg. 2122, C.P. Garcia St., corner Quirino St., Clarkfield, Pampanga Tel: (63 45) 599-9000 Fax: (63 45) 599-2506, 599-2507 E-mail: eya@clark.com.ph	Implementation of the Bases Conversion and Development Act of 1992 (R.A. 7227)
8. Office of the Resident Ombudsman	Atty. Virgilio Gante Board of Investments Industry and Investments Building 385 Senator Gil Puyat Avenue, Makati City Tel: (63 2) 899-3587	Receive and promptly act on report or complaints, written or otherwise, involving illegal, unjust, irregular, improper and inefficient acts of officials and employees of government agencies performing investment-related functions.

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 cannot take effect until after 15 days following complete publication in the Official Gazette or in a newspaper of general circulation in the Philippines unless otherwise provided.

Sub national agencies in the approval process and their roles in the approval process

Agency	Address/telephone/fax	Functions
Housing and Land Use Regulatory Board (HLURB)	NHA Compound, Elliptical Road, Diliman, Quezon City <i>Contact Person:</i> Ms. Petronila de Castro Tel: (63 2) 924-3389 Fax: (63 2) 927-9041	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. Jeffrey Galan Director Center for Land Use Policy and Planning Implementation Telefax: (63 2) 926-1652	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 certificate on environmental clearance certificate.

2. Most Favored Nation Treatment

The Philippines does not discriminate against any investment source economy.

3. National Treatment

Sectors which are subject to exceptions to national treatment for the purpose of foreign investment and the nature of the exception

The Foreign Investments Act of 1991 (RA 7042 as amended by RA 8179, 1996) provides the rules and regulations for foreign investments without incentives. The law clarified to foreign investors that the domestic market is open to them as long as the activity is not restricted 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 components of the current negative list, the Fifth Regular Foreign Investment Negative List (Executive Order No. 139 dated 22 October 2002), are shown below:

List A: Foreign ownership is limited by mandate of the Constitution and specific laws

No Foreign Equity

1. Mass media except recording (Article XVI, Section 11 of the Constitution; Presidential Memorandum dated 04 May 1994)
2. Services involving the practice of licensed professions save in cases prescribed by law
 - a. Engineering
 - i. Aeronautical
 - ii. Agricultural
 - iii. Chemical
 - iv. Civil
 - v. Electrical
 - vi. Electronics and Communication
 - vii. Geodetic
 - viii. Mechanical
 - ix. Metallurgical
 - x. Mining
 - xi. Naval Architecture and Marine
 - xii. Sanitary
 - b. Medicine and Allied Professions
 - i. Medicine
 - ii. Medical Technology
 - iii. Dentistry
 - iv. Midwifery
 - v. Nursing
 - vi. Nutrition and Dietetics
 - vii. Optometry
 - viii. Pharmacy
 - ix. Physical and Occupational Therapy
 - x. Radiologic and X-ray Technology
 - xi. Veterinary Medicine
 - c. Accountancy
 - d. Architecture
 - e. Criminology
 - f. Chemistry
 - g. Customs Brokerage
 - h. Environmental Planning
 - i. Forestry
 - j. Geology
 - k. Interior Design

- l. Landscape Architecture
- m. Law
- n. Librarianship
- o. Marine Deck Officers
- p. Marine Engine Officers
- q. Master Plumbing
- r. Sugar Technology
- s. Social Work
- t. Teaching
- u. Agriculture
- v. Fisheries

(Article XII, Section 14 of the Constitution, Section 1 of RA No. 5181)

3. Retail Trade enterprises with paid-up capital of less than US\$2,500,000 (Section 5 of RA 8762)¹
4. Cooperatives (Chapter III, Article 26 of RA No. 6938)
5. Private Security Agencies (Section 4 of RA No. 5487)
6. Small-scale Mining (Section 3 of RA No. 7076)
7. Utilisation of Marine Resources in archipelagic waters, territorial sea, and exclusive economic zone (Article XII, Section 2 of the Constitution)
8. Ownership, operation and management of cockpits (Section 5 of Presidential Decree No. 449)
9. Manufacture, repair, stockpiling and/or distribution of nuclear weapons (Article II, Section 8 of the Constitution)²
10. Manufacture, repair, stockpiling and/or distribution of biological, chemical and radiological weapons and anti-personal mines (Various treaties to which the Philippines is a signatory and conventions supported by the Philippines)²
11. Manufacture of firecrackers and other pyrotechnic devices (Section 5 of RA No. 7183)

Up to 20 Percent Foreign Equity

12. Private radio communication network (RA 3846)

Up to 25 Percent Foreign Equity

13. Private recruitment, whether for local or overseas employment (Article 27 of Presidential Decree No. 442)

¹ Full foreign participation is allowed for retail trade enterprises: (a) with paid-up capital of US\$2,500,000 or more provided that investments for establishing a store is not less than US\$830,000; or (b) specializing in high end or luxury products, provided that the paid-up capital per store is not less than US\$250,000 (Sec. 5 of RA 8762)

² Domestic investments are also prohibited (Article II Section 8 of the Constitution; Conventions/Treaties to which the Philippines is a signatory)

14. Contracts for construction and repair of locally-funded public works (Section 1 of Commonwealth Act No. 541, Letter of Instruction No. 630) except:
 - a. infrastructure/development projects covered in RA No. 7718; and
 - b. projects which are foreign funded or assisted and required to undergo international competitive bidding (Section 2a of RA No. 7718)
15. Contracts for construction of defense-related structure (Section 1 of Commonwealth Act No. 541)

Up to 30 Percent Foreign Equity

16. Advertising (Article XVI, Section 11 of the Constitution)

Up to 40 Percent Foreign Equity

17. Exploration, development and utilisation of natural resources (Article XII, Section 2 of the Constitution)³
18. Ownership of private lands (Article XII, Section 7 of the Constitution; Chapter 5, Section 22 of Commonwealth Act No. 141)
19. Operation and management of public utilities (Article XII, Section 11 of the Constitution; Section 16 of Commonwealth Act No. 146)
20. Ownership/establishment and administration of educational institutions (Article XIV, Section 2 of the Constitution)
21. Culture, production, milling, processing, trading except retailing, of rice and corn and acquiring, by barter, purchase or otherwise, rice and corn and the by-products thereof (Section 5 of Presidential Decree No. 194; Section 15 of RA 5762)⁴
22. Contracts for the supply of materials, goods and commodities to government-owned or controlled corporation, company, agency or municipal corporation (Section 1 of RA No. 5183)
23. Project proponent and facility operator of a BOT project requiring a public utilities franchise (Article XII, Section 11 of the Constitution; Section 2a of RA No. 7718)
24. Operation of deep sea commercial fishing vessels (Section 27 of RA No. 8550)
25. Adjustment Companies (Section 323 of Presidential Decree No. 612 as amended by Presidential Decree No. 1814)

³ Full foreign participation is allowed through financial or technical agreement with the President (Article XII, Section 2 of the Constitution)

⁴ Full foreign participation is allowed provided that within the 30-year period from start of operation, the foreign investor shall divest a minimum 60 percent of their equity to Filipino citizens (Section 5 of Presidential Decree No. 194; National Food Authority Resolution No. 193 series of 1998)

26. Ownership of condominiums units where the common areas in the condominium projects are co-owned by the owners of the separate units or owned by a corporation (Section 5 of RA No. 4726)

Up to 60 Percent Foreign Equity

27. Financing companies regulated by the Securities and Exchange Commission (SEC) (Section 6 of RA No. 5980 as amended by RA No. 8556)⁵
28. Investment houses regulated by the SEC (Presidential Decree No. 129 as amended by RA No. 8366)⁵

List B: Foreign ownership is limited for reasons of security, defense, risk to health and morals and protection of small and medium-scale enterprises

Up to 40 Percent Foreign Equity

1. Manufacture, repair, storage, and/or distribution of products and/or ingredients requiring Philippine National Police (PNP) clearance.
 - a. Firearms (handguns to shotguns), parts of firearms and ammunition therefor, instruments or implements used or intended to be used in the manufacture of firearms
 - b. Gunpowder
 - c. Dynamite
 - d. Blasting supplies
 - e. Ingredients used in making explosives:
 - i. Chlorates of potassium and sodium
 - ii. Nitrates of ammonium, potassium, sodium barrium, copper (11), lead (11), calcium and cuprite
 - iii. Nitric acid
 - iv. Nitrocellulose
 - v. Perchlorates of ammonium, potassium and sodium
 - vi. Dinitrocellulose
 - vii. Glycerol
 - viii. Amorphous phosphorus
 - ix. Hydrogen peroxide
 - x. Strontium nitrate powder
 - xi. Toluene
 - f. Telescopic sights, sniper scope and other similar devices

However, the manufacture or repair of these items may be authorised by the Chief of the Philippine National Police to non-Philippine nationals; Provided that a substantial percentage of output, as determined by the said agency, is exported. Provided further that the extent of foreign equity ownership allowed

⁵ No foreign national may be allowed to own stock in financing companies or investment houses unless the country of which he is a national accords the same reciprocal rights to Filipinos (Section 6 of RA No. 5980 as amended by RA No. 8556; Presidential Decree No. 129 as amended by RA No. 8366).

shall be specified in the said authority/clearance (RA No. 7042 as amended by RA No. 8179)

2. Manufacture, repair, storage and/or distribution of products requiring Department of National Defense (DND) clearance:
 - a. Guns and ammunition for warfare
 - b. Military ordinance and parts thereof (e.g., torpedoes, mines, depth charges, bombs, grenades, missiles)
 - c. Gunnery, bombing and fire control systems and components
 - d. Guided missiles/missile systems and components
 - e. Tactical aircraft (fixed and rotary-winged), parts and components thereof
 - f. Space vehicles and component systems
 - g. Combat vessels (air, land and naval) and auxiliaries
 - h. Weapons repair and maintenance equipment
 - i. Military communications equipment
 - j. Night vision equipment
 - k. Stimulated coherent radiation devices, components and accessories
 - l. Armament training devices
 - m. Others as may be determined by the Secretary of the Department of National Defense

However, the manufacture or repair of these items may be authorised by the Secretary of the Department of National Defense to non-Philippine nationals; Provided that a substantial percentage of output, as determined by the said agency, is exported. Provided further that the extent of foreign equity ownership allowed shall be specified in the said authority/clearance (RA No. 7042 as amended by RA No. 8179)

3. Manufacture and distribution of dangerous drugs (RA No. 7042 as amended by RA No. 8179)
4. Sauna and steam bath houses, massage clinics and other like activities regulated by law because of risks posed to public health and morals (RA No. 7042 as amended by RA No. 8179)
5. Other forms of gambling, e.g., race track operation, (RA No. 7042 as amended by RA No. 8179)
6. Domestic market enterprises with paid-in equity capital of less than the equivalent of US\$200,000 (RA No. 7042 as amended by RA No. 8179)
7. Domestic market enterprises which involve advanced technology or employ at least 50 direct employees with paid-in equity capital of less than the equivalent of US\$100,000 (RA No. 7042 as amended by RA No. 8179)

Nature and scope of any limitations on foreign firms' access to sources of finance

a. Foreign Firm's Access to Peso

Foreign-owned firms, like domestic companies, have access to peso funds from the Philippine financial system, without any ceilings imposed by the government.

b. Access to Foreign Loans

Rules and regulations relative to foreign borrowings which apply to domestically-owned firms shall also apply to foreign-owned (but locally incorporated) companies.

Generally, all foreign borrowings, irrespective of maturity and creditor, require prior approval of and registration with the BSP to be eligible for servicing with foreign exchange to be purchased from the banking system.⁶

Only BSP-registered loans shall be eligible for servicing with foreign exchange to be purchased from the banking system.

Loans Requiring Prior Bangko Sentral Approval

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

1. Loans of the following public sector entities irrespective of maturity, creditor and source of foreign exchange for servicing thereof except short-term FCDU loans covered by Section 24.4 (Loans Not Requiring Prior Bangko Sentral Approval).
 - (a) National Government, its agencies and instrumentalities;
 - (b) Government-owned/controlled corporations;
 - (c) Government financial institutions, except short-term normal interbank borrowings; and
 - (d) Local governments.
2. Loans of the private sector irrespective of maturity, creditor and the source of foreign exchange for servicing thereof if:
 - (a) guaranteed by government corporations and/or government financial institutions;
 - (b) covered by foreign exchange guarantees issued by local commercial banks; and

⁶ Except those loans specifically exempted from the prior Bangko Sentral ng Pilipinas (BSP) approval requirement under Sec. 24 of BSP Circular No. 1389 as amended. These loans need only to be registered with the BSP to be eligible for servicing with FX to be purchased from the banking system.

(c) to be granted by FCDUs and specifically or directly funded from or collateralised by offshore loans or deposits.

3. Loans with maturities in excess of one year to be obtained by private commercial banks and financial institutions intended for relending to public or private sector enterprises.
4. Other private sector loans, irrespective of maturity if to be serviced using foreign exchange purchased from the banking system.⁶

Loans Not Requiring Prior Bangko Sentral Approval

The following loans may be granted without prior approval of the Bangko Sentral:

1.
 - a. Loans of resident private sector borrowers from FCDUs/offshore sources, irrespective of maturity, to be serviced using foreign exchange purchased from outside of the banking system;
 - b. Loans of non-residents from FCDUs, irrespective of maturity, provided that:
 - the loan shall be serviced using foreign exchange purchased from outside the banking system; and
 - all applicable banking rules and regulations are complied with including Single Borrower's Limit which shall be defined to include lendings and guarantees issued to companies, their subsidiaries, affiliates and major stockholders all over the world.
2. 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 and general liquidity loans.
3. Short-term loans of the private sector in the form of export advances from buyers abroad.
4. Short-term loans of the following private and public sector borrowers from FCDUs:
 - a. 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.

Service exports shall refer to Philippine residents engaged or proposing to engage in rendering technical, professional or other services which are paid for in foreign exchange.

Indirect exports may likewise borrow to fund export-related costs, which may include both foreign exchange as well as peso costs. Indirect exporters shall refer to cottage/small and medium industries (producers/manufacturers) that have supply arrangements with direct exporters who are holders of an export

letter of credit or a confirmed purchase orders/sales contract from a foreign buyer.

- b. 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. Producers/manufacturers shall refer to any person or entity who undertakes the processing/conversion of raw materials into marketable form through physical, mechanical, chemical, or other means or by special treatment or a series of actions that results in a change in the nature or state of the products.

Public utility firms shall refer to any business organisation which regularly supplies the public with commodities or services such as electricity, gas, water, transportation, telegraph/telephone services and the like.

5. Short-term loans of private exporters/importers from Offshore Banking Units (OBUs) and foreign banks with branches in the Philippines, provided that:
 - a. The loans are not covered by a guarantee from a government financial institution/corporation;
 - b. 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;
 - c. 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;
 - d. Drawdown and registration requirements shall be complied with;
 - e. Any assignment of the loan by the creditor concerned shall be reported to BSP within five days from date of assignment;
 - f. 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.
 - g. The borrowers shall submit monthly reports on transactions and status of their short-term loans within three banking days after end of reference month.
6. Short-term loans of private exports/importers from other offshore sources/creditors provided that all provisions of Sec. 5 are complied with, except item (F), and that the loans shall be granted against BSP approved short-term relending programs of foreign creditors. Creditors shall submit to the Bangko Sentral their short-term

relending program for Philippine borrowers indicating their proposed credit limit together with a list of prospective borrowers/beneficiaries. These relending programs shall be valid for one year, but shall be subject to semi-annual review if commitments and/or utilisation for the semester shall be below 50% of total relending limit.

7. 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 year.
8. 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. Also included are loans from other foreign branches and wholly-owned subsidiaries of parent company as well as other subsidiaries of parent company provided that in the case of other subsidiaries, the loan/s shall be fully guaranteed by the parent company.

c. Controls on the sale or issue abroad by residents of IPOs/Bonds

In case of sale or issuance of IPOs by residents abroad, the registration with the BSP or designated custodian bank may be made at the option of the investor. In addition, proceeds of international allocation of initial public offerings (IPOs) and shares of domestic companies listed in the foreign stock exchange must also be reported to the BSP within five days from receipt and remitted to the country. The servicing or transfer of funds pertaining to registered investments using foreign exchange from the banking system in this category is allowed without BSP approval.

All public and private sector publicly guaranteed obligations from foreign creditors, Offshore Banking Units and Foreign Currency Deposit Units shall be referred to the BSP for prior approval. Other private sector loans from these creditors and other financing schemes/arrangements shall require prior approval and/or registration by the BSP if to be serviced using foreign exchange purchased from the banking system.

4. Repatriation and Convertibility

Regulations which restrict the repatriation of funds related to foreign investment

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 forex needed to service the repatriation of capital, remittance of dividends, profits and earnings shall be sourced from the banking system. Foreign exchange needed to service unregistered foreign investments may be sourced outside the banking system. Given this general policy, BSP-registered foreign investments enjoy full and immediate repatriation of capital and remittance of profits, dividends, and other earnings which accrue thereon. The same regulations apply to investments in money market instruments. Unregistered

investments may be serviced using foreign exchange sourced outside the banking system.

Similarly, only loans which have been registered with the BSP shall be available for servicing using foreign exchange purchased from the banking system. Unregistered loans can be serviced using the debtor's own supply of foreign exchange or forex sourced outside the banking system.⁷

Foreign exchange regime

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.

Restrictions on the convertibility of currencies for the overseas transfer of funds

In addition to the regulations discussed in items 3 and 4, and 8, a ceiling is also imposed on the amount of forex that banks can sell over the counter, without need for documents, to US\$5,000 (BSP Circular No. 287 dated 26 July 2001).

5. Entry and Sojourn of Personnel

Permits/entry visa requirements for non-resident staff of foreign firms and the nature of the entry restriction

Foreign nationals who wish to come to the Philippines can enter as a tourist without visa under Executive Order 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 59 days, extendible 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.

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.

⁷ Rules governing transactions of bank-affiliated forex corporations have been aligned with those for banks.

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:

1. Special Investors Resident Visa (SIRV)

- he/she had not been convicted of a crime involving moral turpitude;
- he had not been afflicted with any loathsome, dangerous or contagious disease;
- he/she had not been institutionalised for any mental disorder or disability; and,
- he/she is willing and able to invest the amount of at least US\$75,000 in the Philippines.

The holder of the special visa has the privilege to reside in the Philippines for as long as his/her investment exists. He shall be entitled to import his used household goods and personal effects tax and duty-free as an alien coming to settle in the Philippines for the first time under Sec. 105(h) of the Tariff and Customs Code of the Philippines. Further, the investor's spouse and unmarried children under 21 years of age who are joining him in the Philippines may be issued the same visa.

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

- Employment in any technical, executive or managerial position.

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

- Investment of at least P300,000.00. Only Germans, Japanese and Americans are parties to this treaty.

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

This is granted to foreign personnel of offshore banks duly licensed by the Bangko Sentral ng Pilipinas to operate as an offshore banking unit. They are also entitled to multiple entry privileges and are exempt from the payment of immigration fees, fingerprinting, and registration with the Bureau of Immigration.

5. Special Non-Immigrant Visa under Section 47(a)(2)

Enterprises registered under E.O. 226 and R.A. 7916 are allowed to employ foreign nationals in supervisory, technical, or advisory position under Section 47(a)(2) of Philippine Immigration Act (PIA) 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 year period.

6. Special Non-Immigrant Visa under Book III of Executive Order No. 226

Art. 59 of E.O. 226, 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.

7. Special Subic Work Visa

This is granted to foreign nationals employed as executives by Subic Bay Freeport zone enterprises and other foreign nationals possessing highly technical skills.

Restrictions of law or regulation on the entry/sojourn of foreign technical/managerial personnel and their accompanying family members

Instances/Cases	Positions
1. Registered enterprise under the Board of Investments may employ foreign nationals for a period not exceeding five years from its registration.	Supervisory, technical, or advisory positions.
2. Majority foreign-owned BOI-registered enterprise may employ foreign nationals beyond the period of five years.	President, treasurer and general manager positions or their equivalents
3. Subic Bay Freeport enterprises may employ foreign nationals upon prior approval of the Subic Bay Metropolitan Authority for a period of five years extendible from year to year.	Foreign executives and highly technical positions.
4. Foreign nationals entering into coal operating contracts and service with the government for the exploration and development of oil and geothermal resources are likewise allowed to employ foreign nationals.	Specialised and technical personnel.
5. Foreign nationals under the Corporation Code may be elected as member of the Board of Directors in proportion to the foreign equity holding.	All corporate positions except secretary who should be a Filipino citizen.

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

The Wage Rationalisation Act (Republic Act 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 Labor 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 Labor Code prescribes the different rules for the protection of workers from workplace hazards.

RA 6715, in particular, aims to bolster protection for workers; strengthen their rights to organise, strike and conduct collective bargaining; promote voluntary modes of dispute settlement; and reorganise the National Labor Relations Commission (NLRC, which has jurisdiction over cases involving employer-employee relations) in order to professionalise its ranks and bring its services closer to disputing parties.

Foreign technicians may be admitted into the Philippines with a pre-arranged employment visa if the skills they possess are not available in the country. The foreign technicians are required to have at least two understudies to be trained in relation to their respective assignments.

List of domestic labor laws which apply to foreign firms in the context of labor disputes/relations

Law	Summary
1. Labor Code of the Philippines (Presidential Decree 442, as amended)	A consolidation of labor-related legislation, Book V thereof covers labor relations. It provides for the procedure and the agencies involved in the resolution of labor disputes and the rules governing labor organisations, collective bargaining and administration of agreements. Book VI governs post-employment which include termination of employment and retirement. The latest major amendment to Book V is Republic Act 6715 (New Labor Relations Law effective March 1989).
2. Productivity Incentives Act of 1991 (Republic Act 6971)	While primarily on productivity incentives, the law provides for the procedure in the resolution of disputes arising from productivity incentive programs adopted in accordance with law.
3. Special Protection of Children Against Child Abuse, Exploitation and Discrimination (Republic Act 7610)	The law regulates the employment of children.
4. Anti-Sexual Harassment Act of 1995 (Republic Act 7877)	The law defines sexual harassment in a work-related environment, the duties of the employees and penalties for its violation.

6. Taxation

Brief summary of all taxation arrangement affecting foreign investment, including corporate income tax rates, indirect taxes, withholding taxes, double taxation agreements

Corporate Income Tax

	Domestic/resident foreign corporation	Nonresident foreign corporation
	%	%
Taxable income not subject to special tax rates	32	32
Interest from deposits and yield from deposit substitutes/trust funds and royalties	20 Reduced to 7.5% for interest income derived by a domestic corporation from a depository bank under the expanded foreign currency deposit system.	32 Reduced to 20% for foreign loans.
Interest on foreign loans	N/A	20
Interest income derived by a domestic corporation from a depository bank under the expanded foreign currency deposit system	7.5	N/A
Dividends from domestic corporations	0	15 or 32. Rate of 15% applies if the host country exempts the dividend from tax or permits a 17% or greater credit for underlying corporation tax paid by the company paying the dividend.
Gains on sales of shares of stock not traded in the Stock Exchange	Rate of 5 % applies to the first P100,000 of gains annually and rate of 10% applies to the excess. Stocks of shares in listed companies are subject to a 0.5% tax on the sale proceeds.	

Income tax rates for special corporations

Entity	Rate (%)	Tax base
Proprietary educational institutions and nonprofit hospitals	10	Taxable income. If the gross income from unrelated activity exceeds 50% of the total gross income derived by a proprietary educational institution or nonprofit hospital, the entire taxable income is subject to the regular corporate income tax (32%).
Certain enterprises registered with the Philippine Economic Zone Authority	5	Gross income
Nonresident lessors of aircraft, machinery and other equipment	7.5	Gross Philippine rentals, lease, charter fees
Nonresident owners of vessels chartered by Philippine nationals and approved by the Maritime Industry Authority	4.5	Gross Philippine rentals, lease, charter fees
Nonresident cinematographic film owners, lessors or distributors	25	Gross Philippine source income
Foreign international carriers (air and sea)	2.5	Gross Philippine billings
Offshore banking units (OBUs) and foreign currency deposit units (FCDUs) authorised by the Bangko Sentral ng Pilipinas	10	Income from foreign currency transactions with residents
Regional operating headquarters	10	Taxable income

Value-Added Tax (VAT)

Sale of goods, other properties, and services in the Philippines, as well as importation of goods to the Philippines, are subject to the 10% VAT.

VAT is imposed on the gross selling price (in case of sale of goods) and gross receipts (in case of sale of services). For importation of goods, the tax is based on the total value used by the Bureau of Customs in determining tariff and customs duties. VAT paid by a VAT-registered person on his purchase of goods and services or on importation of goods or services (input tax) is creditable against the VAT due on his own sale of goods and services (output tax).

Withholding Taxes

Domestic Rates	Dividends		Interest	Royalties
	Portfolio	Substantial holdings		
Resident individuals	10	10	7.5 or 20 /1	10 or 20 /2
Nonresident individuals	20	20	7.5 or 20 /1	10 or 20 /2
Other nonresident individuals	25	25	25	25
Domestic corporations and foreign corporations doing business in the Philippines	Nil	Nil	7.5 or 20 /1	20
Nonresident foreign corporations	15 or 32 /3	15 or 32 /3	20 or 32 /4	32

Notes:

1/ Interest derived from a foreign currency deposit unit is subject to 7.5% tax. Interest from deposits, yields, other monetary benefits, trusts and similar arrangements is subject to 20% tax. Other interest earned is subject to normal income tax rates of 5 – 32% for individuals and 32% for corporations.

2/ Royalties on books, other literary works and musical compositions are subject to 10% tax. Other royalties are subject to 20% tax.

3/ The rate of 15% applies if the host country exempts the dividend from tax or permits a 17% or greater credit for underlying corporation tax paid by the company paying the dividend.

4/ Interest on loans with nonresidents payable in a foreign currency is subject to 20% tax.

Double Taxation Agreements

Philippine Tax Treaties with other countries on the avoidance of double taxation:

- | | |
|--------------|-----------------|
| 1. Australia | 12. India |
| 2. Austria | 13. Indonesia |
| 3. Belgium | 14. Israel |
| 4. Brazil | 15. Italy |
| 5. Canada | 16. Japan |
| 6. China | 17. Korea |
| 7. Denmark | 18. Malaysia |
| 8. Finland | 19. Netherlands |
| 9. France | 20. New Zealand |
| 10. Germany | 21. Norway |
| 11. Hungary | 22. Pakistan |

23. Romania
24. Russia
25. Singapore
26. Spain
27. Sweden

28. Switzerland
29. Thailand
30. United Kingdom of Great Britain
and Northern Ireland
31. United States of America

7. Capital Exports

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

A Philippine resident may invest abroad only if:

- The investment are funded by withdrawals from foreign currency deposit units; 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 \$6 million per investor per year.

Regulations/institutional measures that limit technology exports

There is no regulation limiting technology export.

8. Competition policy

The Philippines, through constitutional and statutory provisions, encourages competition for a healthier business environment. The Philippine Constitution mandates that the state must protect Philippine enterprises against unfair competition and trade policies. The Constitution also prohibits monopolies and combinations in restraint of trade or unfair competition.

The basic statute which prohibits unfair trade practices, monopolies and combinations in restraint of trade is the Law on Monopolies and Combinations under RA 3247, as amended and the Revised Penal Code, as amended by RA 1956. The law deters any person, firm or entity from monopolizing or attempting to monopolise, or from taking part in any conspiracy or combination in the form of trust in restraint of trade or commerce or from restraining free market competition. The objective is to promote efficiency by effectively promoting desirable competition resulting in increased output, faster economic growth and lower prices of goods and services.

Other competition-related laws/statutes include, among others:

- The Civil Code of the Philippines which allows the collection of damages arising from unfair competition;

- The Corporation Code of the Philippines which provides for rules regarding mergers and consolidations, and the acquisition of all or substantially all the assets or shares of stock of corporations;
- The Securities Regulation Code which proscribes manipulation of security prices and insider trading; and provides protection to shareholders through tender offers, among others;
- The Intellectual Property Code of the Philippines which penalises patent, trademark and copyright infringement;
- The Price Act which defines and identifies illegal acts of price manipulation such as hoarding, profiteering and cartels; and
- The Consumer Act of the Philippines which provides for consumer product quality and safety standards.
- The Strengthening the Mechanism for the Imposition of Countervailing Duties and the Anti-Dumping Act of 1999 deal with unfair trade practices of subsidisation and dumping.

9. Other Measures

Current intellectual property protection laws and recent enforcement efforts that have contributed to the security of the legal environment for foreign investment

Intellectual Property Laws

On 6 June 1997, Republic Act No. 8293, also known as the Intellectual Property Code of the Philippines (IP Code), was passed establishing a new intellectual property system. This law served at least two purposes, namely: to highlight the celebration of 50 years of Philippine Industry Property System and to make good our commitment and obligation under the TRIPS Agreement.

The intellectual property rights recognised by the law are: patents, copyright and related rights, trademarks, geographical indications, industrial designs, lay-out designs of integrated circuits, and undisclosed information.

a) Patent

A patentable invention is any technical solution of a problem in any field of human activity which is new, involves an inventive step and is industrially applicable. It may be, or may relate to, a product, or process, or an improvement of any of the foregoing. It may also include microorganisms, non-biological and microbiological processes.

The present patent system adopts the first-to-file system setting aside the first-to-invent system observed in the country for 50 years. It provides for a term of 20 years from the filing date of the patent application.

b) *Copyright and Related Rights*

The copyright law provides protection to literary, scholarly, artistic and scientific works. Works are protected from the moment, and by the sole fact, of their creation, irrespective of their mode or form of expression, as well as of their content, quality and purpose. Although only certain classes of works are required to be registered and deposited for purposes only of completing the records of the National Library and the Supreme Court, registration of work is not required for purposes of claiming protection and remedies under the law.

Rights related to copyright called “neighboring rights” are likewise protected under the law. These are the performer’s rights, sound recording producer’s rights, and broadcasting organisation’s rights.

Copyright is protected during the lifetime of the author and generally, for 50 years after his death. Moral rights have the same term of protection.

In the case of related rights, the term of protection is 50 years from the end of the year in which the performance/recording took place. On the other hand, broadcaster’s rights are protected for 20 years from the date the broadcast took place.

c) *Trademarks*

A *mark* is any visible sign capable of distinguishing the goods or services of an enterprise and shall include a stamped or marked container of goods. The present trademark system eliminated use as requirement for application and shortened the term of registration to 10 years with 10-year period renewal.

d) *Geographical Indications*

Protection of geographical indications is found under the trademark law. Specifically, Sections 123.1(g), 169 and 170 address this particular concern. Under the present system, the *False Designation of Origin and/or False Description or Representation* is made as a specific violation of intellectual property rights falling under the concurrent jurisdiction of the Bureau of Legal Affairs and of the Regional Trial Court.

e) *Industrial Designs*

Industrial design is any composition of lines or colors or any three-dimensional form, whether or not associated with lines or colors; *Provided*, that such composition or form gives a special appearance to and can serve as pattern for an industrial product or handicraft. Only non-technical and non-functional designs are protected. An application for industrial design is subject to simple registration as provided under the new implementing rules and regulations.

An industrial design is protected for a period of five years and may be renewed twice for the same period.

f) *Undisclosed Information*

The Rules and Regulations on Voluntary Licensing contain provisions relative to the protection of undisclosed information.

In Part I (1) (f), undisclosed information shall mean information which:

- (i) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
- (ii) has commercial value because it is secret; and
- (iii) has been subject to reasonable steps under the circumstances to keep it secret, by the person lawfully in control of the information.

There are likewise scattered provisions of different laws that can be invoked by analogy for the proper protection of this type of intellectual property. Among those are found in the New Civil Code on provisions dealing with human relations and obligations and contracts. Articles 318, 229 and 230 of the Revised Penal Code are also relevant.

Enforcement Efforts

Enforcement efforts have been strengthened with the continuing coordination of various agencies of government under the Inter-Agency Committee on Intellectual Property Rights (IAC-IPR) created under Executive Order No. 60. Several member agencies of this Committee have created special task forces on IPR such as: the Department of Trade and Industry (DTI), Department of Justice (DOJ), National Bureau of Investigation (NBI), Bureau of Customs (BOC) and the Philippine National Police (PNP). To further strengthen the enforcement of IPRs, the number of member agencies in the IAC-IPR has been increased from 14 to 19 by virtue of Executive Order No. 320 issued on November 2000.

Infringement cases may be filed before the regular courts regardless of amount claimed. The Bureau of Legal Affairs (BLA) of the Intellectual Property Office (IPO) can take cognizance of administrative complaints with claim of damages of Php200,000.00 and above. There are 10 administrative penalties that may be imposed by the Director of Legal Affairs for violations of laws on Intellectual Property Rights. These penalties may be found under Sec. 10.2(b) of the IP Code, to wit:

1. The issuance of a cease and desist order which shall specify the acts that the respondent shall cease and desist from and shall require him to submit a compliance report within a reasonable time which shall be fixed in the order;
2. The acceptance of a voluntary assurance of compliance or discontinuance as may be imposed. Such voluntary assurance may include one or more of the following:
 - a) An assurance to comply with the provisions of the intellectual property law violated;

- b) An assurance to refrain from engaging in unlawful and unfair acts and practices subject of the formal investigation;
- c) An assurance to recall, replace, repair, or refund the money values of defective goods distributed in commerce; and
- d) An assurance to reimburse the complainant the expenses and costs incurred in prosecuting the case in the Bureau of Legal Affairs.

The Director of Legal Affairs may also require the respondent to submit periodic compliance reports and file a bond to guarantee compliance of his undertaking;

- 3. The condemnation or seizure of products which are subject of the offense. The goods seized hereunder shall be disposed of in such manner as may be deemed appropriate by the Director of Legal Affairs, such as by sale, donation to distressed local governments into charitable or relief institutions, exportation, recycling into other goods, or any combination thereof, under such guidelines as he may provide;
- 4. The forfeiture of paraphernalia and all real and personal properties which have been used in the commission of the offense;
- 5. The imposition of administrative fines in such amount as deemed reasonable by the Director of Legal Affairs, which shall in no case be less than Five Thousand Pesos (P5,000) nor more than One Hundred Fifty Thousand Pesos (P150,000). In addition, an additional fine of not more than One Thousand Pesos (P1,000) shall be imposed for each day of continuing violation;
- 6. The cancellation of any permit, authority, or registration which may have been granted by the Office, or the suspension of the validity thereof for such period of time as the Director of Legal Affairs may deem reasonable which shall not exceed one year;
- 7. The withholding of any permit, license, authority, or registration which is being secured by the respondent from the Office;
- 8. The assessment of damages;
- 9. Censure, and;
- 10. Other analogous penalties or sanctions.

Without prejudice and in addition to administrative penalties, the IPC provides for criminal action which may be prosecuted before the regular courts. If found guilty, imprisonment and/or fine shall be imposed upon the infringer.

a) *Patents*

Sec. 84. *Criminal action for Repetition of Infringement.* – If infringement is repeated by the infringer or by anyone in connivance with him after finality of the judgment of the court against the infringer, the offenders shall, without prejudice to the institution of a civil action for damages, be criminally liable therefor and,

upon conviction, shall suffer imprisonment for the period of not less than six (6) months but not more than three years and/or a fine of not less than One Hundred Thousand Pesos (P100,000) but not more than Three Hundred Thousand Pesos (P300,000), at the discretion of the court. The criminal action herein provided shall prescribe in three years from date of the commission of the crime.

b) Copyright

Sec. 217.1 Criminal Penalties. – Any person infringing any right secured by provisions of Part IV of this Act or abetting such infringement shall be guilty of a crime punishable by:

- Imprisonment of one year to three years plus a fine ranging from Fifty Thousand Pesos (P50,000) to One Hundred Fifty Thousand Pesos (P150,000) for the first offense;
- Imprisonment of three years and one day to six years plus a fine ranging from Five Hundred Thousand Pesos (P500,000) to One Million Five Hundred Thousand Pesos (P1,500,000) for the third and subsequent offenses.
- Imprisonment of six years and one day to nine years plus a fine ranging from Five Hundred Thousand Pesos (P500,000) to One Million Five Hundred Thousand Pesos (P1,500,000) for the third and subsequent offenses.
- In all cases, subsidiary imprisonment shall be imposed in case of insolvency.

c) Industrial Designs

Sec. 84. Criminal action for Repetition of infringement. – If infringement is repeated by the infringer or by anyone in connivance with him after finality of the judgment of the court against the infringer, the offenders shall, without prejudice to the institution of a civil action for damages, be criminally liable therefor and, upon conviction, shall suffer imprisonment for the period of not less than six months but not more than three years and/or a fine of not less than One Hundred Thousand Pesos (P100,000) but not more than Three Hundred Thousand Pesos (P300,000), at the discretion of the court. The criminal action herein provided shall prescribe in three years from date of the commission of the crime.

d) Trademarks

Sec. 170. Penalties. – Independent of the civil and administrative sanctions imposed by law, a criminal penalty of imprisonment from two years to five years and a fine ranging from Fifty Thousand Pesos (P50,000) to Two Hundred Thousand Pesos (P200,000), shall be imposed on any person who is found guilty of committing any of the acts mentioned in Section 155, Section 168 and Subsection 169.1.

International Treaties

The Philippines is a signatory in several international treaties on intellectual property rights. These are:

- Convention Establishing the World Intellectual Property Organisation (since 1980)
- Paris Convention for the Protection of Industrial Property (since 1965)
- Budapest Treaty on the International Recognition of the Deposit of Microorganisms for Purposes of Patent Procedure (since 1981)
- Berne Convention for the Protection of Literary and Artistic Works (since 1984). Substantive provisions of the Berne Convention entered into force with respect to the Philippines on 18 June 1997.
- International Convention for the Protection of Performers, Producers of Phonographs and Broadcasting Organisations (since 1984)
- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement)
- Patent Cooperation Treaty (5 February 2001)

Other related laws and executive issuances:

- P.D. 1987 (Decree Creating the Videogram Regulatory Board)
- E.O. 913 (Strengthening the Rule-Making and Adjudicatory Powers of the Minister of Trade and Industry in order to further protect consumers)
- R.A. 9150 (An Act Providing for the Protection of Layout Designs (Topographies) of Integrated Circuits (06 August 2001))

C. INVESTMENT PROTECTION

1. Expropriation and Compensation

Laws and regulations relating to expropriation and compensation of foreign investment

The Philippines guarantees foreign investment against expropriation except for public use or in the interest of national welfare 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 investment was originally made and at the exchange rate at the time of remittance.

2. Settlement of Disputes

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

Disputes Between Government

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. It resolves disputes with its APEC partners through consultations, mediations and/or arbitration, as appropriate. Disputes are settled under the WTO dispute settlement procedures only as a matter of last recourse.

Bilateral trade and investment agreements entered into by the Philippines provide for consultations through diplomatic channels as a primary means of resolving disputes arising from the interpretation and application of the agreements. Joint commissions are established to settle trade and economic issues. Investment agreements provide an option for the submission of disputes to an ad hoc international arbitral tribunal.

Disputes Between Private Parties and Government

The Philippines is a signatory to the International Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (ICSID).

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 of the International Center for the Settlement of Investment Disputes.

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:

- Republic Act No. 876 (Arbitration Law) prescribes the procedures for arbitration in civil controversies;
- Presidential Decree No. 1746 authorises the Philippine Domestic Construction Board to adjudicate and settle claims and disputes in the implementation of public and private construction contracts;
- Executive Order 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;

- Republic Act 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 was established in 1996 for the purpose of promoting and encouraging the use of arbitration as an alternative mode of settling commercial transaction dispute and providing dispute resolution services to the business community.

Last September 2002, the Board of Investments announced the creation of a Mediation Team composed of intensively trained mediators to render dispute resolution services to its registered companies and investors.

The Philippines adheres to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention).

International arbitration proceedings are generally referred to arbitration institutions such as the International Chamber of Commerce and the American Arbitration Association.

ICSID Convention

The Philippines is a signatory to the ICSID Convention.

D. INVESTMENT PROMOTION AND INCENTIVES

Fiscal, financial, tax or other incentives offered at both the national and sub-national level (e.g. tax incentives, grants) provided to foreign investors.

Incentives offered under the Omnibus Investments Code of 1987

An enterprise engaged in a preferred activity listed in the current Investment Priorities Plan (IPP) and registered with the Board of Investments is entitled to the following incentives:

1. Income Tax Holiday

Newly registered pioneer projects are fully exempt from income tax for six years from the start of commercial operation and non-pioneer firms for four years from

the start of commercial operation. The exemption period may be extended for another year in each of the following cases:

- the project uses indigenous raw materials;
- the project meets the BOI prescribed ratio of capital equipment to the number of workers;
- the net foreign exchange savings or earnings amount to at least US\$500,000 annually during the first three years of the project's commercial operation.

Projects locating in less developed areas (LDA) shall be entitled to the incentive for six years. Expansion projects and modernisation projects are entitled to the income tax holiday incentive for three years limited only to incremental sales revenue/volume.

2. Additional deduction for labor expense

For the first five years from registration, a registered enterprise shall be allowed an additional deduction from taxable income equivalent to 50% of the wages of additional skilled and unskilled workers in the direct labor force. This incentive shall be granted only if the enterprise meets a prescribed capital to labor ratio and shall not be availed simultaneously with ITH. This additional deduction shall be doubled if the activity is located in an LDA.

3. Tax and duty free importation of breeding stocks and genetic materials for 10 years from registration or commercial operation for agricultural producers.
4. Tax credit on domestic breeding stocks and genetic materials under the same condition as in number 3.
5. Simplification of customs procedures for the importation of equipment, spare parts, raw materials and supplies and exports of processed products.
6. Importation of consigned equipment for 10 years from date of registration, subject to posting of a re-export bond.
7. Employment of foreign nationals

This may be allowed in supervisory, technical or advisory positions for five years from date of registration. Foreign nationals may hold indefinitely the position of president, general manager and treasurer (or their equivalent) of foreign-owned registered enterprises.

8. 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.
9. Access to bonded manufacturing/trading warehouse system. Registered export-oriented enterprises may have access to bonded warehousing systems subject to customs rules and regulations.

10. Exemption from wharfage dues and export tax, duty, impost and fees.

All enterprises registered under the IPP will be given a 10-year period from date of registration to avail of the exemption from wharfage dues and any export tax, impost and fees on its non-traditional export products.

11. Exemption from taxes and duties on imported spare parts. A registered enterprise with a bonded manufacturing warehouse shall be exempt from customs duties and national internal revenue taxes on its importation of required supplies/spare parts for consigned equipment or those imported with incentives.

12. Additional deduction for necessary and major infrastructure works. Registered enterprises locating in LDAs or in areas deficient in infrastructure, public utilities and other facilities may deduct from taxable income an amount equivalent to the expenses incurred in the development of necessary and major infrastructure works. This privilege, however, is not granted to mining and forestry-related projects as they would naturally locate in certain areas to be near their sources of raw materials.

Incentives offered under the Special Economic Zone Act of 1995

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

- Business establishments operating within the ECOZONES shall be entitled to the fiscal incentives as provided for under Presidential Decree No. 66, the law creating the Export Processing Zone Authority, or those provided under Book VI of Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987.
- Tax credit for exporters using local materials as inputs shall enjoy the same benefits provided for in the Export Development Act of 1994.
- Exemption from taxes under the National Internal Revenue Code but in lieu of paying taxes, 5% of the gross income earned by all businesses and enterprises within the ECOZONE shall be remitted to the national government.

Two other special economic zones were created under two separate special laws. These are the Cagayan Special Economic Zone and the Zamboanga City Special Economic Zone. The incentives granted to those that will locate in these ecozones are similar to the incentives granted to PEZA ecozone enterprises.

Incentives offered under the Export Development Act of 1994

Republic Act No. 7844, or the Export Development Act (EDA) of 1994, was promulgated to provide a macroeconomic policy framework to support the development of the export sector and the activities undertaken by exporters. Exporters are generally defined as those earnings at least 50% of their normal

operating revenue from the sale of products or services abroad. Once registered under the EDA, exporters are entitled to the following incentives:

- Tax credit for imported inputs and raw materials primarily used for the production and packaging of export goods which are not readily available locally until 31 December 1999
- Tax credit for increase in current year's export revenues.
 - First 5% increase in annual export revenue over the previous year a credit of 2.5% to be applied on incremental export revenue converted to pesos;
 - Next 5% increase would be entitled a credit of 5%;
 - Next 5% increase would be entitled a credit of 7.5%;
 - In excess of 15% would be entitled to a credit of 10%.

Incentives offered under the Bases Conversion and Development Act of 1992

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

- Exempt from all national and local taxes but in lieu of paying taxes, Subic Bay Freeport Zone/Clark Special Economic Zone enterprises will be required to pay a final tax of 5% of their gross income earned from sources within the SBFZ/CSEZ.
- Business enterprises and individuals residing in SBFZ/CSEZ will enjoy tax and duty exemptions on their importations of raw materials, capital equipment and consumer items.

One-Stop Action Center

The One-Stop Action Center houses under one-roof representatives from various government agencies that an investor will have to deal with when making an investment. These are: Bangko Sentral ng Pilipinas, Bureau of Immigration (complete visa processing), Securities and Exchange Commission (on-call), and Department of Tourism. In addition, the Philippine Industrial Estates Association, a private sector, also provides its services in terms of site location thru the OSAC. Further, full circle investment servicing is rendered through the Investment Promotion Unit (IPU) Network composed of 26 agencies with corresponding contact points for investors.

Contact Details of Available Frontlines

Agency	Contact Details
1. One Stop Action Center Board of Investments (BOI)	Industry and Investments Bldg. 385 Sen. Gil Puyat Ave., Makati City Telephone: (63 2) 896-7884/896-7342 Fax: (63 2) 895-8322 Contact person: Mr. Dennis R. Miralles Director Email: DRMiralles@boi.gov.ph
2. One-Stop Processing Center Bureau of Customs	Manila International Container Port Isla Puting-bato, Tondo, Manila Telephone No.: (63 2) 245-4101 local 2455 Contact Person: Mr. Erasto Aguila Chief Appraiser
3. One-Stop Shop Tax Credit Center Department of Finance (DOF)	3/F, Executive Tower BSP Complex, Roxas Boulevard Manila Telephone No.: (63 2) 526-8450/523- 9217 Fax: (63 2) 526-8450 Contact Person: Mr. Ernesto Q. Hiansen OIC-Deputy Executive Director
4. One-Stop Action Center Garments and Textile Exports Board	3/F, New Solid Building 357 Sen. Gil Puyat Avenue Makati City Telephone: (63 2) 890-4646/890-4651 Fax: (63 2) 890 4653 Contact Person: Ms. Arminda del Rosario Officer-in-Charge E-mail: adelrosario@gteb.gov.ph

E. SUMMARY OF INTERNATIONAL INVESTMENT AGREEMENTS OR CODES TO WHICH APEC MEMBER IS A PARTY

Agreement	Provisions
Friendship Commerce and Navigation Treaties “Treaty of Amity, Commerce and Navigation between the Republic of the Philippines and Japan”	Both parties desire to maintain and strengthen amicable relations existing between the two countries on a mutually advantageous basis.

Bilateral Investment Guarantee Protection Agreements	
<ul style="list-style-type: none"> 1. Argentina 2. Australia 3. Austria 4. Bahrain 5. Bangladesh 6. Belgium/Luxembourg 7. Cambodia 8. Canada 9. Chile 10. China 11. Chinese Taipei 12. Czech Republic 13. Denmark 	<ul style="list-style-type: none"> a) General provision which encourages investments in either economy by investors of the other economy through the creation of favorable conditions of investments for the purpose of fostering economic development in both economies. b) Most-Favored-Nation (MFN) Treatment states that investors of their economy shall be accorded treatment no less favorable than that accorded to investors of any third State.
<ul style="list-style-type: none"> 14. Finland 15. France 16. Germany 17. India 18. Indonesia 19. Iran 20. Italy 21. Korea 22. Kuwait 23. Mongolia 24. Myanmar 	<ul style="list-style-type: none"> c) Expropriation – if investors of either economy suffer losses in the other economy due to national emergency, revolution, revolt or similar events, the host economy shall accord treatment to that economy no less favorable than its accords to investments of any third State.
<ul style="list-style-type: none"> 25. Netherlands 26. Pakistan 27. Portugal 28. Romania 29. Russia 30. Spain 31. Sweden 32. Switzerland 33. Thailand 34. Turkey 35. United Kingdom of Great Britain and Northern Ireland 36. Venezuela 37. Viet Nam 	<ul style="list-style-type: none"> d) Transfer of Investments – This provision guarantees the free transfer of investments and returns held in the territory of one contracting economy to the other economy. e) Subrogation

Regional or sub regional Investment Treaties	
The ASEAN Agreement for the Promotion and Protection of Investments	Similar with the provisions for bilateral investment treaties.

I. RELEVANT 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.

3. INCENTIVES/EQUITY

-

4. MINIMUM INVESTMENT LEVEL

No minimum investment level requirement.

5. OTHER LEGISLATION

- *1968 Employment Act and 1966 Industrial Relation Act*

Regulates employment and labor relations.

II. APPLICATION

1. AGENCY/IES INVOLVED IN ADMINISTERING INVESTMENT APPLICATION 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 APPLICATION

-

3. SPECIAL SERVICES

Since 1961, the Economic Development Board (EDB) has been steering the growth of industry, in manufacturing and traded services. We, The EDB, provide one-stop investment facilitation, from setting up in Singapore, securing infrastructure and manpower, to linking with the business community. Moving forward, our mission under EDB's Industry 21 plan is to develop Singapore into a vibrant and robust global hub of knowledge-driven industries in a knowledge-based economy.

III. PROMOTED AREAS/SECTORS

1. PROMOTED FIELD/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.

2. RESTRICTIONS

-

IV. FOREIGN EQUITY POLICIES

1. 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 is subject to a government approval.

2. CONDITIONS/RESTRICTIONS

-

V. INCENTIVES

1. CORPORATE INCOME TAX / INCOME TAX ALLOWANCE

Pioneer projects will be granted exemption for 5-10 years.

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

N.A

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

N.A

4. OTHER INCENTIVES (I.E. GRANTS, DOMESTIC LOANS, SUBSIDIES, ETC.)

N.A

5. 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.

VI. 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 distribution of dividend.

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 tax rate of 20% is with effect from the year of assessment 2005 (FY 2004). It applies to both Singapore-incorporated subsidiaries as well as branches of foreign companies. It applies equally to resident and non-resident companies.

Previously, the tax rate for year of assessment 2003 (FY 2002) is 22%.

2. VALUE ADDED TAX/SALES TAX

A Goods and Services Tax (GST) at a rate of 4% is imposed on the supply of goods and services in Singapore and on the importation of goods into Singapore. With effect from 1 Jan 2004, the GST rate will be increased to 5%.

3. WITHHOLDING TAX

15% for payments to non-residents of royalties, interest, 'know-how' fees and rent for movable properties.

4. PERSONAL INCOME TAX

Graduated personal income tax rates of 2-26% depending on 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 in. The common methods of determining the annual value are:

- a) Using the rental value of comparable properties in similar locations.

- b) Applying a reasonable return on the capital investment in the property (commonly used for properties with no alternative use).
- c) 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. REAL PROPERTY GAINS TAX

-

7. ESTATE DUTY

Estate Duty is payable on the aggregate market value of all Singapore property (immovable and moveable property) and movable property outside Singapore of a deceased person at the date of death. His land and buildings (immovable property) outside Singapore are not liable to duty.

8. STAMP DUTY

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

9. 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.

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

10. MUNICIPAL TAXES

N.A

11. OTHER TAXES

Motor vehicle taxes; Betting taxes.

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

VII. FINANCIAL REGULATIONS

1. BORROWING

-

2. FOREIGN EXCHANGE

There are no foreign exchange controls.

3. SOURCE OF FINANCING

Sources of financing for foreign investors include share or bond flotation, loans for banks and other financial institutions, trade credit. Foreign investors may also use sources derived from their enterprises, such as undistributed profits, funds borrowed from shareholders, and new issues of equity shares.

4. REPATRIATION OF CAPITAL/PROFITS

No capital controls on flow of investment proceeds

5. OTHER SPECIAL REGULATIONS

N.A.

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

VIII. EMPLOYMENT FOR APPROVAL OF FOREIGN WORKERS

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

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 VIII.2 for definition of P and Q workpasses)

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

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; and

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.

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.

IX. LAND AND BUILDING OWNERSHIP

1. REGULATION ON ACQUISITION OF LAND AND BUILDING

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.

I. RELEVANT LEGISLATION

LATEST INVESTMENT REGULATIONS IN THAILAND SINCE 2000-2001:

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)

The Thai Board of Investment has revised its policy, effective since August 1, 2000. The highlights are:

- attract investment to speed recovery
- continue decentralisation
- strengthen competitiveness (require international-standard certification)
- 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
- develop new activities and industries (E-Commerce, Regional Headquarters, International Procurement Offices, Retirement Homes, Dedicated Health Centers)
- introduce a performance-based system, in line with good governance, that required promoted investors to submit evidence of qualified performance before claiming the benefits from their incentives
- promote small and medium industries

Full details of the new policy can be found on the Thai BOI website: www.boi.go.th

1. INVESTMENT ACT

Investment Promotion Act (Revision 3) B.E. 2544 (2001)

1977 Investment Promotion Act (Rev.1992)

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) <http://www.boi.go.th> (choose "BOI" and subsequently "BOI incentives").

2. COMPANIES ACT

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:

- 1) <http://www.diw.go.th>
- 2) <http://www.boi.go.th> and select "what's new"
- 3) <http://www.meechailaw.com>

3. INCENTIVES/EQUITY

The 1977 Investment Promotion Act (Rev.1992) stipulates tax and non-tax incentives being granted. ***The Foreign Business Act B.E. 2542 (1999)*** stipulates regulations in foreign equity. Please refer to the BOI website for further information.

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 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, has been enforced on 3 March 2000. It provides the lists of prohibited and restricted businesses, namely, List 1, List 2, and List 3. There is no shareholding limit in other business. It also introduces the minimum capital requirement for businesses; both listed and not listed in the Act.

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

www.thairegistration.com/thai/law/fba_e.phtml.

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

II. APPLICATION

1. AGENCY/IES INVOLVED IN ADMINISTERING INVESTMENT APPLICATION 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 APPLICATION

- a) To qualify for incentives, an investor shall file its application with the Office of the Board of Investment (OBOI). A wide range of activities in both manufacturing and services sectors are eligible for promotion.
- b) The approval process will normally take 60 working days, from the submission of the complete project application documentation, for projects under 500 million baht and 90 working days for larger projects. Please refer to BOI’s website for the application form:

- **www.boi.go.th/english/pdf/boiform_eng.pdf**, or

- **www.boi.go.th/english/pdf/index.html**

3. SPECIAL SERVICES

BOI Thailand offers one-stop service which provides wide ranges 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:

**3rd floor of Krisda Plaza, 207 Ratchadapisek Road,
Dindaeng, Bangkok 10310.
Tel: (66) 2693-9333-9
E-mail: visawork@boi.go.th.**

A 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 countries. 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 countries. ASID creates a strong business link between buyers from around the world and manufacturers in the ASEAN Countries.

III. PROMOTED AREAS/SECTORS

1. PROMOTED FIELD/SECTORS

1.1. List of Activities Eligible for Investment Promotion as appeared in the ***BOI Announcement No.1 and 2/2000*** is classified in 7 sectors:

- Agriculture and Agricultural Products,
- Mining, Ceramics, and Basic Metals,
- Light Industry,
- Metal Products, Machinery, and Transport Equipment,
- Electronics Industry and Electrical Appliances,
- Chemicals, Paper and Plastics,
- Services and Public Utilities.

1.2. The BOI places priority on promoting the following types of projects:

- Agriculture and agricultural products,
- Direct involvement in technological and human resource development:
 - Research and development
 - Scientific laboratories
 - Calibration services
 - Human resource development

- Public utilities and infrastructure:
 - Public utilities and basic services,
 - Mass transit systems and transportation of bulk goods
- Environmental protection and conservation:
 - Industrial zones for environmental preservation
 - Waste water treatment, disposal services of refuse, industrial waste or toxic chemicals
- Targeted industries: steel casting, forged steel parts, machinery and equipment, sintered products, aircraft and aircraft parts, vehicle parts, heat treatment, material for microelectronics, electronic design, software, software parks, and international distribution centers.

Such projects will be entitled to the following privileges:

1. Exemption of import duty on machinery regardless of location;
2. Corporate income tax exemption for eight years, regardless of location
3. Other privileges entitled for each Zone

These privileges are stated in “A Guide to Board of Investment”, and available on BOI’s website.

2. RESTRICTIONS

2.1 Private and foreign investments are prohibited in fields stated in the Industrial Policy Announcements including manufacture of sugar, and concrete reinforcement steel.

2.2 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:

- (1) 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.)
- (2) 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 Commercial Registration, 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.

IV. FOREIGN EQUITY POLICIES

1. EQUITY REGULATIONS

To relax the limitation of foreign shareholding in manufacturing activities and to facilitate investors on their investment, BOI set up the following criteria:

- A. 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;
- B. For manufacturing projects, in all zones (see Section V.1 for information on Zones), foreign investors may hold a majority or all shares in promoted projects;
- C. The Board may specifically fix the share holding of foreign investors on some promoted projects when it is deemed appropriate.

(Please refer to 'A Guide to the Board of Investment', available on BOI's website).

2. CONDITIONS/RESTRICTIONS

Please see Section III.2 (Promoted Areas/Sectors).

V. INCENTIVES

1. CORPORATE INCOME TAX / INCOME TAX ALLOWANCE

Zone 1

3 years exemption for project(s) located within industrial estates or promoted industrial zones, provided that the project has a capital investment of 10 million baht or more (excluding cost of land and working capital), such a project obtains 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 the project has a capital investment of 10 million baht or more (excluding cost of land and working capital), such a project obtains 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 projects located in one of the 58 projects listed below; provided that the project has a capital investment of 10 million

baht or more (excluding cost of land and working capital); such a project obtains ISO 9000 or similar international standard of 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.

VI. TAXATION

1. CORPORATE TAX

The Corporate Income Tax rate is: 30%.

Foundations and Associations pay income taxes at a rate of 2-10% of gross business income, depending upon the activity.

International transport companies face a rate of 3% of gross ticket receipts and 3% of gross freight charges.

2. VALUE ADDED TAX/SALES TAX

VAT or Sales Tax is 7 % starting from 1 April 1999 till 31 March 2001 (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 1.2 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

Withholding tax is levied on remittance of profits/dividends transferred or deemed transferred from a Thailand branch to its head office overseas at the rate of 10%. There is no withholding tax on capital gains or on the share of profit paid to foreign investors in mutual funds, if in the SET.

4. PERSONAL INCOME TAX

Personal Income Tax is applied on a graduated scale as follows:

- 0-100,000 baht = 5%
- 100,001-500,000 baht = 10%
- 500,001-1,000,000 baht = 20%
- 1,000,001-4,000,000 baht = 30%
- over 4,000,000 baht = 37%

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 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 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
Phahol Yothin Road, Soi 7, Bangkok 10400
Tel: (662) 6173000-9
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

10. MUNICIPAL TAXES

Municipal taxes can be divided into 3 categories:

- Land/Property tax (see No. 5)
- Signboard tax

This tax is levied at rates specified in the Signboard Tax Act, **B.E. 2510 (1967)** (depending on location).

For those in Bangkok 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 contact:

Bangkok Metropolitan Administration

173 Dinso Road, Phra Nakhon District

Bangkok 10200

Tel: (662) 2213811

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

11. OTHER TAXES

A specific business tax of approximately 3% is imposed, in lieu of VAT, on the following businesses:

- Commercial banks and similar businesses
- Financial securities firms and credit fanciers
- Sales of non-movable properties
- Insurance companies
- Sales on the stock exchange
- Pawn shops

VII. FINANCIAL REGULATIONS

1. BORROWING

There are no restrictions relating to borrowing of residents from commercial banks.

Non-residents may freely borrow either directly or through FX Swap transactions in local currency from commercial banks to finance their underlying activities. Without underlying activities, non-resident borrowing in local currency is limited to a maximum of Baht 50 million per person.

Private companies may provide lending to affiliated companies abroad of which they hold at least 25% share. Transfers abroad up to USD 10 million per year do not require approval from the Bank of Thailand.

2. FOREIGN EXCHANGE

Remittances of funds for investment and loans into Thailand are freely permitted, but foreign exchange inflows in the form of capital and loans must be surrendered to commercial banks or deposited in a foreign currency account within 7 days from the date of receipt.

Please refer to Chapter 5 of “A Business Guide to Thailand” available in BOI’s website.

According to the Ministry of Labour, a work permit normally takes 7 working days. For BOI’s one-stop service, it takes only 3 hours (for BOI’s promoted firms).

3. SOURCE OF FINANCING

Sources of financing are equally available to foreign and domestic firms. These sources include commercial banks, the Industrial Finance Corporation of Thailand (IFCT), and finance, securities, and credit companies.

4. REPATRIATION OF CAPITAL/PROFITS

Repatriation of investment funds, dividends and profits, loan repayments and interest payments thereon, after settlements of all applicable taxes, may be made freely.

5. OTHER SPECIAL REGULATIONS

Regarding the issuance of debentures, an approval from the Office of the Securities and Exchange Commission is required. Debentures must be issued by a public limited company, with a value of not less than 100 million baht.

VIII. EMPLOYMENT FOR APPROVAL OF FOREIGN WORKERS

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

Under the Investment Promotion Law, aliens are allowed to come to Thailand to conduct research in 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 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 to work in the promoted company for more than two years.

However, BOI encourage the employment of Thai nationals as managers or technicians.

Recently, BOI set up a One-Stop Center to handle all aspects of visa extensions and issuance of work permit, including work permit extensions, issuance of reentry permits, and changes in type of visa to non-immigrant. The office is expected to be able 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 valid only for the period of time that the alien's Non-Immigration Law. 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.

IX. LAND AND BUILDING OWNERSHIP

REGULATION ON ACQUISITION OF LAND AND BUILDING

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.

I. RELEVANT LEGISLATION

LATEST INVESTMENT REGULATIONS IN VIET NAM SINCE 2003:

The Government Decree No. 27/ND-CP dated 19 March, 2003 on the amendments of and additions to a number of articles of the Decree No. 24/ND-CP towards further simplifying the investment procedures and relaxing investment requirements. In particular,

- Expand the scope of investment projects that are entitled to the registration regime for investment license;
- Remove the mandatory requirements on export ratio;
- Relax technology requirements with respect to the ceiling limitation of 20% of the value of transferred technology in the legal capital of a foreign invested enterprise;
- Provide foreign invested enterprises with self-determined rights in recruiting employees.

The Government Decree No. 38/ND-CP dated 15 April 2003 on the conversion of some FDI enterprises into operation under the form of share holding companies aiming at diversifying investment forms.

- Allow some foreign invested enterprises to operate in the form of share holding companies.
- *The revised Law on Corporate Income Tax adopted in July 2003 towards facilitating foreign invested enterprises and creating an fair and equal “playing field” for both domestic and foreign invested enterprises.*
- Apply common rate of corporate income tax for domestic and foreign companies
- Eliminate remittance tax for foreign invested enterprises

For further information on the above new policies, refer to the following website address <http://www.mpi.gov.vn>.

1. INVESTMENT ACT

- ***The Law on Foreign Investment in Vietnam and Law on Amendments of and Additions to a Number of Articles of the Law on Foreign Investment in Vietnam***
Provides the basic principles and rules on the establishment, organisation, operation, investment guarantees and incentives applicable to foreign investment in Viet Nam.
- ***The Government Decree No 24/2000/ND-CP dated 31 July 2000***
Provides detailed regulations on the implementation of the ***Law on Foreign Investment in Vietnam***.
- ***The Government Decrees No. 27/2003/ND-CP dated 19 March 2003***
on the amendments of and additions to a number of articles of the Decree No. 24/ND-CP.
- ***The Government Decree No. 38/ND-CP dated 15 April 2003 on the conversion of some FDI enterprises into operation under the form of share holding companies.***
- ***Other Decrees and Circulars on Foreign Direct Investment (FDI)***
Provide guidelines on various aspects of the establishment and implementation of FDI projects, and investment incentives.

2. COMPANIES ACT

- ***The Enterprise Law***

Provides for the establishment, organisation and operation of various types of domestic enterprises.

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.

4. OTHER 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*

II. APPLICATION

1. AGENCY/IES INVOLVED IN ADMINISTERING INVESTMENT APPLICATION AND GRANTING OF INCENTIVES

Authorities that consider and approve investment projects include the following:

a. The Prime Minister of the Government

The Prime Minister of the Government shall make decisions in relation to Group A projects, comprising the following:

- (i) 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 printing of technical materials, printing of normal patterns on textiles and garments, leather and footwear), press; radio and television broadcasting; advertising services together with 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;
- (ii) 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;
- (iii) Projects using at least 5 hectares of urban land or at least 50 hectares of land of other categories.

b. 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 C below.

c. 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;
- Not included in the list of Group A projects and having the amount of invested capital as stipulated by the Prime Minister of the Government (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):

- i. Construction of national roads or railways;
- ii. Production of cement, metallurgy, electricity, sugar, alcohol, beer and cigarettes; manufacture and assembly of automobiles and motorbikes;
- iii. Travel tours.
- iv. Projects in the sectors of culture, education and training.
- v. Construction and operation of supermarkets.

d. 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 of Group B which have investment scale up to US\$40 million in the industrial zones.

2. CONDITIONS INCLUDING TIMETABLE FOR PROCESSING OF APPLICATION

For making investments in Viet Nam, a foreign investor must obtain an Investment License from one of the abovementioned agencies depending on the type of project.

Investment Licenses shall be issued under one of the two following procedures:

- Procedure of “registration” for issuance of investment licenses.
- Procedure of “evaluation” for issuance of investment licenses.

Conditions for projects to be subject to the “procedure of registration” for issuance of investment licenses:

- a. Projects subject to “registration” for issuance of investment licenses shall concurrently satisfy the following conditions:
 - i. Not belong to Group A projects;
 - ii. Conform with the approved planning; or approved by ministry in charge of industry;

- iii. Not belong to the list of projects in respect of which environmental impact assessment reports must be prepared.
- b. In addition, the projects subject to registration for issuance of investment licenses must satisfy one of the following conditions:
 - i. Export 80% of their products;
 - ii. Invest in an industrial zone, not belong to Group A, be included in the list of sectors in which investment is encouraged or specially encouraged;
 - iii. Belong to the production sector with an invested capital of up to 5 million US\$.

Projects which do not satisfy a & b above would be subject to the “procedure of evaluation” for the issuance of investment licenses.

The timetable for the issuance of an investment license is as follows:

- For projects that would have to follow the “procedure of registration” for issuance of investment licenses: within 15 working days.
- For projects that would have to follow the “procedure of evaluation” for issuance of investment licenses: within 45 days.

III. PROMOTED AREAS/SECTORS

PROMOTED FIELD/SECTORS

a. List of Specially Encouraged Investment Projects:

- Producing, processing for export at least 80% of products;
- Processing agricultural, forestry (except for wood) and aquaculture products from domestic material sources for export of at least 50% of products;
- Producing various kinds of new strains with high quality and high economic efficiency;

- Cultivation of agricultural, forestry and aquaculture products;
- Production of high-quality steel, alloy, non-ferrous metal, special metal, steel billet, sponge iron; iron metallurgy;
- Manufacturing of machinery, equipment and component packs for oil and gas exploitation, mining, and energy fields; manufacturing of large scale lifting equipment; manufacturing machine tools for metal processing, metallurgy equipment;
- Producing medical equipment for analytical and extractive technologies in medical sector;
- Manufacturing equipment for testing toxicity in foodstuffs;
- Manufacturing new materials and precious and rare materials; applying new bio-technology and new technology for manufacturing communications and telecommunications equipment;
- Manufacturing information technology products;
- High-tech industry;
- Investment in research and development of 25% of turnover;
- Producing equipment for waste treatment;
- Treatment of pollution and protection of environment; treatment of waste;
- Producing materials for antibiotic drugs;
- Investment under BOT, BTO and BT contracts.

b. List of Encouraged Investment Projects:

- Exploration, mining and down stream processing of minerals;
- Producing, processing for export at least 50% of products;
- Producing, processing for export at least 30% of products and using many domestic raw materials and materials (with a value of at least 30% of total production costs);
- Regular employment of five hundred (500) or more employees;

- Processing agricultural, forestry (except for wood from domestic natural forest) and aquaculture products from domestic raw materials;
- Preserving foodstuffs; post-harvest preservation of agricultural products;
- Development of petrochemical industry; construction and operation of oil and gas pipelines, oil storage and ports;
- Manufacturing precious mechanical equipment, equipment for safety examination and control; manufacturing jig and dies for metal and non-metal products;
- Manufacturing high and medium voltage electric devices;
- Manufacturing diesel engines with advanced techniques and technology; manufacturing dynamic and hydraulic machinery, parts and compressing machines;
- Manufacturing automobile and motorcycle parts; manufacturing and assembling equipment, vehicles and machinery for construction; manufacturing technical equipment for transportation industry;
- Building ships; manufacturing marine engines, equipment and parts for transportation ships and fishing ships;
- Manufacturing communications and telecommunications equipment;
- Manufacturing electronic equipment and components;
- Manufacturing agricultural and forestry equipment, parts and machines, irrigation equipment;
- Manufacturing equipment for the textiles and garment industry;
- Producing various types of materials for pesticides;
- Manufacturing various types of insecticide, plant protection agents and veterinary drugs with a localised valued added portion of 40% or more;
- Producing basic chemicals of various kinds, purified chemicals and dyes; various kinds of specialised chemicals;
- Producing materials for cleansing chemicals and additives for chemical industry;

- Producing special cement, composite materials, and sound, electricity and heat insulating materials, and wood-substitute synthetic materials, fire-proof materials, construction plastic and fibreglass;
- Manufacturing light construction materials;
- Producing paper pulp;
- Producing silk and fibres of various kinds; special fabric for industry;
- Producing high-quality raw materials and auxiliary materials for manufacturing footwear and garments for export;
- Producing high-quality packages for exports;
- Producing medicine materials; medicine products for treating humans with international GMP standard;
- Upgrading and developing energy sources;
- Public passenger transportation;
- Construction and upgrading of bridges, roads, airports, ports, railway stations, bus stations and railways;
- Construction of water plants and water supply and drainage systems;
- Construction and operation of infrastructure facilities of industrial zones, export processing zones and high-tech zones.
- Technical services for agriculture, forestry and fisheries.

c. List of Sectors in which Licensing of Investment is Conditional

A. Foreign investment is allowed only in the form of a business co-operation contract (BCC) in the following sectors:

- Establishment of public telecommunications networks, provision of telecommunication services; business of domestic or international courier services;
- Press, radio and television activities.

B. Foreign investment is allowed only in the form of a joint venture enterprise (JV) or business co-operation contract (BCC) in the following sectors:

- Exploitation and processing of oil and gas and precious and rare minerals;
- Air, railway and sea transportation; public passenger transportation; airport and post construction (except for BOT, BTO and BT projects);
- Maritime and aviation business services;
- Culture (except for projects for printing of technical material, printing on packaging, printing of labels of goods, and printing on textiles and garments, leather and footwear; printing of computer graphics onto animated films; entertainment and sports areas);
- Afforestation (except for indirect afforestation via Vietnamese organisations, family households and individuals to which or whom the State assigns or leases land which is located in productive or protective forests and to which investors grant assistance with funding, seedlings, technical assistance, fertiliser or in procurement of products pursuant to contract);
- Travel tours;
- Production of industrial explosives;
- Consultancy services (except for technical consultancy).

C. Projects subject to the requirement on developing raw material sources:

- Dairy production and processing;
- Production of vegetable oil and cane sugar;
- Processing of wood (except for projects using imported wood)

D. Investment projects in import services and domestic distribution services and offshore fishing and exploitation of sea-products

These projects shall be implemented in accordance with separate provisions of the Prime Minister of the Government. The provisions are contained in the following website address: <http://www.mpi.gov.vn>.

d. List of Sectors where Investments are Not Allowed:

- Projects which are prejudicial to national security, defense and public interests;
- Projects which are detrimental to historical and cultural relics, fine customs and traditions of Vietnam;
- Projects which may adversely affect the ecological environment; projects for treatment of toxic wastes brought into Vietnam from abroad;
- Projects for production of toxic chemicals or utilizing toxic agents prohibited under an international treaty.

IV. FOREIGN EQUITY POLICIES

100% foreign equity ownership is allowed in all sectors except those sectors in III.1.3.A,B

V. INCENTIVES

1. CORPORATE INCOME TAX / INCOME TAX ALLOWANCE

Preferential corporate income tax rates of 10 percent, 15 percent and 20 percent are applicable where certain criteria are met (e.g. encouragement to develop in a specific sectors and/or specific geographic areas).

Tax holidays exempting all corporate income tax for maximum four years, along with a “followed up period” up to nine years waiving 50 percent in taxes, may also apply.

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

Enterprises with foreign owned capital and business co-operation parties shall be entitled to exemption from import duties for goods imported to form as fixed assets, comprising the following:

- Equipment and machinery;
- Specialised means of transportation which form part of a technological line and specialised means of transportation used for transporting employees (automobiles of twenty four (24) seats or more and watercraft);
- Components, details, parts, spare parts, fittings, moulds and accessories accompanying the above machinery, equipment and specialised means of transportation;
- Raw materials and materials imported to manufacture equipment and machinery in technological lines or to manufacture details, parts, spare parts, fittings, moulds and accessories accompanying machinery and equipment.
- Construction materials which are not yet domestically produced.

* The exemption of import duties applicable to the above equipment, machinery, means of transport, components, parts, accessories shall also be applied to expansion of a project and to replacement or renewal of technology.

- Enterprises with foreign owned capital and business co-operation parties in the fields of hotels, offices, apartments for lease, residential houses, commercial centres, technical services, supermarkets, golf courses, tourist resorts, sports centres, entertainment centres, medical examination and treatment establishments, training, culture, finance, banking, insurance, auditing, and consultancy services shall also be entitled to exemption from duties as provided for above, except in respect of imported furniture and equipment which are entitled to a once-off exemption from import duties.

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

Enterprises with foreign owned capital and business co-operation parties shall be entitled to exemption from import duties in respect of raw materials, supplies and components, comprising the following:

- Raw materials and materials imported for the implementation of BOT, BTO and BT projects; and species of plants and animals or specialised agricultural chemicals permitted to be imported for the implementation of agricultural, forestry and fishery projects shall be exempt from import duties.
 - * The above-mentioned exemption from import duties in respect of raw and other materials shall also be applied in the case of expansion of a project and replacement or renewal of technology.
- Enterprises with foreign owned capital and business co-operation parties investing in projects that are included in the list of specially encouraged investment projects or investing in the regions with especially difficult socio-economic conditions shall be entitled to exemption from import duties in respect of raw materials, supplies and components for production for 5 years from the time when production commences.
- Enterprises with foreign owned capital and business co-operation parties investing in the manufacture of mechanical, electrical and electronic components and parts shall be entitled to exemption from import duties in for production materials, supplies and components for 5 years from the time when production commences.
- Raw materials, spare parts, parts and materials imported for production of goods for export shall be exempt from import duties.
- Other goods and materials used for specially encouraged investment projects under a decision of the Prime Minister of the Government shall be exempt from import duties.
- Enterprises with foreign owned capital and business co-operation parties shall, when selling their products to other enterprises directly producing goods for export, be entitled to exemption from import duties in respect of raw materials in proportion to the volume of such products.

4. OTHER INCENTIVES (I.E. GRANTS, DOMESTIC LOANS, SUBSIDIES, ETC.)

During the business operation, the Enterprise with foreign-owned capital shall be permitted to carry forward losses incurred in any tax year to the following tax year and set off against the profits of subsequent years for a maximum of five (5) years.

VI. TAXATION

1. CORPORATE TAX

Foreign invested enterprises pay a maximum of 28 percent. Rates from 28 percent to 50 percent are applicable to the exploration and exploitation projects of oil and gas and rare and precious natural resources.

2. VALUE ADDED TAX/SALES TAX

Depending on the kind of product being manufactured or service offered, there are three applicable tax rates: zero percent, five percent and ten percent as the standard rate. Exemptions are available in several cases, and most exported goods and services enjoy a zero percent rate as an export incentive, where the exporter will have the input tax recovered.

3. WITHHOLDING TAX

Foreigners are considered to be resident in Vietnam and are taxable on their worldwide income if they live and work in Vietnam 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 Vietnam are taxed only on Vietnam-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 Vietnam will not be subject to a tax.

4. IMPORT AND EXPORT DUTIES

Generally, all imports are subject to duty in accordance with the Law on Export and Import Duties.

Import duty rates fall into 3 categories:

- Preferential rates are applicable to goods imported from countries which enjoy MFN treatment from Vietnam;
- Ordinary rate (which are equal to 150 percent of the respective preferential rate) are applicable to goods imported from countries which do not enjoy MFN treatment from Vietnam;
- Specially preferential rates apply to goods imported from countries that have a specially preferential agreement with Vietnam (e.g. ASEAN/CEPT).

In principle, all exports are subject to export duty. However, in practice, export duties are only imposed on a few items, mainly natural resources, minerals, forest and marine products, and scrap-metal.

Standard export duty rates range from zero percent (common rate) to 45 percent.

Exemption from export duties are applicable to goods exported from an EPZ.

5. 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.

6. 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:

Land rent rate per year (USD/m² per year) = the minimum rate applicable to each land category (USD/m² per year) x the location co-efficient x the infrastructure co-efficient x the industry sector co-efficient

7. NATURAL RESOURCES TAX

A tax levied on industries exploiting Vietnam's natural resources such as petroleum, minerals, forest, fisheries and natural water. Rates vary according to the resource being mined.

VII. FINANCIAL REGULATIONS

1. BORROWING

Enterprises with foreign owned capital may borrow from credit institutions permitted to operate in Vietnam. 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 Vietnam.

2. FOREIGN EXCHANGE

- Enterprises with foreign owned capital or foreign business co-operation parties may purchase foreign currency from commercial banks permitted to trade in foreign currency in order to meet the demands of their current transactions and other permitted transactions in accordance with the provisions of the law on foreign exchange control.
- With respect to specially important investment projects investing in accordance with Government programs in each period, the Prime Minister of the Government shall make a decision on guarantee of foreign currency balance of enterprises with foreign owned capital and business co-operation parties which shall be stated in the investment license.
- The Government of Vietnam shall assure its assistance in the foreign currency balance for enterprises with foreign owned capital and business co-operation parties investing in the construction of infrastructure facilities and some other important projects where commercial banks fail to provide sufficient foreign currency required as referred to above.
- Foreign invested enterprises are permitted to open an overseas account.

3. SOURCE OF FINANCING

Foreign and domestic borrowings are allowed.

4. REPATRIATION OF CAPITAL/PROFITS

Foreign investors investing in Vietnam 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.

VIII. EMPLOYMENT FOR APPROVAL OF FOREIGN WORKERS

CONDITIONS OF APPROVAL OF FOREIGN EMPLOYEES (MANAGERIAL, SUPERVISOR, UNSKILLED LABOUR)

Enterprises with foreign owned capital and parties to a business co-operation contract shall have the right to recruit and employ labour in accordance with business requirements.

IX. LAND AND BUILDING OWNERSHIP

1. REGULATION ON ACQUISITION OF LAND AND BUILDING

Acquisition of Land and Building (for business and residential purposes)

- Enterprises with foreign owned capital are allowed to lease land to implement their investment projects for a long term, which is equal to the

duration of an investment project. In principle, the land lease term can be up to 50 years, and in special cases, up to 70 years.

- Foreigners also are allowed to rent house for residential purpose.

2. RESTRICTIONS

Foreign individuals and enterprises are not entitled to land ownership.

ADDRESSES OF ASEAN'S INVESTMENT AGENCIES

Brunei Darussalam

Ministry of Industry and Primary Resources
Jalan Menteri Besar
Bandar Seri Begawan 3910
Brunei Darussalam
Tel : (673-2) 382 822
Web Site : <http://www.industry.gov.bn>

Myanmar

Directorate of Investment and Company Administration
Ministry of National Planning and Economic
Development
No. 653/691, Merchant Street
Pabedan Township
Yangon, Myanmar
Tel : (95-1) 372 855
Fax: (95-1) 254 660

Cambodia

The Council for the Development of Cambodia
Cambodian Investment Board
Government Palace, Sisowat Quay
Wat Phnom
Phnom Penh, Cambodia
Tel : (855-23) 981 154
Fax : (855-23) 428 426
Web Site : <http://www.cambodiainvestment.gov.kh>

Philippines

Department of Trade and Industry
Board of Investments
Industry and Investments Building
385 Sen. Gil Puyat Avenue
Makati City, Metro Manila
Philippines 1200
Tel : (63-2) 895 3611
Fax : (63-2) 895 6487
Web Site : <http://www.dti.gov.ph>

Indonesia

Investment Coordinating Board (BKPM)
Jl. Gatot Subroto No.44
Jakarta 12190, Indonesia
Tel : (62-21) 525 2008
Fax : (62-21) 525 4945
Web Site : <http://bkpm.go.id>

Singapore

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