

# Law on Investment



## WHAT YOU NEED TO KNOW

Cambodia promulgated its new Law on Investment (LoI) on 15 October 2021. The LoI aims to establish a favorable legal framework to attract and promote quality, effective and efficient investments by Cambodian nationals or foreigners in the Kingdom of Cambodia.

The LoI applies to all "Qualified Investment Projects" (QIPs), "Expanded Qualified Investment Projects" (EQIPs) and "Guaranteed Investment Projects" (GIPs) registered with the Council for the Development of Cambodia (CDC) or Municipal Provincial Investment Sub Committees.

## INVESTMENT INCENTIVES

The LoI incentives investment in 19 sectors, notably through a mechanism of tax-related basic incentives, additional incentives and special incentives

[Read more on page 2](#)

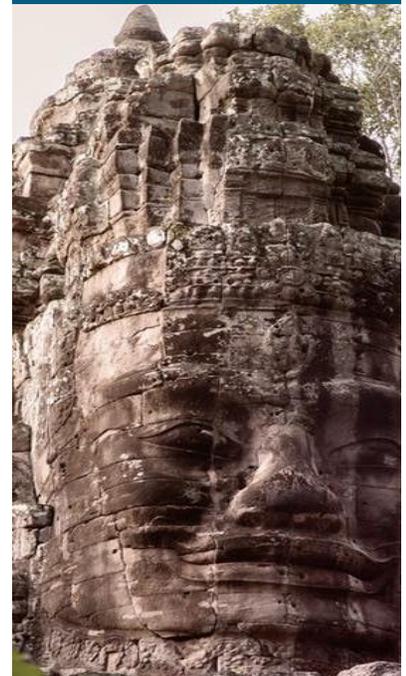


**Cambodia,  
A Great Destination for Investments**

## INVESTOR GUARANTEES

A set of protective measures (guarantees) are granted by the LoI to investors and their assets within the scope of the law to secure safety and stability.

[Read more on page 5](#)



## PROCEDURAL TOPICS

A basic introduction to some technical aspects addressed in the LoI, such as registering and transferring an investment project.

[Read more on page 6](#)





### Some definitions

**Investment Project** = a Qualified Investment Project, an Expanded Qualified Investment Project or a Guaranteed Investment Project. **Qualified Investment Project (QIP)** = an investment project that has received a registration certificate from the CDC or a Municipal Provincial Investment Sub Committee. **Export Qualified Investment Project** = a QIP that sells or transfers any proportion of its products to purchasers or recipients outside Cambodia. **Supporting Industry Qualified Investment Project** = a QIP in which any proportion of its products is supplied to export industries **Domestically Oriented Qualified Investment Project** = a QIP that does not export. **Expanded Qualified Investment Project (EQIP)** = an expansion of a QIP in any form, including expansion of existing production, expansion through product line diversification within the same lines expansion through the use of new technologies that enhance productivity or protect the environment, expansion of infrastructure to serve basic telecommunications services, or expansion in any other forms to be determined by the Sub Decree. **Guaranteed Investment Project (GIP)** = an investment project registered with the CDC or a Municipal Provincial Investment Sub Committee, and being clearly mentioned as a GIP not eligible for tax incentives.

Under the Lol (Chapter 6), **19 investment sectors** (listed in Article 24 of the Lol) – if they are not on the **Negative List (still to be defined in a Sub-Decree)** – shall receive investment incentives after obtaining a Registration Certificate certifying their QIP status. The incentivised sectors are:



- ✓ High-tech industries involving innovation or research and development;
- ✓ Innovative or highly competitive new industries or manufacturing with high added value;
- ✓ Industries supplying regional and global production chains;
- ✓ Industries supporting agriculture, tourism, manufacturing, regional and global production chains and supply chains;
- ✓ Electrical and electronic industries;
- ✓ Spare parts, assembly and installation industries;
- ✓ Mechanical and machinery industries;



- ✓ Agriculture, agro-industry, agro-processing industry and food processing industries serving the domestic market or export;
- ✓ Small and medium-sized enterprises in priority sectors and small and medium-sized enterprise cluster development, industrial parks, and science, technology and innovation parks;
- ✓ Tourism and tourism-related activities;
- ✓ Special economic zones;
- ✓ Digital industries;
- ✓ Education, vocational training and productivity promotion;
- ✓ Health;
- ✓ Physical infrastructure;
- ✓ Logistics;
- ✓ Environmental management and protection, and biodiversity conservation and the circular economy;
- ✓ Green energy, technology contributing to climate change adaptation and mitigation;
- ✓ Other sectors and investment activities not listed by the Lol deemed by the Royal Government of Cambodia to have potential for socio-economic development.



## Basic incentives

Investment activities registered as QIP are entitled to **choose between 2 basic incentives.**

**Option 1: Tax Exemption Period:** an **Income Tax exemption for 3 to 9 years**, depending on the sector and investment activities, from the time of earning of first income. Sectors and investment activities, as well as the period of income tax exemption, shall be determined in the law on financial management and/or the Lol Sub-Decree.

**After the income tax exemption period has expired**, the QIP's income tax will only increase gradually over 6 years, at a **progressive rate proportional to the total tax due** as follows: 25 % for the first 2 years, 50 % for the next 2 years and 75% for the final 2 years.

Further, this option includes:

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

**Option 2: Special Depreciation:** The second option for basic incentives entails:

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

**In addition to the incentives of option 1 or option 2:**

- a. Export QIP and Supporting Industry QIP are entitled to customs duty, special tax and value-added tax exemption for the import of Construction Material, Construction Equipment, Production Equipment and Production Inputs;
- b. Domestically Oriented QIP is entitled to customs duty, special tax and value-added tax exemption for the import of Construction Material, Construction Equipment, and Production Equipment. The incentives for Production Inputs shall be determined in the Law on Financial Management and/or the Lol Sub-Decree.

## Additional incentives

**In addition to the basic incentives, investment activities registered as QIP receive additional incentives, which are very much focused on advancing local production, R&D and improving the working conditions of local employees:**

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

## Special incentives

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





“The extensive  
incentivisation  
of investment in  
innovative and  
sustainable  
sectors is a very  
promising  
development”



# INVESTMENT GUARANTEES

Chapter 5 of the Lol describes the investment guarantees and protection offered. “Investor” refers to a person carrying out an investment project registered with the Council for the Development of Cambodia or a Municipal Provincial Investment Sub Committee.

✓ **Non-discrimination in certain cases of loss of investment** | Investors will be treated without discrimination in relation to restitution, compensation or other economic remedies in the event that their investment suffers losses due to armed conflict, civil disturbance or state of emergency provided that there are laws and policies of the Royal Government of Cambodia on any reasonable restitution or compensation.

✓ **Non-discrimination on the basis of foreign nationality** | Foreign investors shall not be subject to any discrimination on the basis of foreign nationality, except for land ownership as stipulated in the Constitution of the Kingdom of Cambodia and any other regulations in force

✓ **No nationalisation** | The State shall not undertake any nationalization actions which may affect the assets of the Investors in the Kingdom of Cambodia.

✓ **No expropriation** | The State shall not undertake any expropriation which may affect, either directly or indirectly an approved Investment Project or undertake any measures similar to expropriation, except for the purpose of public interest and that such expropriation shall meet the following conditions: 1. Non-discrimination; 2. Fair and just compensation and 3. Compliance with the laws and procedures in force for expropriation.

✓ **No price fixing** | The Royal Government of Cambodia shall not fix the price of products or services created or rendered by the Investment Project.

✓ **Free purchase and repatriation of foreign currencies** | In accordance with applicable laws and regulations, Investors are entitled to freely purchase foreign currencies and to repatriate those foreign currencies to settle financial obligations associated with their investment through authorized intermediary banks.

✓ **Intellectual property protection** | Investors' intellectual property is protected in accordance with the laws and regulations related to the intellectual property of the Kingdom of Cambodia.

✓ **Right to use land** | Investors' ownership of land for the purpose of implementing Investment Projects is granted only to persons of Cambodian nationality in accordance with the laws and regulations in force. Investors have the right to use land through economic land concessions or perpetual leases or leases for a fixed duration in accordance with the laws and regulations in force.

✓ **Miscellaneous** | An Investor also has the following rights:

1. The right to hire foreign employees to manage or operate an Investment Project within a quota not exceeding the number stipulated by the laws and regulations in force in the event that it is not possible to find qualified Cambodian employees to manage or operate the Investment Project. The permission to hire foreign employees is based on current circumstances and is not permanent.

2. The right to obtain a temporary long-term stay permit for oneself, spouse and children who are minors during the period when the Investment Project is operating.

3. The right to request temporary long-term stay permits for foreign employees and their spouses and children who are minors during the valid period of the employment contract.

4. The right to obtain a work permit and employment book for oneself and foreign employees.

The CDC or the Municipal Provincial Investment Sub Committee shall issue a letter to certify the investment status for the persons involved in the Investment Project at the request of the Investor to be used for applying for a temporary long term stay permit, work permit employment book and other necessary purposes in accordance with the procedures in force.

Special procedures for applying for work permits and employment books shall be set out in a joint Prakas between the CDC and the Ministry in charge of Labor.

Formalities and special procedures for applying for a temporary long term stay permit shall be determined by a separate Sub Decree.

✓ The Investor is entitled to receive after care services for the Investment Project registered with the CDC or a Municipal Provincial Investment Sub Committee. Conditions, formalities and procedures for providing after care services for the Investment Project shall be determined by the Lol Sub Decree.

# SOME PROCEDURAL TOPICS

## Registration and implementation of an investment project

Any person who wishes to implement a QIP, EQIP or GIP has to submit a written application to the CDC or a Municipal Provincial Investment Sub Committee. According to the Lol, the Investment Project Application may be made online ("through information technology platforms"). The Investment Project Application shall be accompanied by information to be specified in the Lol Sub Decree. The CDC shall review and make a decision on the application through the **One Stop Service mechanism**, a mechanism for reviewing and deciding on the Investment Project Application by representatives of relevant ministries and institutions seconded to the CDC. If the proposed Investment Project is not on the Negative List (to be determined separately by the Lol Sub Decree), the CDC shall issue the **Registration Certificate** to the Applicant within **20 Working Days**. More information can be found here: <http://www.cambodiainvestment.gov.kh/public-service-of-cdc/application-form.html> and here: <https://qip.cdc.gov.kh/login>.

Investment Projects that have obtained a Registration Certificate may be **implemented automatically**, but it does not exempt the Investment Project from obtaining other permits as required by the laws and regulations in force. All Investment Projects shall be subject to monitoring and inspection through the One Stop Service mechanism coordinated by the CDC to ensure their compliance with the laws and requirements for obtaining the Registration Certificate. The person carrying out an Investment Project shall provide a report on the implementation of the project according to the specific schedule set by the CDC. The detailed format of the report template shall be determined by the CDCs guidelines.

The procedures for registration of an Investment Project with Municipal Provincial Investment Sub Committees shall be determined by a separate Sub Decree.



## Acquisition, sale or merger of an investment project

Rights, privileges and other entitlements of the QIP may not be transferred to any third party, except the transfer through acquisition, sale and merger of the Investment Project. **An Investment Project may be acquired, sold or merged without losing the incentives**, investment guarantees and any obligations attached thereto if the acquisition, sale or merger is done **in accordance with applicable laws and regulations and through a written request to the CDC or the Municipal Provincial Investment Sub Committee**. Detailed procedures shall be further determined by the Sub Decree.

## Nullification of an investment project

Investment Projects may be nullified in any of the following cases:

1. Inability to continue to implement the QIP;
2. Dissolution of the legal entity implementing the QIP;
3. Failure to fulfil the obligations set out in the laws and regulations in force;
4. At the request of the relevant ministries/institutions for the Investment Project which adversely affects environment or national security or public interests or people's welfare or at the request of the Investor.

The detailed procedures for nullification shall be determined by the Lol Sub Decree.

Even if the Investment Project is nullified, the Investor is not exempt from fulfilling tax and other obligations. Investors may appeal the nullification of the Investment Project by submitting a written complaint to the CDC or the Municipal Provincial Investment Sub Committee in accordance with procedures in force. In case of appeal, the CDC or a Municipal Provincial Investment Sub Committee shall make a decision on such appeal. In case of dissatisfaction with the above decision, the appealing Investor may file a complaint to the relevant court of the Kingdom of Cambodia.

## Disputes

Disputes between Investors related to the Investment Project may be resolved by the CDC or Municipal Provincial Investment Sub Committees through **reconciliation** in accordance with procedures in force and upon written request to the CDC or the Municipal Provincial Investment Sub Committees by any party to the dispute. Within 30 days following receipt of the written request for reconciliation, the CDC or the Municipal Provincial Investment Sub Committee shall arrange for reconciliation with Investors and other stakeholders, as needed, to find a suitable solution. If the above reconciliation is not successful, the dispute may be resolved through: 1. National or international **arbitration** with the consent of the disputing parties; or 2. The relevant **courts** of the Kingdom of Cambodia.

## Transitioning to the new Lol

The 1994 and 2003 Law on Investment is nullified (see art. 38 Lol for further detail). Authorised investments that received incentives under 1994 and 2003 LOI will be regarded as QIPs under the new law. Investments that have not received incentives but received investment guarantees under the 1994 and 2003 LOI will be regarded as GIPs. QIPs that have been entitled to income tax exemption prior to the promulgation of the new Law, shall continue to receive the incentives for the remaining income tax exemption period. The CDC shall continue to perform its duties until the promulgation of a Royal Decree on the Organization and Functioning of the Council for the Development of Cambodia (see arts. 4-8 Lol for further detail).

# WHAT IS NEXT?

The Law on Investment brings a new legal framework conducive to foreign investment, notably by establishing an important investment incentive scheme for 19 sectors, including investment in digital infrastructure, environmental management, protection and energy efficiency, tourism, training and upskilling, logistic supply chains, research and development, infrastructure, and many others. EuroCham Cambodia applauds this exciting development, which will significantly increase our possibilities to promote Cambodia and to attract investment to the Kingdom. This law is expected to increase Cambodia's competitiveness and attractiveness in the spirit of diversifying the economic structure, supporting innovation, and fostering the country's economic recovery in view of the COVID-19 pandemic.

We are very privileged to have enjoyed the trust from the Royal Government to be able to be involved with our experts in the consultative processes of the Lol in 2020, organized by the Ministry of Economy and Finance, the International Business Chamber of Cambodia (Government-Private Sector Forum G-PSF WG D secretariat) and by the Council for the Development of Cambodia. A lot of details and procedures are now still to be determined in the Lol Sub-Decree, which is expected very soon. We continue to work together with the Royal Government in this process and to offer our support.



## FOUNDING CHAMBERS AND NATIONAL CHAPTERS



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The smarter way to bank.



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