Two new laws related to private investments were recently adopted in Cambodia. The Law on Investment dated 15 October 2021 (the "New Law on Investment") and the Law on Public-Private Partnership dated 18 November 2021 (the "PPP Law").

THE NEW LAWS ON INVESTMENT AND PUBLIC-PRIVATE PARTNERSHIP: SETTING THE FOUNDATION FOR ADVANCED PRIVATE INVESTMENT LANDSCAPE IN CAMBODIA

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Two new laws related to private investments were recently adopted in Cambodia. The Law on Investment dated 15 October 2021 (the "**New Law on Investment**") and the Law on Public-Private Partnership dated 18 November 2021 (the "**PPP Law**"). These are intended to substitute the 1994 Law on Investment, the 2003 Amendment and the Law on Concessions 2007 respectively. In terms of substance, each of these laws are more advanced than their predecessors and are aimed at setting modern foundation for private investments in the country.

The New Law on Investment is an advanced and forward-thinking legislation which aims to among other things, do the following:

i. ease the process of investment application as a first step towards streamlining the overall investment licensing process. For example, it introduces the option of e-filing of investment applications which would potentially reduce the administrative hassles involved with filing of physical applications.

ii. introduces the use of new technological implements such as the

Highlights of this note

The New Law on Investment

- New Process of Registration: Online Application
- Incentives
- Investment Guarantees and Protections: Safeguarding Investments
- Purchase, Sale or Merger of an Investment Project: CDC/MPIS Prior Approval
- Dispute Resolution: Conciliation as the First Step

The New PPP Law | Strong Foundation for Regulating Public-private Projects

- Project Selection; Project Parties
- Government Financial Support to Private Partners
- Project Assets as Security for Bank Loans; Project Funds Repatriation
- Dispute Resolution

built-in QR code in the investment registration certificate – which can be used by an investor to apply for other necessary permits without having to resubmit documents for information already contained in such QR code.

iii. introduces a list of specific sectors of the economy where private investment will be eligible to enjoy certain incentives listed thereunder, and

iv. in order to increase investor confidence, the law provides for a detailed outline of various investment incentives and guarantees.

The PPP Law, like the New Law on Investment, modernizes the legal framework and:

i. Outlines the principles for the handling of unsolicited proposals;

ii. Outlines several guarantees that the RGC may provide to private partners;

iii. Provides guidelines on the assets that can be used as collateral for loans;

iv. Outlines the project cycle and involvement of the RGC agencies in every step, and

v. Provides guidelines on the type of project related funds and clarifies the offshore repatriation regime for such payments.

This note discusses some of the key provisions in both these laws.

THE NEW LAW ON INVESTMENT

WHAT'S NEW?
• Option of online application for registration of project
• Only 1 registration certificate (RC) will be issued – QR code in RC can be used to apply for additional operating permits as required
• Several additional incentives and guarantees compared to the 1994 law
• 19 priority sectors (including digital infrastructure and climate tech) eligible to receive incentives

The New Law on Investment replaces the 1994 law on investment and the 2003 amendment thereto (collectively, the "**Previous Law**"). This is an advanced, forward-thinking legislation aimed at, among other things, attracting quality, effective and efficient investments by Cambodian nationals or foreigners by

i. modernizing and increasing local productivity,

ii. increasing market competitiveness,

iii. supporting foreign and local investments by establishing investment incentives and guarantees, and

iv. protecting such investments by setting up comprehensive and equitable legal framework.

Below we have discussed some of the key provisions of this law.

New Process of Registration: Online Application

The New Law on Investment requires an applicant to submit the application either physically or online to the Council for the Development of Cambodia (the "**CDC**") or the Municipal-Provincial Investment Sub-committee ("**MPIS**") to register their project as either a Qualified Investment Project ("**QIP**") or as an expansion of a QIP or as an investment guarantee project. The detailed information of application and list of required documents shall be specified in a separate Sub-Decree.

Upon receipt of the application, the CDC will review it and, provided the investment does not fall in the negative list, issue a Registration Certificate ("**RC**") within 20 business days. The CDC will adopt a new negative list under a Sub-Decree.

Investment projects that have been issued an RC may implement their

project subject to receipt of other relevant operating permits from other authorities required under applicable laws. The RC will have a QR code that will contain preliminary data about the project. Thus, the investors would not need to re-submit documents to authorities for information already contained in the QR code.

The New Law requires the project owner to submit a report on the implementation of the project based on the specific schedule set by the CDC. Such requirement did not exist under the Previous Law. A specific template and formalities on preparation of the report shall be determined by a guideline set by the CDC.

Incentives

The New Law on Investment specifically lists 19 sectors where investments would be entitled to receive incentives upon application. Such sectors include (i) high-tech industries involving innovation, research and development, (ii) digital infrastructure, (iii) small and medium industries, industrial parks, (vi) climate change mitigation technologies and so on.

Further, the investment incentives provided under this law are more specific compared to the Previous Law. These incentives are classified into three (3) categories as follows:

1. *Basic incentives*: Investors get an option to choose either of the following:

    i. income tax exemption for three (3) to nine (9) years depending on the sector and investment activity, starting from the time of earning first income and pay income tax at progressive rates after expiry of the exemption period; or

    ii. deduction of capital expenditure at a special depreciation rate stated in the tax laws and an inflation-indexed deduction of amounts up to 200 percent of specific expenses incurred for up to nine (9) years.

    Several incentives have been provided for export oriented QIPs (and QIPs that support them) such as exemption from payment of customs duty, special tax and VAT on import of construction materials, construction equipment, production equipment and inputs. And, non-export related QIPs are exempted from payment of the abovementioned taxes on construction equipment and materials and production equipment and materials.

2. *Additional incentives:* In addition to the basic incentives, investors are also eligible to receive additional incentives, including: (1) VAT exemptions for the purchase of locally produced production inputs; and (2) deduction of expenses at the rate of 150% for activities such as research and development, construction of accommodation and so on as listed in this law.

3. *Special incentives:* Investment projects that have high potential to contribute to national economic development will be entitled to special incentives and such projects and the incentives will be set out in the law on financial management.

Investment Guarantees and Protections: Safeguarding Investments

The New Law on Investment retains the guarantees provided under the Previous Law and provides certain additional guarantees and protections to investors such as:

i. guarantee against expropriation other than for the purpose of public interest and subject to the fulfilment of conditions such as fair and just compensation, non-discrimination and in compliance with applicable laws;

ii. protection of intellectual property rights of investors;

iii. right to transfer dividends, capital gains, royalties, income received from sale or dissolution of project company or compensation received in case of civil disturbance, expropriation or confiscation by the RGC;

iv. the right to apply for temporary long-term stay permits and work permits for foreign employees and so on.

Purchase, Sale or Merger of an Investment Project: CDC/MPIS Prior Approval

Rights, privileges and other benefits of the QIP cannot be transferred to any third party, except through the purchase, sale or merger of investment project (or the project company). This will be subject to prior approval from the CDC/MPIS. As per the law, it is expected that detailed procedure in this regard would be set out in a sub-decree.

Dispute Resolution: Conciliation as the First Step

Any dispute between investors and investors shall be settled through conciliation by the CDC/MPIS based on a written request of the parties to the dispute. The CDC/MPIS is required to commence the conciliation process within thirty (30) days of receipt of the written request from the parties. If the dispute is not resolved by conciliation, it shall be referred to either national or international arbitration (with consent of the disputing parties) or to the competent courts in Cambodia.

THE NEW PPP LAW | STRONG FOUNDATION FOR REGULATING PUBLIC-PRIVATE PROJECTS

WHAT'S NEW?
• Regulation of ways of financial support – viability gap funding and performance and political risk guarantees
• Investment incentives and protection
• Tax incentives
• Project assets as collateral for loans
• Ease of offshore repatriation of project related funds

The PPP Law repeals the Law on Concessions, 2007 which previously governed the PPP framework in Cambodia. The PPP Law clarifies the following with respect to its application:

i. it will not apply to existing PPP projects that received approval from the RGC prior to its promulgation and,

ii. other than the provision on dispute resolution introduced under it, the PPP Law will not govern the provisions of any contract signed prior to its promulgation.

The PPP Law has been enacted for the purpose of developing the public infrastructure and public service projects in an effective, efficient and sustainable manner for the socio-economic development of Cambodia. The scope of this law applies to projects in the eligible sectors listed thereunder.

Below we have discussed some of the key provisions of this law.

Project Selection; Project Parties

The implementing agency ("**IA**") is responsible for, among other things, identifying and selecting project(s) to be implemented by way of PPP. The IA can be any line ministry (such as the Ministry of Mines and Energy) or any government entity having the required authorization to act on behalf of the RGC, as the 'public' entity and enter into a contract with the private party.

The IA would select a project and submit a proposal to the Ministry of Economy and Finance ("**MEF**") for approval. The MEF is in charge of the entire project cycle of a PPP project – commencing from project selection, to its management and its completion (or termination). The MEF would review the IA's proposal and approve (or reject) said proposal.

The PPP Law lays down certain eligibility requirements for projects to be implemented by way of PPP such as the following:

i. it is a public purpose project falling under one of the indicative sectors listed in the PPP Law (for example, construction of infrastructure in transport sector or post and telecom sector or production, transmission, distribution of electricity, oil and gas sector and so on), and

ii. it fulfills certain additional criteria for selection and identification as a

PPP project such as:

- it is for the development of public infrastructure in the eligible sector,
- the project is capable of risk allocation between private and government partners,
- it will have an operational period of at least five (5) years, and so on.

The PPP Law outlines the methods of competitive bidding and direct negotiation for selection of a private partner. The law further sets out principles of handling unsolicited proposals.

Government Financial Support to Private Partners

The PPP Law lists the type of financial support that the government may provide for a PPP project. Some of them are:

i. Viability Gap Funding – subsidy from the government to the private partner paid on the basis of completion of specific milestones after commencement of construction; helps to reduce capital expenditure of the private partner and increase financial viability of the project.

ii. Contingent liability guarantees– such as performance guarantee or political risk guarantee in which cases the government agrees to compensate the private partner in the event the IA does not fulfill its obligations under the PPP contract or if the outcome of any political actions or policies adversely affects the partner, respectively.

Project Assets as Security for Bank Loans; Project Funds Repatriation

The PPP Law allows the private partner to provide the following assets as security for loan repayment:

i. Movable or immovable property,

ii. Account receivables for the operation of the project asset or provision of services to users,

iii. Mortgage of land use rights,

iv. Shares of the special purpose company.

Pursuant to the law, Investors shall be allowed to buy foreign currency in Cambodia and remit funds abroad in connection with the PPP project. Such payments include repayment of principal and interest on offshore loans, payment of license fees to overseas entities, remittance of capital, profit, revenues from liquidation of investment and so on.

Dispute Resolution

The PPP Law stipulates that any disputes arising between the IA and the private partner shall be resolved in the way agreed under the PPP contract. In case of failure of negotiations, the parties have the option of resorting to domestic or international commercial arbitration failing which, they may refer to the courts of Cambodia to resolve the dispute.

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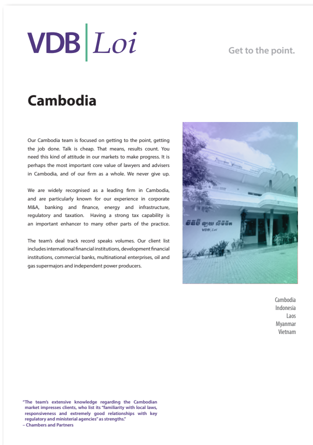

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