

ANUKRET ON THE IMPLEMENTATION OF THE LAW ON INVESTMENT OF THE KINGDOM OF CAMBODIA

Seen the 1993 Constitution of the Kingdom of Cambodia;

Seen tile Royal Decree dated September 24, 1993 on the Appointment of the First and Second prime Ministers;

Seen the Royal Decree dated November 01, 1993 on the Formation of the Royal Government of Cambodia;

Seen the Royal Decree NS/RKT/1094/83 dated October 24, 1994 and the Royal Decree NS/RKT/1094/90 dated October 31, 1994 on the Reorganization of the Composition of the Royal Government of Cambodia;

Seen the Royal Decree CHS/RKT/0897/147 dated August 07, 1997 on the Reorganization of the Composition of the Royal Government of Cambodia;

Seen the Law oil the Organization and Functioning of the Council of Ministers and its promulgation by Kram dated July 20, 1994;

Seen the Law on Investment of the Kingdom of Cambodia and its promulgation by Kram 03 NS 94 dated August 05, 1994;

Seen the Sub Decree No. 51 ANK.BK dated June 26, 1995 on tile Organization and Functioning of the Council for the Development of Cambodia; and

Pursuant to the request of the Council for the Development of Cambodia and the decision of the plenary session of the Council of Ministers on December 04, 1997.

IT IS HEREBY DECIDED

CHAPTER 1: GENERAL PROVISIONS

ARTICLE 1: DEFINITIONS

Article 1.1

The following technical terms where used in this sub-decree shall have the meanings ascribed thereto in this Article:

"Applicant" means any person, natural or juridical, who meets the requirements set forth in Article 6.1(h) and who has submitted an investment application or has requested to establish an Investment Enterprise. An Applicant shall include any existing Investment Enterprises set forth in Articles 3.4 and 5.2;

"Application" means an application to receive privileges and incentives as stipulated in the Law on Investment of the Kingdom of Cambodia which was promulgated by Kram 03 NS 94 dated August 05, 1994 and shall at a minimum consist of those items set forth in Article 6.1;

"Investor" means any person, natural or juridical, who meets the requirements set forth in Article 6.1(h) and Article 9 who has already invested or proposes to invest in an Investment Enterprise;

"Investment Enterprise" means either a Cambodian Entity or a Foreign Entity approved by the Council for the Development of Cambodia under the Law on Investment of the Kingdom of Cambodia and this implementing Sub Decree;

"Cambodian Entity" means any legal entity incorporated and registered at the Ministry of Commerce under the laws of the Kingdom of Cambodia in which more than Fifty One (51 %) percent of the equity capital are directly owned by natural persons or legal entities holding Cambodian citizenship;

"Foreign Entity" means any non Cambodian Entity and which is not incorporated under the laws of the Kingdom of Cambodia;

"Promotion Incentives" mean any special privileges and incentives granted by the Royal Government of Cambodia to an investor pursuant to criterias as set forth in the Law on Investment of the Kingdom of Cambodia and other regulations;

"Investment" means any investment project which has received any privileges and incentives granted by the Royal Government of Cambodia pursuant to investment laws and regulations;

"Schedules" mean the schedules of this Sub-Decree and which are an integral part of this Sub-Decree;

"Capital Goods" mean tangible assets with a useful life of more that one year;

"One Stop Service" refers to the Cambodian Investment Board which provides a mechanism to review, discuss and advise on all the matters pertaining to private sector investments to the Council for the Development of Cambodia.

ARTICLE 2: APPLICATION AND OBJECTIVE OF THE SUB DECREE

- 2.1 **Application:** This Sub-Decree applies to all investments, investment activities and Investment Enterprises approved and promoted by the Council for the Development of Cambodia.
- 2.2 **Purpose:** This Sub-Decree supplements and governs the application and implementation of the Law on Investment and are intended to encourage and regulate investments in the Kingdom of Cambodia by both Cambodian and foreign Investors.

ARTICLE 3: SECTORS FOR INVESTMENT

- 3.1 **Sectors Opened for Investment:** A list of suggested areas for investment and those areas to which investment incentives will not be provided is included in the First Schedule and may be amended from time to time.
- 3.2 **Restriction on Certain Sectors:** The restrictions on investment in certain sectors for reasons of national security, social safety, or economic necessity shall be determined by sub-decree.
- 3.3 **Sectors Prohibited for Investments:** All investment activities whose operations are in contradiction with existing laws currently in force shall be prohibited.
- 3.4 **Existing Investment Enterprise:** For any existing Investment Enterprises whose activities became subject to certain restrictions as set forth in the above mentioned Article 3.2, the Royal Government shall establish a commission to assess the extent of the loss incurred as the result of the imposition of such restrictions. The composition of the commission shall be comprised of representatives of the Royal Government and investors concerned, The fair value of the compensation shall be determined by two independent appraisers, Each party shall appoint an appraiser and the fair price shall be the average of the prices determined by such appraisers. Where the difference of the amounts determined by the appraisers exceeds 15% of the greater amount, a third independent appraiser shall be appointed by the two independent appraisers to determine the fair price as between the two assessed prices. The decision of the commission shall be binding on the Investor and not subject to review.

ARTICLE 4: ELIGIBLE INVESTORS

- 4.1 **Foreign Investment:** The Royal Government welcomes investment in all economic sectors from foreign nationals save for where particular activities are specifically restricted by laws, regulations, notifications or sub-decrees.
- 4.2 **Use of Nominees:** No individual or legal entity controlled by Cambodian citizens shall act for or represent, either directly or indirectly, a foreign controlled entity for the purposes of avoiding the effects of the provisions of this Sub-Decree and enabling any foreign controlled entity or foreign national to circumvent or avoid the effects of any restriction or prohibition on the activities of foreign controlled entities or foreign persons.

CHAPTER 2: INVESTMENT APPLICATION AND APPROVAL

ARTICLE 5: INVESTMENT APPLICATIONS

- 5.1 **Prior Approval from the Council:** In accordance with Article 3 of the Law on Investment and Article 2 of this Sub-Decree, all investors wishing to obtain privileges and incentives for their investment shall be required to apply for prior approval of the Council.
- 5.2 **Existing Investment Enterprises:** Any investment enterprise which has been established prior to the entry into force of this Sub-Decree, regardless of whether or not it has already commenced commercial operations in the Kingdom and which wishes to obtain the investment incentives granted pursuant to this Sub-Decree, must file an application with the Council. This filing is made only for the purpose of applying for investment incentives.
- 5.3 **Application Submission:** Duly completed Applications shall be signed and submitted by the Applicant or by a representative of the Applicant authorized pursuant to a duly notarized power of attorney executed in favor of the representative and submitted to the Council for review and consideration. A certified copy of any power of attorney shall be produced at the time of submission of the Application.

ARTICLE 6: REQUIREMENTS FOR APPLICATION

- 6.1 **Application Documents:** A completed Application shall comprise one set of the following documents:
- (a) A completed Application, in the form prescribed by the Council and signed by a duly authorized representative of the Applicant whose power of attorney shall be attached;
 - (b) A letter stating the intention of the Applicant to invest in the Kingdom with a brief summary of the investors, the investment project, their objectives and any requests made to the Council regarding the investment project;
 - (c) The constituent documents of the proposed Investment Enterprise such as the Memorandum of Association and Articles of Association in accordance with existing laws of the Kingdom of Cambodia;
 - (d) A detailed study of the economic and technical feasibility of the Investment Enterprise including an outline of the manufacturing flow process;
 - (e) Such other information as the Council may from time to time require regarding the proposed investment.
 - (h) Details of the qualifications of the Applicant including
 - (i) Technical capacity;
 - (ii) Marketing capacity;
 - (iii) Human resources and managerial capacity; and
 - (iv) Financial capacity.
- 6.2 **Application Fee:** After the Application for investment has been duly complied with by the Investor pursuant to the above mentioned Article 6.1, the Council shall issue a receipt within 24 hours to acknowledge payment of the Application fee. Investor shall pay the Application fee according to the following schedules:
- A. For investment project less or equal to US\$ 1,000,000:
 - One Hundred (US\$ 100) US Dollars at the time of application
 - Five Hundreds (US\$ 500) US Dollars upon investment approval.
 - B. For investment project exceeding US\$ 1,000,000:
 - Two Hundred (US\$ 200) US Dollars at the time of application;
 - One Thousand (US\$ 1,000) US Dollars upon investment approval.

These fees shall be considered as state revenues,

- 6.3 **Feasibility Study:** The feasibility study shall address the following main points:
- (a) Proposed market for the products of the Investment Enterprise;
 - (b) Perceived demand, pricing techniques and competition for the products of the Investment Enterprise;
 - (c) Proposed techniques for manufacturing and production including the use of domestic or imported raw materials;
 - (d) Proposed import and export ratios;
 - (e) Proposed employment ratios for Cambodian and foreign nationals;
 - (f) Financial and technical analysis of the project including the cost of production and proposed retail pricing;
 - (g) Proposed earnings in local and foreign currency and ability to satisfy foreign exchange needs;
 - (h) An environmental impact study including detailed plans for the treatment and disposal of all waste; and

- (i) Proposed human resources development plan.
- 6.4 **Request for Additional Information:** The Council may at any time before approval of an Investment Enterprise request additional information from any of the Investors of the proposed Investment Enterprise within Fifteen (15) business days. Such information shall be provided to the Council within Fifteen (15) business days of the Council's request.
- 6.5 **Completed Application:** An Application shall be regarded as complete when all required documents have been submitted and all requested information has been provided to the Council. Notification of any change in the name or address or both must be submitted to the Council with Ten (10) business days of such a change. Failure to make such notification will, without prejudice to any other action taken by the council, be grounds for an automatic rejection of the application.

ARTICLE 7: COMPLETE OR PARTIAL APPROVAL OR REVOCATION BY THE COUNCIL

7.1 Approval Period:

- a. The Council shall notify its decision to approve or reject the Application within Forty Five (45) business days from the date of receipt by the Council of a complete Application as per the Flow Chart of the Investment project attached in the schedule.
- b. The Investment Enterprise shall maintain a deposit in the according of the Council in the National Bank of Cambodia according to the following terms:
 - 2% of the total investment fund which is less than or equal to US\$ 1,000,000;
 - 1.9 76 of the total investment fund which exceeds US\$ 1,000,000 but is less than or equal to US\$ 10,000,000;
 - 1.8 96 of the total investment fund which exceeds US\$ 10,000,000 but is less than or equal to US\$ 20,000,000;
 - 1.7 76 of the total investment fund which exceeds US\$ 20,000,000 but is less than or equal to US\$ 30,000,000;
 - 1.6 % of the total investment fund which exceeds US\$ 30,000,000 but is less than or equal to US\$ 40,000,000;
 - 1.5 % of the total investment fund which exceeds US\$ 40,000,000.

This deposit shall be returned back to the Investor upon 30% implementation of the Investment Enterprise.

- 7.2 **Amendment or Modification of Application:** The Council may require Applicants to amend or modify any Application, and any document constituting a part thereof, and to resubmit the Application to the Council following such amendment or modification within Fifteen (15) business days, The Council will not consider applications which fail to meet the required amendments or modifications.
- 7.3 **Approval or Rejection:** Approval of an Application shall be notified in writing by the Council by the issue of an Investment License to the Applicant, Rejection of an Application shall be notified in writing by the Council with justification of the reason for such rejection.
- 7.4 **Revocation of Privileges and Incentives and Forfeiture of Deposit:** The Council reserves the right to revoke partially or wholly privileges and incentives if, among other things, one or more of the following conditions are not met:
 - (a) The project is not implemented in accordance with the schedule stated in the Application and in no case shall commencement occur more than Six (6) months after the issue of the investment license;
 - (b) The paid-up capital requirement of 25% as stated in the Investment Application or an equivalent sum of capital assets is not paid within Thirty (30) days from the day of approval;
 - (c) The total authorized capital has not been paid up within Three (3) years after the date of incorporation of the Investment Enterprise;
 - (d) The deposit fund as stipulated in Article 7.1 (b) shall automatically revert to state properties if the Investment Enterprise has not commenced within Six (6) months after the issue of the investment license;
 - (e) The Investment Enterprise fails to notify the Council within Ten (10) business days of any change in the name or address;
 - (f) The Investment Enterprise fails to request permission from the Council of its change of investment activities;
 - (g) The Investment Enterprise has merged or transferred ownership; or
 - (h) There is a request for revocation by a competent government institution for serious violations of existing laws.

- 7.5 **Notice of Revocation or Cancellation:** The Council shall notify the Applicant in writing of its decision to revoke or cancel partially or wholly privileges and incentives.
- 7.6 **Procedures for Revocation of Privileges and Incentives:** If the Applicant fails to respond within Thirty (30) days to the Council after receiving the Revocation or Cancellation Notification of privileges and incentives, the Council shall proceed to do the following:
- Send another reminder notice (15 days)
 - Send a warning letter (15 days)
 - Suspend the privileges and incentives for Sixty (60) days
 - Revoke definitively the privileges and incentives.
- 7.7 **Appeals:** The Investment Enterprise can file an appeal to the Council within Twenty Five (25) business days after receipt of the notification to revoke or cancel partially or wholly the privileges and incentives.

CHAPTER 3: TRANSFER OF SHARES

ARTICLE 8: RESTRICTIONS ON TRANSFERS

- 8.1 **Transfer Details:** Each Application for transfer of shares shall clearly detail the identities and nationalities of each party involved in the Investment Enterprise. Where an Applicant is not a natural person, the Application shall clearly identify the ownership structure of such Applicant with sufficient detail to enable the Council to identify the shareholders or other parties involved. The Application shall indicate, among other things, the relative ownership interests of each party in the Investment Enterprise.
- 8.2 **Transfer of Shares:** Each Investor has the right to transfer their shares in the Investment Enterprise to other Investors in that Investment Enterprise. If the other Investors do not wish to purchase these shares, the transferring Investor shall have the right to transfer the shares to a third party. The transferring Investor shall obtain prior written approval from the Council at least Thirty (30) days prior to the proposed transfer.
- 8.3 **Prohibition on Transfer of Shares:** Investment Enterprises which are Foreign Entities shall not, by any direct or indirect means whatsoever, own or hold any ownership interest in land, Investors in a Cambodian Entity which legally owns land in the Kingdom shall be prohibited from transferring their shares in the Cambodian Entity if the effect of the transfer would cause the Investment Enterprise to be a Foreign Entity, A Cambodian national or a Cambodian Entity which legally owns land in the Kingdom shall be prohibited from registering any transfer of shares which would cause the Investment Enterprise to become a Foreign Controlled Entity.

CHAPTER 4

PART I: FORMS OF INVESTMENT

ARTICLE 9: FORMS OF INVESTMENT PERMITTED

The legal forms of investment permitted shall include the following:

- Wholly owned domestic capital (100 percent)
- Wholly owned foreign capital (100 percent)
- Joint Ventures
- Built-Operate-Transfer (B.O.T)
- Business Cooperation Contract (B.C.C)
- Other forms of investment as authorized by law.

PART II: JOINT VENTURES

ARTICLE 10: FORMATION OF JOINT VENTURE

The proposed Investment Enterprise may be in the form of an incorporated joint venture. A joint venture may be formed between Investors of any nationality and may include a joint venture with the Government. Irrespective of the nationality of the shareholders of a joint venture, there shall be no limit on the permitted share holding proportions of each shareholder unless the joint venture owns or intends to own land, or holds or intends to hold an interest in land in the Kingdom, in which case the foreign shareholding in the joint venture shall not exceed Forty Nine (49%) percent.

ARTICLE 11: CONTRIBUTIONS TO JOINT VENTURE

- 11.1 **Contributions in Kind:** The capital value of any asset contributed to the joint venture shall be calculated on the basis of the market value of the asset. Where the Council in its absolute discretion determines that the value of the asset to be contributed by any party is more than the assessed market value, the Council has the right to use the assessed market value as the value of the contribution for the purpose of its assessment of the Application.
- 11.2 **Property:** Any plant, machinery or equipment that an Investor wishes to contribute to the joint venture or which the joint venture proposes to purchase shall be in good condition and shall comply with recognized safety standards applicable to that type of plant, machinery or equipment. The investor shall be fully responsible for compliance with those safety standards.
- 11.3 **Land:** A Cambodian Investor may contribute land to the capital of a joint venture, The value of the land for the purpose of determining the capital contribution to the joint venture by the Cambodian Investor shall be agreed by the parties to the joint venture.

PART III: OTHER FORMS OF INVESTMENT ENTERPRISE

ARTICLE 12: FORMS OF AGREEMENT

- A. **Business Cooperation Contract (BCC):** This is an agreement between the investor in Cambodia and a State entity in Cambodia for the purpose of undertaking activities of production and business in Cambodia and to share between themselves the profits resulting from their activities without creating in itself a separate legal entity. Trade or barter agreements are expressly excluded from the scope of the abovementioned business cooperation contracts.
- B. **Built-Operate-Transfer (BOT):** This form of investment shall be prescribed in detail in the Sub-Decree on Build Operate Transfer (BOT).

CHAPTER 5: FOREIGN CURRENCY

ARTICLE 13: BANK ACCOUNTS

- 13.1 **Opening Bank Account:** On receipt of an investment license, an Investment Enterprise must open a bank account in the Kingdom at a bank recognized by the National Bank of Cambodia.
- 13.2 **Payments:** An Investor must make all payments in relation to the Investment Enterprise through the bank account opened in accordance with Article 13.

ARTICLE 14. LOANS

Debt/Equity Ratio: An Investment Enterprise shall not borrow an amount or amounts which will cumulatively exceed an amount equal to three times the capital of the Investment Enterprise except for priority projects as determined by the Royal Government.

ARTICLE 15. REPATRIATION OF FOREIGN EARNINGS

The repatriation of foreign earnings shall be done according to the Law on Foreign Exchange as promulgated by Kram No. Chor Sar/Ro Kar Mo/0897/03 dated August 22, 1997 as well as other regulations issued by the National Bank of Cambodia. These transfers shall include but are not limited to: Foreign Controlled Entities which may use income denominated in foreign currency and deposited at the bank pursuant to Article 13 for the purposes of:

- (a) Payments for imported goods and services and repayment of loans including interests and principals made by foreign banks or institutions;
- (b) Royalties and management fees.
- (c) Profits after discharge of obligations due and payment of all relevant taxes and royalties.
- (d) Remittance of capital of the Investment Enterprise out of the Kingdom pursuant to the investment plan of the Investment Enterprise; and
- (e) Other savings after payment of salaries

CHAPTER 6: REAL PROPERTY

ARTICLE 16: OWNERSHIP

- 16.1 **Ownership:** Ownership of land, for the purpose of investment by a Cambodian national or a Cambodian legal entity, shall comply with the Land Law of the Kingdom of Cambodia as promulgated by Kret No. 100 Kr. Dated October 13, 1992.

- 16.2 **Registration of Ownership:** The investor shall comply with all the formalities of land ownership registration at the Land Title Department of the locality.
- 16.3 **Ownership Restriction:** In accordance with the Constitution of the Kingdom, foreign nationals and foreign entities shall not own or hold an interest in land in the Kingdom.

ARTICLE 17: USE OF THE LAND:

- 17.1 **Cambodian Entities:** Aside from ownership, Cambodian investors can benefit from other existing forms of land use such as concession, lease, loan, transfer, grant, etc.
- 17.2 **Foreign Entities:** Use of land shall be permitted to investors, including long-term leases of up to a period of 70 years, renewable upon request. Such use may include the right of ownership of real and personal property situated on the land as may be permitted by law.
- 17.3 **Lease of the Land:** Foreign nationals and foreign entities shall be allowed to lease land in the Kingdom of Cambodia provided their lease agreements are duly notarized by the competent authority, specify the terms and conditions, the agreed fair market value of the lease payment and the specific lease period.

Nationals and legal entities which have entered into a land lease agreement from the State shall have the right to sublease to a third party, whether a natural or juridical entity, provided there is prior consent from the competent government authority and after the expiry of three (3) years period counting from the date the initial lease agreement was signed. The three (3) year period shall not apply for special cases.

CHAPTER 7: TAXATION

ARTICLE 18: GENERAL PRINCIPLES

- 18.1 **Liability to Taxes:** Investment Enterprises shall be liable to and shall comply with the provisions of the Financial Law and the Law on Taxation. The tax rate for the profit tax for the exploration, exploitation, and primary processing of natural resources such as timber, oil, natural gas, ore, gold, and precious stones, shall be determined according to paragraph 2 of article 20 of the Law on Taxation. Investment Enterprises may be granted tax concessions as specified in the Third Schedule.
- 18.2 **Limitations:** The privilege of a full or partial exemption from taxes and customs duties granted by the Council will apply to the payment of any liability for the Tax on Profits and the payment of customs duties and certain taxes imposed on imports as provided in this Sub-Decree. These exemptions do not include the following:
- (a) The liability of the employees of an investment enterprise or the obligation and liability of the investment enterprise to the provisions of the Tax on Salary;
 - (b) Liability for the tax on turnover, the tax on specific merchandise and services other than those paid at the time of import, or any other taxes, other than the tax on profit and customs duties, as specified in the respective laws of the Kingdom of Cambodia;

The investment enterprise can not use the 9% income tax rate for the tax on profit or the provision for the five (5) year carry forward of losses originating prior to 1 January 1997 unless the allowance for such a rate or carry forward is stated in a document of approval issued by the Council.

- 18.3 **Starting Year and Rules for the 5 Year Loss Carry forward:** The deduction of a loss resulting from the use of the 5 year loss carry forward provision of article 14(2) of the Law on Investment shall be determined according to the rules of article 17 of the Law on Taxation.

ARTICLE 19: TAX ON PROFIT

- 19.1 **Starting Year for Exemption from the Tax on Profits:** The exemption from the payment of the tax on profit as provided in article 14(2) of the Law on Investment shall be from the year in which the investment enterprise first derives a taxable profit without regard to the carry forward provisions of the tax on profits or the Law on Investment. All other provisions of the tax on profits will be used for the determination of taxable profit.
- 19.2 **Determination of the Tax Exemption Period:** The conditions of the matrix of coefficients must be met by the end of the second year of commercial operations of the investment enterprise and must be maintained throughout the remaining period of the tax exemption. The Council may reduce or increase the length of the exemption from the Tax on Profits not to exceed Eight (8) years if conditions used to determine the project coefficient change.

- 19.3 **Prepayment of the Tax on Profit for Investment Enterprises:** The prepayment of the tax on profit as stated in article 31 of the Law Amending the Finance Act of 1995 on turnover earned prior to 1 January 1997 and article 28 of the Law on Taxation on turnover earned after 31 December 1996 applies to all investment enterprises granted the investment incentive of a 9% rate for the tax on profit as provided in article 14(1) of the Law on Investment. The prepayment of the tax on profit does not apply to an investment enterprise granted an exemption from the tax on profit as provided in article 14(2) of the Law on Investment.
- 19.4 **Reinvestment of Profit:** As provided in article 14(2) of the Law on Investment, where an investment enterprise is liable to the tax on profit for a tax year, the amount of positive taxable profit for that year may be reduced by the amount invested in plant and equipment used to increase the productive capacity of the investment enterprise in that year only. The amount by which the taxable profit may be reduced cannot exceed the amount of taxable profit before the reduction. For depreciation, the depreciable basis of the asset so acquired is the value of the asset minus the amount by which the taxable profit was reduced.
- 19.5 **Distributions of Profit:** A profit distribution is any distribution defined in paragraph 8 of article 3 of the Law on Taxation. Such a distribution shall not be taxable under article 26 of the Law on Taxation but shall be taxable under the conditions provided in article 23 of the same law, which is an advanced payment of the tax on profit.

ARTICLE 20: CUSTOMS DUTIES AND TAXES

- 20.1 **Customs Duty and Taxes Exemption:** The Council can grant customs duties and taxes exemption for materials or goods to be imported according to the type of investment and the types of materials or goods as specified in the Annex 2.
- 20.2 **Diversion or Sale of Capital Goods, Materials and Other Goods Exempt from Customs Duty and Taxes:** Any material or goods other than capital goods imported under customs duty and tax exemption which is not used as part of the project and is later sold or disposed of in any way, will be subject to the immediate payment of customs duty, taxes and associated customs penalties. Any new capital goods or any capital goods used for less than five (5) years imported under a customs duty, tax exemption which is later sold or disposed of in any way, will be subject to the immediate payment of customs duty, taxes and associated customs penalties except for those goods which have been properly depreciated according to the Law on Taxation. For capital goods which have been used for 5 continuous years or more since importation and are later sold or disposed of in any way, customs duty will be applied to the remaining undepreciated value of the capital good using the straight line convention.
- 20.3 **Liquidation or Reorganization of an Investment Enterprise:** If during the first five years of production, the investment enterprise ceases to operate or makes any distribution or transfer of assets resulting from the complete liquidation or reorganization of an investment enterprise, the exemption from taxes and customs duties in this chapter are cancelled and the investment enterprise must pay all customs duties and taxes exempted. If after the first five years of production, the investment enterprise ceases to operate or makes any distribution or transfer of assets resulting from the complete liquidation or reorganization of the investment enterprise, such act will be considered as a diversion of assets under article 20.2 of the Sub-Decree.

ARTICLE 21: EFFECTIVE DATE OF AN EXEMPTION FROM TAX OR DUTIES

The effective date of an exemption from the Tax on Profits or from customs duties will be the date of approval by the Council, but not sooner than the date on which the investment enterprise has been registered with the Tax Department and the Customs Department under the procedures for registration established by these departments and assigned a tax identification number from the Tax Department. The Council must supply all the appropriate documents to the Tax Department and the Customs Department, which shall include:

- (a) A copy of all information supplied by the investor(s) during the application process and all agreements entered into between the investor(s) and the Council; and
- (b) The approval document of the Council including all information relevant to the financial flows of the investment, tax concessions, and a schedule of all goods that have been granted customs duty exemptions.

The Tax Department, within one week after receipt of a properly completed application for registration and other information required by this article, will provide the Council with a tax identification number for the investment enterprise. It is the responsibility of the Council to supply the tax identification number to the investment enterprise and explain the requirements for the use of this number. The provisions of this article also apply to existing investment enterprises.

ARTICLE 22: MINIMUM TAX FOR INVESTMENT ENTERPRISES

The minimum tax, as stated in article 32 of the Law Amending the Finance Act of 1995 on turnover earned prior to 1 January 1997 and as stated in article 24 of the Law on Taxation on turnover earned after 31 December 1996, applies to all investment enterprises whether they have been granted the incentive of a 9% rate for the tax on profit as provided in article 14(1) of the Law on Investment, or an exemption from the tax on profit as provided in article 14(2) of the Law on Investment.

ARTICLE 23: OBLIGATION OF INVESTMENT ENTERPRISES

23.1 **Tax Declaration:** All investment enterprises approved by the Council under the Law on Investment, whether or not they have been granted an exemption for the tax on profit as stated in article 14(2) of the Law on Investment, are required to submit to the Tax Department monthly and annual tax declarations for the tax on profit, the tax on salary, the tax on turnover, the tax on value added, the specific tax on certain merchandise and services, and other taxes beginning from the time the enterprise was granted such approval.

An existing investment enterprise has ninety (90) days after the effective date of this Sub-Decree to be in compliance with the provisions of this chapter, after which the penalties specified in article 24 of this Sub-Decree shall apply.

23.2 **Procedures and Information Requirements Related to the Import of Capital Goods, Materials, and Other Goods:** All capital goods, Materials and other goods imported by an investment enterprise as part of an approved project are subject to all customs clearance formalities. Within 30 days of import the investment enterprise must submit to the Tax Department and the Council certified copies of the customs clearance documents, including the valuation documents for those goods issued by the government appointed agent.

23.3 **Other Information Requirements:** The Council and the investment enterprise will separately provide to the Tax Department and to the Customs Department, on a monthly basis and no later than the fifteenth day of the next month the following:

- (a) Actual investment flows for an approved investment project;
- (b) A schedule of the actual import of goods approved for a investment project;
- (c) A schedule of any remittances abroad of profits or interest payments that are the result of investment project activities;
- (d) A schedule of payments to domestic sources of profits and interest that are the result of investment project activities; and
- (e) Any change in the address of the representative of the investment enterprise and any change in the information related to the initial application to the Council or the application for a tax identification number. All information supplied by the Council or the investment enterprise must contain the tax identification number issued by the Tax Department.

ARTICLE 24: PENALTIES

In the event the Investment Enterprise did not comply with the obligations as stipulated in article 23 of this Sub-Decree, the Investment Enterprise shall receive penalties as specified in the Financial Law and the Law on Taxation. In addition, the non-submission of a tax return and required supporting documents or the failure to supply information to the Tax Department as required by the Law on Taxation will result in a revocation of all tax and duty exemptions granted under the Law on Investment and the immediate payment of all taxes and duties refunded, exempted, and the amount by which the tax on profit has been reduced through the use of the incentive for the rate of the tax on profit as stated in article 14 of the Law on Investment.

CHAPTER 8: EMPLOYMENT

ARTICLE 25: EMPLOYMENT OF FOREIGN NATIONALS

Any Investment Enterprise which wishes to employ any foreign national to work in the Kingdom must comply with all the provisions of the Labor Law and the Law on Immigration.

ARTICLE 26: EMPLOYMENT OF CAMBODIAN CITIZENS

26.1 **Hiring of Cambodian Citizens:** Subject to requirements for specific skills and experience, Investment Enterprises shall give preference to Cambodian citizens in the hiring of employees.

26.2 **Employment Contract:** All employment contracts shall comply with the provisions of the Labor Law.

CHAPTER 9: PROTECTION OF INTELLECTUAL PROPERTY

ARTICLE 27:INTEUECTUAL PROPERTY

- 27.1 **Filing:** An Investor may apply for intellectual property protection by filing a proper application with the competent ministries.
- 27.2 **Compliance with Laws:** All dealings in trademarks, patents, copyright and know-how shall be in compliance with the laws relating to intellectual property.

CHAPTER 10: FINAL PROVISIONS

ARTICLE 28.

The Co-ministers in charge of the Office of the Council of Ministers, the Minister of Economy and Finance, the Council for the Development of Cambodia, all ministers and heads of government institutions concerned shall be responsible for effectively implementing this Sub-Decree.

ARTICLE 29:

This sub-decree shall become effective on the date of its signatures.

FIRST SCHEDULE OF SUB DECREE 88 ANKR.BK ON THE IMPLEMENTATION OF THE LAW ON INVESTMENT OF THE KINGDOM OF CAMBODIA DATED DECEMBER 29,1997

PART A: LIST OF SUGGESTED AREAS OF INVESTMENT

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 Pats & 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 USP

- 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
- 7.2 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 a Three stars classification or higher**
The starts 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.**

PART B: LIST OF AREAS OF INVESTMENT TO WHICH INVESTMENT 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 Parlours 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

SECOND SCHEDULE OF SUB DECREE 88 ANK.BK ON THE IMPLEMENTATION OF THE LAW ON INVESTMENT OF THE KINGDOM OF CAMBODIA DATED DECEMBER 29,1997

CUSTOM DUTY EXEMPTIONS

- A. Types of investment Subject to Customs Duty Exemptions
1. Investment in Export-oriented projects with a minimum of 80 per cent of Production designated for export;
 2. Projects located in a Special Promotion Zone;
 3. Tourism industry Projects;
 4. Projects in labor intensive industries, Processing industries and agro-industries; and
 5. Physical infrastructure and energy Projects.

In the case of projects within (3), (4) and (5) above, the exemption from customs duties shall relate only to the construction of building and factories and the first year of operation.

- B. Types of Goods Subject to Customs Duty Exemption
1. Construction materials for the project;
 2. Machinery used directly in the production process;
 3. Other equipment used directly in the project other than administrative equipment, transportation and distribution equipment;
 4. Spare parts for the machinery and equipment referred to in (2) and (3)
 5. Raw materials and intermediate goods used directly in the production process.
 6. Packaging equipment.
- C. Types of export goods entitled to 100% Export Tax Exemptions
Finished products

THIRD SCHEDULE OF SUB DECREE 88 ANKR.BK ON THE IMPLEMENTATION OF THE LAW ON INVESTMENT OF THE KINGDOM OF CAMBODIA DATED DECEMBER 29,1997

CRITERIA MATRIX FOR INCENTIVES

To each criteria corresponds a scale of values which values can be an amount, a number or a percentage.

To each value corresponds a coefficient. The total of the coefficients is used for determining where it is located in the tax holiday scale in order to obtain the corresponding number of tax holiday years.

Often the value which is taken into account does not correspond exactly to those stated in the scale. In this case the calculation is made by an interpolation method by taking the nearest figure. If the figure is close to the upper figure of the bracket the next following bracket is applied with the corresponding number of tax holiday years.

ECONOMIC CRITERIA:

Location: In order to promote disadvantaged areas, Cambodia is divided into 4 zones:

- Zone 1: Phnom Penh, Kandal, Siem Reap and Sihanoukville
- Zone 2: Kampong Chain, Kampong Chhnang, Kampong Speu, Kampot, Prey Veng, Svay Rieng and Takeo
- Zone 3: Battambang,, Kampong Thom and Pursat
- Zone 4: Banteay Mean Chey, Kratie, Koh Kong, Mundul Kiri, Preah Vihear, Ratanak Kiri and Steung Treng

A Province located in a higher -figure zone is considered as more disadvantaged than one located in a smaller figure zone.

Investment Amount: Shows the cost of investment (in million USD) capitalized as fixed assets such as land improvement, construction fittings and fixtures, machinery and equipment, furniture, and office equipment.

Head Count/Employment: This criterion is expressed as the number of Cambodians employed at full production.

Export: This criterion is expressed in percentage by the ratio of Production exported/Total Production (in term of quantity or volume).

Value Added: This is determined as being the value of production less intermediate consumption. Intermediate consumption includes all outside purchases of goods and services used by the Investment Enterprise for its current professional activities: raw materials, semi-finished goods, finished goods, supplies, utilities, telephone and telegraph, rentals (land, building and equipment lease) transportation, advertising and promotion, sales commissions, various fees and all other outside services, etc.)

Use of Local Resources: This criterion is expressed in percentage by the ratio of Purchase of local resources / Total purchases.

Training & Human Resources Development: It is expressed by the ratio of man/days of training for Cambodian staff divided by the number of days of training. Man/days of management level staff members are accounted by a factor of two.

SOCIAL CRITERIA:

Employment of women: in percentage of manpower

Employment of disabled: in percentage of manpower