**What Type of Entity Should We Use to Set Up Our Business?**

A prospective investor in Cambodia will need to consider what is the appropriate legal entity for its business in Cambodia. Legal entities typically established by investors desiring to conduct business in Cambodia include private limited companies, branches and representative offices. When choosing the entity that is appropriate for your business, you should consider a number of factors including:

*i. Capital requirements;*

*ii. The intended business activities to be pursued;*

*iii. Liability issues; and*

*iv. Tax treatment.*

Private Limited Company

The most common legal entity utilized by foreign investors in Cambodia is a private limited company (“company”).

Branch

In many ways, the branch structure is very similar to that of the private limited company. Both are allowed to earn income in Cambodia, and similar tax rules apply to both. Moreover, the rules governing the activities of a branch are the same as the rules governing the activities of a foreign-held private limited company.

Representative Office

The representative office structure is very different from those of the branch office and private limited company. Unlike a branch or private limited company, representative offices are not allowed to earn income. Just as with a branch, representative offices merely serve as extensions of their parent companies overseas. They are not stand-alone legal entities. They are also strictly regulated to perform specific functions designated by statute on behalf of their parent companies overseas.

Capital Requirement

The minimum registered share capital of a company is KHR 4,000,000 (approximately US$1,000) and the registered share capital must be stated in the company’s articles of incorporation.

 “*There is no capital requirement for branches and representative offices.*”

**Registration and Official Fees**

A company, branch and representative office will, also, be required to obtain a Patent Tax Certificate (which is a basic business license) as part of the registration process with the General Department of Taxation (“GDT”). However, only a company and a branch will receive a VAT (Value Added Tax) Certificate as part of the registration process with the GDT.

**What are the Legal Issues Associated with the Start-up of a Company?**

The procedure to incorporate and register a company, branch or representative office follows the same two steps:

1. registration with the Ministry of Commerce (“MOC”), and
2. registration with the General Department of Taxation (“GDT”). After registration with the GDT, a company can apply for any other required licenses with regards to its activities.

However, for companies and branches engaging in certain activities, such as banking, insurance and mining, the company or branch would be required to obtain a license or at least an in-principle approval before it registers with the MOC.

1. Company Name

Companies, branches and representative offices are required to display its name in the Khmer language. The Khmer name shall be placed above and shall be larger than the name in another language. The translation of the company’s name from one language to another language is prohibited since the Khmer name must sound phonetically the same as the name in the other language. A company shall display the Khmer name on all seals, signs, letterheads, and forms and documents used for public purposes, and on all public advertisements displayed in Cambodia. Note that compliance with the above requirements may not be enforced by authorities regularly.

2. Articles of Incorporation

the AOI also generally include the frequency with which directors’ and shareholders’ meetings take place, what constitutes a quorum at meetings, notice requirements for meetings, the numbers required to pass a resolution at a meeting, etc.

 Although the MOC has a template for the AOI, investors may, subject to the negotiation with and the approval by officers of the MOC, amend the AOI within legal limits.

 The MOC does not generally recognize the difference between authorized capital, registered capital and paid-up capital and thus will expect that the authorized, registered and paid-up capital be expressed as the same amount.

Under current practices, for the address of any persons stated in the AOI, such as shareholders, corporate representatives of corporate shareholders, or directors, should be the country of the nationality of that person.

3. Company Address

The use of a virtual office, where the company does not actually have a functioning office, but is provided a registered office address, is not expressly prohibited but is discouraged. Accordingly, if the rent stated is less than US$100 per month, the GDT will not typically approve the registration.

4. Minimum Capital and Registered Capital

The minimum registered share capital of a company is KHR 4,000,000 (approximately US$1,000) and the registered share capital must be stated in the company’s AOI.

*“As part of the incorporation process with the MOC, the applicant will be required to procure from a bank in Cambodia a letter to confirm its opening of a bank account in Cambodia (the GDT does not require a minimum amount to be deposited at a bank; however, such requirement may depend on each bank’s policy). In current practice, the bank will require that all directors of the company be physically present in Cambodia before the bank official will open the account.”*

 5. Directors

 *“A company must have at least one director and the company’s initial director(s) must be stated in the AOI. The director may be either a Cambodian citizen or a foreigner.”*

 As part of the registration process with the GDT, the chairman of the board of the company must personally visit the GDT within 15 working days of incorporating the company with the MOC for the purpose of being photographed and providing fingerprints. As part of the GDT registration application, the chairman of the board must provide a residency letter to evidence that he/she resides in Cambodia or at his/her current country of residence.

 Directors have legal obligations and substantial liability associated with the actions of the company, including owing the company a duty of care. Therefore, a person should carefully consider these obligations and liabilities before agreeing to serve as a director of a company.

6. Auditor and Company Secretary

 The shareholders of a company are required to appoint an auditor by an ordinary resolution at the first annual general meeting of shareholders and at each succeeding annual general meeting; however, a company will be exempt from this requirement if the company has not issued any securities to the public or does not have any outstanding securities held by more than one person. In such a case, the shareholders of the company may adopt a resolution not to appoint an auditor. There is no strict requirement to appoint a corporate secretary; however, certain actions require the participation of a corporate secretary, such as keeping minutes of all board meetings.

7. Bank Accounts

After incorporating the company with the MOC, but before registering the company with the GDT, the company must open a corporate bank account in Cambodia and obtain a letter from the bank confirming the details of the account. The requirements to open an account vary from bank to bank; however, for a corporate account, most banks will require a copy of the company’s AOI, certificate of incorporation, MOC letter of approval, as well as various information about the account signatories.

8. Taxes in Arrears

 As part of the GDT registration, the officers of the GDT will determine whether the chairman of the board of directors, the shareholders or any representative of the new company have any taxes in arrears. If so, the GDT may delay or refuse to register the company with the GDT until such taxes have been paid. Therefore, to avoid delays, investors should ensure none of the foregoing persons have any taxes in arrears before incorporating a company.

9. Timing

From the time that a complete application is submitted to the MOC, the MOC typically requires between one to two weeks to incorporate a company.

*“Within 15 days of registering with the MOC, the company is required to (a) arrange for the chairman of the board to personally visit the GDT for the purpose of being photographed and fingerprinted, (b) pay all fees and taxes for the GDT registration, and (c) submit all GDT application materials.”*

10. Public Access to Company Details

For companies incorporated after March 2005, the MOC maintains an online database in Khmer and in English that contains the following information about a company:

1. Form of the company;
2. Address of the head office;
3. Business objectives;
4. Term of the company;
5. Name of the chairman;
6. Current address of the chairman;
7. Agent of registration;
8. Shareholder names and details; and
9. Director names and details.

*“Please note that the information on the online database may not be regularly maintained and may not be up to date.”*

**What are the Legal Issues Associated with Operating as a Foreign-Held Company?**

 In Cambodia, there are no special corporate structures for foreign companies and there is no special investment regime for foreign companies as both foreign and domestic investors are subject to the same commercial laws and investment laws. Further, there are no restrictions on the business activities of companies established by foreign investors and companies established by foreigners and by Cambodians are subject to the same licensing requirements.

**What is the Process to Obtain a Work Permit?**

All foreigners working in Cambodia are required to obtain a work permit and an employment card (collectively, a “Work Permit”) from either the Ministry of Labour and Vocational Training (“MLVT”) or Municipal/Provincial Department of Labour and Vocational Training (“DLVT”) based upon the category of the enterprise as defined as follows.

1. Garment, textile, and footwear for exportation;
2. Industry;
3. Company who recruits for workers to work abroad;
4. Non-Governmental Organization;
5. Construction Company;
6. Hotels;
7. Banks;
8. Aviation;
9. Navigation.

Apart from the above sectors, all other enterprises and establishments must register with the DLVT where its registered address is located through One Window Service Office of the concerned provincial office.

1. Employer Requirements

Only an employer registered with the MLVT/DLVT may apply for a Work Permit on behalf of its employees. Therefore, independent contractors and freelancers are unable to apply for a Work Permit unless they incorporate a company or establish a sole proprietorship and register with the MLVT/DLVT.

2. Employee Requirements

 In order to obtain a Work Permit, a foreigner must possess a Category E (business) or Permanent Residence Permit (E Visa). The E Visa may generally be obtained at the airport, upon arrival to Cambodia, or may be received in advance, either in person or by mail, through a Royal Embassy of Cambodia’s Consular Section. Note that it is important for applicants to confirm the specific visa requirements for their nationality with the Royal Embassy of Cambodia before entering Cambodia.

3. Application Process

Obtaining a work permit for a foreign employee is a two-step process. The first step is applying for quota approval (see below) to hire the foreign employee (this approval is required regardless of whether the company is below its quota threshold for foreign employees or not). The second step is applying for the foreign employees Work Permit.

**What Incentives Are Available to Foreign Investors by the Government?**

Under Cambodia’s law, qualifying investors may receive a package of investment incentives upon registering a Qualified Investment Project (“QIP”) with the Council for the Development of Cambodia (“CDC”) or a Provincial Municipal Investment Subcommittee (“PMIS”). Qualifying projects may be registered as a QIP and may be eligible to receive incentives so long as those investments are not designated on the negative list as discussed in this chapter.

Incentives Available

 Investors granted a QIP may select one or more of the following tax incentives depending upon the nature of the project.

1. Profit Tax Exemptions

Investors with qualifying QIPs may select a profit tax exemption and receive a tax exemption for up to 3 years.

2. Special Depreciation Allowances

 If a QIP investor does not select a profit tax exemption, the investor may instead select a special depreciation allowance for the QIP. The special depreciation allowance entitles the QIP to deduct an amount equal to 40% of the capital value of new/used tangible property (movable and immovable), which is used in production or processing for a QIP in the first year of the purchase of the tangible property or the first year of using the tangible property.

3. Import Duty Exemptions

Example:

|  |  |
| --- | --- |
| **Type of QIP** | **Exemptions** |
| Domestic-oriented QIP | * Production equipment (i.e., any machinery/tools used in the substantial transformation of production inputs, including IT equipment or any motor vehicle)
* Construction materials (i.e. construction items including fixtures in a facility that are fully transformed or utilized in the construction of facilities to be used by the QIP to carry out its investment activities)
* Production inputs (i.e. goods including raw materials, semi-finished products and accessories serving production that is fully transformed or utilized in the production process of the QIP.  Office equipment, furniture, petroleum products, vehicles and spare parts for vehicles are excluded)

 Production input will only be exempted if the domestic-oriented QIP supplies its products to export-oriented industries or exports its products, and then only to the extent that the production inputs were used to produce those products directly or indirectly exported. |

 4. Export Duty Exemptions

QIPs are entitled to a 100% exemption on export duties unless the QIP involves timber and animal products (including most seafood).

 5. Other Taxes

 Note that the above exemptions are only applicable to profit tax and customs duties. Investors having a QIP are still required to pay other taxes, such as withholding taxes, withholding taxes on dividend payments, additional profit taxes on dividend distributions, taxes on salary income, value added taxes (VAT), specific taxes on goods and services and any other taxes in effect.

 6. Investment Guarantees

 In addition to being provided with investment incentives, investors granted a QIP are provided the following investment guarantees:

1. The foreign investor will not be treated in any discriminatory way due to only being a foreign investor except with respect of ownership of land;
2. No nationalization policies will be implemented which have an adverse effect on private property of investor;
3. There will be no fixing of prices or fees of products or services of the QIP;
4. There will be no prohibition on the remittance of profits, repatriation of invested capital, payment of royalties and managements fees, e

Negative List

The negative list referred to at the beginning of this chapter is organized into three sections. Section 1 of the negative list generally prohibits projects that are illegal or might otherwise be contrary to Cambodia’s interests. Section 2 lists the investment activities that are not eligible for investment incentives, such as restaurants, karaoke parlors, general commercial activity and investments falling below certain investment thresholds, which range from US$200,000 to US$8,000,000. Section 3 lists investment activities that are eligible for custom duties exemptions, but are not eligible for the profit tax exemption.

QIP Registration Procedure

Investors should be aware that in practice the CRC may not list all necessary approvals, authorizations, licenses, permits or registrations for the QIP to be lawfully undertaken as CRC’s may be based on a template that is not customized for each proposed QIP. In the event that a CRC fails to specify a required approval, and such approval is not obtained by the CDC, PMIS or the investor, the investor will be liable. Therefore, it is important that the investor independently verify what approvals are required to carry out the QIP.

**What are the Legal Issues Associated with Foreign Ownership of Land?**

1. Land Ownership by Companies

 Under Cambodian law, foreigners are prohibited from owning land and only a company of Cambodian nationality can own land.

 Applicable law also provides that, for a legal entity or a company to obtain Cambodian nationality, at least 51% or more of shares of such legal entity or company must be owned by Cambodians or Cambodian companies. In this regard, a Cambodian company (i.e., having at least 51% shares owned by Cambodian nationals or entities) is qualified to hold and own land in Cambodia.

 For a legal entity (i.e., a private limited company) to be qualified to own land in Cambodia, the following conditions must be met:

1. At least 51% of the shares (particularly voting shares) are held by natural persons of Cambodian nationality or by Cambodian legal entities recognized pursuant to the laws of Cambodia;
2. Said entity has a place of business and is registered in Cambodia.

2. Leases

There are no prohibitions under Cambodian law on foreigners entering into land leases. Under Cambodia’s Civil Code, the maximum lease term is 50 years, which may be renewed.

3. Condominiums

Although foreigners are not permitted to own land, foreigners are permitted under Cambodian law to own apartments or commercial spaces in “co-owned” buildings subject to the following conditions:

1. the unit is not located on an underground floor or the ground floor;
2. foreign ownership of the private units does not exceed 70% of the total floor space of all private units in a co-owned building;
3. the co-owned building is not located within 30 kilometers of the country’s borders, unless the co-owned building is located in
4. a special economic zone;
5. (ii) important urban areas;
6. other areas determined by the Royal Government; and
7. Building is properly registered with authorities.

4. Land Titles in Cambodia

 In addition to a “hard title,” there is also a class of documents that is generally referred to as “soft title”. Soft title documents are typically not a title document, but are usually in the form of a sale and purchase agreement for the property that is certified by the local authorities (Sangkator Commune) or Khan (District) authority. Soft title documents are recorded only with the Sankgat and Khan and are not recorded or registered with the national, provincial or municipal authorities.

5. Land Taxes

All transfers of hard title property, whether land or private units in co-owned buildings, are subject to a transfer tax of 4%, which is levied on the value of the property.