

LEGAL UPDATE

SUB-DECREE NO.139 ON THE IMPLEMENTATION OF THE LAW ON INVESTMENT OF CAMBODIA



1. OVERVIEW

On 26th June of 2023, the Royal Government of Cambodia issued a Sub-decree No.139 ANK/BK on the Implementation of the Law on Investment of Cambodia (“**Sub-Decree**”). This Sub-Decree is a long-awaited supporting regulation to the new Law on Investment which was promulgated in the late 2021. It consists of 7 chapters and 28 articles which include the details of the investment incentives, investment project registration procedure, the negative list and the priority sectors. This Sub-Decree also provides more comprehensive provisions on investment protection, acquisition, sale or merger of investment project, and nullification of investment project.

This Sub-decree is applicable to the investment project registered with the Council for the Development of Cambodia (“**CDC**”) or the Municipal-Provincial Investment Sub-Committees (“**MPISC**”).

2. INVESTMENT PROJECT

The investment project under this Sub-decree includes:

- **Qualified Investment Project (QIP)** refers to an investment project that has received a registration certificate from the CDC or MPISC.
- **Expanded Qualified Investment Project (EQIP)** refers to 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 telecommunication services, or expansion in any other forms determined by this Sub-Degree.

- **Guaranteed Investment Project (GIP)** refers to an investment project that has registered with the CDC or MPISC, and being clearly mentioned as a GIP which is not eligible for tax incentives.

3. INVESTMENT PROJECT: CONDITIONS, REGISTRATION, AND INSPECTION

3.1. CONDITIONS

QIP: The Application for QIP registration shall satisfy the following conditions:

- The applicant shall be the person carrying out an investment project or the authorized representative;
- The project of the application for QIP registration shall be carried out and has its registered address in Cambodia; and
- The project of the application for QIP registration shall not include any investment activities which are set out in the negative list.



EQIP: The application for EQIP registration shall satisfy the following conditions:

- The applicant shall be the person carrying out an investment project or authorized representative;
- The project of the application for EQIP registration shall be the existing QIP;
- The project of the application for EQIP registration shall not include any acquisition, sale, or combination of other QIPs which had received the tax incentives;
- The project of the application for EQIP registration shall not be a complement of investment capital to the original registered QIP; and
- The project of the application for EQIP registration shall have the expanded capital at least equivalent to the minimum capital set out in the negative list.

GIP: The application for GIP registration shall satisfy the following conditions:

- The applicant shall be the person carrying out an investment project or authorized representative;
- The project of the application for QIP registration shall be carried out and has its registered address in Cambodia;
- The project of the application for GIP shall not be any investment activities which is prohibited by the existing law and regulations of Cambodia;

- The legal entity carried out the investment project shall not be possessed or managed by the citizen other than the citizen of ASEAN member states, the member of investment related treaties or agreements ratified by Cambodia, or any countries with diplomatic relations with Cambodia; and
- The project of the application for GIP registration shall not be the authorized representative of any foreigners whose activity is prohibited in Cambodia or abroad to access the investment opportunities and any other incentives set out in Cambodian Investment Law.

3.2. REGISTRATION PROCEDURE

The applicant for the registration of QIP, EQIP or GIP shall submit the investment project registration application to CDC or MPISC. This application can be submitted through information technology platform.

Upon the receipt of the investment project registration application, the officer in charge shall process the application without delay as per the internal administration rule of CDC or MPISC. The officer in charge is required to issue a letter confirming the receipt of the application for later use to withdraw the registration certificate.

CDC or MPISC shall issue the registration certificate within 20 business days upon the application has fully complied with Cambodian laws and regulations. The application shall be reviewed and decided through one-winder mechanism. The registration certificate shall include the QR code which contains the basic information related to the registration for other official uses.



The registration certificate issued by CDC or MPISC shall not exempted the investment project from others permit, license, approval, or register required by ministries, institutions, municipal-provincial administration, department, and entity with respect to the existing law and regulation.

The investor is required to submit the written request for the approval from CDC or MPISC for any changes related to investment project and the memorandum and articles of association of the investor deposited at CDC or MPISC. The request shall be reviewed as per the existing procedure.



3.3. INSPECTION

The CDC or MPISC has the obligation to inspect the investment project as per the Law on Investment to review the legal compliances and any obligation performances which are the conditions for the receipt of registration certificate. The CDC or MPISC is required to provide a prior notice before such inspection unless any doubt occur which allow the relevance authorities to conduct inspection without prior notice.

The investor has the obligation of report to the CDC or MPISC on a semi-annual and annual basic on tax related issues and the actual performance of the investment project as per the forms and formalities issued by CDC or MPISC. The CDC or MPISC is required to issue the certificate of investment compliance on the basic of the above reports.

4. INVESTMENT INCENTIVES

The investment incentives under this Sub-decree includes the basic incentives and the additional incentives based on the level of technological usage or the priority of Cambodian government.

4.1. BASIC INCENTIVES

The investment project obtained QIP registration certificate is entitled to the basic incentives as follows:

Option 1: The QIP is entitled to the followings:

- Income tax exemption in a specific period based on the group of investment activity list from the time of earning its first income as follows:
 - 09 (nine) years for group 1;
 - 06 (six) years for group 2; and
 - 03 (three) years for group 3.
- Income tax payment at a progressive rate proportional to the total tax due at the expiration of income tax exemption as follows:
 - 25 (twenty-five) percent for the first 02 (two) years;
 - 50 (fifty) percent for the next 02 (two) years; and
 - 75 (seventy-five) percent for the last 02 (two) years.

- Prepayment tax exemption in a specific period based on the group of investment activity list as follows:
 - 09 (nine) years for group 1;
 - 06 (six) years for group 2; and
 - 03 (three) years for group 3.
- Minimum tax exemption provided that an independent audit report has been carried out;
- Export tax exemption, unless otherwise provided in other laws and regulations.

Option 2: The QIP is entitled to the followings:

- Deduction of capital expenditure through special depreciation as stated in the tax regulations in force.
- Eligibility of deducting at the rate of 200 (two hundred) percent on the specific expenses based on the group of investment activity list as follows:
 - 09 (nine) years for group 1;
 - 06 (six) years for group 2; and
 - 03 (three) years for group 3.
- Prepayment tax exemption in a specific period based on the group of investment activity list as follows:
 - 09 (nine) years for group 1;
 - 06 (six) years for group 2;
 - 03 (three) years for group 3.
- Minimum tax exemption provided that an independent audit report has been carried out;
- Export tax exemption, unless otherwise provided in other laws and regulations.

In addition to the incentives in option 1 or option 2:

- **QIP:** is entitled to custom duty, special tax, and value added tax exemption for the import of construction material, construction equipment, and production equipment;
- **Export QIP and supporting industry QIP:** is entitled to custom duty, special tax, and value added tax exemption for the import of production input;
- **Annex 3 of the Sub-Decree:** investment activities in this annex are entitled to custom duty, special tax, and value added tax exemption for the import of construction material, construction equipment, and production equipment other than tax incentive after registered as QIP unless otherwise stated in the law;

- **Annex 4 of the Sub-Decree:** investment activities in this annex are entitled to custom duty, special tax, and value added tax exemption for the import of production input; and
- **Domestically oriented QIP:** may refund or offset the future payment of the custom duty, special tax, and value added tax for the later import of goods in the case that such QIP has declared its tax duties arising from its export or supply to the export QIP.

4.2. ADDITIONAL INCENTIVES

The QIP is entitled to the additional incentive as follows:

- Value-added tax exemption for the purchase of locally made production inputs for the implementation of the QIP;
- Deduction of 150 percent from tax base for the activities which focus on research, development, innovation, or the upgrade of machinery as well as any activities which improve the well-being of the employees/workers;
- QIP is entitled to custom duty, special tax, and value added tax exemption for the import of construction material and construction equipment for the construction of childcare center, first aid room, food courts, free-food canteens, canteens where reasonable price foods are sold for employees/workers of its investment project in its location; and
- New vehicle assembly QIP is entitled to incentive in the form of the deduction of custom duty, special tax, and value added tax for the import of spare parts for vehicle assembly for domestic supply based on the rate and conditions set out in the Sub-Decree.



5. INVESTMENT AFTER-CARE SERVICES

The CDC or MPISC is required to establish investment after-care service mechanism to enhance the effectiveness of investment facilitation to increase confidence and seek for opportunities to address the challenges of the investor in all stages of investment project implementation which will ensure the benefits of all stakeholders, equality of competition, and favorable investment environment. This Sub-Decree sets out 11 (eleven) points of investment after-care services to be carried out by CDC and MPISC.

6. ACQUISITION, SALE, OR MERGER OF INVESTMENT PROJECT

The investment project can continue to receive the investment incentive, investment guarantee and investment protection and continue to perform its obligation as per the Law on Investment and this Sub-Decree after the investment project is acquired, sold or merged unless otherwise prohibited by the laws and regulations or limited by its registration certificate or other concession agreements.

A person who wishes to acquire or sell the investment project is required to submit the written request to CDC or MPISC along with other essential documents set out in the Sub-Decree. An investment project is considered as acquired, sold, or merged upon the receipt of the official approval and certification of the new memorandum and articles of association of the entity to carry out the investment project from CDC or MPISC. The investor who continues to implement the investment project through this acquisition, sale, or merger shall obtain the existing rights and obligations of the investment project.



7. NULLIFICATION OF THE INVESTMENT PROJECT

The investment project may be nullified for any of the following cases:

- Inability to continue to implement the investment project;
- Dissolution of the legal entity implementing the investment project;
- Failure to fulfil the obligations set out in the laws and regulations in force;
- 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;
 - avoid the performance of tax obligations;
 - fail to perform obligations under the registration certificate (except due to force majeure); and
 - lose the rights to use the location.

The investment project is nullified when CDC or MPISC confirms the nullification through a written letter. After the nullification, the investor may transfer the existing property abroad or use in Cambodia as per this Sub-Decree. This nullification does not exempt the investor from tax obligations and other obligations as per the laws and regulations in force.

*If you require any further information or have any questions, please contact **Mr. HOUN Vannak**, managing partner of RHTLaw Cambodia.*

This legal update is a general information only and is not considered as legal advice or opinion.

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