



Private Equity and Institutional Investors: Risks and Opportunities in Cambodia and Lao PDR

IPBA, Manila
March 2018

Introduction to Lao PDR and Cambodia

PE Wishlist

Cambodia:

- General Corporate and Legal Regime
- Tax Regime

Lao PDR:

- General Corporate and Legal Regime
- Tax Regime

Challenges

Q&A

Regional Reach: Southeast Asia and South Asia



Bangladesh (2011)

Partner: 1

Advisers: 12

Cambodia* (1995)

Partners: 6

Advisers: 32

Lao PDR (1994)

Partners: 3

Advisers: 8

Indonesia* (2011)

Mataram Partners

Partners: 2

Advisers: 10

Myanmar (1995)

Partners: 3

Advisers: 15



Philippines* (2015)

Ocampo & Suralvo Law Office

Partners: 4

Advisers: 7

Singapore (2010)

Partner: 1

Adviser: 1

Thailand (2005)

Partners: 6

Advisers: 17

Vietnam (2006)

Partners: 4

Advisers: 10

In Cambodia, DFDL works in commercial cooperation with Sarin & Associates. In Indonesia, DFDL works in association with Mataram Partners. DFDL does not operate or practice law in the Philippines. DFDL collaborates with Philippine law firm, Ocampo & Suralvo Law Offices, which provides local legal advice.

Pioneers in emerging markets



How we can help



DFDL									
BUSINESS UNITS	Bangladesh	Cambodia*	Indonesia*	Lao PDR	Myanmar	Philippines*	Singapore	Thailand	Vietnam
	Dhaka	Phnom Penh	Jakarta	Vientiane	Yangon Naypyidaw	Manila	Singapore	Bangkok, Phuket, Samui	Hanoi Ho Chi Minh City
REGIONAL PRACTICE GROUPS	Banking and Finance								
	Mergers and Acquisitions								
	Employment								
	Energy, Mining and Infrastructure								
	Real Estate and Construction								
	Taxation								
ASIAN DESKS	China Desk			India Desk			Japan Desk		

* DFDL collaborating firms

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Table 1. Real GDP Growth in ASEAN, China and India
Annual percentage change

	2016	2017	2018-22 (average)	2011-15 (average)
ASEAN-5 countries				
Indonesia	5.0	5.0	5.4	5.5
Malaysia	4.2	5.5	4.9	5.3
Philippines	6.9	6.6	6.4	5.9
Thailand	3.2	3.8	3.6	2.9
Viet Nam	6.2	6.3	6.2	5.9
Brunei Darussalam and Singapore				
Brunei Darussalam	-2.5	0.0	0.5	-0.1
Singapore	2.0	3.2	2.3	4.1
CLM countries				
Cambodia	6.9	7.1	7.2	7.2
Lao PDR	7.0	6.9	7.1	7.9
Myanmar	5.9	7.2	7.4	7.3
China and India				
China	6.7	6.8	6.2	7.9
India	7.1	6.6	7.3	6.8
Average of ASEAN-10	4.8	5.1	5.2	5.1
Average of Emerging Asia	6.4	6.4	6.3	7.1

Source: OECD: *Economic Outlook for Southeast Asia, China and India 2018*

Overview: Cambodia



Snapshot:

- Joined ASEAN in 1999 and WTO in 2004
- Population: 15.58 million (World Bank, 2015)
- Market economy (open market system); recently classified as lower-middle-income economy by World Bank
- Civil law country with common law influences
- Cambodian Securities Exchange opened in 2011 (4 listed companies to date)
- GDP: 7.1% (2017e)
- Attracted FDI inflows of over USD1.7 billion in 2016 or 8.5% of GDP
- Key FDI sources: China, South Korea and Vietnam, Malaysia and Thailand
- Top three sectors: Garment and footwear manufacturing, real estate and agriculture

Attractions

- Preferential market access (for e.g. EU's EBA policy & AEC)
- Liberal, few foreign ownership restrictions
- Relatively uncomplicated, swift licensing process
- Favourable tax incentives
- Strategic geographical location
- Competitive, young and energetic workforce

Challenges

- Key laws (slowly) being drafted
- Weak law enforcement
- Transparency
- Human resources & infrastructure constraints
- Expensive business inputs (power) ... but improving

Overview: Lao PDR



Snapshot:

- WTO member: 2013
- Population: 6.91 million
- GDP Growth: 6.9% (2017e)
- Planned economy (Large State)
- Civil/Socialist legal system
- Laos Securities Exchange opened 2011
- Key FDI sources: Vietnam, PRC, Thailand, Australia

Attractions

- Energy powerhouse
- Well tested financing structure & involvement of IFIs
- Relatively complete legal system
- Political stability
- Co-operative government for approvals/exemptions

Challenges

- Small population
- Scarce human resources & infrastructure
- Slow licensing process & enforcement issues
- Large, slow bureaucracy
- Lack of co-ordination among ministries
- Conflicting laws

Investment Targets: Cambodia

- Real Estate
- Tourism
- Manufacturing
- Agriculture
- Infrastructure

Investment Targets: Lao PDR

- Infrastructure
- Hydropower
- Tourism

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Stable Regulatory Environment

- Expropriation
- Permitting and operations

Manageable Tax:

- Tax on Dividends
- Tax on Interest
- Tax on Capital Gain
- Tax Treaty Network

Predictable and stable exit:

- Tax issues
- Government Approvals
- Repatriation of Profits

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Key Laws

- Law on Commercial Enterprise
- Law on Investment
- Business Enterprise Law
- Law on Concessions
- Commercial Registration Law
- Secured Transaction Law
- Land Law
- Law on the management and exploitation of natural resources

Key Regulatory Authorities

- Ministry of Commerce
- Council for Development of Cambodia
- Ministry of Economy and Finance

Cambodia has entered into Investment Treaties with more than 20 countries/territories such as:

- China
- France
- Germany
- Indonesia
- Philippines
- Japan
- Korea
- OPEC countries
- Singapore
- The Netherlands

Standard BIT provisions include:

- Most Favored Nation status clause
- Compensation in the event of nationalization/expropriation
- Dispute resolution

Note: Asean Comprehensive Investment Agreement

Dividends

- No tax on dividends paid to resident individuals and enterprises
- Withholding tax of 14% on dividends paid to non-residents

Interest

- Withholding tax of 14% on interest paid to non-residents
- Withholding tax of 15% on interest paid to residents (no withholding tax if paid to resident banks or financial institutions)

Capital Gains

- Subject to the Tax on Profit

Tax on Profit

- Standard rate: 20% or 1% Minimum Tax, whichever is higher
- 30% for the profit through exploitation of natural resources
- 5 % on gross premiums for insurance companies engaged in the insurance or reinsurance of life
- 0% percent for the profit on businesses registered as a Qualified Investment Project (QIP)

Tax Incentives under the QIP rules

- Special depreciation rate or a tax exemption of up to 6 years
- Loss carry forward for up to 5 years
- Exemption from the prepayment of profits tax during the tax exempt period
- Exemption from the Minimum Tax
- Import Duty exemptions

Tax Treaty Network

- Singapore
- Thailand

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Key Laws

- Enterprise Law
- Investment Promotion Law
- Secured Transactions Law
- Land Law
- Water Resources Law

Key Regulatory Authorities

- Bank of Lao
- Ministry of Planning and Investment
- Ministry of Electricity and Mines
- Ministry of Natural Resources and Environment

Lao PDR has entered into Investment Treaties with more than 20 countries/territories such as:

- Cambodia
- Thailand
- Indonesia
- Russian Federation
- United Kingdom
- Japan
- Korea
- China
- Singapore
- The Netherlands

Standard BIT provisions include:

- Most Favored Nation status clause
- Compensation in the event of nationalization/expropriation
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Note: Asean Comprehensive Investment Agreement

Dividends

- Withholding tax of 10% on dividends paid to residents and non-residents

Interest

- Withholding tax of 10% on interest paid to residents and non-residents

Capital Gains

- Income tax of 10% of the gain (selling price less purchase price) on the sale of shares if the gain can be established; otherwise: 2% on selling price

Tax on Profit and Incentives

- Standard Tax Rate at 24%
- 26% for companies engaged in the manufacturing, import and sale of tobacco products,
- Tax on Profit exemption from 1 to 15 years depending on the activity and zoned areas

Tax Treaty Network

- Belarus
- Brunei
- China
- Indonesia
- Korea
- Luxembourg
- Malaysia
- Myanmar
- Singapore
- Thailand
- Vietnam

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Common Tax-related Issues

- Limited Treaty Network
- Undeveloped system of tax rulings, opinions, precedents
- Technical capabilities of tax auditors need to be upgraded
- Tax and customs rules sometimes risk violating WTO commitments

Legal/Regulatory Challenges: Cambodia

- Uncertainty in the enforcement of agreements through court system – issues related to transparency and capacity of courts
- Inconsistent application of laws

Legal/Regulatory Challenges: Lao PDR

- Uncertainty in the enforcement of agreements through court system – issues related to transparency and capacity of courts
- Inconsistent application of laws
- Loans from foreign shareholder – requires prior approval from Bank of Lao
- Conditions imposed before dividends are paid to foreign shareholders – tax and labor payments fulfilled, capital must be fully paid-up
- Time and Cost in determining applicable rules and compliance with laws may be significant

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Questions?



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