The Legal Framework on Foreign Investment in Cambodia

By

SOKKHON David

THESIS
Submitted to
KDI School of Public Policy and Management
in partial fulfillment of the requirements
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Abstract

The very rapid economic growth of Cambodia, its dramatic success in world export markets and its heavy receives of foreign direct investment (FDI) have generated much thought and debate in policy and business circles in different parts of the world. And in the Second Socio-Economic Development Plan 2001-2005, the Cambodian government regards foreign direct investment (FDI) as a major engine for economic development.

For this reason, the Cambodian government regards foreign direct investment (FDI) as a major engine for economic development. From the viewpoint of the legal framework in Cambodia, laws and regulations governing FDI in Cambodia are basically designed to encourage investments. As the Law on Investment stipulates, FDIs are treated in a non-discriminatory manner except for land-ownership and allowed to invest freely in many areas.

Therefore, in order to attract FDI, the Government of Cambodia is trying to create an institutional and regulatory framework, a stable policy, and real free market oriented system. Moreover, after the political stability and peace were born in 1998 in Cambodia, the government recognized foreign investment is essential and that it, can develop the national economy of this country, and rebuild the infra-structures and human resources which were destroyed by the civil war. In addition, the quality of the protection for foreign investment was still inadequate. Hence, the government has structured the politic of integration into the regional (ASEAN) and the World (WTO) in order to obtain the special assistance, and no doubt, to attract foreign direct investment from those two organizations and to enlarge the market.

The objective of this thesis is to provide a comprehensive exploration of trade policy and specifically, to understand the system of legal framework on foreign investment in Cambodia. The main question of this research thesis is ***whether how can the Cambodian government harmonize the international law and national law in order to attract foreign investment?***

With the proper legal framework, Cambodia will become a very competitive country for foreign direct investment, with a liberal business environment, non-discrimination, low cost and hard working labor force. The government of Cambodia will continue to attract companies from around the world to invest and to do business in Cambodia because FDI has played an important role in rehabilitating Cambodia's economy.

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Chapter I. INTRODUCTION

Foreign Direct Investment (FDI) has played an important rehabilitating role as it helped Cambodia to integrate into the region and the world. In other words, Foreign Direct Investment is one of the driving forces needed countries into closer economic interdependence. FDI flows have increased rapidly in recent years related with the deeper liberalization of national and international investment regimes.

Currently, Cambodian government regards a Foreign Investment as one of the major engines for national economy development and foreign policy for the country. Therefore, from the viewpoint of the legal framework in Cambodia, laws and regulations governing FDI in Cambodia are basically designed to encourage investment.

Foreign direct investment is the acts of private business investing capital in a foreign country in order to produce goods or services. This has contributed to a dense tissue of cross-country economic relations that, called *economic globalization*.

An understanding of Cambodia's recent history is an absolute necessity for any business operating in Cambodia, from a political, human resources and legal point of view. One of the major legal difficulties facing an investor in Cambodia is identifying the applicable law. Since Cambodia's independence from France in 1954, the present legal framework combines laws and principles from the various legal systems implemented over time.

Even though a new, democratically-elected government came into power in 1993, according to Cambodia's constitution 1993, all laws passed by previous governments remained in force to the extent that they did not contradict new laws or are not expressly annulled. In practice, however, the current government's policy is not to apply or enforce

certain provisions of some of these laws on the grounds that they are not compatible with Cambodia's free market economy and other policies.

After Cambodia has achieved political stability in the whole country, the government has prepared strategies for national and international policies. The goals are to repair the economy, to develop the human resource, to open the country for free market economy, to rebuild the infrastructure, and to enlarge the market, all of which are done by the model of using FDI for accession of the country into the region and the world. In the second Socio-Economic Development Plan from 2001-2005, the Cambodian government regarded foreign direct investment (FDI) as a major engine for economic development. Therefore, from the viewpoint of the legal framework in Cambodia, laws and regulations governing FDI in Cambodia are basically designed to encourage investments. As the Law on investment stipulates, FDIs are treated in a non-discriminatory manner except for land-ownership and allowed to invest freely in many areas. Under the current Law on Investment, the investors, who are given Final Registration Certificates, will be entitled to various incentives. Moreover, the Cambodian government has been improving their investment facilitation services. For example, the government decided in 2005 to establish the Cambodian Special Economic Zone Board (The CSEZB) under the Council for the Development of Cambodia (CDC) to promote the special economic zone (SEZ) scheme in Cambodia.

The big success of both Cambodian trade and foreign policy is the "Regional and Globalization Integration of Cambodia" shown through the membership of Cambodia to Association of South East-Asia Nation (ASEAN), on April 30, 1999. This one the advantages to being a member of ASEAN is that investors in Cambodia will gain access

to the markets of other ASEAN countries at lower duty rates. Furthermore, the 35% local content rule for GSP purposes mentioned above will be much easier to satisfy. Provided 35% of the total value of a product comes from one or more ASEAN members, the product can be exported duty-free to Europe and the United States. In addition, on September 11, 2003 in Cancun, Mexico, in the inter-Ministerial conference, Cambodia was approved as a member which was a second success of Cambodia in the international trade policy. This will have wide-raging effects on Cambodia's trading relationships and procedures.

As a result, Cambodia has realized its goals to integrate the country into the region and the world. Later, the attractiveness of foreign investment has increased with high speed and the national and international regulations on foreign investment became a model of harmonization in order to provide as much incentive as possible. For this reason, the economic growth in Cambodia in 2000 and 2001 saw significant improvement over 1997 and 1998 when Cambodia also suffered from the regional economic crisis. Economic growth was 7.0% in 2000, and 5.7% in 2001. Moreover, the economic growth was 7% in 2005, 13% in 2007 and even though the world is currently facing with the financial crisis but the government tries to keep increasing economy at roughly 5% in 2008[1].

Hence, the foreign investment has the potential to play an important role in constructing the infra-structure and in building the economy of developing countries such Cambodia.

Transparency of implementation of trade policy, non-discrimination, and the liberalization of trade are the basic principles of international trade law and the needs of

[1] Council for Development of Cambodia "Economic Climate in Cambodia", Cambodia Legal & Investment Guide, 2008

investors. Thus, Cambodian government has struggled to reform the legal system to combine its domestic laws and international rule on investment in order to attract foreign and domestic investments.

Therefore, noting the prior achievement of Cambodian integration into ASEAN and WTO and attracting Foreign Investment into the country, this thesis will study the question ***how can Cambodian government harmonize domestic law and international law in order to attract foreign investment?***

The aim of this research question is to explore the implementation of the trade policy in the integration of Cambodia into the region and the world. Plus, this paper will examine the investment policy of the Cambodian government which provides the common incentives and facilitates to attract FDI in Cambodia. Therefore, the objective of this paper is to provide a comprehensive analysis of the legal framework on foreign investment in Cambodia.

With the proper legal framework, Cambodia will become a very competitive country for FDI, with a liberal business environment, non-discrimination, low cost and hard working labor force. The Government of Cambodia will continue to attract companies from around the world to invest and to do business in Cambodia.

Chapter II. International Obligations Relating to Foreign Investment in Cambodia

The international obligations are the constraints that Cambodia must respect. Legally the rule of international laws is the area of law which governs the operations of State in the international society. The worldwide organizations are also the organs of international society. Hence, the global law could be also elaborated inside the international organization. *The international organization or international governmental organization is an association of Countries, established by and operated according to multilateral treaty, whose purpose is to pursue the common aims of those Countries. For examples include the World Trade Organization, Organization of Petroleum Exporting Countries*[2] *etc.* There are nowadays many international organizations, but this paper we will only focus on about the World Trade Organization (WTO) and Association of South-East Asian Nation (ASEAN).

The International Obligations relating to the foreign investment in Cambodia are constrained, thus the Cambodia has to respect its own rules within the organization, in the domain of foreign investment, before those of the WTO and ASEAN. Additionally, it is necessary to review the regional and multilateral aspects of regulation on foreign investment in Cambodia.

Section1. The Regional aspect of regulation on Foreign Investment: Accession of Cambodia to ASEAN

In this research paper, the regional regulation is related to the rule of acts which put into practice in domain of foreign investment.

[2] Black's Law Dictionary, Page 822

The legal's aspect of the regulation is related to the concession of Cambodia to ASEAN. Thus, the question should be asked here is after adhesion of Cambodia to ASEAN, in the sector of foreign investment, does Cambodia oblige to respect the specific rules of ASEAN? If yes, what are the rules of ASEAN?

To better answer this above question, it is important to know about the Association of South-east Asia Nation and to recognize the history of Cambodia's adhesion to ASEAN.

With a goal to stand against to the establishment of communist regime, the ASEAN or association of south-east Asia countries was created on August 8, 1967 in Bangkok in Thailand by five original members Indonesia, Thailand, Malaysia, Philippines and Singapore. Brunei Darassalam has become a member in 1984, Vietnam in 1995, Laos and Myanmar in 1997 and Cambodia in 1999. With these new countries, ASEAN now covers all countries of south-east Asia.

In accordance to the declaration of Bangkok in 1967, the declaration of the ministers of foreign affairs in 1971 in Kuala Lumpur (ZOPFAN= Zone of Peace, Freedom and Neutrality Declaration), the treaty of coincidence in Bali and the summit in Indonesia in 2003, ASEAN has two important objectives.

The general objectives of ASEAN is to accelerate of the growth economy, social progress and cultural development in the region by the common efforts and to secure the regional peace and stability by the respect of justice and rules of in the relations between state members, and to respect the principals of charter of United Nation[3]. In other words, ASEAN also aims to promote a collaboration in the mutual affairs of common interest and the affairs of economy, social, cultural, techniques, scientific, administrative and to

[3] www.aseansec.org

supply an mutual assistance by the facilities of training and research in the domains of professional and technical education. The cooperation of ASEAN is effective in terms of productivity or grand utilization of the agriculture and industries in order to improve the level of people's life. Moreover, ASEAN also has the objective to cooperate closely with the international and regional organizations.

Outside of these general objectives, ASEAN has also the aims in specific domains such as in the economy domain; ASEAN has the ambition to create the ASEAN free trade area[4] and to launch the Common Effective Preferential Tariffs[5] in 1992 in the summit of leaders of ASEAN Countries in Singapore. On the other hand, in the political domain; ASEAN has also goals to promote internationals dialogues on the regional security and realize the zone of peace, liberty, neutrality and a zone in south-east Asia exempts nuclear weapon which has mentioned in the declaration of Kuala Lumpur in 1972: Non-Proliferation Nuclear Zone[6]. Finally, in the domain of cooperation, ASEAN has also the objectives to intensify the relation of cooperation, particularly with Australia, Canada, EU, Japan, Republic of Korea, China, New-Zealand, Russia and United-States in order to reinforce the exchanges mechanisms, dialogues and to introduce the other ASEAN plus 3, 5, 7 and 1. Furthermore, by the declaration of Singapore in 1992, ASEAN has sought to safeguard their collective interest.

Since the constitutions of new royal government in October 1993, Cambodia has re-established the relations of diplomacies with certain occidental countries and strong powers such as the United-States and France and in Asia such as Japan, the Republic of Korea and China. The foreign politics was restarted since the re-establishment of

[4] AFTA : Asean Free Trade Area
[5] CEPT: Common Effective Preferential Tariffs
[6] La Déclaration de Kuala Lumpur de 1972: La Zone de non-prolifération nucléaire.

monarchy which is neutral, non-alignment and rests on the personality of King Norodom Sihanouk and his personal relation with the grand chief of foreign states. The lack of finance and will to limit the expenditure of state obliges Cambodia to consult each other within ASEAN for recovery of the national economy. The ASEAN constitutes a sphere of economic integration for Cambodia. In fact, Cambodia intended to enter the ASEAN in 1997, Vietnam has wrecked a plan because of internal political event the 5 and 6 July 1997 (civil war between the Cambodian People Party (CPP) and Front Uni National pour un Cambodge Independent, Neutre, Pacifique, et Coopératif (FUNCINPEC)). That was the reason why Cambodia has postponed the term of concession of Cambodia to ASEAN until 10 April 1999. After this concession, Cambodia has to satisfy conditions for ASEAN, respect all the agreements concluded within the ASEAN framework. However, in our case, we will limit to the rights and obligations which encompass Cambodia in the sector of foreign investment within ASEAN. It is necessary to study primary rules of foreign investments within ASEAN framework in part I and then the legal's effect of law on foreign investments within ASEAN on Cambodian law in part II.

I. Regulation on Foreign Investment within ASEAN Framework

The regulation here designates the public international law; it means that "the legal system governing the relationships between nations; more modernly, the law of international relations, embracing not only nations but also such participants as international or organizations and individuals (such as *customary international law: international law that derives from the practice of states and is accepted by them as legally binding. This is one of the principal sources or building blocks of the*

international legal system)"[7]. The foreign investment designates all operation relating to the funds of commerce or to the preexisting companies in which the control is submitted to the natural or juristic person non-resident. Hence, the rules on foreign investment within ASEAN govern the relations between State and the subjects of international law within the ASEAN framework.

In order to comprehend the rules it is important to study the rules created by ASEAN (A) and the other part the legal influences from extra-region (B).

A. Rule created by ASEAN

The rules created by ASEAN are an assembly of rules which will apply to the sector of investment within the ASEAN framework. However, ASEAN is based on the mechanism of cooperation. It means that within ASEAN, in the sector of investment, there are domestic rules of members which have authority on this domain investment. Plus, ASEAN contains only the agreements of economic cooperation and agreement on the creation of investment area in order to improve the mechanism of investment between members and opening the international economic regime.

Now, in order to figure out the sense of the agreements on economic cooperation between ASEAN members, it is necessary to study the ASEAN free trade area (1) and then the agreement on investment area (2).

1. ASEAN Free Trade Area

The agreement of economic cooperation between the ASEAN's countries members is the result of the meeting of volunteers in the goal to create rules.

[7] Black's law dictionary, eighth edition, page 678

The treaty of Bali in 1967 has fixed the objections of ASEAN to create the common market and to realize the ASEAN free trade area. The agreement on free trade area has been created since the fifth Summit of Singapore in 1992 with 12 agreements under form of CEPT[8] in the aim to liberalize the market inside the region of ASEAN. It means that the members of ASEAN shall liberalize their national market and reduce the tariffs from 5% to 0% on certain products. Therefore, the CEPT is the first phase of AFTA and the agreement on AFTA came into force on 1st January 1993.

The AFTA or ASEAN free trade area has for objectives to facilitate the whole region becoming most attractive to foreign direct investments and to develop the economies of ASEAN member. It means that free trade area between ASEAN members will lead to the attributions of most effective resources, reduce the fees of transaction and harmonize the standards of qualities of ASEAN's products. Moreover, the agreement has also the goals to enhance the competitiveness of the region and create the zone of unified production. It supposes that the elimination of customary tariffs between state members will augment their production, competition and their economic efficiency. In addition, AFTA has created the council of AFTA which is composed of a representative appointed by each State member. The Council of AFTA is charged to supervise, to coordinate and to follow the application on the reduction of tariff in the framework of AFTA. In the exercise of its functions, the Council of AFTA obtains the assistance of senior economic officers meeting (SEOM) and the Secretary of ASEAN. Each State shall have a consultation with the Countries members of ASEAN on all questions relating to the application of the AFTA's rules.

[8] CEPT: Common effective preferential tariffs

The development of application of AFTA was late because of the economic crisis in Asia in 1997. That's why the member have done the list of all products in the AFTA's framework and announced on 1st January 200 that 90% of products in the list shall have its tariffs reduce to 5%. However, some original members of ASEAN disagreed. The problem is that some members of ASEAN keep the customary valued of their domestic products. They don't want to participate because they want to protect their own domestic product. In Malaysia the domestic product is the national automobiles (Proton), in Philippines the domestic product is petrochemical and in Thailand is oil of palm. There is no elimination on these products above.

2. ASEAN Investment Area (AIA)

The ASEAN investment area of ASEAN has been raised in the framework of Summit of Bangkok on December 1995 and has adopted in October 1998. The goal of the ASEAN Economic Community is to establish that ASEAN is a single market and production base that will make ASEAN more dynamic and competitive. In this context, one of the five core elements of an ASEAN single market and production base is the free flow of investment[9]. A free and open investment regime is a key to enhancing ASEAN's competitiveness and attracting foreign direct investment as well as intra-ASEAN investment.

The ASEAN investment area stipulates that the reduction and the elimination of the barriers of investments intra-ASEAN as well as the rationalization, the transparency and the regularity of the regulations in this domain investment; and the members of ASEAN will conclude the ASEAN agreement on investment area in 2010.

[9] http://www.aseansec.org/19589.htm

The Agreement on investment area contains the objectives to coordinate the program of the cooperation and the facilitation in the domain of investment and the agreement includes also the investment promotion and incentive program for the investors in order to inaugurate immediately all the industries in South-east Asia. In the same word, the national treatment principal provides all the benefit and advantages to all members of ASEAN and it was implemented immediately on the investment sector apart from the exception states that the list of temporary exclusion and the list of sensible domain.

B. The legal influence from extra-region

Apart from the region, ASEAN has objectives to enlarge its economic cooperation with the non-members of ASEAN for that ASEAN in 2020; it's an ASEAN enlarging to the world and playing the important role in the international community and to bring forward the collective interest of Countries members. The ASEAN will continue to develop its relations with the countries of the Asia Pacific region. The cooperation with the other States in East Asia is accelerated with the meeting of annual dialogue between the leaders of ASEAN and China, Japan and the Republic of South Korea (ASEAN plus 3).

In 1997, a common declaration has been signed to establish a structure of cooperation for the 21st century. During the year 2000 the ASEAN plus 3 Countries have agreed to create a possible free trade area. Especially, China was interested to establish a commercial bloc with ASEAN. Plus, the economic cooperation with the non-members in the subject of investment shall also obtain the external legal influences. In fact, ASEAN external laws are the rules concluded between the ASEAN members and the partner of

the region or on the other hand between the States members and non-regional partner in the form of international agreement or treaty. And these international agreements or treaties produce the legal effects in the subject of investment and it will apply to the internal law and order.

Therefore, in order to well understand external legal influences, it is necessary to understand first the agreement on economic cooperation with the Countries non-members of ASEAN (1) and then the agreement on the economic cooperation with international organization (2).

1. Agreement on Economic Cooperation with non-member Countries of ASEAN

ASEAN is an association of the South-east Asia Countries which emphasizes the economic cooperation to enlarge its economic territory. That is the reasons of doing the major efforts to have a good economic relation with the ASEAN members as well as with non-members. In effect, this cooperation corresponds to the enlargement of the investment area within the ASEAN framework. Moreover, in order to comprehend deeply the sense of this cooperation, it is important to study primary the regional partners (1.1), and then non-regional partners (1.2).

1.1. The Regional Partnership

The politics of economic cooperation necessitates the relations with the countries in region and as well as extra-region.

a. <u>The ASEAN and Japan</u>

During the Grand Negotiation of ASEAN and Japan in 1970 about the artificial Caoutchou; this negotiation has achieved a goal to build a good relation with ASEAN and

Japan. As a result, the grand negotiation on the subject of commerce and investment, the transfer of technology have been able to operate with the aids of development of 1992 that was stipulated at the first conference of ASEAN Economic Ministers and Ministers of International Trade and Industry (AEM-MITI) in Manile. Nowadays, this cooperation is rapidly developed and had got the prestige result such as the creation of the fund FUKUDA (one billion dollars for aid AIPS) and plus, the opening the Center of Information Broadcasting of the ASEAN region in Tokyo in 1981 in order to provide the information about the importations and the exportation of ASEAN and Japanese products and as well as in the aims to reinforce the tourism in the region. Similarly, in 1988 the cooperation between the ASEAN and Japan has planned a project on the budgetary of development in the aims to grant the financial aids to the member countries of ASEAN.

With respect to this project, the Japan grants the important financial aids to the member countries of ASEAN with the conditions of countries which are in *economic instability*. This subvention can be granted in accordance to different factors:

- The aids under the form of funds in cash 20 million dollars in order to support the activities of information and the cultural in the ASEAN region;
- The scholarship granted to the ASEAN students of the order of 2 million a year (aids for the development of human resource of the citizens in the ASEAN region);
- The aids for the cooperation programme between the ASEAN and Japan
- The aids for the commercial exchange programme between the ASEAN and Japan or for the others important partners in the domain of investment in 1993.

Even though, in 1993 the percentage of economic cooperation between the ASEAN and Japan is inconsistent. The Japan still encourages the good relation with ASEAN such as the Japan has provided the GSP to ASEAN countries. GSP is General System of Preference which is a formal system of exemption from the more general rules of the World Trade Organization. Specifically, it's a system of exemption from the most favored nation principle (MFN) that obligates WTO member countries to treat the import of all other member countries no worse that they treat the import of their "most favored" trading partner. In other words, we can say GSP is the program to eliminate the tariffs and the obstacles of the importation the products for the ASEAN region. Moreover, in accordance with the proposition of ASEAN, Japan has increased the quota of general products in the aims to develop the economy of ASEAN member countries and to consolidate the policy of foreign affairs cooperation between Japan and ASEAN.

Similarly, the Japan implements the investment policy in order to replace the importations and it also prepares the project to enlarge the market in comparison with the production in the region. On the other hands, the Japan will install the enterprises and factories of production in the form of joint-venture and these enterprises have cooperated with the United-Stated and European Union which are the big market of importation for the Japan. This economic cooperation does not only open the possibilities for the Japan to invest in the ASEAN area but the ASEAN member countries have also the possibilities to invest in Japan. It is the vision of enlargement to the ASEAN investment Area.

In brief, ASEAN and Japan have agreed on four different programs of industrial cooperation; these are *the industrial development*; *the protection of industrial product*; *control the quality of product* (as International Standard of Organization that has the role

to control the quality of imported or exported products) and finally, the *research on industrial technology*.

b. *The ASEAN and Republic of Korea*

The Republic of Korea (ROK) became a Dialogue Partner of ASEAN at the ASEAN Ministerial Meeting/Post- Ministerial Meeting in July 1991. Prior to this, an ASEAN-ROK Joint Sectoral Cooperation Committee (JSCC), an inter-government consultative body, was established to facilitate the ASEAN-ROK Dialogue relations. The First Meeting of ASEAN-ROK Dialogue was held on 11-13 May 1993.

The ROK Government as well as the Korean private sector intends to further enlarge their trade links with ASEAN by means of counter trade and a variety of financing methods. Considering Korea's rapidly expanding trade pattern, ASEAN countries offer potential opportunities for further expansion in the medium and long-term. Various high-level visits have taken place to increase bilateral trade and to establish multi-faceted relations with ASEAN countries through an expanded flow of capital and technology, while seeking to achieve a horizontal inter-industry division of labor.

The Second Meeting of the ASEAN-ROK JSCC agreed that the ASEAN-ROK Cooperation should be expanded to other areas such as development Cooperation, transfer of technology and human resource development in addition to trade, investment and tourism. Several project proposals under the framework of the expanded areas of Cooperation have been proposed by ROK for implementation during the FY 1992-1993. These include, among others, Technical Transfer Programme in Agricultural Development and Basic Research Project for Supporting the Establishment of Science

and Technology Policy and Research and Development Management System in ASEAN countries.

On international issues, ASEAN and ROK agreed to continue to undertake cooperative efforts in creating a more open world trading system on commodities and processed products and towards stabilizing prices and promoting downstream processing. ASEAN appreciated the support given by ROK against the campaign on eco-labelling of tropical timber products.

ASEAN and ROK have noted with satisfaction some accomplishments in the development cooperation programme such as those successfully implemented, among others, the ASEAN Travel Fair held in Seoul in April 1993 and the installation of the Computer E-Mail System which links ASEAN Member Countries and the ASEAN Secretariat.

c. *The ASEAN and China*

The cooperation between the ASEAN and China has officially begun in 1994. This cooperation has started in the Ministries of Foreign Affairs in Bangkok in the aims to exchange the knowledge between the ASEAN and China. This cooperation is submitted to the negotiation of common committee between ASEAN and China. The negotiation of common committee comprises two organs; one is in charge the economic and commerce cooperation and the other one is in charge the cooperation on the sciences and technology.

The cooperation between the ASEAN and China is implemented after the first negotiation which contains the senior officers of ASEAN member countries and China in January 1995.

d. The ASEAN-India

India became a sectoral dialogue partner of ASEAN in 1992. Mutual interest led ASEAN to invite India to become its full dialogue partner during the fifth ASEAN summit in Bangkok in 1995. India also became a member of the ASEAN Regional Forum (ARF) in 1996. India and ASEAN have been holding summit level meetings on an annual basis since 2002.

Since the establishment of the ASEAN-India dialogue relations, development cooperation activities have grown in strength and number. In terms of sectors, ASEAN-India cooperation covers the following: trade and investment, science and technology, human resource development, tourism, transport and infrastructure, health, small and medium scale enterprise and people to people contact[10].

In the future, two way trade and investment between ASEAN and India remain low although both sides are of the view that opportunities for collaboration are yet to be fully tapped. The ASEAN-India framework Agreement on Comprehensive Economic Cooperation, once agreed and implemented, could facilitate greater flow of trade and investment. In addition, ASEAN and India should encourage their respective private sectors to tap on the huge market potentials that both sides have to offer.

1.2. The Non-Regional Partners

The reinforcement of economic development, the enlargement of commercial territory and investment are the reason which grants the ASEAN of making the strong foreign policy and good relation with countries extra-region.

[10] http://www.aseansec.org/5738.htm

a. The ASEAN-United States

The negotiation between the ASEAN and the United States began in 1977 in order to expand the market of credits and the market of transfer technology and the energy, the maritime transportation and the food security. United State is also a big market for ASEAN and grand export of products in the World.

Similarly, to reinforce and guarantee good relations, ASEAN and United States have agreed to create the Trade and Investment Cooperation Committee) in Washington in the aims to negotiate, to consult in the subject of investment and the others matter relating to the transfer of technology and the human resource development in the private sector.

So the negotiation between the ASEAN and United States aims for the participation of each region in the private sector. And this activity is also a special condition to reinforce the other commercials activities. These activities allow helping the small sectors of ASEAN to enter to the grand market.

Therefore, the relation between ASEAN-USA agreed that all countries should reject protectionism. The US recognized ASEAN's need to seek improved access to the US market. Both sides underscored the importance of the Multi-Lateral Trade Negotiations. The meeting also agreed that substantial progress should be made in tropical products.

b. The ASEAN-Russia

ASEAN-Russian relations could be traced to July 1991 when the then deputy Prime Minister of the former USSR attended the opening session of the 24th ASEAN Ministerial Meeting held in Kuala Lumpur as a guest of the Malaysian Government.

Subsequently, Russia was elevated to a full Dialogue Partner of ASEAN at the 29th AMM[11] in July 1996 in Jakarta.

ASEAN's trade with Russia, while remaining low, has shown a positive upswing in recent years. Russia's exports to ASEAN remains heavily dependent on base metal and metal articles, chemicals and mineral products while ASEAN exports include machinery and electrical appliances, prepared foodstuffs, and fats and oils[12].

In an effort to boost trade ties, ASEAN and Russia have established a Working Group on Trade and Economic Cooperation (ARWGTEC) and agreed to explore the possibility of convening the ARWGTEC back-to-back with the upcoming ASEAN-Russia Joint Committee Cooperation in 2004. Both sides are also developing an economic agreement to boost trade and other related cooperation. With a population of 150 million and being a key member of Commonwealth of Independent States (CIS), Russia stands as an important emerging market for ASEAN in the future.

c. The ASEAN and Australia

The ASEAN-Australia relationship has evolved and matured considerably since Australia became ASEAN's very first Dialogue Partner more than two decades ago in 1974. Initially the dialogue was focused on providing technical assistance through regional projects, primarily in research and development in food-related areas to ASEAN.

Consequently, initiatives were taken to enhance and broaden cooperation activities to reflect the economic transformation and needs of ASEAN and Australia. The 14th ASEAN-Australia Forum in 1991 agreed to expand the theme of cooperation so that it would be based on mutual interest and benefit, encompassing new areas such as

[11] Asean Ministerial Meeting
[12] http://www.aseansec.org/5922.htm

education, environment, telecommunications and science and technology. This development was followed by the inclusion of political and security issues as a topic for discussion during the 15th Forum in 1993[13].

As the result of the partnership between Australia and ASEAN is in part due to the increasing complementarities of the relationship and the dynamism of the economies in the region and the other part is due to both partners determination to continually assess the relationship and implement changes to suit the needs of the two parties.

d. The ASEAN and New Zealand

New Zealand became ASEAN's Dialogue Partner in 1975. ASEAN-New Zealand's relations have strengthened by building upon areas of mutual interest and comparative advantages of both sides. Trade and economic issues figure prominently in the ASEAN-New Zealand dialogue relations. The impetus of the dialogue relations between ASEAN and New Zealand has been ASEAN's thrust towards economic development. Overall, "New Zealand's share of ASEAN's total trade has remained stable at 0.3%, reaching US$1.6 million in 1995. In recent years, however, there has been a decline in the growth rate of ASEAN's trade with New Zealand. In 1993, the figure was 19.5% while in 1994, it decreased to 9.2%. ASEAN's main exports to New Zealand are machinery parts, electrical appliances and mineral products while New Zealand's major exports to ASEAN are livestock, pulp and paper products"[14].

The Trade and Investment Promotion Programme (TIPP) which commenced in 1991, is an integral component of the ASEAN-New Zealand Dialogue, with the goal of

[13] http://www.aseansec.org/23213.htm
[14] http://www.aseansec.org/5826.htm

promoting trade and investment between the two sides with an emphasis on the expansion of ASEAN exports and New Zealand investments

e. The ASEAN-Canada

The first formal meeting between ASEAN and Canada was held in February 1977. At the meeting, the Canadian Secretary of State for External Affairs informed the Chair of the ASEAN Standing Committee of her proposal to extend a programme of development assistance to ASEAN. This commitment was later formalized in 1981 with the signing of the ASEAN-Canada Economic Cooperation Agreement (ACECA) which came into force on 1 June 1982.

The ACECA provided for industrial and commercial cooperation in addition to technical cooperation. It also established the Joint Cooperation Committee (JCC) to promote and review the various cooperation activities envisaged between ASEAN and Canada.

Trade flows between ASEAN and Canada have grown steadily. Canada's imports from ASEAN have increased from US$1.56 billion in 1993 to US$2.33 billion in 1996 while Canada's exports to ASEAN have decreased marginally. In 1993, a total export to ASEAN was US$1.96 billion and in 1996 it dropped to US$1.9 billion. As a result ASEAN has been registering a trade surplus with Canada since 1995 and this trend is likely to continue in the coming years[15].

[15] http://www.aseansec.org/5590.htm

2. Agreement on Economy Cooperation with International Organization

The international organization is *an intergovernmental association of countries, established by and operated according to multilateral treaty, whose purpose is to pursue the common aims of those countries*[16]. By this definition, the international organization is a permanent group of States which have a common objective to operate their goals together. Hence, the agreement on the economy cooperation between the ASEAN and the international organization correspond to the meeting the voluntary between ASEAN and the permanent group of States in sight of creation the legal effects to the parties. In our perspective, these are the agreements which are created the legal effects by the parties in domain of investments.

In order to understand the agreement on economy cooperation between ASEAN and international organization, it is important to study the agreement on economy cooperation with European Union (EU) in section (a) and then, the cooperation with United Nation for Development Program (UNDP) will be covered in section (b).

a. European Union

The ASEAN has started the relations with the European Union in 1977. The European Economic Community (EEC) was the first dialogue partner to establish informal relations with ASEAN in 1972 through the Special Coordinating Committee of ASEAN (SCCAN). On 7 May 1975, an ASEAN-EEC Joint Study Group (JSG) was formed between the two regions.

The launch of the New Asia Strategy in 1994 and the declaration that ASEAN would remain the cornerstone of the EUs dialogue with countries in Asia at the Karlsruhe

[16] Black's law dictionary "International Organization", page 679, eighth edition

meeting set the stage for the convening of the first Asia-Europe Meeting (ASEM) which held its inaugural Summit in Bangkok in March 1996 as well as the 1st ASEM Foreign Ministers Meeting in Singapore in February 1997 where ASEAN played a pivotal role. Both sides are committed to the new Comprehensive Asia-Europe Partnership for Greater Growth forged by the leaders at the Summit and have agreed to outline mechanisms and guidelines to implement the Asia-Europe Cooperation Framework and to establish an Asia-EU Vision Group at ASEM II in 1998 to provide ideas for the development of the ASEM process for the next century.

The potential of ASEAN as a market and a gateway to the rest of the Asia Pacific is an important dimension of the ASEAN-EU relationship. Given the current state of development and infrastructure development activities, ASEAN has also become a major market for the EUs capital goods and investments. The foreign investment of EU in the region was increased by 13.1% from US$35 billion in 1993 to US$ 39.5 billion in 1994[17].

b. United Nation for Development Program (UNDP)

The ASEAN has officially started the relation with UNDP in 1977 and is the only multilateral aid organisation to be accorded this status. ASEAN-UNDP ties were further strengthened with the launching of the ASEAN-UNDP Sub-regional Programme in 1977 that aimed to better assist ASEAN with its regional cooperation and integration efforts.

In the subsequent quarter century, UNDP has continually provided assistance to ASEAN through its initial attempts at regional economic cooperation, with the move towards ‘open regionalism’ built around the ASEAN Free Trade Area agreement; in adjusting to and mitigating the negative effects of the severe financial crisis starting

[17] http://www.aseansec.org/23216.htm

in1997[18]. UNDP has also provided significant support to the institutional development of the ASEAN Secretariat. Efforts are now underway to strengthen the effectiveness of UNDP ASEAN cooperation in facing new challenges to the region.

From the beginning, the ASEAN-UNDP sub-regional programmes (ASPs) provided the basis for the dialogue relationship between ASEAN and UNDP. The mechanism for dialogue was structured along the UNDP framework for regional/inter-country programmes, which generally operate on five- year cycles.

Moreover, the ASEAN-UNDP was agreed that a facility would be established for the next phase of ASEAN-UNDP cooperation to support ASEAN in the identification, analysis, and dialogue on policy issues relating to regional economic integration.

C. The Modalities of Dispute Settlement

Legally within the ASEAN, there is no organ of commercial dispute settlement. However, in practice we found that the Senior Officer Economic Meeting (SEOM) plays almost the same role as the Dispute Settlement Body of WTO. Accordingly in the meeting of ASEAN Economic Ministers in Phnom Penh (Cambodia) in 2003, the member countries promised to create the services for settling the questions relating to the commerce and investment intra-ASEAN; that is "Act on ASEAN consultation to solve the Trade and Investment issues" for the ASEAN members. The SEOM is an organ of ASEAN with the missions to verify the conformity of the execution on the economics cooperation agreements of the ASEAN member countries.

Therefore, in order to understand the modalities of dispute settlement within the ASEAN, it is advisable to examine the organ of dispute settlement in section (1) and then, the procedure of dispute settlement (2).

[18] http://www.aseansec.org/20195.htm

1. The Dispute Settlement Body under ASEAN

The organ of dispute settlement is an organ which has the competence for settling the conflict. Nowadays, in the ASEAN framework there is not a specific competent organ for solving the commercial dispute intra-community. However, how can we resolve this question? If we look deeply into the ASEAN there is a service which is dealing, almost by the same dispute settlement of WTO, with the case of the conflict. But this service has been created in the temporary manner under the direction of SEOM[19] which the principal mission is similar to the organ of dispute settlement of WTO. Article 2 of the ASEAN Protocol on Enhanced Dispute Settlement Mechanism states that *"the SEOM shall administer this protocol and, except as otherwise provided in a covered agreement, the consultation and dispute settlement . . ."*[20]. In other words, the SEOM is a meeting which comprises the chiefs of economic Department of Ministry of Economic of ASEAN member countries for settle the question relating to the economic issue. And if the parties of dispute do not satisfy to the solution, they can form the complaints before the other organ which is ASEAN Economic Ministers (AEM). This organ has the authority with accordance to the simple majority principle to take a final decision. Similarly, for the disputes in the subject of investment, these are two organs above which have the competence in this domain.

[19] SEOM means Senior Economic Officer Meeting

[20] ASEAN Protocol on Enhanced Dispute Settlement Mechanism, article 2 states that "the SEOM shall administer this Protocol and, except as otherwise provided in a covered agreement, the consultation and dispute settlement provisions of the covered agreements. Accordingly, the SEOM shall have the authority to establish panels, adopt panel and Appellate Body reports, maintain surveillance of implementation of findings and recommendations of panel and Appellate Body reports adopted by the SEOM and authorize suspension of concessions and other obligations under the covered agreements" of 29 November 2004

2. The Procedure of Dispute Settlement

Any differences between the member states concerning the interpretation or application of the ASEAN agreement shall be settled amicably between the parties. If such differences cannot be settled amicably, the ASEAN Economic Ministers (AEM) shall establish a ministerial-level Council comprising one nominee from each Member State and the Secretary-General of the of the ASEAN Secretariat. Moreover, the ASEAN Secretariat shall provide the support to the ministerial-level Council for supervising, coordinating and reviewing the implementation of the agreement, and assisting the AEM in all matters relating thereto[21]. In the performance of these functions, the ministerial-level Council shall also be supported by the Senior Economic Official Meeting (SEOM).

Within the meaning of article 2 of the ASEAN Protocol on Enhanced Dispute Settlement Mechanism stipulates that *"The SEOM and other relevant ASEAN bodies shall be notified of mutually agreed solution to matters formally raised under the consultation and dispute settlement provisions of the covered agreements"*[22].

Therefore, in case of the dispute the parties can recourse to which level of procedural settlement in front of the SEOM. The procedural settlements are classified in three levels which are the procedure of conciliation (a), then the procedure in front of special group (b) and finally, the procedure of the end of action (c).

a. The procedure of conciliation

[21] Article 7 of the Common Effective Preferential Tariff (CEPT) of 28th January 1992
[22] ASEAN Protocol on Enhanced Dispute Settlement Mechanism of 29 November 2004

The Conciliation is a settlement of a dispute in an agreeable manner. Or it is a process in which neutral person meets with the parties to a dispute (often labor) and explores how the dispute might be resolved; mediation[23].

In the ASEAN framework, the member states which are parties to a dispute may agree at any time to resort to *good offices, conciliation or mediation* in order to resolve the dispute within an agreed time limit[24].

Therefore, the procedure of conciliation is a procedure which the parties of dispute agree to settle their dispute in order to find the satisfied mutually solution. This procedure is the first phase of the important consultation but if such differences cannot be settled with the procedure of conciliation the parties of dispute can bring their difference to the special group or panel.

b. The procedure of special group

After the failing of consultation procedure to settle a dispute within sixty (60) days after the date of receipt of the request, the matter shall be raised to the Senior Economic Officer Meeting (SEOM) if the complaining party wishes to request for a panel. The special group or panel shall be established by the SEOM, unless the SEOM decides by consensus not to establish a panel[25]. The function of the panel is to make an objective assessment of the dispute before it and its findings and recommendations in relation to the case. Plus, it should be noted that the panel does not have rights to decide whether which one is right or violated the agreement. In other words, a panel shall have a right to seek information and technical advice from any individual or body which it

[23] Black's law Dictionary "conciliation", page 284, seventh edition
[24] The ASEAN Charter, article 23 "Good Offices, Conciliation and Mediation"
[25] ASEAN Protocol on Enhanced Dispute Settlement, article 5 of 29th November 2004

deems appropriate. Before they submit their findings and recommendations to the SEOM, the panel shall give adequate opportunity to the parties to the dispute to review the report.

After the submission the report of panel to the SEOM, the SEOM shall adopt the panel report within thirty (30) days. In this case, if a party of dispute is not satisfied with the panel recommendation, he can again bring the dispute to the ASEAN Economic Ministers in order to reach reasonable solution for the parties of dispute. That's the procedure of the end of recourse.

c. The procedure of the end of action

The procedure of final action is a procedure which one of the parties of dispute brings the complaint as a last resort in front of the meeting of ASEAN Economic Ministers (AEM). In principle, the procedure of final action can be taken within thirty (30) days of the submission the final report by the SEOM. In exceptional case, the ministers of economy can again postpone ten (10) days more.

The AEM is the final procedure to settle the dispute and has a competence to take a final decision. The decision of AEM is considered as decision as a last resort and all the concerning parties shall be obligated to respect the decision of AEM.

It shall be noted that during the session of decision of AEM, the ministers of economy of the parties of dispute do not have a right to participate.

II. The legal effect of the Law on Foreign Investments within of ASEAN

The legal effects of the law on foreign investment within the ASEAN on the Cambodian law are on the internal rules of the region and the international rules in the domain of foreign investment which will apply to the national law in Cambodia. In order to better understand these legal effects, it is important to study primary the effects of

agreement on economic cooperation with the ASEAN member countries on the domestic law and then, the effects of agreement on economic cooperation with the extra countries of region.

A. The effects of Agreement on Economy Cooperation with the member countries of ASEAN on the domestic Law

Generally, the agreement is a mutual understanding between two or more persons about their relative rights and duties regarding past or future performances; a manifestation of mutual assent by two or more person[26]. In other words, the agreements are the meetings which produce the legal effects by the signature parties. The effects of agreement on economic cooperation with the members of ASEAN on the domestic law are the meeting of voluntary of the parties in order to establish the economic cooperation, and this cooperation has produced the legal effects on the domestic law by the parties; Cambodia with the member countries of ASEAN.

As a rule, Cambodia is a member of ASEAN, according to the ASEAN principle. Cambodia is obligated to respect all the agreements concluded beyond the ASEAN framework. It means that these produced effects to the Cambodian law. However, this paper will only study the agreement concluded in the domain of foreign investment which produce the effects on the Cambodian law on foreign investment.

Nowadays, Cambodia has concluded many cooperation agreements on investment such as:

- Law on the adoption of the Agreement between the Government of the Kingdom of Cambodia and the Government of Malaysia on the Promotion and Protection of Investment of 28th October 1996;

[26] Black's law dictionary "agreement", page 58, eighth edition

- Law on the adoption of the Agreement between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand on the Promotion and Protection of Investment;

The meaning of these agreements obligates the Cambodian government to respect and implement these agreements in the aims to enhance the investment and increase the economy.

B. The effects of Agreement on Economy Cooperation with non-member countries of ASEAN on the domestic laws

The effects of agreement on the economic cooperation with the countries non-member of region on domestic law are the gathering of parties' agreement in order to establish the economic cooperation which produces the legal effects on the Cambodian law by the signature countries. Similarly, on behalf the contracting party of agreement, the Cambodia is obligated to respect the clauses that Cambodia has promised with the other contracting party.

In addition, legally Cambodia is obligated to respect either the regional agreement of ASEAN or the agreement of extra-region as well due to Cambodia is also a member of the agreement. Hence, this paper will only study the agreement concluded in the domain of investment which produced the legal effects on the national legislation. In case of the foreign investment Cambodia has signed many agreements with the countries extra-region such as:

- Investment Incentive Agreement between the Royal Cambodian Government and the Government of United States of America of October 1995;
- The Agreement between the Kingdom of Cambodia and the Government of China on the Protection and Promotion of Investment on 1996;

- The Agreement between the Kingdom of Cambodia and the Government of Switzerland on the Reciprocal Protection and Promotion of Investment on 1996;
- The Agreement between the Kingdom of Cambodia and the Government of German on the Protection and Promotion of Investment in Munich of 2000;
- The Agreement between the Kingdom of Cambodia and the Government of France on the Reciprocal Protection and Promotion of Investment on 2001;
- The Agreement between the Kingdom of Cambodia and the OPEC on the International Development for the Protection and Incentives of Investment on 2001;

Generally, these agreements have the legal value between the contracting parties. It means that these agreements produced the legal effects to make the obligation to the parties in order to respect the clauses stipulated in the agreement. Therefore, legally the Cambodia shall respect the agreement; it's due to the membership of the agreement.

Section2. Multilateral Aspect of Regulation on Foreign Investments: Concession of Cambodia to WTO

The foreign investments are all the operations relative to the fund of commerce or the pre-existent companies which the control is taken by the natural or juristic person non-residence or by the company which they control directly or indirectly.

The regulation of foreign investment is an assembly of the area of law which will apply to the domain of foreign investment beyond the WTO framework. Within the multilateral aspect of the regulation on the foreign investment in Cambodia, we will study which are the conditions that the Cambodia is obligated to respect in the domain of foreign investment after the concession to the WTO? In response to this question, it is advisable to know a little about the history of concession of Cambodia to WTO.

On the 11 August 2003, Cambodia has became a member of WTO at the fourth Ministerial Conference in Cancun of Mexico with the conditions stipulate in the protocol of adhesion and the other agreements between the other members of WTO. Moreover, this protocol is a detail result of the negotiation between the Cambodia and the other member countries which has been at middle of 1999 that Cambodia has sent the agenda of the regime of exterior commerce of Cambodia to the organization. This protocol shall be ratified by the National Assembly. Hence the question we should raise is what is the meaning and the influence of this protocol to the foreign investment in Cambodia? In order to answer to this question, it is important to understand the rule on the foreign investment within the WTO and then, the legal effects of rule on the foreign investment of WTO to Cambodian law.

I. The Law on Foreign Investments within the WTO

The law on foreign investment of WTO is an assembly of the area of international law which has a competence on the sector of investment.

By way of the WTO principle, the agreement of WTO contains only the obligation for all the signatures members. But, by way of the exception of the Agreement establishing the World Trade Organization, the article II.2 stipulates that *"The agreements and associated legal instruments included in Annexes 1, 2 and 3 (hereinafter referred to as "Multilateral Trade Agreements") are integral parts of this Agreement, binding on all Members"*[27]. This means that certain agreements on multilateral trade are the common or unique legal rule which have the effects for all the member countries.

[27] The Legal texts, Article II:2 of the Marrakesh Agreement Establishing The World Trade Organization, page 4, edition Cambridge University

Nowadays, these agreements are recognized by the framework of free trade area such ALENA, EU.

In order to better understand the law of foreign investment within WTO framework, it is advisable to study the conventional rule on foreign investment and then, the rules on the modality of Dispute settlement.

A. The Conventional Rules on Foreign Investments

Within the meaning of the agreement of WTO, there are two categories of the conventional rules in the domain of foreign investments. The first repeats on the mechanism of cooperation or the bilateral convention and then, the mechanism of integration or the multilateral convention on foreign investment.

1. The Bilateral Convention on Foreign Investments

In the domain of investment, there is a bilateral convention on the promotion and protection of investment which is the international treaty. This act is the common agreement concluded between two States in order to define the principles and the rules of protection of investment.

The bilateral convention on the promotion and protection of investment is based on the reciprocal principle, because the two contracting parties have the obligation to execute the clause stipulated in the agreement. In other words, the two parties have legally the synallagmatic obligation.

Generally, the bilateral convention is always constituted between the developed country; (importer) and the developing country or the least developed country; (exporter) in order to share benefits to each other. For example, the Cambodian government has just signed a bilateral agreement on the promotion and protection of investment with the

Korean government in 2009. After this agreement concluded, the Hyundai Company will install a new factory for produce Hyundai car in Cambodia[28].

Similarly, to understand the bilateral convention on investment, it is also important to understand the multilateral convention on investment.

2. The Multilateral Convention on Investments: The case of Project MAI (Multilateral Agreement on Investment)

The multilateral conventions have a role most innovators because it is somehow in the aims to replace the lack of domestic law and create the new rules of act. Multilateral trade agreements are between many nations at one time. For this reason, they are very complicated to negotiate, but are very powerful once all parties sign the agreement. The primary benefit of multilateral agreements is that all nations get treated equally, and so it levels the playing field, especially for poorer nations that are less competitive by nature. For example, the Doha Round of trade agreement is a multilateral trade agreement between all 153 members of World Trade Organization[29].

Moreover, in the case of the Multilateral Agreement on Investment (MAI); it represents the major effort in order to codify and develop the international law on investment. The MAI represents such the multilateral agreement but this agreement is negotiated between the member countries of Organization Economy and Cooperation Development (OECD).

To sum up, the purpose of the multilateral agreement in this paper is the principle and the rules negotiated between the countries in order to enhance capacity of investment and to eliminate the commercial barriers.

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[28] www.dap-news.com

[29] http://useconomy.about.com/od/glossary/g/multilateral.htm

Similarly, in the application of both agreements; bilateral or multilateral agreement we always found the problem of application of the clauses of agreement. Therefore, it is better to study the rules of dispute settlement in order to facilitate the investor in case of happening issue.

B. The Modalities of Dispute Settlement

The management of the commercial dispute settlement is the problem of the Country. In practically, there are three modes of classical dispute settlement; these are *good office, mediation and conciliation*[30] which are the procedures for the parties of dispute to recourse their case to settle in the form of having the voluntary of parties.

The conciliation is neither arbitration nor mediation. The party choose an independent third party who hears both sides, either privately or together, and then prepares a compromise which the conciliator believe is a fair disposition of the matter. The conciliator's report or conclusions are then put to both sides, who may agree or disagree with it. It is not binding nor is it enforceable unless the parties adopt it. On the other hand, the conciliation is a procedure of alternate dispute resolution in which a neutral third party hears both sides and then issue is not binding suggested resolution[31].

1. The Dispute Settlement Body

The Dispute Settlement Body (DSB) of the World Trade Organization (WTO) play an important role to make a decision on the trade disputes between governments that are adjudicated by the Organization. Its decisions generally match those of the Dispute Panel.

[30] Article 5 of Understanding on Rules and Procedures Governing The Settlement of Dispute, page 359, The World Trade Organization
[31] http://duhaime.org/LegalDictionary/C/Conciliation.aspx

Dispute settlement is administered by a Dispute Settlement Body (DSB) that consists of the WTO's General Council. The DSB has the authority to "establish panels, adopt panel and Appellate Body reports, maintain surveillance of implementation of rulings and recommendations, and authorize suspension of concessions and other obligations." The Dispute Settlement system aims to resolve disputes by clarifying the rules of the multilateral trading system; it cannot legislate or promulgate new rules.

When a Member believes that another party has taken an action that impairs "benefits accruing to it directly or indirectly" under the Uruguay Round Agreements, it may request consultations to resolve the conflict through informal negotiations. If consultations fail to yield mutually acceptable outcomes after 60 days, Members may request the establishment of a panel to resolve the dispute. Panels typically consist of three individuals with expertise in international trade law and policy; these panelists hear the evidence and present a report to the DSB recommending a course of action within six months[32]. The panel can solicit information and technical advice from any relevant source, though it is not required to do so. Only submissions from Members are guaranteed to be heard, although in rare cases, panels have consulted submissions from interested non-governmental organizations. Third-party member nations may also involve themselves in the dispute settlement process. All deliberations and communications are confidential, and only the final panel reports become part of the public record.

Once panel reports have been prepared, they are presented to the Dispute Settlement Body, which either adopts the report or decides by consensus not to accept it.

[32] http://www.wto.org/english/thewto_e/whatis_e/tif_e/disp1_e.htm

Alternatively, if one of the parties involved decides to appeal the decision, the report will not be considered for adoption until the completion of the appeal.

In the case of an appeal, a three-person Appellate Body chosen from a standing pool of seven persons will assess the soundness of the panel report's legal reasoning and procedure. An Appellate Body report is adopted unconditionally unless the DSB votes by consensus not to accept its findings within 30 days of circulation to the membership.

"The primary goal of dispute settlement is to ensure national compliance with multilateral trade rules. Accordingly, the Dispute Settlement Body encourages Members to their make best possible efforts to bring legislation into compliance with the panel ruling within a "reasonable period of time" established by the parties to the dispute. If a Member does not comply with rulings, the DSB can authorize the complainant to suspend commitments and concessions to the violating Member. In general, complainants are encouraged to suspend concessions with respect to the same sector as the subject of the dispute; however, if complainants find this ineffective or impracticable, they may suspend concessions in other sectors of the same Agreement or even under separate Agreements"[33].

2. The Procedure of Dispute Settlement

A procedure for settling disputes existed under the old GATT, but it had no fixed timetables, rulings were easier to block, and many cases dragged on for a long time inconclusively. The Uruguay Round agreement introduced a more structured process with more clearly defined stages in the procedure. It introduced greater discipline for the

[33] http://www.cid.harvard.edu/cidtrade/issues/dispute.html

length of time a case should take to be settled, with flexible deadlines set in various stages of the procedure. The agreement emphasizes that prompt settlement is essential if the WTO is to function effectively. It sets out in considerable detail the procedures and the timetable to be followed in resolving disputes. If a case runs its full course to a first ruling, it should not normally take more than about one year and 15 months if the case is appealed.

How long to settle a dispute?[34]	
These approximate periods for each stage of a dispute settlement procedure are target figures — the agreement is flexible. In addition, the countries can settle their dispute themselves at any stage. Totals are also approximate.	
60 days	Consultations, mediation, etc
45 days	Panel set up and panellists appointed
6 months	Final panel report to parties
3 weeks	Final panel report to WTO members
60 days	Dispute Settlement Body adopts report (if no appeal)
Total = 1 year	**(without appeal)**
60-90 days	Appeals report
30 days	Dispute Settlement Body adopts appeals report
Total = 1y 3m	**(with appeal)**

II. The Legal effects of law on foreign investment under the WTO

The legal effects of law on foreign investment within the WTO on the Cambodian law are the application of international rules beyond the WTO framework in the domain of foreign investment on the national legal plan of Cambodia.

Therefore, to better understand this part, it is essential to study first the application of bilateral agreement and then, the application of multilateral agreement.

[34] http://www.wto.org/english/thewto_e/whatis_e/tif_e/disp1_e.htm

A. The implementation of bilateral agreements

The majority of the countries in the world has chosen or has been constrained to choose to complete their national jurisdiction with the treaty on the promotion and protection of the foreign investments. In this meaning; the bilateral treaty plays a role to complete the national legislation of Cambodia. Moreover, what is interesting to note is the multiplication of bilateral treaties. From a legal point of view, what is important is to determine which dispositions of law on investments that the bilateral treaty came to internationalize or came to subtract to the unilateral action.

Turning to the bilateral treaty, it always comprises at least 3 important series of dispositions which are *firstly, the treatment of investment, secondly, the protection and the guarantee of investment and finally the mode of dispute settlement between the contracting parties.*

1. <u>The treatment of investment:</u>

Once the investment is constituted in the host country with conformity to the his legislation, it is here possible to have a discussion about the veritable *internationalization of regime* in the sense of bilateral treaty on investment and in term identical; to the *conventional obligation of protection* the investors and their investments.

The first clause states the just and equitable treatment of foreign investors somehow with the precision in accordance with the principle of international law. Then, in accordance to the principle of WTO, the host country shall agree to treat the foreign investor with accordance to the *national treatment principle*[35] and the most often in combination with the *most-favored nation treatment principle*[36].

[35] Article 3 of the GATT 1994 "National Treatment on Internal Taxation and Regulation"
[36] Article 1 of the GATT 1994 "General Most-Favored Nation Treatment"

2. The protection and the guarantee of investment:

It is the protection of foreign investment against nationalization or expropriation. Accordingly, the traditional rule of the international public law gives compensation in case of nationalization. The bilateral treaty on investment will constitute the operation of recovery according to the rules concluded by the host country of investment. What is the important is that all the expropriation or nationalization shall be done in accordance with legal procedure in force, to be sincere in the aim of the public utility and it shall not operate in the way of discrimination for cause of nationality. Moreover, the nationalization or expropriation shall give place to the appropriate compensation. The compensation is well-known to be appropriate if it is adequate effective and rapid. Therefore, we found here the condition of nationalization.

3. The dispute settlement in the sector of investment:

The dispositions that we have discussed in the bilateral agreement on investment, these are the mode of dispute settlement in the domain of investment. Accordingly, the bilateral agreement, in case of the conflict, will submit their dispute to the authority of arbitration; ad hoc or institution. The convention of Washington of 1965 plays a role very important to the settle the dispute relative to the investment. Moreover, at the end of the year 1980, Latin America has adopted the clause Calvo which all the litigations between the State and the foreign investors are under the authority of an internal judge and shall be judged in accordance with the law of the host country. In addition, the tribunal arbitration which is ICSID or the other arbiter; ad hoc, can apply with modalities differing from the general principle of international public law or rule, in other words, this applicable rule escapes the unilateral action of State.

To sum up, the bilateral agreement has produced many effects on the legal framework in Cambodia, because the bilateral convention, in the domain of investment, obligate the State of Cambodia to open the door in order to welcome the investment with the installation of the measure on the treatment of investors, the measure of protection and the guarantee of investment and finally, the choice of investor to find the solution in case of conflicts.

B. The Implementation of multilateral agreement

The negotiation of the multilateral agreement on the investment (MAI) is led by the OECD since 1995, is supported by the need of international rules for the development a multilateral framework. Accordingly, the declaration of OECD in 1976 is to encourage the positive role of the multinational enterprises and to eliminate all the negative effect or commercial barrier. In other words, the international legal framework of investment shall comprise the principle of equitable treatment and the non-discrimination to the foreign investments and the norms of the good behavior apart from the investors. Moreover, the ambition of the bilateral agreement is to create the agreement on investment comprising a high level of the protection and the liberation for the member countries and for the countries, plan to adhere to the OECD, which are being ready or capable of assume their obligations. Plus, the liberalization of investment has evolved on the regional plan which is a point for the European Union in the Maastricht Agreement. Agreement of free trade of North America composes the important chapter of the liberalization and the protection of investments.

Finally, in the multilateral level of WTO, further to the negotiation of the Uruguay Round, the treaties compose the rules on the partial aspects of investment, in particular the services (GATS) and the measures of investments affecting to the commerce (TRIMs). In addition, the legal framework in Cambodia, as a member of WTO, there exists

therefore two types of multilateral agreements which have produced the effects on the Cambodian law; GATS and TRIMs.

Chapter III. The Cambodian Regulations on Foreign Investment

The regulation on foreign investments in Cambodia constitutes the assembling rules of law which implement in the internal law and order of Cambodia in the section of foreign investment. The foreign investors can be natural or juristic persons who have a foreign nationality or those who have already been permitted to invest in Cambodia by the approval of the Council for Development of Cambodia. In order to understand deeply the national regulation on foreign investment in Cambodia, it's important to explore the existing laws.

The global legal framework is an assembly of acts or rules implemented in the domain of foreign investment in Cambodia. This means that there are regulations which cover foreign investment on Cambodian territory. What are these regulations? And what are the meanings of these regulations? In order to answer these questions, we will first examine the law on foreign investment in Cambodia in section1. The guarantee offering to foreign investments will be covered in section 2 and finally, the modalities of dispute settlement raised by foreign investors will be presented in section 3.

Section1. Cambodian Investment Law

In Cambodia, the FDI is free to implement, except in those areas prohibited or restricted for foreigners. According to the Cambodian investment law; all investment projects shall be made by investors who are Cambodian citizens and/or foreigners within the Kingdom of Cambodia. This means that the Cambodian law covers the legal effects for all types of investments to the national and foreign investors who realize the

commercial operations on Cambodian territory. However, this study will discuss only the regulation on foreign investment in Cambodia. Hence, the regulation on foreign investment is the area of law that made effects in the domain of foreign investments in Cambodia. Moreover, for better understanding about the Cambodian regulation on investment, this study will first present the general conditions on foreign investments. And then turn to the different forms of foreign investment.

I. General Conditions of Foreign Investments

The question that is addressed here is in which conditions the foreign investors can invest in Cambodia. The general conditions of foreign investment are the rules that make obligations to foreign investor to accomplish some formalities. Therefore, what are the conditions that the investors have to fulfill? In response to this question, it is necessary to understand the formalities relating to foreign investment (A) and then the rights and obligations of foreign investors (B).

A. The Formalities relating to Foreign Investments

Within the meaning of this law, all persons wishing to establish a QIP[37] shall submit an Investment Proposal to the Council for the Development Proposal to the Council for Development of Cambodia in the form and according to the procedures provided in this law and the Sub-Decree. The Qualified Investment Project or QIP means an investment project which has received a Final Registration Certificate[38].

The Council for the Development of Cambodia is the sole and one-stop service organization responsible for the rehabilitation, development and oversight of investment activities. In other words, it is the Royal Government's Etat-major responsible for the

[37] QIP means Qualified Investment Project
[38] Art. 2 of Law on Investment 2003

evaluation and the decision making on all rehabilitation development and investment project activities.

Furthermore, within three (03) working days of the Council's receipt of the investment proposal, the Council shall issue to the Applicant a Conditional Registration Certificate or a Letter of Non-Compliance[39]. If the investment proposal contains all the information required under the Sub-Decree, and if the proposed activity is not in the negative list set out in the Sub-Decree, the Council shall issue the conditional registration certificate. However, if the investment proposal does not satisfy the above condition, the council shall issue a Letter of non-compliance to the applicant. In addition, if the Council for the Development of Cambodia fails to issue a conditional registration certificate or letter of non-compliance within three working days, the conditional registration certificate shall be considered to be automatically approved in the form set out in the Sub-Decree. Finally, in light of the paragraph 6 of article 7 of Law on Investment in Cambodia stipulates that "*all government entities responsible for issuing an authorization, clearance, license, permit or registration listed on the conditional certificate shall issue such document no later than the 28th working days from date of the conditional registration certificate"*. Plus, any government official fails to respond to an applicant's request by this deadline without proper reason shall be punished by the law.

B. The Rights and Obligations of Foreign Investments

Generally, the foreign investors shall automatically obtain some obligations or several priorities given by the law of Cambodia where they invest. In Cambodia, the rights and obligations of all persons wishing to establish a QIP shall be guarantee by the submission an investment proposal to the Council for the Development of Cambodia in the form and

[39] Art. 7 of Law on Investment 2003

according to the procedures provided in this law and sub-Decree[40] ; this mean that all foreign investors shall respect the law of Cambodia where they are investing in commercial operations. In that case, they also get the right to use of land by including concession, unlimited long term leases and limited short-term leases which are renewable, in compliance with the provision of the Land law[41].

In addition, according to law on leasing; the investors they have the right to own and pledge as security and transfer the real and personal property situated upon the land and land which the QIP uses, for a period no longer than the period determined in a land concession contract or land lease agreement as permitted by law[42]. However, the investor cannot transfer or pledge any longer the land concession which has not been in operation.

Furthermore, the Cambodian government grants also the incentives to the foreign investors by the law on investment. Firstly, a Qualified Investment Project shall be entitled to exemption from the tax on profit imposed under the law on Taxation by obtaining a profit tax exemption period. The tax exemption period is composed of a Trigger period + 3 years ÷ Priority period. The Priority period shall be determined through the Financial Management Law. The maximum Trigger Period is to be first year of profit or three year after the QIP earns its first revenue, whichever is sooner[43]. Secondly the exporting of QIP other than an Export QIP which elects to use the customs manufacturing bonded warehouse mechanism, shall be entitled to import production equipment, construction materials, raw materials, intermediate goods, and production input accessories, exempt of duty which shall be specified by the Sub-Decree. Thirdly a qualified investment project shall be entitled to 100% exemption of export tax, except for

[40] Article 6 of law on investment on February 3, 2003
[41] Paragraph 2 of art. 16 of law on investment, 2003
[42] Sub-decree on pledge-transferring right on land lease long-term or right on land economic concession on august 29, 2007
[43] Article 4 of Law on Investment, 2003

activities as stipulated in the effective laws. Finally, a QIP is entitled to obtain visas and work permits for the employment in the Kingdom of foreign citizens as managers, technicians and skilled workers, and residency visas for the spouse and dependants of those foreign nationals as authorized by the Council for the Development of Cambodia and in Compliance with the immigration and Labor Law.

II. The Differences forms of Foreign Investment

The law on investment and commercial enterprise of Cambodia states that foreign investment in Cambodia can be the following:

1- The Joint Venture (Mixed Companies)

2- The Company with foreign capital 100%

3- The contract of cooperation

A. The Contract of Cooperation

A Contract is an agreement between or more parties creating obligations that are enforceable or otherwise recognizable by law "a binding contract"[44].

Within the law on commercial enterprise enacted on May 17th, 2005, the contract of cooperation is an agreement in which the foreign investors and one or more Cambodian partners cooperate in order to do business. Therefore, the contract of cooperation is a contract which the foreign investor and Cambodian partners decided to create a common share in order to create an enterprise or to accomplish the commercial activities and; production without the creation of the juristic person in Cambodia, but in the goal to share the rights and obligations.

1. The Creation of the Contract of Cooperation

[44] Black's law dictionary, page 271, eighth edition

The contract of cooperation has been created by the voluntary agreement of the parties; in fact the regulation states that the contract shall comprise the information of the parties such as the name, nationality and the designation of their equal representative. In addition, the contract shall also determinate the activities of productions and exploitation which the partners envisage to undertake to do their commercial activities. Similarly, the contract shall have a list relating to the nature and the quantity of material and the necessary equipment to their activities and the indication of their origin as well. The contract shall also stipulate the conditions of transfer the rights and obligations and the modalities of sharing the benefits and the loss between the two parties of contract. The contract should also point out the term, condition of its modification, the ending and the modalities of rule of dispute settlement between partners.

2. The Regime of the Contract of Cooperation

Legally, all terms and modifications relative to the contract of cooperation must be submitted to the Council for Development of Cambodia before taking effects between the parties. Moreover, partial or total transfers by a party of his rights and obligations to a third party should obtain the preliminary authorization from the Council of Development. During the execution of the cooperation contract, the partners have to deliver the annual report to the CDC evaluating the results generated by the execution of contract and the balance of their cooperation. The contract can be ended when the object has been realized as stipulated if the parties do not respect their contractual engagements or if their activities can affect the environment, the CDC has the power to withdraw the privileges and incentives granted to the investors. In case of dispute between the parties of cooperation contract, this should be solved the amicable settlement. If the parties failed to

reach an amicable settlement, the dispute should be brought by either party for the conciliation before the CDC which shall provide its opinion, or trial by the tribunals of Kingdom of Cambodia or arbitration in or outside of Cambodia as agreed by both parties.

B. The Joint Venture

Article 8 of the law on commercial enterprise states that "*a general partnership is a contract between two or more persons to combine their property, knowledge or activities to carry on business in common with a view to profit"*[45]. Hence, within the meaning of this article, the general partnership is the company of Cambodian law which combines between two or more foreign investors and more Cambodian partner. The general partnership is under the type of cooperation contract since it can be created under the form of joint venture. A joint venture or joint enterprise is a business undertaking by two or more persons engaged in a single defined project. The necessary elements are first, an express or implied agreement; second, a common purpose that the group intends to carry out; third, shared profits and losses and finally, each member's equal voice in controlling the project[46]. This means that two or more enterprises will cooperate their operations in the local market or for research and development in the goal to create the company's new structure. Plus, the investment partnership of joint venture has the rights to join the limited shared. Article 13 of law on commercial enterprise stipulates that *"a general partnership that has acquired legal personality shall be deemed to be of Khmer nationality only if firstly, the general partnership has a place of business and a registered office located in the Kingdom of Cambodia and secondly, more than 51% of the record ownership interest in such general partnership is held by natural or legal persons of*

[45] Article 8 of Law on Commercial Enterprise on May 17th, 2005.
[46] Black's law Dictionary, page 697, eighth edition

Khmer nationality"[47]. The parties of Joint Venture contract in our case; it might be between the enterprise of foreign investor and the enterprise of Cambodian partner or between the foreign investor and the Cambodian government.

C. The Company with 100% foreign capital

Here, the foreign company is one with 100% foreign capital which invests in the Kingdom of Cambodia without sharing with the other company. In other words, we can say that the foreign company is the corporation which the capital is totally occupied by the foreign investor.

According to the Black's Law Dictionary defines that "*foreign company is an entity (usu. A business) having authority under law to act as a single person distinct from the shareholders who own it and having rights to issue stocks and exist indefinitely; a group or succession of persons established in accordance with legal rules into a legal or juristic person that has a legal personality distinct from the natural persons who make it up, exists indefinitely apart from them and has the legal powers that its constitution gives it*[48].

Within the meaning of Cambodian law on Commercial enterprise of May 17th, 2005, the foreign investors are authorized to create one or more companies with foreign capital 100% and they have full rights to lead it alone.

The foreign company would enjoy fully of all the rights which have given by the State of Cambodia and they have to respect all the obligations which figure in the authorization of investment. So, the foreign company is juristic person of Cambodian law which has the form as the limited responsibility company. The foreign investors are owners of their shares and have the rights to lead the company by themselves. The

[47] Article 13 of Law on Commercial Enterprise on May 17th, 2005.
[48] Black's law dictionary, page 289, eighth edition.

foreigners are authorized to create more companies with 100% foreign capital. The status of the company shall comprise the name and the address of foreign investor; the social designation and the place of social head office in the Kingdom of Cambodia. Moreover, the company should also indicate the social object of the company; the sum of capital invested and the sum of the share. Plus, the company should fix the term of firm and to appoint the team management, the directions of firm and the legal representative of company as well. The corporation shall in parallel adopt the best methods for accounting. The company can merely modify his status after the authorization from the Council of development of Cambodia.

To sum up, all the foreign investors which constitute the company with 100% foreign capital should have the legal representative residence in Cambodia. For the prolongation of the company's activities and the ending their activities before their term, they have to fulfill the conditions and formalities which are stipulated for the Joint Venture.

Section2. The Guarantees offering to Foreign Investors

Legally the mechanisms of guarantees are the national and international rules which offer to the foreign investment. The guarantees are a financial consequences attached to the political risks. This means that the guarantees offered to the foreign investors are the possibilities to protect their activities of investment on the territory of the host country. Aside from the mechanism of the guarantee, there are rules of protection. The rules of protection protect or sanction the public attack existing to the foreign investment. Hence, principally the guarantee is precise by the domestic law. In addition, a foreign investor shall not be treated in any discriminatory way by reason only of the investor being a foreign investor, except in respect of ownership of land as set forth in the

land law[49]. The foreign investors thus have the same rights as national investors without discrimination of nationality or race, with the exception of the ownership of land.

Therefore, to give a brief understanding to the guarantee offering to foreign investors, it is firstly important to study the guarantee offer to foreign investor as set by national rules and then the guarantee offer to the foreign investor as set by the international rules.

I. The National Acts

According to the law on investment of Cambodia, for the foreign investors during the period of their investment in Cambodia, the capitals and all the foreign goods shall be protected against all requisitioning or confiscation in the framework of administrative procedure or against nationalization by the Cambodian government. It means that the Cambodian government shall interdict the nationalization of goods of foreign investor in Cambodia. Additionally, the Cambodian government should also respect the principal of free trading the foreign capitals; this means that the Cambodian government should not take the acts or the administrative procedures that cause difficulty the foreign investors. In other words the Cambodian government shall not fix the price or fee of the products or the diverse services of investors[50]. Plus, in accordance to the relevant laws and regulations issues and published to the public by the National Bank of Cambodia, the Royal government shall permit investors with investment in Cambodia to purchase foreign currencies through the banking system and to remit abroad this currencies for the discharge of financial obligations incurred in connection with their investments. This concern of the payment are firstly the payment of imports and repayment of principal and

[49] Art.8 of law on investment
[50] Art.10 of law on investment

interest on international loans, secondly, the payment of royalties and management fees, thirdly, the remittance of profits and finally the repatriation of invested.

In addition, the law on investment has also encouraged the foreign investors to erect the principle in the differences domain. The encouragement offered to the foreign investors concerns the priority or the high technology of industries, the creation of employment, the increasing of exportations, tourism industry, the production of merchandises agro-industry and the industry of transformation, the creation of physical infrastructures and the creation of energy, the provincial and rural development, the protection of environment and investment in the special economic zone which has created by the sub-decree on the establishment and management of the special economic zone on December 29, 2005.

Furthermore the encouragement to the foreign investment can present in the form of total or partial exoneration of law customary tax. It shall note that the encouragement should be applied at the Council for the Development of Cambodia.

II. The International Acts

The protection of foreign investors is not enough in the national level, it is necessary for Cambodian government to adhere to the international conventions which can solve the bad conditions for them or in other word; the international rule which guarantee the foreign investors.

In order to guarantee the investors in international level, we have the Convention of Seoul of 1985 for establishing the MIGA; the principles of international bank for the reconstruction and development of 1980 and the principles of the Organization for Economic Co-operation and Development (OECD) of 1976, which prohibit the State to

create any legal documents or administrative rules which constitute the barriers to the formation or the liquidation[51].

Within the Cambodian legal framework, there are bilateral conventions which have the competence to guarantee the foreign investors. In the subject of foreign investments we have many agreements signed by the Cambodian government and the States of foreign investors in order to guarantee and to protect the foreign investments such as the following:

- Agreement between the government of Kingdom of Cambodia and the government of the United States on the protection and encouragement of investment in October 1995;
- Investment incentive agreement between the Kingdom of Cambodia and the government of the United-States of America on August 4th, 1995;
- Law on the adoption of agreement between the government of the Kingdom of Cambodia and the government of Malaysia for the promotion and protection of investment on August 17th , 1994;
- Agreement between the government of the Kingdom of Cambodia and the government of the Kingdom of Thailand on the protection and protection of investment on October 28th , 1996;
- Agreement between the government of Kingdom of Cambodia and the government of the Republic of China for the protection and encouragement of investment on July 19th , 1996;

[51] Author: Ms. L.L.M. POLY Pagna, "Le cadre juridique des investissement au Cambodge" of 2003 said "Pour garatir les investisseurs au niveau international, on la convention de Seoul de 1985 pour la garantie des investisseur; les principles de la banque international pour la reconstruction et le développement (BIRD) de 1980 pour encourager les investisseurs étrangers and les principles de l'Organisation de Coopération et de Developpement Economique (OCDE) de 1976 interdisent à l'État de créer un dispositif legislative ou des règles administrative qui constituent un obstacle à la formation et à liquidation (Translated by SOKKHON David)

- Agreement between the government of Kingdom of Cambodia and the government of Switzerland on the reciprocal protection and encouragement of investment on 1996;
- Agreement on the Multilateral investment guarantee agency (MIGA) in 1999;
- Agreement on the protection and encouragement of investment between the government of Kingdom of Cambodia and the government of Republic of Germany on June 26th , 2000;
- Law on the adoption of agreement on the reciprocal protection and encouragement of investment between the government of Kingdom of Cambodia and the government of Republic France on March 3rd , 2001;
- Law on the adoption of agreement between the government of Kingdom of Cambodia and the OPEC on the international development for the protection and encouragement of investment on July 2nd , 2001;
- Protocol of Cambodia's accession to the Association of Southeast Asia nation (ASEAN) on April 30, 1999;
- Protocol of Cambodia's accession to the World Trade Organization (WTO) on 2004.

By these documents, Cambodia has to obligate the clause as stipulated. Plus, there are also a lot of possibilities and abilities for Cambodia to design a better legal system on investment which is in need of foreign investors. These rules will basically design to encourage investments.

Section3. The Disputes Settlements Mechanisms

The modalities of disputes settlements raised by the foreign investment are the ways to resolve the solution in case of the commercial conflicts. However, the disputes settlements mechanism raised by the foreign investment has not yet occurred, but the law on investment in Cambodia contains stipulations for this matter.

According to the article 20 of law on investment in Cambodia stipulate that *"Except for land-related disputes, any dispute relating to a Qualified Project Investment concerning its rights and obligations set forth in the law shall be settled amicably as far as possible through consultation between the Council for the Development of Cambodia, the investors and any other party involved in dispute.*

If the parties failed to reach an amicable settlement within two months from the date of the first written request to enter such consultations, the dispute shall be brought by either party for:

- *Conciliation before the Council (CDC) which shall provide its opinion, or*
- *Arbitration in or outside of Cambodia as agreed by both parties, or*
- *Trial by the tribunals of the Kingdom of Cambodia*[52]*."*

Within the meaning of this article, in all the disputes relatives to investments in Cambodia, the investors have the rights to find out the amicable solution first. Then, in case of failing to reach the amicable solution within 2 months from the date of the first written request, both parties shall seek conciliation before the CDC or find the arbitrator in or outside of Cambodia or go directly to the tribunal of the Kingdom of Cambodia.

Moreover, the contract of investment is a contract that created the relation between national and international legal acts. In the same word, we can also say the

[52] Art.20 of law on investment 2003

contract of investment is an importance contract in order to develop economy. The operations of this contract are the operations relating to the commercial rules. Therefore, if the parties of contract on investment have conflict of interests or the investors are violated on their interest, the parties of conflict will try to find the most reasonable common solution.

To sum up, the article 20 of law on investment in Cambodia, the modalities of disputes settlements have devised into two ways. In order to understand the details of the disputes settlements, this study first presents study Extra-jurisdictional rule and then looks at the jurisdictional institution.

I. Extra-jurisdictional rule: Action of the Council of Development for Cambodia

The Council for Development of Cambodia is an executive organ of government. The CDC is an organ created by the government and by this organ, the government delegates the certain executive powers to the Council. In the same way, the Council for Development of Cambodia is the sole service organization responsible for the rehabilitation, development and oversight of investment activities. Moreover, in the light of article 20 of the law on investment of 2003 states that *"except for land-related disputes, any dispute relating to a Qualified Investment Project concerning its right and obligations set forth in the law shall be settled amicably as far as possible through consultation between the Council for the Development of Cambodia, the investors and any other party involved in dispute. If the parties failed to reach an amicable settlement within two months from the date of the first written request to enter such consultations,*

the consultation shall be brought by either party for the conciliation before the Council for the Development of Cambodia which shall provide its opinion"[53].

Apart from the modality of extra-jurisdictional rule, the parties of conflict in the subject of foreign investment can also find the solution by jurisdictional way.

II. Jurisdictional institution

The jurisdictional mode is an assembling of litigates for submission to tribunal. In order to solve conflicts, the parties are allowed to choose a tribunal. There exist two modes of dispute settlement: first is the jurisdiction of state (A) and in the other part, the parties can bring the dispute to the Centre of Arbitration (B).

A. The Jurisdiction of State

Jurisdiction is *a government's general power to exercise authority over all person and things within its territory; esp., a state's power to create interests that will be recognized under common-law principles as valid in other states*[54].

In the general observation, if the litigation occurs within the territory of State; it's the national jurisdiction which has absolutely authority. In contrast, the problem of conflicts in foreign investment is that it concerns the interest of many states. Hence in this case, there is an appearance of the conflict of jurisdiction. The question has been often raised: which tribunal has the competence for solve the dispute? In the light of the interest of many States, the rule of determination of jurisdiction consist four criteria:

- The common treatment of the judicial competence: base on the civil rule, in case of dispute, the jurisdictional competence is the territorial judge which is located at the place which is the residence of defendant;

[53] Article 20 of Law on Investment of 2003
[54] Black's Law Dictionary, page 707, eighth edition

- The common treatment of conventional law: the Convention of Bruxelles of 27 September 1968 and the community regulation of 22 December 2000 come into force in 2002 states that *the competent tribunal is the tribunal of residence of defendant when he is a society, the competent tribunal is the tribunal of headquarters when he is public establishment, the competent tribunal is the place where the administration takes the decision*[55].
- The attribution of jurisdiction: in this case the parties have chosen the competent jurisdiction, it means that the parties voluntary insert the clause for appointing the competent jurisdiction. However it should be noted that for the judge to accept, the contention must be an international case; this signifies that the two parties are different nationalities and that the objection of the contention is not contrary to the law and order; it means that the purpose of the dispute is not to damage the law and order.
- The immunity of State and action in justice: accordingly to the Vienna Convention of 1961, the immunity is the parties of classical principles of international law. Their objections are to guarantee the respect of sovereignty of State.

In the same way, for the disputes relative to the subject of foreign investment in Cambodia; the competent tribunal is the tribunal of Cambodia, unless, the parties of the contract on investment mention a clause of the competent tribunal when they have a dispute. Otherwise, theoretically, the order of Cambodian jurisdiction is the unique legal order which has authority over all the subjects within the territory of Cambodia. In the

[55] Author: Ms. L.L.M. POLY Pagna, "Le cadre juridique des investissement au Cambodge" of 2003 wrote that "La convention de Bruxelles du 27 Septembre 1968 et le règlement communautaire de 22 Decembre 2000 entré en vaguer en 2002 prévoient que le tribunal competent est le tribunal du domicile du defendeur lorsqu'il est une société, le tribunal competent est le tribunal du siege social lorsqu'il est un établissement public, le tribunal competent est le lieu où l'administration prend la decision (Translated by SOKKHON David)

Cambodian jurisdiction system, there is only a general tribunal which has authority over all the subjects.

This raises the following question that if the Cambodia has not yet created the specific tribunal, so in case of the conflict relative to the specific domain, hence how can we find the solution?

Generally in Cambodia, in case of conflicts relative to the specific domain, it's the general tribunal which has the authority. One after the other, it will designate the specific judge who has the capacity to solve the disputes. Similarly, the disputes raised by the foreign investors are the conflicts relative to the operations of commerce. So they always bring the case to the general tribunal. Somehow, they bring the case to the National Arbitration Center in order to settle the dispute.

Therefore, Cambodia has not yet created the tribunal in charge of commercial dispute. But recently, in order to facilitate investors, we have adopted the law on commercial arbitration of 6th March, 2006.

B. The Arbitration

The phenomenal growth and the increasing complexity of international trade in recent years have resulted in arbitration becoming the preferred method of settlement of international commercial disputes[56].

The recourse to the arbitration allows the parties to escape the norm of the court of state, this mean that the parties volunteer to bring the dispute to the arbitration and ignore the national jurisdiction. It means that the national jurisdiction does not have authority on

[56] Authors: Prof. J.-G Castel, OC, OO, QC, FRSC, Prof. William C. Graham, QC, DU, Prof. Susan Hainsworth, LLB, MAES, Prof. Armand L.C de Mestral, BCL, LLM and Prof. Mark A.A. Warner, MA, LLB, LLM "Arbitration" page 722, The Canadian Law and Practice of International Trade, Second Edition, Produced by Words Worth Communications of Toronto, Canada.

the case, unless the parties bring to their case to national jurisdiction or the case can affect to the law and public order.

The arbitration is the ancient method which is from the antiquity. In this period, the arbitration is passed by two phases. First, the arbitration is recognized by the public powers. Then, the arbitration is accepted as the rule of dispute settlement between the parties. Article 2 of the Commercial Arbitration Law states that *"Arbitration means any arbitration whether or not administered by permanent arbitral institution"*[57]. In the other word, the arbitration is a method of dispute resolution involving one or more neutral third parties who are usually agreed to by the disputing parties and whose decision is binding[58]. Arbitration is an institution which has the purpose to settle the commercial dispute and opposes the parties who exercise the jurisdictional mission.

In the subject of investment, an arbitration may be *ad hoc* or *institutional* which has competence over this domain. The institutional arbitration is an arbitration which stays under the legal regime of the institution. The institutional arbitration is appointed by the institutions such as the arbitration of ICSID[59] and the arbitration of the International Chamber of Commerce.

In the case of an *ad hoc* arbitration, the parties initiate and proceed with the arbitration without the assistance of a permanent arbitral institution[60]. It means that the *ad hoc arbitration* is an arbitration which is directly appointed by the parties.

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[57] Article 2 of Law on Commercial Arbitration of March 2006.

[58] Author: BRYAN A. GARNER, "Arbitration" page 85, Black's Law Dictionary, Abridged eighth edition, produced by Thomson West.

[59] Convention on International Centre for Settlement of Investment Disputes (ICSID) of Washington of 1965

[60] Authors: Prof. J.-G Castel, OC, OO, QC, FRSC, Prof. William C. Graham, QC, DU, Prof. Susan Hainsworth, LLB, MAES, Prof. Armand L.C de Mestral, BCL, LLM and Prof. Mark A.A. Warner, MA, LLB, LLM "Arbitration" page 722, The Canadian Law and Practice of International Trade, Second Edition, Produced by Words Worth Communications of Toronto, Canada.

The arbitration of ICSID has been created by the Convention of Washington in 1965. It has an Administrative Council in which each States dispose their representative. The president of council is the director of World Bank. The arbitration of ICSID does not settle the dispute by himself; it means that he offers the infrastructure method to the parties of dispute for settle the dispute by the way of *a conciliator or an* arbitrator, the parties will choose the method by themselves. How can we recourse to the arbitration of ICSID?

Article 25 paragraph 1 of the Convention of Washington of 1965 set forth *"the jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a contracting State (or any constituent by that State) and a national of another contracting State, which the parties to the dispute consent in writing to submit to Centre. When the parties have given their consent, no party may withdraw its consent automatically"*[61]. When the parties express their consent, they cannot withdraw consent. Within the meaning of the disposition of this article, an arbitration of ICSID gives only a rule on the consent of contracting parties; it means that without consent the ICSID cannot work and the parties cannot withdraw unilaterally. Beyond the framework of ICSID, it should be noted that it judges only the dispute relative to the natural person and to the subject of international law.

In order to assure the functioning of ICSID must be valid, and so must come before seizure. The consent shall also be given in the precise manner without ambiguity. Moreover, the consent of contracting parties should be formed by written and the consent cannot be withdrawn unilaterally and automatically.

[61] The Convention of Washington on ICSID, article 25 paragraph 1 of 1965

The ICSID has been created from reports of contentions that violate two principles: the first is Protection of foreign good principle and the other is the Sovereignty of the natural resource principle. The recourse to ICSID is possible; there is not problem for the signature country. The problem is for the contracting parties of a contract which one is a signature country and another one is not member of ICSID. In the case, it depends on the consent of the contracting parties. That's why; the host country and the foreign investor country will usually add a clause of recourse to the ICSID in the contract.

Generally in comparison with State, it shall give up the exhaustion of the methods of internal recourse but in the framework of ICSID when the parties accept to recourse to ICSID, they can form the directly recourse without the needs of methods of internal recourse.

In order to clearly understand the arbitral jurisdiction, it is necessary to examine the agreement arbitration or the compromise arbitration (1) and then, the procedure of arbitration (2).

1. Arbitral clause or Arbitral compromise

In order to give authority to settle the dispute to arbitration, there must be an arbitration agreement. The arbitration agreement is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. In other words, the arbitral clause is the fundamental act of arbitration. Plus, the convention arbitration grants the arbitrator the authority for the dispute settlement. Hence, the agreement arbitration

plays a very important role in the modalities of dispute settlement relative to the commercial operations.

The question that arises here is if the principal contract is null, is the arbitral clause also null? Generally, if the clause is added to the principal contract it means that the clause is an element of the contract, therefore if the contract is null the clause is also null.

However, if the clause of arbitration is autonomic it means that the arbitral clause is independent of the principal contract so the nullity of the principal contract does not give the nullity to the clause of arbitration.

In the same way, for the compromise arbitration is an agreement between two or more persons to settle matters in dispute between them; an agreement for the settlement of a real or supposed claim in which each party surrenders something in concession to the other[62]. Plus, it is a convention by this the two parties to recourse to arbitration after creating the conflict. The compromise arbitration contains also the independent character of the principal contract so the nullity of principal contract does not give the nullity of compromise.

Therefore, the recourse to the arbitral jurisdiction can be done by the voluntary of parties in two methods; the first is the clause of arbitration and then, the arbitration agreement.

a. The conditions of validity of arbitrators

In the subject of international commerce, the legal regimes of the arbitral clause and arbitral compromise are not much different. The reason is that the arbitral clause and the arbitral compromise are both considered valid, if they respect two conditions: the conditions of fond and the conditions of form. The law of Cambodia did not state these

[62] Black's law dictionary "compromise", page 241, eighth edition

conditions but we can find out some principles from the Decree number 38 which inspires the ideas of contract and other liability of contract of 28 November 1988 introduced by the French law.

In order to understand clearly the conditions of validity the arbiters, it is necessary to study primary the condition of fond (a-1) and then, the condition of form of the arbitration agreement (a-2).

a-1. The fundamental conditions of the arbitration agreement

The arbitration agreement is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not[63]. As a result, we can define that the arbitration convention is a type of contract, so that the contract of arbitration is valid when it respects the condition of formation of contract. With the light of the article 3 of Decree Number 38, the conditions of validity of contract are firstly that it arises out of a real and free agreement, Secondly, it is made by parties who have capacity to enter into a contract and finally, it has a subject matter that is certain, possible to perform, lawful, and consistent with public order and good customs[64].

Within the meaning of this article, legally the agreement is a free expression of voluntary will of the two parties of contract which decide to recourse their dispute to the arbitrator. The agreement of the parties shall be free and clear without vice of consent. This it means that an agreement that is the result of mistake, duress or fraud is not valid.

Similarly, for the capacity of an individual, we have to control the type of person: private person and public person. The private person shall be the person who has the legal

[63] Law on Commercial Arbitration, article 2 paragraph 2 of March 2006
[64] Decree No.38 on Contract and other Liability, article 3 of October 1988

capacity to sign a contract. In principle, the operations relatives to the public person prohibit recourse to an arbitrator. However, merely the operations relatives to the public person relevant to public service on industry and commerce can do the arbitration agreement.

Otherwise, in the level of international arbitration, this principle shall not be applied for the public person; it means that the public persons have a full capacity to sign an arbitration convention freely. Plus, they have all possibilities and free recourse to arbitration but their purpose shall be conformed to the national and international law and public order.

Apart from the conditions of fond of the arbitration agreement, we move to the conditions of form of arbitration agreement.

a-2. The conditions of form of arbitration agreement

The arbitration agreement precisely states all the decisions of parties who have chosen the arbitration method in order to settle their disputes. Paragraph 2 of article 7 of the law on commercial arbitration states that "the arbitration agreement shall be in writing. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, or other means of electronic telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defense in which the existence of an agreed is alleged by one party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement, provided that the contract is in writing and the reference is such as to make the clause part of the contract"[65].

[65] Law on Commercial Arbitration, article 7, paragraph 2

To sum up, in the national level of arbitral system of Cambodia, the arbitration agreement shall be in writing. However, in the international level, the written form is not important, for example the Vienna Convention of 1980 on international sale was recognized a consensualisme principle. It means that the agreement of the parties is enough for the conclusion of a contract.

b. The legal effect of arbitration agreement

The arbitration agreement contains the force of obligation; it means that according to conception of the philosophy of law, the autonomy of voluntary will is the principle which created the obligations of the contracting parties because the contract is the law of the parties. Legally, this principle is recognized by many States in the World and in particular implemented in the subject of Commerce.

The compromise of arbitration and the arbitral clause are identical to a contract in having the force of obligation for the contracting parties. The contracting parties of the agreement or the clause of arbitration shall absolutely accept to settle the solution by way of arbitration. As a result, the contracting parties cannot refuse the agreement without consent from the other parties of contract. The arbitral convention and the compromise of arbitration shall not be canceled unilaterally except with the unanimous consent of the two contracting parties. But, moreover the question has been raised: when does the arbitral clause or the compromises of arbitration have the value of the force obligation? The compromises of arbitration or arbitral clause have the value of force of obligation due to the signature of the contracting parties; it means that the signature of this convention and this clause are valid. Furthermore, the validity of the arbitration agreement can give the incompetence to the judicial order; it means that the decision of

contracting parties have chosen arbitration to settle their disputes. For instance, if the jurisdiction of a State requested to settle the disputes but the disputes have been submitted to the arbitral jurisdiction by the decision of the parties, in this case the jurisdiction of State shall be pronounced as incompetent, except the nullity of arbitration agreement.

2. The procedure of arbitration

The primary question relative to the arbitral procedure is the designation of arbitrator (a), then the recourse to the arbitration (b) and finally the arbitral award (decision of arbitrator) (c).

a. The designation of arbitrator

The modality of the designation of arbitrators can be changed depend on the type of arbitrator. Within the meaning of the article 11 and 12 of the Commercial Arbitration Law; the khmer natural person or foreigner who is arbitrator shall register with the National Arbitration Center. The National Arbitration Center shall have an obligation to determine the arbitrator's qualification and shall make the public announcement of arbitrator's list yearly. The list is not absolute; the parties are free to choose the arbitrator outside the list[66]. Therefore, to become an arbitrator, one shall be registered with the National Arbitration Center.

In order to understand the designation of arbitrator, it is necessary to study firstly the type of arbitration, then the modality of designation and the finally the power of arbitration.

- *The type of arbitration:*

[66] Law on Commercial Arbitration of March 2006

Legally, an arbitration may be ad hoc or institutional. In the case of an ad hoc arbitration, the parties initiate and proceed with the arbitration without the assistance of permanent arbitral institution. It means that the parties can adopt the arbitration by themselves in order to settle the disputes, plus they fix the precise modalities for arbitrator in order to escape the difficulties in the future. The parties should first choose the arbitrator with accordance to the modalities of designation. After that, they should choose the rules applicable for the functioning of arbitration. Finally, they have to choose the language, the term to take decision and the procedure of recourse.

In brief, these modalities shall be conformed to the conditions of the contracting parties of the commerce investment by which they wish to settle rapidly the disputes. Besides, the institutional arbitration has a general character and it grants a better security than an ad hoc arbitration. The institutional arbitration is born by the voluntary will of both parties to receive the decision that is the most reasonable of the regional and international institution. Therefore, all the designation and the functioning of the procedure of disputes settlements shall be conformed to the regulations of the institutional arbitration which has been created.

It should note that the international institutional arbitration has been created in the last 50 years; therefore the regulation of conciliation and the arbitrator of the International Chamber of Commerce are recognized and very utilized.

- *The modalities of designation*

There exist two methods of the designation of arbitrator. Primarily, the direct designation by the parties is interest for the parties of disputes.

In the subject of international arbitration, the parties shall not stipulate the clause of arbitral designation or the procedure of arbitral designation due to the fact that the parties have to appoint directly after the happening of disputes. The parties are free to agree on a procedure for appointing the arbitrator or arbitrators in order to settle the disputes[67]. In practice, they often appoint the sole arbitrator with the common accordance of the parties. Sometimes each party appoints an arbitrator, and a third arbitrator shall then be appointed by those the two arbitrators. Article 18 of the law on commercial arbitration stipulates that "the parties are free to determine the number of arbitrators. The number of arbitrators shall be an odd number. Failing such determination, the number of arbitrators shall be three (3)"[68]. If the result of the appointment of the third arbitrator is failed, the parties shall submit this affair to the arbitration center in order to appoint the third arbitrator.

Moreover, the parties can also stipulate in the clause or the agreement of arbitration to request the intervention of judge in the case if the functioning of arbitration creates the obstacles by the negligence of parties or by the dishonesty of the parties. After that, the indirect appointment comes, wherein the arbitrator is not appointed by the parties. But it contains the intervention of third party as the parties will choose the appointment of institutional arbitration or ad hoc arbitration with recognizing the rules of appointment of arbitrators by the other international institution. It shall be noted that if the parties accept institutional arbitration; it means that they have already accepted a mode of appointment prepared by the regulation of this institution.

[67] Law on Commercial Arbitration, article 19 "Appointment of Arbitrator" of March 2006
[68] Law on Commercial Arbitration, article 18 "Number if Arbitrators" of March 2006

Generally, the rules of institutional arbitration grant many possibilities to the parties to propose the list of names of arbitrators or accept the arbitrators proposed by the parties or the institution will appoint directly in case of the absence of consent of parties. The obstacles of appointment relatives to the institutional arbitration are rare because the institution play a neutral role to appoint the arbitrator.

- *The power of arbitration*

The power of arbitrator is different than the power of judge because the power of judge shall be stated in the law and the parties do not have rights to refuse. In contrast, the power of arbitration can be determined with accordance to the need of the contracting parties.

The arbitrator settles the disputes, depending on the rule of the parties chose but in the case of the parties failing choose, the arbitrator should choose with accordance to the conditions. In other words, the arbitrator can settle the conflicts, depending on the morality if the parties accepted. In brief, all the powers and the activities of arbitrators are determined by the parties. However, his power is wide enough in the case of arbitrator will be appointed by the system of institutional arbitration.

b. The recourse to arbitrators

The recourse can be different, depending on the types of arbitration. If the parties choose the institutional arbitration, for example the arbitration of International Chamber of Commerce, the recourse shall respect the stages of the procedure: first the party or parties shall form the request to the Secretary of Arbitration of the International Chamber of Commerce in Paris. After that, the Secretary sends this request to the party defendant of dispute and the he is obliged to respond within the term of 30 days. Then, this is the

opening of tribunal arbitral, with the determination of place and price is stipulated by arbitration. After the arbitrator has received the half of fee (as we know that the arbitral procedure is very expensive thus the price is important for opening the procedural arbitration), the international arbitrator sends the documents to the tribunal arbitral.

In this case, the tribunal arbitral has roles to create the letter of activities and send it to the arbitration of International Chamber of Commerce within two months. Finally, when he receives the other half of the arbitral fee, the tribunal of international arbitration starts investigating the affairs in the manner very deeply within one month.

In the part, if the parties chose the ad hoc arbitration, the demand shall not do directly to the arbitration. First, the parties shall inform each other about to the will to settle the problem by the arbitral way and request to the parties to participate in order to appoint the arbitrator. The other party of dispute can participate to the designation. If they think that the arbitrator is incompetent, they are obliged to prove the incompetency.

c. The arbitral award

In order to take his decision, an arbitrator shall control with all the rules which are applicable for settling the dispute. The arbitrator shall also control the other problems relative to the arbitral award such as the plaintiff, the representative of the parties of dispute, the place of arbitration, the language and the time of dispute settlement. It shall be noted that an arbitrator takes his decision based on the principle of the autonomy of the voluntary will to the unanimity or to the majority.

In brief, for the modalities of dispute settlement in the subject of foreign investment in Cambodia, within the meaning of the law on investment in Cambodia; if the parties failed to reach an amicable settlement within two months from the date of the

first written request to enter such consultations, the dispute shall be brought by either party for conciliation before the CDC which shall provide its opinion, or arbitration in or outside of Cambodia as agreed by both parties, or trial by the tribunals of the Kingdom of Cambodia[69]. Furthermore, the foreign investors can also invoke the autonomy principle of the voluntary will of parties to recourse to the arbitration.

As a result, it should be noted that in the subject of investment and commerce, an arbitration is a good method and very popular of the dispute settlement for the contracting parties.

Chapter IV. The Evolving of Legal Framework on Investment in Cambodia

The legal framework currently evolving in Cambodia is an assembly of the national legislations which shall be amended for better adaptation with regional and international standards. As the result, laws and regulations governing Foreign Direct Investment in Cambodia are basically designed to encourage investments. Furthermore, the FDIs are treated in a non-discriminatory manner and allowed to invest freely in many areas.

Therefore, there are two ways of evolution to explore. First is the evolution of national legislation under the effect of regional cooperation that will be covered in section one, and then the evolution of the national legislation under the effect of multilateral integration in section two.

Section1: The Evolution of national legislation under effect of Integration (ASEAN)

With the membership of Cambodia in ASEAN, what legislation shall evolve? For what reason will the national legislation evolve? In response to these questions, it is

[69] Law on Investment of Cambodia, article 20 of February 2003

essential to consider the reason why the Cambodian legislation shall changed, followed by the legislation created by the effect of cooperation.

I. The reasons of evolution

There are many reasons which have invoked the national legislation to evolve. Nevertheless, in the subject of investment, we have found two important reasons attached to the economic market of Cambodia. Principally, the current economic and legal concern for Cambodia revolves around the recent proposition of the service consultation for foreign investment, relative to the fiscal balance of foreign investment on Cambodian territory. Even the evolution of Cambodian legislation is not in the fast track. But at least we are now on the right way to reform Cambodian fiscally and legally, as seen through. The agreement on Common Effective Preferential Tariffs (CEPT) for AFTA (A) as well as the other bilateral agreement (B).

A. Agreement on CEPT for AFTA

The agreement of CEPT is considered as the most important instrument of AFTA and it aims to eliminate all the intra-regional commercial troubles and moreover to reduce/eliminate taxes and other non-tariff restrictions.

The creation of AFTA installs the essential measures on investment in order to facilitate commercial liberalization. This eliminated the tariff and non-tariff obstacles beyond the intra-region and also reformed the structure of taxes in order to facilitate the regional free trade.

Under the Common Effective Preferential Tariff (CEPT), Cambodia is obligated to reduce tariffs each year. Cambodia began implementing the CEPT reductions in the year

2000 and will complete them by 2015. By the end, duty rates will be 0 to 5%, depending on the goods imported.

Therefore, on behalf of its membership in ASEAN, Cambodia has therefore the obligation to participate seriously in this project. As the participant of AFTA, Cambodia has also reformed its legislation which was not conformed to this disposition.

B. The others bilateral agreements

The internationalization of regulation on foreign investment; in Cambodia; has taken place for two decades. Certainly in the completing exam of the evolution of that regulatory, it had also the legal influences to the domestic rule in the domain of foreign invest.

Therefore, the most important phenomenon which reinforces the Cambodian government is the evolution of its national legislation, to meet the norm of bilateral treaties concerning the promotion and the protection of investment.

II. The legislation created by regional cooperation

In order to better harmonize the national law and international law and to attract the foreign investment within the regional framework, the Cambodian government was obligated to modify the law on investment of 1994 and law on fiscal practice of 1997. To appreciate the real impact of these dispositions, it is advisable to compare these with the regimes of the neighboring countries.

In the subject of foreign investment, there were two pieces of legislation created by the regional cooperation. The first is an order on taxes and profits (A), then law on company (B).

A. The regulation on taxes and profit

This section provides an overview of the various taxes applicable in Cambodia. It should be noted that this section only addresses taxes affecting businesses under the current regime, which covers virtually all businesses except small proprietorships.

Profit Tax:

The standard corporate tax rate is 20%. Profits obtained from oil or natural gas production sharing contracts or exploitation of natural resources are subject to a 30% profit tax rate. Certain investment projects can enjoy profit tax exemption upon registration with the Council for Development of Cambodia (CDC) or PMIS (Please see Investment Incentive & Procedures Section for more detail).

Taxable profit is defined under Cambodian law as the net profit obtained from all results of all types of operations realized by the taxpayer and including the capital gains from the sale of assets during the operation or at the close of the business, as well as income from financial or investment operations and interest, rental and royalty income.

This following is the applicable corporate profit tax rate[70]:

Type of Businesses	Rate
Legal entities general	20%
Oil or natural gas production sharing contracts or exploitation of natural resources	30%
Existing business enterprises granted profit tax investment incentives by the Cambodian Investment Board (during the 5 year's transitional period starting from 31 March 2003)	9%
Business enterprises granted a tax holiday by the Cambodian Investment Board (the tax holiday cannot be for more than eight years)	0%
Insurance companies insuring Cambodian risk	5% (of gross premiums

[70] Cambodia Legal & Investment Guide, page 38, Mekong Law Group

Moreover, the following is a chart of the major taxes that a business in Cambodia may incur[71]:

Tax	Rate
Profit Tax	20% (30% for natural resource business; 9% or 0% for existing and tax exempted qualified investors)
Minimum (Profit) Tax	1% of turnover
Withholding Tax	4%, 6%, 10%, 14% or 15% of payment depending on the purpose of payment
Salary	5% to 20% of salary, 20% of fringe benefits
VAT	10%
Import & Export Duties	Varies
Specific Tax on Certain Goods and Service	Varies

Furthermore, at present there are no export duties applied in Cambodia other than those levied on restricted export products, such as timber, rubber, some forms of seafood and other special items. Import duties, however, are imposed on all goods imported to Cambodia. Imported duties are collected regardless of the point of entry on all goods crossing the border, except those specifically exempted from import duties by law or relevant authorities including[72]: Goods temporarily imported into Cambodia; Articles for personal use; Goods exempted from duties by international treaty; Humanitarian aid and some donations; Goods related to international relations; and Goods imported for weddings or funerals.

Moreover, import duties are set by the annual Custom Tariff Schedules. Cambodia is a party of the Agreement on the Common Effective Preferential Tariff (CEPT) which intends to provide the preferential tariffs on imports of manufactured products originating from a member of ASEAN into another ASEAN member state. Under the CEPT scheme, Cambodia will reduce tariff rates on imports of manufactured products originating from ASEAN countries to 0-5% by 2010 and 0% by 2015.

[71] Cambodia Legal and Investment Guide, page 37, Mekong Law Group
[72] Cambodia Legal and Investment Guide, page 45, Mekong Law Group

B. Law on Company

The law on Commercial Enterprises was promulgated on 19 June, 2005 and replaces the former practice of businesses operating based on contractual arrangements. The law now provides a comprehensive framework to establish and operate various types of organizations.

Whatever the form, all direct investments in Cambodia must be registered at the Ministry of Commerce. Certain indirect investments must also be registered or may be registered at the option of the investor.

The initial issue faced by most investors is whether their business objectives would be best served by a direct equity investment through a locally registered business enterprise or by entering into distribution, franchising, management, financing, leasing, technical assistance or other contractual arrangement (including BCC[73]) with existing Cambodian registered legal entities.

Therefore, if the answer is a direct investment, the form of the most suitable investment must be determined. Presently, the available forms are *a limited liability company; branch office; representative office; partnership; and sole proprietorship.* Moreover, there are three types of Limited Liability Company available: single member private limited company; private limited company; and public limited company.

Section 2: The Evolution of the national legislation under effect of Globalization (WTO)

The enlargement of economic territory in the aims of attracting the foreign investments and expenditure in the Cambodian market; requires Cambodia to reform the domestic regulation on foreign investment. The objectives of this policy are in the goals

[73] BCC means Business Cooperation Contract

of finding the financial and technical assistance in order to develop country and it therefore motivates the Cambodian government to adhere to the World Trade Organization. Under the effect of world economic integration and in order to well adapt to the current situation and in accordance with the rules of WTO, Cambodia has made several reforms to the national legislation on investment.

With the accession of WTO, many national legislations on foreign investment have evolved and many regulations will be adopted by this policy integration.

I. The reasons of evolution

Legally, the multilateral trading system can be broadly defined as the body of international rules by which countries are required to abide in their trade relations with one another. The basic idea of these rules is to encourage countries to pursue open and liberal trade policies. These rules are continuously evolving. The rules of GATT and its associate agreements were further revised and updated to meet the changing conditions of world trade in the Uruguay Round of Trade Negotiations which were held from 1986 o 1994. The text of GATT, along with the decisions taken under it through the years and several understanding developed during the Uruguay Round, have come to be known as GATT 1994. Separate agreements have been adopted in such areas as agriculture, textiles, subsidies, anti-dumping, safeguards, and other matters; together with GATT 1994, they constitute the elements of the Multilateral Agreements on Trade in Goods. The Uruguay Round also resulted in the adoption of a new set of rules governing trade in services and the trade-related aspects of intellectual property rights.

Therefore, the main raison for the evolution of Cambodian laws on foreign investment is Cambodia's obligations as a member of WTO, and need to follow the four principles of WTO.

A. The 4 principles of WTO

Even though, the detailed rule of the WTO and its other related agreements may appear complex and their legal terminology often difficult to understand, but they are simple in that they are based on four basic principles. In effect, the entire legal framework of WTO is based on: (1) trade non-discrimination; (2) trade liberalization or market opening; (3) transparency and predictable and (4) Special and differential treatment for developing countries.

1- Trade non discrimination

Nondiscrimination has been a central pillar of trade policy for centuries. Non-discrimination, as prescribed in Articles I and III of the GATT has two major components: the MFN rule, and the national treatment principle[74]. Both are embedded in the main WTO rules on goods, services, and intellectual property, in contrast their precise scope and nature differ across these three areas[75]. This is especially true of the national treatment principle, which is a specific, not a general commitment when it comes to services.

The principle applies at two levels: among countries seeking to export to, for example, Cambodia and among goods and services that enter the Cambodian market. Looked at from another perspective, non-discrimination means that Cambodian goods cannot be

[74] The World Trading System, GATT 1994

[75] Author: John H. Jackson "The World Trading System", page 157, Second Edition: "With the results from the Uruguay Round, the number of challenging MFN issues is on the rise, particularly with reference to the application of the MFN concept to the new subjects of trade in *services and trade-related intellectual property matters*".

discriminated against in export markets with respect to the same goods arriving from competing countries. Once they enter those export markets, Cambodian goods also cannot be treated any less favourably than the same goods produced locally.

- *The Most-Favoured Nation principle (MFN)*

The MFN rule obliges that a product made in one member country be treated no less favourably than a "like" (very similar) good that originates in any other country. On the other hands, Cambodian goods must be treated no less well in the markets of another WTO member than the best treatment available to any other member. Thus, if the best treatment granted a trading partner supplying a specific product is a 10% tariff, this rate must be applied immediately and unconditionally to imports of this good originating in all WTO members. The MFN rule applies unconditionally although it has to be recognized, however, that this principle is increasingly often breached through regional free trade areas and preferential treatment of developing countries.

- *The National Treatment principle*

National treatment requires that foreign goods, once they have satisfied whatever border measures are applied, be treated no less favourably, in terms of internal (indirect) taxation than like or directly competitive domestically produced goods (Article III, GATT 1994). It is an important safeguard against situations in which goods can enter a market but are then made uncompetitive because they are subjected to special taxes, charges, or administrative practices that are not applied to locally produced products of the same kind. The guarantee of "national treatment" will help Cambodian goods succeed

in export markets; but it will also restrict the possibilities for coping with import competition within the domestic economy.

2- Trade liberalization or market opening

This principle is that of progressive trade liberalization through negotiation. WTO is not a free trade agreement. There is scope for the legal protection of markets from import competition. After accession, WTO members are essentially free to liberalize further to the extent, and at the speed, they think fit.

The principle of market opening is promoted in WTO through successive rounds of multilateral trade negotiations aimed at the progressive lowering of trade barriers. Roughly once every 10 years, GATT and WTO have traditionally launched multilateral trade rounds in which member countries engage in broad, general negotiations to open each other's markets or extend the coverage of the rules. WTO was established as a result of the Uruguay Round. Trade ministers also initiated the latest round of multilateral negotiations at the Doha Ministerial Meeting in November 2001.

3- Transparency and predictable

Nothing is more important to business people than knowing and having confidence in the regulatory environment in which they operate. In essence, transparency is a basic pillar of WTO, and it is a legal obligation, embedded in Article X of the GATT and Article III of the GATS. WTO members are required to publish their trade regulations, to establish and maintain institutions allowing for the review of administrative decisions affecting trade, to respond to requests for information by other members, and to notify changes in trade policies to the WTO. These internal transparency requirements are

supplemented by multilateral surveillance of trade policies by WTO members, facilitated by periodic country-specific reports (trade policy reviews) that are prepared by the secretariat and discussed by the WTO General Council. From an economic perspective, transparency can also help reduce uncertainty related to trade policy, and; mechanisms to improve transparency can help lower perceptions of risk by reducing uncertainty. WTO membership itself, with the associated commitments on trade policies that are subject to binding dispute settlement, can also have this effect.

4- Special activities of the WTO

The final principle is that of special and differential treatment for developing countries. In practice, this concept largely amounts to providing poorer countries with easier conditions at the end of WTO trade rounds. That can mean making certain provisions of new agreements non-applicable to developing countries. Alternatively, it can mean granting poorer nations longer time periods to implement such provisions than the periods applicable to developed countries.

B. The Cambodia's obligation and benefits as a member of WTO

With the accession of the WTO, Cambodia can enjoy the rights and benefits as the all member of WTO. In effect, as a member of WTO, Cambodia has promised certain obligations announced in the report of working group which has negotiated with Cambodia. Three obligations are required for Cambodia to respect attentively: - *transparency and predictability; - non-discrimination; - trade liberalization or market opening.*

Generally, a rules-based multilateral trading system provides transparency, stability, and predictability with respect to market access conditions and various other trade-related issues. The provision of these public goods is intended not simply to promote the development of trade relations but also to foster the economic prosperity of trading partners.

The benefits of WTO membership can be categorized under three main headings: - strengthening of domestic policies and institutions for the conduct of international trade in both goods and services, which is required before accession to WTO can be accomplished;- improvements in the ease and security of market access to major export markets; and – access to a dispute settlement mechanism for trade issues.

II. The legislation created by Multilateral Integration

With the accession to the WTO, Cambodia shall respect and conform to the trade measures of the WTO. In order to update the regulations, Cambodia should reform the internal rules and laws which have been submitted in the report of working group to the WTO. Among 29 domains, 17 sectors concerning law and regulation were already conformed to the WTO's measures. Moreover, Cambodia has engaged with WTO to create a law on reforming the court system such as the creation a tribunal on commerce. In contrast, with the reason of the political instability, Cambodia could not realize this engagement until now. However, Cambodia has created a center of arbitration for trade disputes in order to facilitate easing trade disputes.

Plus, in order to better protect the interest of investors, Cambodia has tried to adopt the law on intellectual property with technical assistance from Canada. This can provide guarantees and confidence to the shareholder. Moreover, in order to provide more

incentives to the foreign investment, Cambodia has adopted the sub-degree on the creation of special economic zone on 29 December 2005, and so the shareholder can enjoy their business with many tax exemptions.

Therefore, with the membership of Cambodia to the WTO, the government can enjoy very well many advantages such as technical assistance in order to prepare the policy and regulation for attracting the foreign investment and economically, Cambodia can enlarge their market to the world.

A. Law on the protection of Intellectual Property

With the accession of Cambodia to WTO, Cambodia has fully tried to adopt the intellectual property rights regulation in order to grant a confidence to the foreign investor. Bringing Cambodia's legislative framework up to WTO standards will take a number of years, as the country needs to implement many new laws and regulations and, most importantly, the development of an enforcement regime that will oversee the proper implementation of the WTO's exacting standards. Until that happens, the investor will find that the protection and enforcement of their intellectual property rights is an area of their business that merits close attention.

1. Law on trademark and unfair competition

In February 2002, the law concerning Marks, Trade Names and Acts of Unfair Competition entered into force. Before the new Trademark Law came into effect, there was no civil law on intellectual property protection currently in force in Cambodia. Trademark issues were governed primarily by practice; ministerial declaration.

The trademark Law is quite comprehensive in its scope as it covers the protection of trademarks and service marks, when an objection of registration may be made and the

priority given when there has been a previous registration in another country. The protection given to trademark owners is also defined, as well as their right to assign, transfer and license the trademark.

This trademark law authorizes interested persons to consult the register of the marks and obtain extracts from it. All registrations, renewals refusals or removals of the mark are registered in the official gazette published by the Ministry of Commerce.

On October 4, 1996, Cambodia signed the Agreement between the United States of America and the Kingdom of Cambodia on Trade Relations and Intellectual Property Rights Protection. This Agreement was ratified in early 1997 by the National Assembly of Cambodia. In this Agreement, Cambodia agreed to become a member of the Berne Convention for the Protection of Literary and Artistic Works, to protect all works encompassed by that Convention, and to ensure adequate enforcement measures to protect intellectual property.

2. Law on Patents, Utility Model Certificates and Industrial Designs

The law on Patents, Utility Model Certificate and Industrial Designs was promulgated in January 2003. This important law has as its objectives the encouragement of innovation, scientific and technological research and development, the stimulation and promotion of increased internal and external commerce and investment, the promotion of the transfer of technology to Cambodia in order to facilitate industrial activity and the development of the economy, and the protection of industrial property rights and to combat the infringement thereof from illegal business practices.

3. Law on Copyright and related Rights

The law on Copyright and Related rights was promulgated on March 5, 2003. It aims to secure the rights of authors with respect to works and to protect the works of authors, performers, phonogram producers and broadcasting organizations to ensure a just and legitimate exploitation of those cultural products.

What works are protected by this law? In order to gain the protection of the copyright law, the work in question must fall into one of the following categories: Works of authors who are Cambodian national or habitual residents; Works of first publishing in Cambodia; Audiovisual works, the producer of which is headquartered in or is a habitual resident of Cambodia; Works of architecture erected in Cambodia and other artistic works incorporated in a building or other structure located in Cambodia; and Works to which Cambodia is obliged to grant protection under international treaties.

B. The creation of Special Economy Zone (SEZ)

After the discussion for several years on the regulation of Special Economic Zones (SEZ), Cambodia has recently adopted the sub-degree on the creation of SEZ in December 29, 2005 and the amendment on the sub-degree of SEZ in February 22, 2008 in order to speed-up the process. The main purpose of this regulation is to set forth "procedure and provisions related to the establishment and the management" of special economic zone in Cambodia. It provides for two types of SEZs: General Industrial Zones and Export Processing Zones (100% dedicated to exports).

The Cambodian government intends to establish a number of export Processing Zones in Cambodia. One will be established in Sihanoukville, a second on the Thai border in Koh Kong province and the third on the Thai border in Poipet. It will also allow

and facilitate the formation of various Special Economic Zones around the Country, notably on the border with Vietnam.

All SEZs must be approved for establishment by the Council for the Development of Cambodia. The basic conditions are detailed in the regulation as follows: the size must be 50 hectares or more and be fenced; - Anti-flooding system, clean water system, electricity, telecommunication and post systems must be provided; - A residential center must be built for employees and employers as well as large road system, recycling system for liquid wastes, environmental protection measures and other related infrastructure must be provided.

The procedure to establish an SEZ is envisaged as follows[76]:

Institutions	Relevant Steps or Procedures	Timing
CDC	Application by the Zone Developer to register as Qualified Investment Project and Pay application fee.	Whenever
One-Stop Service Committee at CDC	Make decision to approve or reject the application	Within 28 days from application
CDC	Inform investor of decision of the One-Stop Service Committee and issue the Conditional Registration Certificate.	No later than 28 days from application
CDC	The Zone Developer shall provide the planning and detailed feasibility studies, notably the master plan of all infrastructures, commercial registration documents, Articles of Incorporation, and other certified letters required in the conditional Registration Certificate.	Within 180 days after the issuance of the Conditional Registration Certificate
CDC and other relevant institutions	The CDC will obtain, on behalf of the Zone Developer, all governmental authorizations required from the relevant competent authorities, and will issue the Final Registration Certificate.	Within 100 days from the submission by the Zone Developer of the detailed planning
Council of Ministers (i.e. Prime Minister)	Promulgation of a Sub-Decree specifically on the establishment of the SEZ and its border.	Same time as issuance of the Final Registration Certificate

[76] Cambodia Legal & Investment Guide, page 64, Mekong Law Group

Chapter V. Conclusion

The system of the enlargement of economic and commercial cooperation has allowed Cambodia to have adhered to the ASEAN and WTO. This integration of the Cambodian economy into the regional and world economy will therefore facilitate by the opening of Cambodia to the world and will make their economic institution fully competitive. Furthermore, as a member of ASEAN and WTO, Cambodia has done all efforts to realize the harmonization of international principles on trade and national law in order to attract foreign investment.

In addition, to attract investments, the government of Cambodia has adopted a policy that regards the private sector as the national economy's engine of growth and the key partner of Cambodia. In the world of globalization, capital and technology will flow into investment-friend countries. The government has done a remarkable job in attracting FDI and has better guaranteed all investors a favorable investment environment, especially peace, safety, security, good infrastructure, political and macroeconomic stability, an increasingly efficient legal and institutional framework, transparency, accountability and predictability.

Among the specific strategies, there should be promotion and protection of exportations and incentives to the foreign investors as well as the laws and the institutions in order to help Cambodia to integrate to the world trade. On the other hands, the obligations related to the two organizations also give the Cambodia a legal system most efficacy to the measures relative to the trade transaction and investment. It means that the ASEAN and WTO have granted to Cambodia a legal framework which is recognized by the international community for that the Cambodia is able to reconstruct the institutional

and legal structures of the country in a good environment in order to attract the foreign investments.

In closing, with the proper legal framework, Cambodia will become a very competitive country for foreign investment, with a liberal business environment, non-discrimination, low cost and hard working labor force. All the efforts are the hope of Cambodian government which will continue to attract foreign companies from around the world to invest and to do business in Cambodia in order to develop the country.

ANNEX

LAW ON THE AMENDMENT TO THE LAW ON INVESTMENT OF KINGDOM OF CAMBODIA

Approved by the National Assembly on February 3, 2003

KINGDOM OF CAMBODIA
NATION RELIGION KING

LAW ON THE AMENDMENT TO THE LAW ON INVESTMENT
OF THE KINGDOM OF CAMBODIA

CHAPTER I
GENERAL PROVISIONS

Single Article:

Article 1, 2, 6, 7, 8, 10, 12, 14, 15, 16, 18, 20, 21, 22, and 23, Article 24 of Chapter 09, and Article 25, 26 and 27 of Chapter 10 of the law on investment of the Kingdom of Cambodia promulgated by Royal Kram 03/NS/94 dated August 5 1994 shall be amended as follows:

CHAPTER II
GENERAL PROVISION

Article 1: New

This law governs all Qualified Investment Projects and defines procedures by which any person establishes a Qualified Investment Project.

Only Qualified Investment Projects are entitled to the benefits subject to the scope of this law.

Article 2: New

Within the meaning of this law, the following terms shall be defined as follow:

"Qualified Investment Project" or **"QIP"** means an investment project which has received a Final Registration Certificate.

"Export QIP" means a Qualified Investment Project whose production is exported to be determined by Sub-Decree.

"Supporting Industry QIP" means a Qualified Investment Project which has its entire production (100%) supplying export industry as substitution for the regularly imported raw materials or accessories.

"Working day" means any calendar day which is an official working day of the Royal Government of Cambodia.

"Cambodian Entity" means a company which has a place of business and registered in the Kingdom of Cambodia and 51% or more of the shares of the company are held by a person with Cambodian nationality.

"Person" means any natural or juristic person.

"Conditional Registration Certificate" means the document issued by the council under the paragraph 3 of the new Article 7 of this law.

Final Registration Certificate" means the document issued by the Council for the Development of Cambodia under the paragraph 7 of the new Article 7 of this Law.

"Investment Proposal" means the proposal submitted by any person to the Council for the Development of Cambodia.

"Investor" means any person who carries on a Qualified Investment Project;

CHAPTER II

THE COUNCIL FOR THE DEVELOPMENT OF CAMBODIA

Article 3:

The Council for the Development of Cambodia is the sole and one-stop service organization responsible for the rehabilitation, development and oversight of investment activities. The Council for the Development of Cambodia is the Royal Government's "Etat-Major" responsible for the evaluation and the decision making on all rehabilitation, development and investment project activities.

Article 4:

The Council for the Development of Cambodia compromises of the following two operational boards:

1. The Cambodian Rehabilitation and Development, and
2. The Cambodian Investment Board

Article 5:

The Organization and functioning of the Council for the Development of Cambodia shall be specified by sub-Decree.

CHAPTER III
INVESTMENT PROCEDURE

Article 6: New

All persons wishing to establish a QIP shall submit an Investment Proposal to the Council for the Development of Cambodia in the form and according to the procedures provides in this law and Sub-decree.

Article 7: New

Within three (03) working days of the Council's receipt of the Investment Proposal, the Council shall issue to the Applicant a Conditional Registration Certification or Letter of Non- Compliance.

If the Investment Proposal contains all the information required under the Sub-Decree, and if the proposed activity is not in the Negative List set out in the Sub-decree. However, if the Investment Proposal does not satisfy the above condition, the council shall issue a Letter of non-Compliance to the Applicant.

The Conditional Registration Certificate shall specify the approvals, authorizations, clearances, licenses, permits or registrations required for the QIP to operate, as well as the government entities responsible to issue such approvals, clearances, licenses, permits or registrations. The Conditional Registration Certificate shall also confirm the incentives that the QIP is entitled to under new Article 14 of this law and recognize the statues of the legal entity which will undertake the QIP.

If the Council for the Development of Cambodia fails to issue a Conditional Registration Certificate or Letter of Non-Compliance within three working days, the Conditional Registration Certificate shall be considered to be automatically approved in the form set out in the Sub-Decree.

The Council for the Development of Cambodia shall obtain all of the licenses from relevant ministries-entities listed in the Conditional Registration Certificate on behalf of the applicant.

All government entities responsible for issuing an authorization, clearance, licenses, permit or registration listed on the Conditional Registration Certificate shall

issue such document no later than the 28th working day from the date of the Conditional registration Certificate.

Any government official who, without proper reason, fails to respond to an applicant's request by this deadline shall be punished by law.

The Council of the Development of Cambodia shall issue a Final Registration Certificate within 28 working days of its issuance of the Conditional Registration Certificate. Issuance of the Final Registration Certificate does not release the QIP from obtaining any other approvals specified by competent ministries-entities. Even upon the lapse of the lapse of the 28 working days deadline as stipulated in the paragraph 6 above, all competent entities shall issue approvals as prescribed by laws and regulations. The date of issuing the Final Registration Certificate shall be the date of QIP commencement.

All Letter of Non-Compliance shall clearly state the clear reasons why the Investment Proposal was not acceptable as well as the additional information required to enable the Council to issue a Conditional Registration Certificate.

CHAPTER IV
INVESTMENT QUARANTEES

Article 8: New

A foreign investor shall not be treated in any discriminatory way by reason only of the investor being a foreign investor, except in respect of ownership of land as set forth in the Land law.

Article 9:

The Royal Government of Cambodia shall not undertake nationalization policy, which shall adversely affect private properties of investors in the Kingdom of Cambodia.

Article 10: New

The Royal Government shall not fix the price or fee of the products or services of a QIP.

Article 11:

In accordance with the relevant laws and regulations issues and punished to the public by the National Bank of Cambodia, the Royal Government shall permit investors with investment in Cambodia to purchase foreign currencies through the banking system and to remit abroad this currencies for discharge of financial obligation incurred in connection with their investments. This concerns the following payments:

1. Payment of imports and repayment of principle and interest on international loans;
2. Payment of royalties and management fees
3. Remittance of profit and
4. Repatriation of invested capital in compliance with chapter 8.

CHAPTER V
INVESTMENT INCENTIVES

Article 12: New

The Royal Government shall make available incentives under this Chapter to Qualified Investment Projects.

Article 13:

Incentives and privileges shall include the exemption, in whole or in part of customs duties and taxes.

Article 14: New

Incentives provides for in Article 13 shall include as follow:

1. A QIP shall be entitled to exemption from the tax on profit imposed under the Law on Taxation by obtaining a profit tax exemption period.

   The tax exemption period is composed of a Trigger Period + 3 years ÷ Priority Period. Priority Period shall be determined in the Financial Management Law.

   The maximum Trigger Period is to be first year of profit or three years after the QIP earns it first revenue, whichever is sooner.
2. The entitlement of a QIP under the paragraph 1 above shall be subject to the QIP obtaining from the Council an annual certificate of obligation satisfaction before the State which shall be specified by the Sub-Decree.
3. A QIP shall be subject to a profit tax rate after its tax exemption period as determined in the Law on Taxation
4. A QIP which use the entitlement under the paragraph 1 above shall not been titled to claim any special depreciation under the Law on Taxation.
5. A domestically oriented QIP shall be entitled to import production equipment and production input construction materials, exempt of duty which shall be specified by the Sub-decree.
6. Export QIPs other than an Export QIPs which elects or which has elected to use the Custom Manufacturing Bonded Warehouse mechanism, shall be entitled to import production equipment, construction materials, raw materials, intermediate goods, and production input accessories, exempt of duty which shall be specified by the Sub-decree.
7. A "Supporting Industry" QIP shall be entitled to import production equipment, construction materials, raw materials, intermediate goods and production input accessories, exempt of duty which shall be specified by the Sub-Decree.
8. A person which has acquired, or merged with, an investor, may on application to the Council for the Development of Cambodia inherit all, and any, guarantees, rights, privileges and obligations from the investor's QIP, subject to the merger or acquisition procedures which shall be specified by the Sub-Decree.
9. A QIP which is located in a designated SPZ or EPZ listed in a development priority list issued by the Council shall be entitled to the same incentives and privileges as other QIPs stipulated in this law.
10. A QIP shall be entitled to 100% exemption of export tax, except for activities as stipulated in laws in effective.
11. A QIP is entitled to obtain visas and work permits for the employment in the Kingdom of foreign citizens as managers, technicians and skilled workers, and residency visas for the spouses and dependent of those foreign nationals as authorized by the Council for the Development of Cambodia and in compliance with the Immigration and Labor Law.

Article 15: New

The rights, privileges and entitlements of a QIP may not be transferred or assigned to any third party except by acquisition or merger as stipulated in the paragraph 8 of the new Article 14.

CHAPTER VI
LAND OWNERSHIP AND USE

Article 16: New

Ownership of land by investor for the purpose of carrying on a QIP shall be vested in natural persons holding Cambodian citizenship or in Cambodian Entities.

Use of land shall be permitted to investor, including concessions, unlimited long-term leases and limited short-term leases which are renewable, in compliance with the provisions of the Land Law.

Investors shall have the right to own and pledge as security and transfer the real and personal property situated upon the land and land which the QIP uses, for a period no longer than period determined in a land concession contract or land lease agreement as permitted by law.

Investors cannot transfer or pledge any longer the land concession which has not been in operation.

CHAPTER VII
EMPLOYMENT PRACTICES

Article 17:

Investor in the Kingdom of Cambodia shall be free to hire Cambodian nationals and foreign nationals of their choosing in compliance with the labor and immigration laws.

Article 18:

Investor shall be allowed to hire foreign employees as conditions below:

- The qualification and expertise are not available in the Kingdom of Cambodia among the Cambodia populace. In the event of such hiring, appropriate document including photocopies of the employee's passport, certificate and/or degree and a curriculum vitae shall be submitted to the Council for the Development of Cambodia,
- A letter asserting needs for hiring the foreign employees shall be required. Investors shall obtain an approval and a permit from the Ministry of Social Affairs, Labor, Vocational Training and Youth Rehabilitation,
- Before working for investors, the foreign employee shall hold a permit for work in the Kingdom of Cambodia, issued by the Ministry of Social Affairs, Labor, Vocational Training and Youth Rehabilitation.

Investors shall perform the following obligations:

- Provide adequate and consistent training to Cambodian staff,
- Promotion of Cambodian staff to senior positions will be made over time.

Article 19:

Foreign employees shall be allowed to remit abroad their wages and salaries earned in the Kingdom of Cambodia, after payment of appropriate tax, in foreign currencies obtained through the banking system.

CHAPTER VIII
DISPUTES AND DISOLUSION

Article 20: New

Except for land-related disputes, any dispute relating to a QIP concerning its right and obligations set forth in the law shall be settled amicably as far as possible through consultation between the Council for the Development of Cambodia, the investors and any other party involved in the dispute.

If the parties failed to reach an amicable settlement within two months from the date of the first written request to enter such consultations, the dispute shall be brought by either party for:

- Conciliation before the Council (CDC) which shall provide its opinion, or
- Arbitration in or outside of Cambodia as agreed by both parties, or
- Trial by the tribunals of the Kingdom of Cambodia.

Article 21: New

If an investor intends to end its activities in the Kingdom of the Cambodia, it shall inform the Council for the Development of Cambodia through either a registered letter or a hand delivered letter stating the reason of such a decision, and signed by the investor or his attorney-in fact.

Article 22: New

If an investor intends to stop the activity of its QIP without judicial procedures, the investor shall provide proof to the Council that the QIP has properly settled its depts., including any complainants and claims from the Ministry of Economy and Finance, before the investor is allowed to officially stop the activities of the QIP or dissolve according to the applicable commercial law.

Article 23: New

Once the QIP is allowed to stop its activity either within the judicial procedures or not, the investor can transfer the remaining proceeds of their assets overseas or use them in the Kingdom of Cambodia. However, in the event that the QIP had used machineries and equipment that were imported duty free for less than five years, the QIP shall have the obligations to pay the duties applicable to those machineries and equipment, according to the determination of the Sub-Decree.

NEW CHAPTER IX
TRANSITIONAL PROVISIONS

Article 24:

All investment authorized under the Law on Investment promulgated by Royal Kram N0. 03/NS/94 dated August 05, 1994 and Sub-Decree shall be considered to be Qualified Investment Projects as stipulated in this Law and relevant Sub-Decree.

A QIP entitled to a tax on profit rate of 9% before the promulgation of this Law and which has commenced the investment activity in respect of which the approval was granted, shall be entitled to that 9% tax rate for five tax years commencing from the fiscal

year after the promulgation of this law, subject to the investors submitting in each fiscal year after the promulgation of this law a certificate of obligation satisfaction before the state, which shall be specified by the Sub-Decree as stipulated in the paragraph 2 of the new Article 14.

A QIP entitled to an exemption of tax on profit before promulgation of this law, and whose entitlement has been approved in writing by the Council, shall continue to be entitled to that profit tax exemption, subject to the Investors submitting in each fiscal year after the promulgation of this law a certificate of obligation satisfaction before the State, which shall be specified by the Sub-Decree as stipulated in the paragraph 2 of this new Article 14.

NEW CHAPTER X
FINAL PROVISIONS

Article 25: New

Where the QIP violates or fails to comply with the conditions stipulated by the Council for the Development of Cambodia, the Council shall have the power to withdraw the privileges and incentives grated to him, in whole or in part.

Article 26: New

Any provision contrary to this Law shall be abrogated.

Article 27: New

This Law shall be promulgated immediately.

This law was adopted by the National Assembly
On the 3 of February 2003 at its 9th plenary session
Of the 2nd legislature
Phnom Penh, 4 February 2003.
The Chairman of the National Assembly
(Sign and Seal)
Norodom Ranariddh

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