



REAL ESTATE INVESTMENT GUIDE

BANGLADESH | CAMBODIA | INDONESIA* | LAO PDR | MYANMAR | SINGAPORE | THAILAND | VIETNAM

REAL ESTATE INVESTMENT GUIDE

**Bangladesh | Cambodia |
Indonesia* | Lao PDR |
Myanmar | Singapore |
Thailand | Vietnam**

2014 EDITION

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- CAMBODIA LEGAL, TAX & INVESTMENT GUIDE
- LAO LEGAL, TAX & INVESTMENT GUIDE
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INTRODUCTION

Over the past decade Asia's property market has diversified immensely, and nowhere is this more apparent than in Southeast Asia, the continent's rising star. With a combined population of 616 million in 2012, the economies of the members of the Association of Southeast Asian Nations (ASEAN) are as varied as the region is wide, presenting numerous opportunities for investors.

As in all regions of the world, the wealth of Southeast Asia differs widely between, and even within, states. Indonesia is the region's largest economy, followed by Thailand and Malaysia, with Singapore and Vietnam coming in fourth and sixth places respectively. In fact, as a bloc, ASEAN is one of the most dynamic economies in the world. The region's combined nominal gross domestic product (GDP) of USD 2.31 trillion is larger than either Brazil or Russia.

While other economies shrank during the economic slowdown of 2008-2009, and again in 2010, the region proved itself powerful and resilient, with overall growth of 5.7 percent in 2012. Among the regions in Asia most open to trade and financial flows, ASEAN's share of world foreign direct investment (FDI) totaled 7.6 percent in 2012, almost equal to China's 8.1 percent, with a number of member countries reporting further increases in FDI in 2013; indeed Indonesia and Singapore reached record and near-record FDI levels respectively. Home to one-tenth of the world's population, the region's GDP per capita is increasing every year, and reached USD 3,748 in 2012 (up 4.3 percent from 2011). In the coming years it is expected to become one of the world's major growth engines.

With international tourism hitting a new worldwide high with 4 percent growth in 2012, tourism has been a key factor in the economic development of many Asian countries. According to the UNWTO World Tourism Barometer, the Asia-Pacific region welcomed 248 million international tourists in 2012, with South Asia taking a 23 percent share of the USD 1 trillion global tourism industry.

Southeast Asia enjoyed again the highest increase in tourist arrivals: the 10 percent increase in 2013 followed a 9 percent rise the previous year. The successful marketing stories of Malaysia, new resort developments in Singapore, as well as the "Visit Year" campaigns have helped buoy the region's tourism.

Thailand's international arrivals jumped 16 percent with more than 22 million travelers in 2012, while the number of international tourists visiting Indonesia climbed 5.1 percent to 8

million from about 7.65 million in 2011. The “Visit Lao PDR Year 2012” campaign succeeded in attracting more than 3 million tourists, while in the two years to 2012 Myanmar doubled its tourist arrivals to 600,000. Singapore, for its part, welcomed 14.4 million tourists.

The most sweeping series of political reforms in Myanmar since the 1962 coup has seen the slow withdrawal or softening of United States and European Union economic sanctions, opening up major growth opportunities in the country’s property market.

It is a story of optimism shared across Asia. Investors’ confidence in Indonesia’s economy, which grew more than 6 percent in each of the past two years, has fueled the country’s property market, which was among Indonesia’s top 10 fastest-growing sectors in 2012. Cambodia remains one of the brightest frontier growth stories in Asia, while Singapore, known for its stable real estate market, still has one of the healthiest markets in the Asia-Pacific region. Although high inflation and a large trade deficit threatened overheating in Vietnam, the country remains one of the fastest-growing economies in Southeast Asia, and foreign investors are focused on developing its enticing long-term prospects. The opening in December 2011 of a village for Swiss nationals who wish to retire in Thailand signals the emergence of a new segment in the region’s property market – Western retirees seeking warmer climes, access to cheaper healthcare, and a higher standard of living. According to the Swiss Embassy, most of the 6,700 Swiss people living in Thailand are retired.

Like much of the world, the subdued US and euro-zone markets slowed growth in East Asia in 2012, but the region remains the world’s economic powerhouse, led by China, India, and Indonesia, according to the Asian Development Bank. Southeast Asia and Bangladesh are well positioned to capitalize on Chinese buyers looking to overseas markets as a result of property price cooling measures in their home country.

With Europe and the US seeking to diversify into Asia’s growth markets, interest in the continent’s property sector remains strong. Despite a mixed picture outlined in the Global Competitiveness Report 2012-2013, most of the countries are improving their competitiveness, and the markets in this region continue to provide good opportunities for investors.

In a region as diverse as Southeast Asia, different rules govern different real estate markets, and doing business within these complex markets requires an understanding of local regulations, tax laws, and cultural nuances. Enter DFDL’s property investment guide.

Designed to deconstruct the confusion and provide a solid insight into the property markets of Southeast Asia and Bangladesh, the guide facilitates access to these markets in a simple and straightforward manner.

Providing specialized legal and tax services since 1994, DFDL is a pan-Asian international law firm well experienced in all the emerging markets of the Mekong region – Cambodia, Lao PDR, Myanmar, Thailand, and Vietnam – as well as Bangladesh, Indonesia, and Singapore. Advising on all aspects of an investment from general regulatory matters to specific “big ticket” transactions, DFDL provides assistance to investors, business developers, and entrepreneurs looking to tap into the myriad opportunities unfolding in the region – from resort development in Vietnam and Thailand to the mining sector in Lao PDR, agricultural concessions in Cambodia, and real estate in Myanmar.

With the advent of ASEAN’s single economic market in 2015, the region and its investors will be looking to leverage its position on the global stage, making the most of the free movement of goods, labor, services, and investment. Accounting for more than 6 percent of global exports of goods and services from 2012, there is no time like the present to get a foothold in this vibrant market and harvest the fruits of its growing prosperity.

We truly believe that this real estate investment guide will provide real estate developers and investors with a practical understanding of the legal and tax developments in the real estate sector in Bangladesh, Cambodia, Indonesia, Lao PDR, Myanmar, Thailand, and Vietnam.

Marcus Collins

Partner;

Head of the Regional Real Estate Practice Group

Thailand

BANGLADESH

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Bangladesh at a Glance

Bangladesh has been and continues to be an exciting investment destination for foreign investors including in the commercial and residential property development space. Investors and contractors from South Korea, other parts of Southeast Asia and the United States and Europe have seen a growth in upmarket residential and commercial properties with sustained interest in high-end serviced apartments and high-end hotels (Radisson and The Westin being recent examples). Bangladesh has remained resilient to challenges faced with its stock markets, local liquidity issues and availability of multilateral support, and its economy continues to grow year-on-year by between 5 to 6 percent. The real estate market in its capital city, Dhaka, has seen record high prices for both commercial and residential property as demand has continued to grow and new players have entered the market to leverage the new opportunities this fast developing sector and country have to offer.

Bangladesh (officially known as the People's Republic of Bangladesh) is situated in the fertile Ganges Delta in South Asia. The standard of living in Bangladesh compares favorably with other parts of South Asia. Bangladesh is a parliamentary democracy, with an elected parliament called the Jatiyo Sangshad. It is the ninth most populous country in the world, with a population estimated at some 163 million people.

1.1 Economy of Bangladesh

1.1.1 Overview

Bangladesh has a rapidly developing, market-based economy. Its per capita income in 2010 was approximately USD 1,700 adjusted by purchasing power parity (PPP) terms. According to the International Monetary Fund (IMF), Bangladesh ranked as the 42nd-largest economy in the world in 2010 in PPP terms, and 58th-largest in nominal terms. It is considered to be one of the "Next Eleven" or N11 as identified by "Goldman Sachs investment bank and economist Jim O'Neill" and D8 ("Developing Eight") economies.

Bangladesh's economy has grown by 5-6 percent per year on average since 1996 despite frequent natural disasters, political instability, poor infrastructure, and slow implementation of economic reforms. Although more than half of the gross domestic product (GDP) is generated through the service sector, 45 percent of Bangladeshis are employed in the agriculture sector, with rice as the single-most important product. The ready-made garments industry, textiles, leather products, jute, ceramics, and seafood processing are also important revenue generating sectors for Bangladesh.

1.1.2 Macro-Economic Institutions

The central bank of Bangladesh, named Bangladesh Bank, is the monetary authority of the government of Bangladesh. It is responsible for formulating monetary policy and its implementation. It does so in consultation with the Ministry of Finance (MOF). The MOF is responsible for overseeing the function of the financial institutions of the country, and also for planning, implementing, and controlling the government's public expenditure policies and programs. Both institutions are engaged in formulating appropriate policies consistent with monetary objectives. Currency is not freely convertible, and there are restrictions on outward remittance. Foreign investment (including related issues) is dealt with by the Board of Investment (BOI), which regulates, promotes, and facilitates foreign investments in Bangladesh.

1.2 Legal Environment

1.2.1 Overview

The legal and judicial system of Bangladesh is based on the common law system and owes its origin mainly to 200 years of British rule in the Indian subcontinent, although some elements are remnants of the pre-British period, tracing back to Hindu and Muslim rule. Structures, legal principles, and concepts are modeled on both Indo-Mughal and English law. However, unlike other common law jurisdictions, Bangladesh's Supreme Court has the power not only to interpret laws made by the parliament, but also to declare them null and void and enforce the fundamental rights of citizens.

1.2.2 Legislation

Bangladesh has a written constitution, which is the supreme law of the country. The national parliament is the sovereign law-making body, which is subject to the constitution. Laws are passed by parliament after draft laws are presented before it as bills.

1.2.3 Judiciary

The Bangladesh judicial system is made up of the Supreme Court of Bangladesh and the subordinate courts. The Supreme Court is the highest court and is comprised of two divisions: the High Court Division and the Appellate Division. The judiciary is headed by the chief justice, and the judges of the Supreme Court are constitutional appointments. As the apex court, the High Court Division has the power to hear appeals and revisions from subordinate courts, and also issues orders and directives to enforce fundamental rights and to grant other relief available under writ and its original jurisdiction. The Appellate Division has appellate jurisdiction over the High Court Division.

The subordinate courts are under the control of the Supreme Court and are divided in terms of their jurisdiction over civil and criminal matters. Their hierarchy is based on geographic and administrative importance. In addition, there are special courts and tribunals dealing with specific matters, such as the labor courts, tax tribunals, special tribunals, administrative tribunals, environmental courts, and family courts.

1.2.4 Process to Seek Legal Remedy

In order to seek legal remedy in Bangladesh, a plaintiff has to lodge a complaint with local police or file a case before the appropriate court or authority. For seeking remedy in criminal matters, the local police stations or magistrates with territorial jurisdiction are the appropriate agencies to accept a complaint. For civil claims – such as claims regarding land, money, or compensation – a claimant must file suit at the district-level civil courts, subject to the territorial and pecuniary jurisdiction of the court. Appeals from the subordinate courts lie with the Supreme Court through the High Court Division. The High Court is not a trial court. However, citizens are entitled to seek legal remedy directly in the High Court, by way of writ application, in matters regarding the infringement of fundamental rights. Note, however, that the High Court does have original jurisdiction in admiralty and company matters.

1.2.5 Restrictions on Foreign Ownership of Real Property and Ways to Obtain Rights to Real Property

Foreign persons or entities are not allowed to own real property in Bangladesh. However, certain structures allow foreigners to have ownership rights to real property in Bangladesh. Foreigners may incorporate a local company with 100 percent foreign ownership and have that foreign-owned local company own property. Foreigners can establish joint-venture companies in Bangladesh that can own real property or shares of a local company that owns real property. Foreigners may also lease land in certain specialized areas such as the export processing zones (EPZs).

1.2.6 Secured Transactions Involving Real Property

Real property may be secured by way of mortgage, which is regulated by specific laws. The landowner executes a deed of mortgage, and that deed has to be registered with the Local land registry office pursuant to the provisions of registration laws. Stamp duty is also required to be paid on an ad-valorem basis on the value of the mortgage. Common practice is also to provide registered power of attorney in favor of the mortgagee, along with the registered mortgage deed. All indentures relating to such rights to the land also have to be registered with the local land registry. There is also a common practice of depositing the original title deeds as an informal security.

1.3 Zoning and Building Laws and Regulations

Land Zoning Overview

In Bangladesh there is no specific law that deals with zoning of land across the country, with zoning being regulated by different authorities, based on location and use. Although a land policy at the national level was introduced in 2001, which set out guidelines for improved land use and zoning regulations, it has not yet been fully implemented. Land zoning maps has been completed certain areas in 21 districts and work is ongoing in 40 remaining districts. Initiatives are also being taken to preserve agricultural land. In Bangladesh, typical land zones are as follows:

- agricultural;
- residential; tourism
- commercial;
- industrial; and,
- special economic zones.

1.4 Geographical Land Zoning

1.4.1 Urban Areas

There are zoning regulations that designate specific urban areas in categories such as residential, commercial, industrial, schools, religious institutions, recreational, or hospitals. In four principal cities there are city development authorities – such as the Rajdhani Unnayan Kartripakhkha (RAJUK) in Dhaka, and the Chittagong Development Authority (CDA) in Chittagong – that regulate zoning of land within their respective jurisdictions. Local municipal authorities are also responsible for overseeing land zoning in other urban areas.

1.4.2 Rural Areas

In rural areas, land zoning is regulated by local land authorities.

1.4.3 Special Economic Zones

Certain areas are designated as export processing zones (EPZs), where foreign investors are allowed to lease land directly and are given special advantages in respect of tax such as tax rebates, tax exemptions, tax holidays, export and import facilities by way of reduction of duties, and other trade advantages.

1.4.4 Zoning Laws

Bangladesh is yet to introduce a consolidated law regarding land zoning. Under these circumstances, several government authorities – implementing laws from relevant acts, and using their internal regulation – try to maintain separate zoning, as in the RAJUK controlling land regions over the capital city Dhaka. EPZs are also good examples of a special type of land zoning, in this case to tap into foreign investment; they are administered by the government through the Bangladesh Export Processing Zone Authority (BEPZA).

The National Land Use Policy, 2001 (the Policy) was adopted by the government in 2001, setting out guidelines for improved land use and zoning regulations. The Policy was issued by the Ministry of Land (MOL) but the government still has a lot of difficulties and issues with its implementation. MOL has initiated the process and implementation work is ongoing. The Policy highlights the need for integrated planning and management of the land resources of the country.

In addition, the Agricultural Land Protection and Land Use Act, 2012 (draft), based on the essence of the Policy, has been initiated by the government. Salient features of this draft enactment are to avoid and prohibit the use of agricultural land for commercial purposes, with specific provisions for the use and preservation of other types of land such as forests, hill tracts, tea estates, and “gardens.”

1.4.5 Building Laws and Regulations

While there are laws related to building construction in Bangladesh, historically they have rarely been enforced. Building construction in the urban areas requires specific approvals from the city authorities. Recently a swathe of new laws and regulations has been introduced, mainly to regulate construction in urban areas. New laws have also been introduced to control the urban real estate industry. These laws affect the scope of land development, and the landowner-developer relationship, among other things. They also lay down the responsibilities of building designers, structural engineers, and site supervisors, and provide penalties for any breach. However, since these recent laws are yet to be fully implemented, their impact on the property market is yet to be seen.

1.5 The Real Estate Market: Land Use, Trends, and Key Players

1.5.1 Residential Real Estate

Bangladesh has one of the lowest land-person ratios in the world. The steady GDP growth of the last 10 years has resulted in urbanization and industrialization in Bangladesh on an unprecedented scale, which has in turn affected the real estate market tremendously. Land prices have increased all over the country. The price of land in and around the principal cities has sky-rocketed.

Bangladesh is one of the most densely populated countries in the world. Land prices are high and permanent housing is rare — barely 23 percent in urban centers. Estimates suggest a shortage of about 5 million houses in Bangladesh, with as many as 500,000 houses added annually in urban areas. (Source - World Bank Document, 2010). Real estate business, especially apartment projects, took off in the Dhaka City in the late 1970s. From the early 1980s the business started to flourish and showed robust growth. At present, more than 1,000 companies are active in the real estate business in the country (source - a recent comprehensive study conducted by Real Estate and Housing Association of Bangladesh (REHAB)) Statistics show that Bangladesh will need to construct approximately four million new houses annually over the next 20 years to meet the future demand for housing. The current trend in urban growth in Bangladesh is about 6-7 percent per annum. At present, 29 percent of Bangladesh's population lives in urban areas, and this will increase to 34 percent by 2025.

Although credit is not readily available to, and accessible by, the masses, and the cost of financing remains very high because of population growth and rapid urbanization, real estate prices in the urban areas continue to rise. The cityscapes have changed considerably from low-rise properties to congested, high-rise, apartment-style buildings.

1.5.2 Hospitality

With the increasing interest of the international investor community in Bangladesh, the hospitality sector is witnessing a boom. There has been a sharp increase in the number of new hotels, guesthouses, and motels in Dhaka, and also to some extent in Chittagong. A number of international hotel chains opened up less than five years ago and all of these are now looking toward expansion as even more international brands are coming in. As a result of the growing young middle class, local tourism is also seeing a boom. Hotels owned by local entrepreneurs are being built in droves in the handful of tourist destinations in the country, resulting in overcrowding and concerns for the environment. However, there are still opportunities for international brands to move into those areas as more local holiday-makers are travelling abroad, seeking international quality service.

1.5.3 Retail

Demand for retail space in the urban areas has seen unprecedented growth. Most of the demand is from local entrepreneurs, servicing the needs of the burgeoning urban population. Shops, shopping centers, restaurants, cafes, and fast-food outlets have traditionally been the main retailers. Recently banks and service centers for telecom companies have started taking up a lot of retail space. Chain stores are a recent phenomenon in Bangladesh. There are such stores for consumer goods, and more recently bakeries, grocery stores, and superstores have been set up in Dhaka and Chittagong. Some international fast-food chains have also entered the market, mainly in the two major cities. There are a number of shopping centers similar to malls, but they lack international quality in terms of facilities, infrastructure, and overall aesthetic.

1.5.4 Agriculture

Bangladesh is primarily an agrarian economy. Agriculture is one of the principal producing sectors of the economy, comprising about 30 percent of the country's GDP and employing around 60 percent of the total labor force. Until very recently, most farming methods and processes were very traditional, and indeed this remains the case for much of the country. However, a number of large local conglomerates have entered the agri-business sector and are now transforming certain methods and processes, with new machinery being introduced. Nevertheless, some companies are still using traditional methods to add value by branding their products as organic and marketing them appropriately in sophisticated markets in the West.

1.5.5 Mining

The constitution of Bangladesh provides that the state is the owner of all mineral resources in the country. All mining activity is thus heavily regulated by the government. The principal mining activity in Bangladesh is in the form of exploration, production, and distribution of natural gas, petroleum, and coal. Petrobangla is the sole authority that regulates all matters relating to oil, gas, and mineral exploration, transmission, marketing, mining, production, and development. International companies may engage in exploration and production of petroleum and mineral resources in Bangladesh by entering into production sharing contracts (PSCs) with Petrobangla. Royalties under the PSCs are not fixed and are negotiable.

1.5.6 Opportunities

As the economic landscape in Bangladesh is changing and developing rapidly, opportunities in the real estate sector abound. In the residential market, there are tremendous opportunities for international companies to come in and consolidate, as the entire market is fragmented. As the young, urban middle class grows, there will be further demand for housing. In addition, the legal framework is still conducive for foreign investment in this sector. Although there are restrictions in terms of convertibility of currency, the foreign exchange laws allow for repatriation of profits and capital.

CAMBODIA

GUILLAUME MASSIN

Partner; Managing Director, Cambodia; Deputy Head of the Regional Real Estate Practice Group; Head of the Cambodia Real Estate Practice Group.

Cambodia at a Glance

After continuous annual economic growth of around 10 percent per annum during the decade prior to the global economic crisis, Cambodia saw its GDP growth slow dramatically to just 0.1 percent in 2009 during the worst of that financial crisis. However, the country bounced back impressively, with official economic growth of 5.5 percent in 2010, and reached 7.6 percent in 2013. Cambodia has recovered well and continues to show healthy growth driven by strong foreign investment, stability in the real estate sector, a growing tourism industry, and impressive increases in agricultural production and garment exports.

Nominal GDP was USD 15.4 billion in 2013 and is expected to reach USD 17.5 billion by 2015. In 2012, services made up an estimated 40 percent of the national economy, with agriculture constituting 36 percent and industry 24 percent.

According to the UN's World Investment Report, FDI in Cambodia reached almost USD 1.6 billion in 2012, compared with USD 902 million in 2011, a rise of 73 percent. That was largely credited to businesses looking to invest in the inexpensive, labor-intensive garment and manufacturing industries, and was helped by rising production costs outside Cambodia.

Cambodia is an open economy, with foreign firms comprising 40 percent of listed companies in 2010, a figure that keeps growing. The Ministry of Commerce (MOC) estimates that more than 1,000 of the 2,572 businesses granted licenses that year were foreign.

Although upward pressure on prices increased by the end of 2010, inflation in Cambodia remained well below the 20 percent-plus annualized rates experienced in July and August 2008 prior to the onset of the economic crisis. Following a year of deflation in 2009, consumer price index inflation returned in 2010 as prices of key commodities, including rice and fuel, climbed an average of 4 percent. The inflation rate continued to accelerate in 2011 and 2012, with prices for food and non-alcoholic beverages, clothing and footwear, housing, electricity, gas, other fuels, transport, and miscellaneous goods and services increasing. In 2013, inflation dropped sharply at the beginning of the year to stabilize at 4.5 percent at the end of 2013, with an annual average of 2.5 percent.

Despite tensions following 2013's general election, in which the ruling party won a majority of seats in the National Assembly, and protests by the opposition of alleged irregularities and fraud, Cambodia is expected to consolidate its growth in 2014. In short, the outlook looks bright for foreign investors in this understated land of opportunity.

2.1 Legal Environment

2.1.1 Constitutional Monarchy

The Kingdom of Cambodia and the Royal Government of Cambodia came into being in the form of a constitutional monarchy. Under the constitution – adopted on September 21, 1993 as the supreme law of the land – power is divided between the executive branch, the legislative branch, and the judiciary.

The executive branch, the Royal Government of Cambodia, is composed of a prime minister, the Council of Ministers, the ministries, provincial and municipal authorities, and various other government agencies.

The legislative branch is composed of a 123-member National Assembly and a 61-member Senate – the latter was created under amendments to the constitution in 1999. The constitution requires elections for National Assembly members to be held at least once every five years. The National Assembly then chooses the prime minister by a two-thirds majority vote. Members of the Senate are selected by the political parties with representation in the National Assembly, and by the King. In the future, senators will be elected by the people.

The Senate has the right to review all laws passed by the National Assembly and to propose its own legislation, though it cannot veto laws passed by the National Assembly. The Senate may, however, return any law to the National Assembly for reconsideration. If the National Assembly approves the law a second time, it will come into effect between 10 and 20 days after being signed by the King, without further review by the Senate.

The judicial branch is composed of a military court, municipal and provincial courts, a Court of Appeal, and a Supreme Court. The Cambodian judicial system is competent in all civil, criminal, commercial, and administrative cases.

2.1.2 Current Status of Legal Reform and Future Trends

Cambodia's legal system and legal institutions currently present a complex labyrinth for foreign investors to navigate. However, the situation has become somewhat less confusing following the accession of Cambodia to the World Trade Organization (WTO). Cambodia's

ongoing transformation into a democratic and capitalist free-market economic system has resulted in many new laws and regulations being passed, new policies being implemented, and modification of the judicial institutions.

Since its accession to the WTO, Cambodia has committed to adopt 47 new laws to ensure full compliance with WTO standards. A number of these laws have been enacted, while others are still being prepared. Such enacted laws include the 2011 Law on the Implementation of the New Civil Code, the 2010 Foreign Ownership Law, the 2010 Law on Anti-Corruption, the 2010 Law on Expropriation, the 2007 Law on Insolvency, the 2007 Law on Secured Transactions, the 2007 Law on Customs, the 2006 Commercial Arbitration Law, the 2005 Law on Negotiable Instruments and Payment Transactions, and the 2005 Law on Commercial Enterprises.

Further laws are expected soon, including the Notary Public Law and the new Commercial Contract Law, as well as many other laws touching on nearly all aspects of business activity, which are being drafted by various ministries with the technical assistance of several donor countries.

The main pillars of Cambodian legal and judicial reform are being implemented through the recent adoption of new civil and criminal procedures codes. In accordance with the Law on the Implementation of the New Civil Code, which was enacted by the National Assembly in April 2011, the new Civil Code, promulgated in December 2007, came into force in December 2011. The new Penal Code came into force in December 2010.

2.2 Restrictions on Foreign Ownership of Real Property and Ways to Obtain Rights to Real Property

2.2.1 The 2001 Land Law

In November 2001, a new Land Law was enacted (the 2001 Land Law), which considerably improved the legal infrastructure for land-related investments in Cambodia. The 2001 Land Law clarified various types of rights relating to land, including ownership, easement, usufruct, security interest, concessions of state and private land, and leases. It also clarified the process by which land is transferred by sale or succession, and registration of the transfer.

In implementing the 2001 Land Law, the government established cadastral commissions at the local and national level in 2002. These are vested with the power to settle disputes over unregistered, immovable property, and recognition of lawful possession. New regulations also detail the structure and mission of the cadastral commissions. Cambodia has now put in place the mechanism for registering land throughout the country, both systematically and sporadically.

Further implementing regulations will be issued by the Ministry of Land Management, Urban Planning and Construction in the coming years to further detail, clarify, and regulate this crucial area.

The 2001 Land Law superseded contrary provisions of the 1992 Land Law and all other preceding laws and regulations, but otherwise co-exists with such prior laws and regulations. It is to be noted that the 2001 Land Law has been amended by the 2011 Law on the Implementation of the New Civil Code as discussed below.

2.2.2 The 2010 Law on Foreign Ownership

As to foreign ownership of co-owned buildings, a major step forward was achieved with the promulgation of this Law on the Provision of Ownership Rights over Private Units in Co-Owned Buildings to Foreigners. Since the promulgation of this law and the adoption of the Sub-Decree No. 82 dated July 29, 2010 on the Determination of the Proportion and Methods for Calculating Private Units that Can Be Owned by Foreigners in Co-Owned Buildings, foreigners are allowed to own up to 70 percent of private units in co-owned buildings or condominiums, excluding ground and underground floors. Specific formalities have to be undertaken, however, in order to apply for co-ownership titles in order to register foreigners' rights on co-owned buildings or condominiums.

2.2.3 The 2011 Law on the Implementation of the New Civil Code

The purpose of the Law on the Implementation of the New Civil Code, (the Implementation Law), enacted by the National Assembly on April 6, 2011 and entered into force on December 1, 2011, is to ensure continuity in the legislation governing civil matters, and to guarantee the proper enforcement of the provisions of the Civil Code and of any matter related to the implementation of the Civil Code. As a result, a number of provisions in the existing Cambodian laws will be abrogated or amended.

The Implementation Law revokes certain provisions of the 2001 Land Law. Specifically, it revokes provisions dealing with:

- means of acquisition of ownership, including acquisition through sale of immovable property, acquisition by exchange of immovable property, acquisition by succession, and acquisition by gift;
- rights and obligations of owners, including the enjoyment of the benefits of ownership, accession to fruits and products of ownership, accretion of ownership, and leases on immovable property;
- limited proprietary rights, including usufruct, and the rights to use, habitation and easements;

- undivided ownership;
- joint ownership; and,
- immovable property used as surety, including mortgage, antichrèse, and gage.

All of these provisions are replaced by new ones in the Civil Code.

2.2.4 Land Investment Structuring

Cambodia is rich in land for development. Land may be privately owned by individuals with Cambodian citizenship, or legal entities having Cambodian nationality, without any limitation by time or interest (except in case of concession).

A legal entity is considered to have Cambodian nationality if 51 percent or more of the voting shares of the entity are held by Cambodian citizens or a Cambodian entity, and if the registered address of the entity is located in Cambodia. In addition, foreigners may be registered as the mortgagee of land, giving secure exposure to real estate investments.

The combined effect of these factors is that nearly all investments in Cambodia involve some investment in immovable property.

For foreign investors, such investment in immovable property is usually in the form of:

- perpetual lease;
- concession from the state;
- minority interest in a Cambodian-owned company that owns immovable property; or,
- direct interest (freehold title) in a co-owned building.

2.2.5 Perpetual Leases

Under the 2011 Civil Code, foreign investors may secure control over land through a perpetual lease. A perpetual lease refers to a long-term lease of immovable property for a term of not less than 15 years and not more than 50 years. It must be in writing in order to be valid, and must be registered in order to be enforceable against third parties.

The perpetual lease can be renewed for another term of 50 years, assigned with or without consideration, sub-let, or inherited. Upon termination of a perpetual lease, the lessor cannot demand that the lessee restore the immovable property to its original condition, unless the lessee has destroyed the immovable property or fundamentally changed its nature. Furthermore, the lessor shall acquire the ownership of any improvements and any structures installed on the immovable property by the lessee without having to pay compensation to the lessee. However, exceptions to this rule may be provided.

2.2.6 Concessions from the State

Under the 2001 Land Law and the 2007 Law on Concession, concessions can be granted by the state, notably:

- economic land concessions;
- infrastructure concessions; or,
- use, development, and exploitation concessions.

2.3 Economic Land Concessions

Foreign investors may have interests in state private property through economic land concessions (ELCs). The 2001 Land Law defines an economic land concession as a land concession responding to an economic purpose that allows the concessionaire to clear the land for industrial or agricultural exploitation.

On December 16, 2005, the Council of Ministers adopted the Sub-Decree on ELCs, which establishes the criteria, procedures, mechanisms, and institutional arrangements for initiating, granting, and monitoring ELCs.

The purpose of granting ELCs is primarily to develop intensive agricultural and industrial-agricultural activities with a high level of capital, and to increase employment opportunities in rural areas.

Formerly, ELCs with a value of less than 10 million riels (the Cambodian currency) (USD 2,500) and a total concession area of less than 1,000 hectares could be granted by the relevant provincial or municipal governor. The Council of Ministers removed this authority in 2008, and now ELCs must be, in general, granted by the Ministry of Agriculture, Forestry, and Fisheries.

ELCs can only be granted on land that is registered and classified as state private land, and for a use consistent with a land use plan adopted by the provincial-municipal state land management committee. The size of the concession is generally limited to 10,000 hectares, with some exceptions available. Furthermore, environmental and social impact assessments must be completed for the anticipated project. There must be a plan for resettlement if the land is occupied, and there must be consultations with the local authorities and residents regarding the project.

According to the sub-decree, there are two permissible ways to initiate ELC projects:

- through a solicited proposal, where a contracting authority proposes a project for solicitation of proposals from investors; or,
- through an unsolicited proposal, where an investor proposes a project to the state.

Solicited proposals are the preferred method of initiating an ELC. However, if the investor can demonstrate exceptional advantages to achieving the purposes of an ELC, such as introduction of new technology, exceptional linkages between social land concessions and ELCs, and access to processing or export markets, unsolicited proposals may be considered by the contracting authority.

In practice, however, another pragmatic way of acquiring rights to concessions has emerged through the involvement of intermediaries. This applies mainly to new concessions or concessions in the process of being issued.

The transaction taking place between a broker or agent as intermediary, and the investor, is formalized into an agreement. Frequently, this agreement is in the form of a service agreement. However, there might be important risks attached to the format of the transaction under a service agreement. For instance, even if the services provided by the intermediary are not successful and do not allow for the issuance of the requested concession, under Cambodian law the service provider may still be entitled to the payment of partial fees for the services rendered to the investor.

For this purpose, structuring the contract in respect of clear and detailed conditions precedent is important. If the conditions are not satisfied, no payment will be provided, and if the intermediary does not remedy the default in relation to the conditions precedent, the agreement will be terminated.

The following conditions are usually included in contracts between intermediaries and investors to provide clear obligations to be completed by the intermediary:

- obtaining a sub-decree from the government, stating that the concession land is part of state private land under the trusteeship of the relevant contracting authority;
- execution of a concession agreement in relation to the concession land for 70 years with the contracting ministry, duly authorized to that extent; and,
- obtaining land clearance approvals, permits, or authorizations from relevant government institutions in order to develop the project infrastructure and to undertake agro-industrial development and build the infrastructure required for the development of agro-industrial activities.

The Royal Government of Cambodia issued a moratorium on May 7, 2012 pursuant to which the issuance of new ELCs is suspended and the government shall revoke any existing ELCs that have not complied with their obligations under the ELC agreement (the “Moratorium”). Moreover, pursuant to this Moratorium, the government will revoke ELCs granted to

companies that, as of the date of issuance of this Moratorium, have already obtained approval from the government but failed to develop the land under concession, or failed to comply with the concession contracts or the legal procedures in force. The ELCs revoked accordingly will be put under the direct management of the state.

Furthermore, with regard to ELCs already approved in principle by the government, these ELCs shall continue to be implemented in accordance with the legal principles and procedures in force. However the Moratorium requires that the competent ministries, institutions, and authorities rigorously monitor the implementation of ELCs in order that they do not negatively affect the lands and livelihoods of the communities.

The authorities have not given any indication as to how long the ban will stand on the issuance of ELCs.

2.4 Infrastructure Concessions

For use, development or exploitation concessions, the Law on Concession, passed on October 19, 2007 (“Law on Concession”), is meant to facilitate the implementation of privately-financed infrastructure projects in Cambodia in order to ensure the public interest and the fulfillment of the national economic and social objectives. Following the promulgation of the Law on Concession, an implementing sub-decree will also need to be issued.

The Council for the Development of Cambodia (CDC) is the one-stop service entity for obtaining the authorization required to implement an investment project in accordance with the Law on Investment. The CDC shall, upon receipt of a request for a Qualified Investment Project (QIP), implement a Concession Contract. The Law on Concession sets a maximum concession period of 30 years from the date of signing the concession contract, but allows the government to grant a longer period should the nature of the project so require.

2.5 Mining Concessions

Under Cambodian’s Constitution, all mineral resources are the property of the state and are regulated by law. Currently the main laws governing the mining sector are the 2001 Law on the Management and Exploitation of Mineral Resources (“LMEMR”) and the 1999 Law on Environmental Protection and Natural Resources Management. These two laws form the policy framework around which mineral exploration and recovery in Cambodia should be based. In Cambodia’s legal system, laws are elaborated upon by Sub-Decrees and *Prakas* that give more specific details on procedures for obtaining and operating a mining concession.

The Royal Kram № NS/RKM/1213/017, dated December 6, 2013, promulgates the establishment of the Ministry of Mines and Energy (“MME”). The MME leads and manages the minerals and energy sector, including petroleum, gas, and electricity. The minerals and energy sector, which was previously within the purview of the Ministry of Industry, Mines, and Energy (MIME), now falls under the supervision of the MME.

In 2001, the MIME – now replaced by the MME – passed the Law on the Management and Exploitation of Mineral Resources (the Mining Law) in order to attract domestic and foreign mining companies to invest in the mining sector. The Mining Law governs the management and exploitation of mineral resources, and all activities relating to mining operations in Cambodia except for those relating to petroleum and gas.

Under this law, the natural person or legal entity (i.e. a mining company) wishing to conduct mining operations in Cambodia must apply to the minister at the MME for all other mineral licenses (points 2 to 6 below).

To effectively facilitate the management and exploitation of mineral resources within Cambodia, the Mining Law allows Cambodian and foreign investors to apply for the following mineral licenses:

- Artisanal mining licenses shall be issued only to Cambodians to explore for and exploit mineral resources by using locally available hand tools and by working alone or with family members in a group, not exceeding seven.
- Pit and quarry mining licenses shall be issued to a qualified natural person or a legal entity to explore for and exploit construction materials and industrial minerals quarried from pits and used in the construction, chemical, and processing industries.
- Gem mining licenses shall be issued to a qualified natural person or a legal entity to explore for and exploit precious, semi-precious, and ornamental stones.
- Mineral [gemstone] cutting licenses shall be issued to a qualified natural person or a legal entity to cut precious, semi-precious, and ornamental stones.
- Mineral exploration licenses shall be issued to a qualified natural person or a legal entity to explore for mineral resources.
- Industrial mining licenses shall be issued only to a concessionaire holding a mineral exploration license to explore for and exploit mineral resources found in commercial deposits located within the boundaries of the area of land granted under the mineral exploration license.

Land use rights for mining projects can be secured either by way of a lease arrangement (if it is a private ownership property) or through government concessions (if it is state private property).

2.6 Minority Interest in a Cambodian-Owned Company that Owns Land

A foreign investor can choose to invest in land by forming a limited liability company in partnership with a Cambodian entity or individual. The newly formed company must have a minimum 51 percent Cambodian shareholding. The foreign shareholder can own only up to 49 percent of the shares.

In order to control rights to the real property in which they have invested, shareholders can enter into private agreements such as a shareholders' agreement appointing a proxy agent, or a shareholders' agreement creating different classes of shares. Under the first agreement, the Cambodian shareholder grants the foreign shareholder rights to act as the permanent proxy agent of its shares. Under the second agreement, the foreign investor can allocate one class of shares, with restrictions attached thereto, to Cambodian shareholders, and a class of shares without restrictions to the foreign shareholders. Restrictions may include restrictions on the transfer of shares.

If an investor intends to take a perpetual lease interest in land, or an ownership interest through a 51 percent Cambodian-owned company, it is very important that clear, unencumbered ownership of the land owned by the landlord or land holding company is verified. Given Cambodia's recent history, this can sometimes be time-consuming, and may lead to uncertain results. However, a title search will often reveal any registered encumbrances or other problems that could affect legal transfer of the land.

2.7 Real Security Rights Involving Real Property

The 2011 Implementation Law revokes certain provisions of the 2001 Land Law, including Part 5, which dealt with immovable property used as surety. Under the Land Law, immovable property could be put up as surety by its owner to secure the payment of a debt by way of mortgage, antichrèse, or gage.

Under the Civil Code, foreign investors have real security rights. The new code establishes five types of real security rights, including pledge and hypothec.

A real security right is established in order to secure an existing debt or a debt to be incurred in the future, if it can be specified. Where the holder of a real security right does not receive satisfaction of the secured claim, he may enforce the real security right in accordance with procedure established by law.

2.8 Pledge

Under a pledge, a pledgee is entitled to hold possession of the property that he has received from the debtor or a third party as security for his claim, and to obtain satisfaction of his claim out of such thing in preference to other creditors.

Unless otherwise provided, the pledgee of an immovable property may use and receive the profits of the immovable property in accordance with its ordinary use; shall pay the costs of management thereof, and shall bear all other charges pertaining to such immovable property; and may not demand interest on the secured claim. The pledge of an immovable property cannot exceed five years, and can be renewed.

2.9 Hypothec

Pursuant to the legal regime governing hypothecs, a hypothec is entitled to obtain satisfaction of his claim in preference to other creditors out of the immovable property that has been furnished as security by the debtor or a third party. A perpetual lease or usufruct may also be made the object of a hypothec.

A hypothec may not assert the hypothec against a third party who is not the hypothecator unless the instrument creating a hypothec is notarized and registered in the land registry.

The effect of a hypothec shall extend to all things that are attached to, and form part of, the land comprising the object of the hypothec when the hypothec was created, including buildings residing thereon, as well as things attached to the land after the hypothec was created. In the event of failure to perform on a debt, a hypothec may apply to the court for compulsory sale of the entirety of the hypothecated land. This rule, however, incurs an exception in cases where the buildings attached to the hypothecated land are subject to a perpetual lease, usufruct, or leasehold agreement registered in the land registry. In such cases, the hypothec may not demand the compulsory sale of the building together with the hypothecated land.

2.10 Zoning, Licensing, and Construction Regulations

The 1994 Law on Land Management, Urban Planning, and Construction regulates both local and national land use. The objective of this law is to promote the organization and embellishment of urban and rural areas throughout the Kingdom. Its purpose is to establish a national framework for the development, administration, and implementation of land use policies and regulations. The government has focused its efforts in three areas – Siem Reap province, Sihanoukville province, and the greater Phnom Penh region – in an attempt to create a comprehensive land use plan. However, these plans are general in nature

and require detailed sub-decrees in order to be fully implemented. Investors intending to undertake projects in any of these three areas should familiarize themselves with the various land use permits and committees that exist at both the local and national level.

For example, in Siem Reap, the Apsara Authority has been established by law to regulate the use of land around the Angkor Wat temple complex. Various use zones have been established to conserve and protect the temples and surrounding areas. Foreign investors should familiarize themselves with the applicable zoning rules and regulations before moving forward with acquiring an interest in land.

2.11 Special Economic Zones

The government has established a number of export processing zones. The framework for special economic zones is now governed by a Sub-Decree on Special Economic Zones (SEZ SD), described below.

The main purpose of the SEZ SD is to set forth “procedures and provisions related to the establishment and the management” of special economic zones (SEZs) in Cambodia. It provides for two types of SEZs: general industrial zones and export processing zones (which are wholly dedicated to exports).

All SEZs must be approved for establishment by a new wing of the CDC called the Cambodian Special Economic Zone Board (“CSEZB”), which was established to manage the SEZ scheme. Basic terms are detailed in the SEZ SD as follows:

- SEZ refers to the special area for the development of the economic sectors, which brings together all industrial and other related activities and may include General Industrial Zones/or Export-Processing Zones. Each SEZ shall have a Production Area which may have a Free Trade Area, Service Area, Residential, and Tourist Area;
- it must have land of more than 50 hectares with precise location and geographic boundaries;
- it must have a surrounding fence;
- it must have a management office building and a Zone Administration office, and all necessary infrastructure must be provided;
- it must have water sewage systems, a waste-water treatment network, a location for the storage and management of solid wastes, environment protection measures, and other related infrastructure as deemed necessary.

The procedure to establish an SEZ is envisaged as follows:

Institutions	Relevant Steps or Procedures	Timing
CDC	Application by the zone developer to register as a Qualified Investment Project and pay application fee.	At any time.
One-Stop Service Committee at CDC	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 infrastructure, 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	Promulgation of a sub-decree specifically on the establishment of the SEZ and its border.	Same time as issuance of the final registration certificate.

Zone investors must register with the SEZ administration by providing all required documentation. The SEZ administration will then register the project and provide relevant incentives as provided by the Law on Investment and other regulations.

The Council for the Development of Cambodia (CDC) is the état major for the government on all strategic and regulatory aspects for the development of SEZs. Notably, the CDC will resolve disputes in relation to SEZs and will nominate officials for the administration of an SEZ.

The incentives that can be granted by the CDC to zone developers are detailed in the SEZ SD. The procedure to obtain these incentives is stipulated, and the main incentives are listed as follows:

Tax, Duty or Others	Incentive
Tax on Profit	Exemption of nine years.
Import Duties	The import of equipment, construction equipment, means of transportation to be used in the infrastructure construction, and transportation in the SEZ shall be exempted. This exemption will also apply for the import of machinery, and equipment for construction of connecting roads and other infrastructure for public services.
VAT	Zero percent for the zone developer and the zone investors as follows: VAT recorded for every import by zone investors and cancelled if the output materials of production are exported.
FOREX	The zone developer, zone investor, and foreign employees will have the right to transfer offshore all income from the investment and salary received from the SEZ after payment of tax.
Investment Guarantees	Protection against nationalization, price fixing, and all FOREX transactions.

The SEZ SD sets out additional provisions for export processing zones (EPZs).

The import or export of goods to and from the EPZ shall be considered as the import or export of goods to or from Cambodia, which firstly requires the owner of the goods to complete the relevant customs paperwork with the customs authority at the EPZ.

No retail business can be located in the EPZ. Further, zone investors cannot remove output materials from the EPZ without permission from the SEZ administration. Zone investors must seek approval from the SEZ administration for any domestic purchase or disposal of products from the EPZ.

2.12 Licensing

2.12.1 Real Estate Licenses

On February 14, 2007 the Ministry of Economy and Finance (MEF) issued the *Prakas* on Granting Professional Certificates and Licenses for Valuation Services and Immovable Property/Real Estate Services (the Real Estate *Prakas*). The Real Estate *Prakas* was followed up by two instructional circulars from the MEF, the more significant being the Instructional Circular on the Implementation of the Real Estate *Prakas*, issued on August 3, 2007 (Circular 002).

The purpose of the Real Estate *Prakas* is to regulate the operations of companies providing real estate services and property evaluation services in Cambodia. Its objectives are to establish a code of professional standards for companies and individuals providing real estate services and property evaluation services; to facilitate the sale, transfer, leasing, and mortgage of immovable property by investors; to ensure the national economic sustainability and development of the real estate sector in line with international standards; and to increase national revenue through tax payments and other service fee payments.

The Real Estate *Prakas* defines “real estate services” as services related to the purchase, sale, leasing, and pledging of immovable property.

2.12.2 Construction Licenses

The Ministry of Land Management, Urban Planning, and Construction (MLMUPC) issued *Prakas* No. 75 on Blueprint Design and Construction Businesses on October 19, 1999; Circular No. 002 on the Registration of Foreign Blueprint Design and Construction Companies and Individuals, dated July 10, 2000; and *Prakas* No. 166 on the Amendment of Articles 7 and 10 of the First *Prakas* of the MLMUPC, dated October 8, 2007. These dictate specific rules regulating any company wishing to engage in the construction business in Cambodia.

As per *Prakas* No. 75, any company wishing to engage in any construction business must obtain a construction license from the MLMUPC.

Construction companies are classified in four categories. While *Prakas* No. 75 does not clearly provide the reasons behind the classification of the construction company, in practice, each category determines the size of construction a company may engage in.

- a company holding a Category 1 construction license may engage in any construction of any value.
- a Category 2 license allows a company to engage in construction with a value between USD 100,000 and USD 150,000.

- a Category 3 license allows a company to engage in any construction with a value of not more than USD 100,000.
- a Category 4 license allows individual contractors to engage in small construction projects only.

Article 7 of *Prakas* No. 166 requires the construction company to be of Cambodian nationality and have at least one Cambodian technical director. However, the Circular authorizes an offshore company to register a subsidiary in the form of a branch office or company to carry out construction activities in Cambodia. Although the Circular should be invalid if it is inconsistent with *Prakas* No. 166, the authorization for a subsidiary of an offshore company to carry out construction activities is widely accepted and recorded in the MLMUPC's precedents. Thus, an offshore company may establish a branch or company as its subsidiary to provide construction services in Cambodia.

Before issuing a construction license to a subsidiary of an offshore company, the MLMUPC will require a subsidiary to deposit a sum of money in its bank account corresponding to the amount required under the category of license the subsidiary wishes to obtain. As per the Circular, a company that is a subsidiary of an offshore company may apply for category 1, 2, and 3 construction licenses.

2.12.3 Developers' Licenses

The Ministry of Economy and Finance issued *Prakas* No. 1222 on the Management of Real Estate Development Businesses on December 15, 2009 as a mechanism to control the management, inspection, and licensing of real estate projects in Cambodia.

Prakas No. 1222 supersedes *Prakas* No. 548, dated July 30, 2008, on the Management, Inspection, and Granting of Licenses for Real Estate Developers. The significant changes introduced by *Prakas* 1222 include:

- the abolishment of a requirement that 3 percent of a real estate project be implemented before a developer is allowed to advertise it for sale;
- the abolishment of official fees for the advertising of real estate projects; and,
- the abolishment of restrictions upon when such advertising could occur.

Project bank accounts are now clearly controlled by the developer. However, the withdrawal of money from a project-related account is subject to some regulatory control and, in some instances, is tied to the actual progress of a project, which must be assessed by a licensed, independent engineering company.

The minimum terms and conditions fixed by *Prakas* No. 1222 must be stated in a relevant lease or sales and purchase agreement (to which the minimum terms apply).

The roles and duties of the Inter-Ministerial Working Group are expanded. The existing rule, which requires, as a licensing condition, that real estate developers post security in an amount of 2 percent of a project's expected cost, has been maintained. (Note: this only applies to the third category of real estate developer mentioned below.) Such deposit has to be provided in either the form of a cash deposit (to be remitted into a bank account opened by the real estate developer) or in the form of a bank guarantee.

Under *Prakas* No. 1222, three categories of real estate developer are established:

- developers who have their own capital and can complete projects without the need for customer finance;
- developers who have received finance from foreign shareholders, and who can complete their projects without the need for customer finance; and,
- developers who require customer finance to complete their projects, or any other developer who does not fall within the above two categories.

License fees for real estate developers are determined in accordance with the category of the developer and the size of the developer's projects. Additional requirements are to be imposed by the Inter-Ministerial Working Group.

Before building any structure on land or substantially remodeling a building, the owner of the land or building must obtain a construction permit signed by either the government delegate to the city, if the construction is in an urban area, or, in rural areas, by the provincial governor. For commercial buildings of more than 3,000 square meters, including hotels or buildings located within view of historic temples, the permit must also be approved by the MLMUPC. This ministry also reviews certain projects under consideration by the Council of Ministers or CDC. However, the Apsara Authority may have some overlapping powers for approvals of permits in Siem Reap, and the legal situation in this regard is at present unclear. In order to apply for this permit, various specified documents must be submitted, in Khmer, detailing the planned construction. These documents are compiled and reviewed by the land management, urbanization, and construction office or the municipal or provincial/district authorities where the construction is planned. Proposed industrial buildings must include information on remedying possible environmental pollution resulting from the operation of the industry. The construction plans must be signed by the landowner and drawn by an architect or construction company registered with the MLMUPC.

The construction office reviewing the documents has 45 days in which to issue a decision, after all supporting documents have been submitted to it. Construction must begin within one year after the permit is issued, although one extension is allowed.

Upon completion, and prior to the building being opened to the public, its construction must be approved by issuance of a certificate attesting that the construction was properly accomplished according to the approved plans.

2.13 The Real Estate Market: Land Use, Trends, and Key Players

2.13.1 Real Estate Development and Construction

Cambodia's property market was badly hit by the economic crisis but is now recovering. With respect to commercial and residential developments, a major advancement was achieved with the promulgation of the Foreign Ownership Law in 2010. According to this law, foreigners are allowed to own up to 70 percent of private units in co-owned buildings or condominiums, excluding ground and underground floors, as long as these are not within 30 kilometers of a national border. This new land ownership structure is intended to help promote residential and mixed-use projects and to attract new investors, as well as customers from Cambodia's expanding middle class, notably through the development of satellite cities. There are already four satellite cities either planned or presently under construction in Phnom Penh – namely Camko City, Phnom Penh Grand International City, Diamond Island City, and Boeung Kak Town. A fifth satellite city, City of the Future, should be developed in the near future.

Construction activity was slow in 2010, reflecting a fall in property investment during the global economic crisis. However, the construction sector soon bounced back. In 2012, investment in new construction projects soared 83.6 percent to reach USD 1.83 billion compared to the same period in 2011. Bank credit for construction rose 46 percent in June 2013 from a year earlier, and construction project approvals rose sharply to USD 1.9 billion in the first half of that year.

As both local and foreign investors have begun to invest again in this sector, many large- and medium-sized construction projects have been licensed, including commercial buildings, apartments, hotels, agricultural processing plants, and garment factories.

The revival of the Cambodian property market has sparked demand for high-end residential, office units and serviced apartments. We have recently noted a clear rise in the quality of office space available, with the same also true in the residential market. The first

international-standard Grade A building – the USD 170 million Vattanac Tower – is expected to be launched mid-2014, while the first international standard luxury condominium – De Castle Royal – is currently under development.

The supply of office space has increased (up 28 percent in 2014) while prices are still well below what can be found in the large cities of neighboring countries such as Bangkok or Ho Chi Minh City.

2.13.2 Hospitality

Tourism is one of Cambodia's strongest economic pillars. According to the Ministry of Tourism, the number of inbound tourists rose 24 percent to 3.6 million in 2012, bringing revenue of USD 2.2 billion. The tourism industry was expected to see 4.2 million arrivals by the end of 2013.

Infrastructure development, including the restoration of roads and improvement in sanitation conditions in key destinations, has contributed to the steady growth of Cambodia's tourism sector. Tourism investors are displaying particular interest in the country's coastline, which is fast becoming the second-largest tourism attraction after the temples of Angkor near Siem Reap. Cambodia's coastal zone (Sihanoukville, Koh Kong, Kep, and Kampot) joined the Club of the World's Most Beautiful Bays in July 2011.

New luxury resorts such as Song Saa Island and the Alila Villas Koh Russey project likely represent only the beginning for further development of this coastal area.

In recent years, the government has also focused on the development and promotion of eco-tourism and cultural-based tourism, which offers interesting potential in Cambodia.

2.13.3 Retail

The retail property sector is a relatively new phenomenon in Cambodia. In Phnom Penh, western-style shopping centers – such as Sorya Shopping Center and Sovanna Shopping Center, as well as Mittapheap Shopping Center in Sihanoukville – have begun to emerge in recent years. The retail property sector is primed for growth over the next decade, with three modern retail complexes expected to welcome shoppers by 2015 alone. The USD 300 million Koh Pich Riviera, complete with five towers between 27 and 37 floors high, broke ground in 2012. The USD 205 million, AEON Mall, developed by Japanese retailer AEON, is set to open mid-2014 with 180 units of retail shops and restaurants, and will inaugurate a new era for shopping in Phnom Penh. Parkson, a Malaysian retail chain, also plans to open in 2015.

2.13.4 Agriculture

Agriculture has long been a key economic sector and is proving one of the up-and-coming areas for investment, particularly in connection with production and export capacity.

The government has recently given priority to investors in agro-industry. Economic land concessions granted by the government on state private land have brought a large flow of investment into Cambodia, notably through the development of rice, rubber, palm oil, and jatropha plantations. Investors are looking long-term with regard to capital growth and positioning themselves in a developing nation that is growing quickly and that provides numerous new economic opportunities.

2.13.5 Mining

According to the Ministry of Industry, Mines and Energy (MIME), which was recently renamed the Ministry of Mines and Energy (MME), Cambodia is one of the most under-explored countries in the world for mineral resources. Copper, gold, iron ore, zinc, lead, tin, bauxite, sapphires, rubies, kaolin, and limestone are among the untapped resources in the country.

In recent years, interest in this sector has grown substantially, with an increasing number of local and foreign companies conducting mineral research and exploration across the country. Companies from Australia, China, Vietnam, and South Korea are among those exploring for mineral resources. Since 2005 and 2006, Cambodia has issued about 100 licenses to mining companies, including those from Australia, China, Vietnam, and South Korea.

2.13.6 Opportunities

Cambodia has undoubtedly repositioned itself in the Mekong region as an emerging “dragon”, especially in regard to property-based foreign investment. For the past decade there has been a steady influx of companies looking to take advantage of the opportunities on offer with regard to Cambodia’s attractive tax incentives, low-cost labor, available land for industrial and agro-business development, and open attitude toward foreign investment.

Cambodia offers a friendly environment for property investment, with the potential to become even more liberal as the country develops further.

INDONESIA*

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Indonesia at a Glance

Indonesia has weathered the global financial crisis relatively smoothly because of its heavy reliance on domestic consumption as the driver of economic growth. Increasing investment by both local and foreign investors is also supporting solid growth.

Although the economy slowed to 4.5 percent growth in 2009 from the 6 percent-plus growth rate recorded in 2007 and 2008, by 2010 growth had returned to a 6 percent rate. During the recession, Indonesia outperformed most of its regional neighbors. The government made economic advances under the first administration of President Yudhoyono, introducing significant reforms in the financial sector, including tax and customs reforms, the use of treasury bills, and capital market development and supervision.

Indonesia's debt-to-GDP ratio has declined steadily in recent years because of increasingly robust GDP growth and sound fiscal stewardship, leading two of the three main credit rating agencies to upgrade ratings for Indonesia's sovereign debt to one notch below investment grade.

Indonesia still struggles with poverty and unemployment, inadequate infrastructure, corruption, a complex regulatory environment, and unequal resource distribution among its regions. President Yudhoyono and his vice-president, respected economist Boediono, have maintained broad continuity in economic policy, although the economic reform agenda was hindered during the first year of their term by corruption scandals and the departure of an internationally respected finance minister.

In late 2010, increasing inflation, driven by higher and volatile food prices, posed a challenge to economic policy-makers and threatened to push millions of the near-poor below the poverty line. The government in 2013 faces the ongoing challenge of improving Indonesia's infrastructure to remove impediments to growth, while addressing climate-change concerns, particularly with regard to conserving Indonesia's forests and peat lands.

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GDP Annual Growth Rate in Indonesia averaged 5.43 percent from 2000 until 2013, reaching an all-time high of 7.16 percent in the fourth quarter of 2004 and a record low of 1.56 percent in the fourth quarter of 2001. Industry accounts for the largest share of GDP (46.5 percent of total GDP). Within industry, the most important is manufacturing, which has been one of the main growth engines (24 percent of total output). Mining and quarrying accounts for 12 percent, construction for 10 percent and electricity, gas and water supply for 0.75 percent. Services constitute 38 percent of total GDP. Within services, the most important are:

- trade, hotel and restaurants (around 14 percent);
- transport and communication (7 percent);
- finance, real estate and business services (7 percent) and government services (6 percent). Agriculture accounts for the remaining 15 percent. (Source: The Statistics Indonesia).

3.1 Legal Environment

The legal system of Indonesia is based on three distinct systems: customary law (hukumadat), Islamic law, and colonial law (civil law), given that Indonesia was under Dutch rule for nearly 350 years (1602-1945). The legal system has developed and transformed significantly, especially since the fall of former president Suharto's administration.

Some of the significant legal transformation pertains to the judiciary. Nowadays, Indonesia has several chambers of court and a Constitutional Court (Mahkamah Konstitusi). In 1998 the Indonesian authorities established the Commercial Court (Pengadilan Niaga), which is tasked with handling bankruptcy and insolvency applications, although its jurisdiction can be extended to other commercial matters.

The legal environment is accommodating toward the business community, especially foreign parties. The development of the judiciary has greatly contributed to the development of the business environment, and the government has introduced several new laws and regulations in order to accelerate the growth of business. These include the Law on Foreign Investment and the Agrarian Law.

The government has made a significant effort to cater to the needs of foreign parties in performing their business activities. The law related to foreign investment has been amended several times to be more accommodating to foreign investors by opening up some of the previously restricted areas of business. This law also grants a longer timeframe for several land rights in order to attract investors to Indonesia.

Real estate issues are basically set out in Law Number 5 of the 1960 Agrarian Law. Real estate is part of the national land policy, and the Agrarian Law is the basic law for other laws

that cover other parts of the land policy, such as the Law on Stratified Building, the Law on Housing, and the Mortgage Law.

The National Land Body is the authorized institution regarding land policies. However, some local administrations have their own implementing regulations for land policies, for instance in land tax. Therefore, the National Land Body delegates local offices to regulate and implement its land policies. This includes real estate policies, as local administrations have their own development plans, such as housing plans, urban zoning, or business area plans. Each regional or local administration in Indonesia basically regulates its own regional real estate policy. Nevertheless, each local administration bases its real estate regulations upon the Agrarian Law, specifically on the legal aspects of land titles.

3.2 Restrictions on Foreign Ownership of Real Property and Ways to Obtain Rights to Real Property

The Agrarian Law only allows Indonesian individuals to own property under freehold land titles. However, several land titles are available for individual foreigners or foreign companies in Indonesia. The land titles available for a foreign company include:

- the Right to Cultivate (locally known as Hak Guna Usaha);
- the Right to Build (locally known as Hak Guna Bangunan); and,
- the Right to Use (locally known as Hak Pakai).

There is also a Right to Own Stratified Building title. For foreign individuals, the Right to Use (Hak Pakai) title is available.

3.3 Right to Cultivation Land Titles

The government grants such land titles for the purposes of agriculture and aquaculture; and plantation, fishery, or animal husbandry activities, subject to the provisions of the related regulations and local community interests.

These land titles are granted to Indonesian individuals for a minimum of five hectares, up to a maximum of 25 hectares. However, foreign-invested companies can apply for a certain area of required land subject to the consideration and approval of the government. These land titles are only granted to Indonesian citizens or foreign-invested companies. They are not granted to foreign individuals. The title is granted for a period of 60 years, extendable for another 35 years subject to proper management and utilization of the land.

These titles can be exercised as collateral, subject to government approval. Such approval can be obtained through the local land conveyance officer, notary public or land office.

3.4 Right to Construction Land Titles

The Agrarian Law acknowledges the separation of land ownership and the ownership of any property built upon the land. Thus, the law recognizes the right to own a property or building on a piece of land, even though another party owns the land. However, this right does not apply to entire islands or to beachfront property. There are other regulations for obtaining licenses and permits to build properties in such areas.

Right to Build land titles are only granted to Indonesian citizens and foreign-invested companies. They are granted for a maximum period of 50 years and are extendable for another 30 years. The Right to Build may be granted to several types of land right, which includes state land, the land under the Right to Manage, and land under the Freehold Land Titles (see the Bali Practice below). Similar to the Right to Cultivate, this kind of land title can be exercised as collateral, subject to government approval. Such approval can be obtained through the local land conveyance officer, notary public or land office.

3.5 Right to Use Land Titles

Right to Use land titles are granted for any kind of purpose, personally or commercially. Any foreign individual or foreign-invested company may hold such a land title. The government grants an initial period of 45 years, extendable for another 25 years. This right is applied to any land owned by the government or any land with a freehold land title, under a certain agreement. The government will issue the right to use if the leaseholder can comply with certain regulations, including a lease agreement as the basis to issue the land title. This kind of land right cannot be exercised as collateral or a guarantee.

3.6 Right to Own a Stratified Building

Government Regulation No. 41 (of 1996) on Strata Titles stipulates the regulation on house, condominium, or office space ownership. It does not cover any issues of land ownership. Such a building can be constructed under several land titles, such as Freehold, Right to Build, or Right to Use, and state land. Because the Agrarian Law acknowledges the separation of ownership of the building and ownership of the land itself, the Right to Own a Stratified Building – in practice, commonly known as Strata Title – does not include ownership of the land.

Under this regulation, any foreigner or foreign-invested company can own a house, condominium, or office space, under the condition that such house, condominium, or office space is built under the Right to Use land title upon state land. Any house, condominium, or office space that is built under a different land title than the Right to Use upon state land, is not available for foreigners. The ownership of Strata Title on a house is proven by virtue of

written agreement between foreigners and the holder of the land right. Such an agreement shall be registered and mentioned in the relevant land certificate. The duration of the Strata Title depends on the underlying land title of the condominium or office space. On the other hand, the agreement on Strata Title for a house can be made for maximum of 25 years and is extendable for another 25 years.

3.7 Ownership Restrictions

Land and property titles in Indonesia are only available to foreign individuals or foreign-invested companies domiciled permanently or from time to time in Indonesia. Therefore, if a foreign individual is no longer domiciled in Indonesia, the land title shall be released or transferred to any other person who fulfills the terms and conditions to hold such right.

Any foreign individual or foreign-invested company may own residential accommodation in the form of:

- a house under the Right to Use land title (Hak Pakai) upon state land, or under written agreement from the holder of the rights over the land; or,
- a stratified building (condominium or office space) built on land under the Right to Use upon state land.

Indonesian laws and regulations that are related to real estate or property, as we have mentioned above, are sometimes unfriendly toward foreign interests in the sense that the owner of a condominium cannot use the property as collateral for business purposes. In spite of this, unofficial sources say that the government is planning to amend this regulation in order to more properly protect foreign interests.

However, foreign ownership can be exercised either directly or indirectly, and the foreign individual or foreign-invested company can purchase land directly. The laws provide some land titles for this method, and there are two methods to acquire land indirectly, as discussed below.

3.8 Obtaining Other Types of Land Title over the Freehold Land Title

The other two methods of acquiring land are:

3.8.1 Bali Practice

As the Agrarian Law acknowledges the separation of land and property ownership, foreign individuals or foreign-invested companies are able to own property on certain land with the Freehold land title. This is arranged and conducted under a long lease agreement with the holder of the Freehold title. This method applies in several areas of Indonesia, most notably Bali. Many foreign individuals or foreign-invested companies in Bali build hotels or villas under this kind of arrangement.

The foreign individual or foreign-invested company can also apply new land titles, such as a Building land title, over the leased Freehold land. Thus, a new land title, above the Freehold title, comes into being.

3.8.2 Real Estate Business

Under Presidential Decree 36 (of 2010) on the Negative List of Foreign Investment, a foreign-invested company is allowed to conduct business in the area of real estate. This can be in the form of property developer/contractor or real estate consultant. However, there are several specific licenses and permits that must be obtained by the property developer/contractor or real estate consultant pursuant to laws issued by the Ministry of Housing, the Ministry of Public Works, and other related institutions.

3.8.3 Zoning and Building Laws and Regulations

The National Land Body is, in general, the authorized institution governing land policies and land registration. As discussed earlier, local administrations have their own implementing regulations for land policies, for instance in land tax, with the National Land Body allowing the local administrations to implement and regulate their own land policies.

The zoning policy under Law No. 26 (of 2007) on Spatial Planning regulates the requirements on the utilization of land space. The law stipulates that zoning policy shall be regulated further in the various regions. At present, certain areas or provinces have different implementing regulations than others.

3.9 The Real Estate Market: Land Use, Trends, and Key Players

3.9.1 Residential Real Estate, Retail and Offices

The growth and nature of real estate and property markets in Indonesia varies from place to place, with Jakarta as the major market. The capital city has broad development in office space, landed property, apartments, and hotels. In other areas, such as Bali, the growth in real estate mostly covers hotels, resorts, and serviced apartments. In Bali and certain areas of Sulawesi, for example, commercial space for businesses or offices does not grow significantly.

In Jakarta the need for housing and office space is huge. In the central business district, an unofficial source estimates that by 2013 there will be 30 high-rise buildings. There is also a huge demand for retail space in Jakarta and other areas of Indonesia. Currently there are several retail spaces built for certain purposes only, such as electronics plazas or textiles shopping centers.

There are several local and foreign key players in the real estate market. The local entities are especially involved in development and construction, and include Ciputra, Lippo Gorup, Pakuwon, Agung Podomoro Land, Bakrie Land, Summarecon, and Duta Anggada. These companies have their own land bank in Jakarta and other tourist areas. On the other side, there are several property management companies belonging to foreign parties, including Cadwel and Colliers, as well as the local property management companies.

Other important property needs include hospitals. The market for this sector is still huge because the demands for healthcare facilities are increasing all the time. The government promulgated Presidential Regulation No. 36 in 2010, which allows for foreign parties to own up to 67 percent of the shares in hospital management services, specialist and sub-specialist hospitals (up to 200 rooms), and other healthcare services (such as rehabilitation centers). This law was promulgated as the government is aware that these types of business involve a huge amount of investment.

3.9.2 Industrial and Agriculture

The Agrarian Law also oversees the use of land for either industrial or plantation estates. Each region in Indonesia has its own economic advantages and strengths, either in industry or in agriculture. In Sumatra and Kalimantan, for instance, the demand for land for plantation estates is still huge. Most plantations are given over to palm oil or rubber production. In southern Irian Jaya, the local government is trying to establish a food estate near Merauke. In Kalimantan, Sulawesi, and other remote areas of the country, mining is a significant economic activity.

3.9.3 Opportunities

The opportunities in Indonesia for real estate development, especially apartments and office space, are enormous. Since 2007, in Jakarta especially, there has been increased awareness of what has come to be known as the “super block” or “mega block” concept, in which there is recognition that urban communities should have mixed business and residential development. The traffic system in Jakarta is still problematic, but there is recognition that foreign investment will play an important role in addressing this issue and in meeting the supply and demand for business, residential, and industrial property development – not only in the capital, but in the country as a whole.

LAO PDR

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Lao PDR at a Glance

The Lao People's Democratic Republic (Lao PDR) is a landlocked country strategically situated between its ASEAN neighbors (Vietnam, Cambodia, Thailand and Myanmar) and China. Lao PDR has mirrored the economic dynamism of the region over the last 10 years, registering high rates of economic growth – consistently in excess of 8 percent per annum. This improved economic performance has been encouraged by broad policy reforms which have promoted higher levels of foreign and domestic investment. These reforms indicate a shift towards free market principles.

Furthermore, Lao PDR's participation in ASEAN initiatives stimulating intra-ASEAN investment and trade and its recent accession to the WTO have helped propel further economic and trade liberalization.

These reforms have resulted in improved development indicators. According to the World Bank, economic growth has ranged between 8 percent and 9 percent since 2006. Life expectancy has increased from 63.2 years in 2003 to 67.4 years in 2011 and the poverty headcount has declined from 45.0 percent in 1992 to 27.6 percent in 2008. The country is now classified by the World Bank as a lower-middle income country with a GDP in 2012 of USD 9.2 billion. GNI per capita has increased from USD 1,350 in 2003 to USD 2,730 in 2012. The World Bank estimates that Lao PDR will no longer be classified as a least developed country by 2020 provided current rates of growth are maintained. The International Monetary Fund (IMF) has determined that Lao PDR has achieved macro-economic stability.

Despite being a small market, Lao PDR's geographic proximity to larger markets in Thailand, Vietnam, and China offers significant opportunities for future development.

While key reforms have helped stimulate foreign direct investment, introduced investment incentives, improved public revenue collection, and partially deregulated foreign exchange transactions, Lao PDR remains a poor country with a largely unskilled workforce and significant reliance on foreign aid and development funding. In 2013, the ADB and IMF expressed concern regarding rising domestic demand, stimulated by credit expansion, placing pressure on foreign reserves.

Foreign investment has primarily been limited to hydropower and mining projects. These sectors accounted for nearly one-third of Lao PDR's economic growth between 2005 and 2010. In 2012, hydropower output increased by 29 percent to 13.8 billion kilowatt-hours. New hydropower projects commissioned in 2012 increased national output by more than 650 megawatts. About 70 percent of all hydropower generated is exported, mainly to Thailand.

Mining production was lifted by the Ban Houayxai gold and silver mine and the expansion of existing minerals projects. In 2012, the ADB reported that copper output from the two largest producers rose by 8 percent to 149,500 tons, with gold production climbing 61 percent to 206,240 ounces and silver production up by 15 percent to 616,680 ounces.

There has also been an increase, although less substantial, in foreign investment in the tourism, manufacturing and construction sectors. In 2012, the ADB reported that the industrial sector grew by an estimated 14 percent. This represents a marked shift towards increasing Lao PDR's industrial capacity.

It is anticipated that further investment in hydropower and mining, tourism and construction, will be major drivers of GDP growth in 2014 and 2015. In addition to the large Hongsa lignite power plant, work has commenced on the USD 3.5 billion Xayaburi dam and hydropower project, which is scheduled to be commissioned in 2018 with a capacity to generate 1.3 gigawatts of electricity.

4.1 Legal Environment

Over the last two decades, Lao PDR has adopted major regulatory reforms in its transition to a market economy and its integration with the economies of neighboring countries. The current legal system has been influenced by Lao tradition and custom, French colonial administration, Soviet-style socialist ideology, and the legal and economic transitions taking place in neighboring countries, particularly Vietnam and China. The development of the legal system is also being driven by the requirements of regional integration, notably membership of the Association of Southeast Asian Nations (ASEAN) and accession to the World Trade Organization (WTO).

4.2 Legislative Process

Draft laws may be proposed by the following authorities:

- the President of the Republic;
- the National Assembly Standing Committee (NASC);
- the Government Office;

- the People's Supreme Court;
- the Public Prosecutor; and,
- Mass Organizations at the Central Level.

The drafting committee submits the draft, as approved by the Government Office, for the consideration of the National Assembly. There are two National Assembly sessions each year, usually in June and November. Once a law is adopted, it must be promulgated by the president within 30 days. During this period, the president has the right to request that the National Assembly reconsider the law. However, if the National Assembly affirms the adoption of the law, the president must promulgate it within 15 days thereafter.

4.3 Structure of the Legal System

The Law on Enacting Legal Acts provides the general enforcement of a legal act and the specific enforcement of a legal act as follows:

General enforcement of a legal act:

- Constitution;
- Law;
- Resolution of the National Assembly;
- Resolution of the NASC;
- Presidential executive decree/edict;
- Decree of the government;
- Resolution of the government;
- Order or decision of the prime minister;
- Order, decision, or guideline of the minister or head of an organization under the supervision of the government;
- Order, decision, or guideline of the provincial governor or mayor;
- Order, decision, or instruction of the district governor or head of municipality; and,
- Regulation of the village.

Specific enforcement of a legal act:

- Presidential decree on the promulgation of a law;
- Presidential decree, decree, or decision on granting an award or appointing a person for any position or for a specific professional task; and,
- Notification.

4.4 Judicial Organization

The Supreme Court must report to the National Assembly, and the National Assembly is empowered to issue instructions that can overrule the Supreme Court's decisions.

The constitution divides the judiciary into two distinct bodies: the People's Court and People's Public Prosecution. All People's Court judges are nominated by the National Assembly Standing Committee (NASC). There are 39 regional courts, 16 provincial courts, one Vientiane Municipality Court, one Military Court, and one Supreme Court.

Cases are considered collectively by a three-judge panel. Litigants can be represented, and social organizations are allowed to take part in trials.

Generally, trials and hearings are openly conducted, and sentences and awards are publicly announced, although court decisions are not published. Foreigners in Lao PDR may file petitions to the courts and to other concerned organizations, and are obliged to respect the constitution and the laws of Lao PDR.

The Law on Civil Procedure establishes specialized divisions within the judiciary, including a commercial division, a family division, and a juvenile division.

4.5 Real Estate

Land-related matters are governed by the Land Law. This law is also aimed at protecting the country's environment and its national borders.

All land in Lao PDR is owned by the "national community." This principle makes it impossible for any individual or entity, Lao or foreign, to "own" land. Rather, individuals and entities can be granted land use rights akin to freehold ownership or usufructs – a civil law concept granting long-term rights to use land for productive activities.

Individuals and organizations can acquire land use rights and usufructs in one of three ways:

- allocation by the state;
- transfer; or,
- inheritance.

4.6 Foreign Ownership

Foreign investors, in addition to Lao nationals and domestic entities, can be granted land use rights or usufructs, but only under limited circumstances. Foreign investors with registered investment capital of USD 500,000 are entitled to purchase land from the government in order to build housing or office buildings, with the agreement of the relevant local

authorities. However, implementation of this aspect of the Investment Promotion Law is still unclear and no discernible practice has emerged as to how or when such rights are granted.

Aside from this limited provision, foreign individuals and foreign-invested companies, including joint ventures, are restricted to leasing land from Lao citizens, or receiving land concessions from the state.

Leases from Lao citizens to foreign investors are limited to 30 years, while concessions from the state are limited to 50 years. Concessions of land in a special economic zone (SEZ) are limited to 75 years. Embassies and international organizations are entitled to lease land or receive land concessions from the state for up to 99 years.

Foreigners who lease land or receive land concessions from the state must fulfill certain obligations, including using the land in accordance with relevant zoning objectives, protecting the environment, respecting the land use rights of neighbors, paying land lease or concession fees on time, and complying with Lao PDR law generally.

Foreign investors are entitled to own structures and developments that they build or purchase on leased land. This right is protected under the Land Law and the Investment Promotion Law. However, upon expiration of the lease or concession term, all fixtures will revert to the lessor or the state without compensation.

The property of investors is protected from nationalization or expropriation unless it is for public purposes and compensation is paid. Foreign investors are also permitted to use fixed assets on land leased as security, to sub-lease their land use rights, and to use a lease concession agreement as capital contribution in a Lao entity, subject to prior approval from the state. However, upon expiration of the lease or concession, all fixtures will revert to the lessor or state without compensation.

4.7 Land Management and Registration

The state is responsible for the management of land throughout the country. The Land Management Authority (LMA) (also referred to as the Ministry of Natural Resources and Environment [MONRE]) oversees the use and management of land by other government agencies and private actors.

The LMA is responsible for land surveying, use planning, collection of land tax, implementation of the land registry/cadastre system, issuance of land titles certifying land use rights, and land document registration.

All legal transactions relating to land must be registered with the LMA. This process involves having the land transaction recorded in the book for the registration of legal transactions at the LMA office where the land is located.

4.8 Land Titling System

The land titling system in Lao PDR has a direct impact on the operations of foreign investors. While foreign investors cannot own land, their security in any leased land will depend on the validity of the lessor's land rights. In order to be able to lease land to a foreign investor, a Lao citizen must obtain formal title to land, as this is the main document evidencing permanent land use rights and the right to lease land.

While the Land Law outlines titling procedures for the entire country, land in urban areas such as Vientiane and Luang Prabang is much more likely to be surveyed, registered, and titled than land in rural areas.

4.9 Dispute Resolution

The LMA is responsible for the resolution of disputes of an administrative nature relating to land. Use of land without proper authorization, in violation of relevant zoning objectives or Lao PDR law, and failure to pay land taxes or fees, are issues that fall under the LMA's responsibility.

Disputes of a civil nature, such as those relating to the transfer or inheritance of land, or contracts relating to land, must be arbitrated at the village level. If the dispute cannot be resolved at this level, it can be brought before a Lao PDR court.

4.10 Construction on Land

The Construction Law sets out the relevant feasibility study, survey, design, and permit requirements. Approval for all types of construction is required from the responsible sector. For example, construction of bridges, roads, railroads, water systems, and telecommunications systems must be approved by the Ministry of Public Works and Transport (MPWT), while construction of hydropower dams, electricity plants, and mines must be approved by the Ministry of Energy and Mines (MEM). Any damage caused as a result of construction is the strict responsibility of the project developer. Construction contracts entered into with contractors must comply with the provisions of the Contract and Tort Law.

4.11 Taxation on Land

A company must report its own profit tax on the sale of properties or leasehold rights. In general, income from the sale of properties or leasehold rights, and income derived from rent, will be subject to a profit tax. Further, under the VAT Law, the supply of immovable property or parts thereof is subject to VAT if:

- the immovable property is located in the Lao PDR;
- the supply is made for a consideration by a registered VAT taxpayer whose business consists at least in part of the purchase and supply of immovable property, acting as such; and,
- the immovable property is used, or destined to be used, by a registered VAT taxpayer, at least in part, as a business asset.

In addition to profit tax and VAT, the sale of land use rights will be subject to a transfer fee. The transfer fee is calculated on the basis of the value of the property, which can vary depending on the zone and type of land. Additional fees include service fees and stamp tax.

4.12 Secured Transactions

Secured transactions are governed by the Secured Transactions Law and the Secured Transactions Decree, which define two general types of security interests: legal security, as created by law (e.g. wage and tax claims, other non-contractual obligations to the government, and lien rights of suppliers of goods and materials); and contractual security, as created by contract (e.g. pledges, security interests, mortgages, guarantees, etc.).

Perfected security interests are junior to legal security (wage claims, tax claims, and lien rights of suppliers of goods and materials) but are senior to subsequently perfected security interests and non-secured claims of creditors.

The following types of “contractual security” are permitted by the Secured Transactions Law:

- security over immovable property (covering immovable assets [including land use rights, leases, and fixtures] and movable assets);
- security over movable property (covering material and tangible assets, documents, shares, contractual rights, receivables, bank accounts, intellectual property rights, licenses, and future assets or gains from activities reasonably certain to occur in the future); and,
- guarantees (personal or corporate).

Three witnesses are generally required for security agreements concerning immovable assets. In practice, witnesses are usually used for all security agreements.

The Secured Transactions Law and the Secured Transactions Decree allow the creditor to enforce or exercise its rights, as determined in the security agreement, without a prior obligation of mediation, arbitration, or court proceedings. However, the secured creditor must provide a 10-day enforcement notice in the case of movable assets, and 75-day notice in the case of immovable assets. “Self-help” is permitted – to the extent that no laws are violated in the process.

A security interest will automatically expire, without the necessity for the filing of documents, if the underlying debt has been paid in full, the statute of limitations period has expired, or the creditor has relinquished the claim. Amendment or modification of the underlying guaranteed obligation without the consent of a guarantor will fully release the guarantor.

4.13 Perfection of Security Interests, Contract Notarization, and Registration Requirements

The Secured Transactions Law and the Secured Transactions Decree require the registration of all security agreements for the perfection of a security interest. Guarantees must also be registered as per the Document Registration Decree, for enforceability. Security agreements relating to immovable assets are to be registered with the relevant Department of Natural Resources and Environment (DONRE). Security agreements relating to movable assets and guarantees are to be registered with the State Assets Management Department (SAMD), and registration fees and stamp duties are payable. Security documents relating to immovable assets must also be notarized, which will require a Lao-language translation. Other security documents and guarantees will require a Lao-language summary for the registration process.

As per the Document Registration Decree and related regulations, all contracts must be registered with either the SAMD (non-land related contracts) or DONRE (land-related contracts) for enforceability in the Lao PDR.

Land leases and security documents related to immovable assets must also be notarized by the Notary Office. Notarization fees are payable and a full Lao-language translation is required.

4.14 Special Economic Zones

The Investment Promotion Law provides for favorable investment incentives in SEZs, highlighted under regulations established for each zone. Each SEZ is empowered by the Special Economic Zone Decree to stipulate the nature of incentives and exemptions that will apply to investments. SEZs are also empowered to approve investment projects, grant leasehold rights to land with the zones and procure additional permits and approvals. For example, regulations for the Savanh-Xeno SEZ provide:

- exemption from leasing fees for 12 years if a lease is for over 30 years;
- exemptions from business turnover tax and use tax for the importation of goods;
- temporary “tax holidays” in the industrial sector, according to the level of export production and the use of local raw materials; and,
- “tax holidays” in the service sector of 10 years for a company with capital higher than USD 2 million.

In practice environmental impact assessments and the issuance of environmental compliance certificates are still dealt with by the MoNRE.

4.15 SEZ Development Strategies

The government determines its SEZ development strategy based on each National Socio-Economic Development Plan, in order to contribute to the policies of transforming assets into capital, transforming land into capital, and of realizing the goal of regional and international integration.

The SEZs are intended to focus mainly on production. Thus far, 10 SEZs have been established although not all of them are operational. SEZs are typically established in key border or urban areas. Given Lao PDR’s strategic location between China and its ASEAN neighbors as well as its wealth in natural resources the concept of SEZs in the country, enabling attractive incentives for the processing, beneficiation and logistical movement of goods and raw materials, offers substantial promise for further investment in the country.

4.16 Building Laws and Regulations

Construction matters are currently governed by the Law on Construction and the Decision on the Management of Construction, which sets out the relevant permit requirements. Construction permits are generally not required for construction that is part of a large-scale investment project that has already been approved by the government, such as the building of a dam or factory. All other construction, however, can only take place after a construction permit is obtained from the Vientiane Urban Development Administration Authority, or the Ministry of Public Works and Transport at the provincial level. Construction contracts entered into with contractors must comply with the provisions relating to such contracts under the Contract and Tort Law.

4.17 The Real Estate Market: Land Use, Trends and Key Players

There is increasing interest in land-related investments in the agro-industry and hotel/resort sectors. Foreign investors in Lao PDR generally seek long-term leases or land concessions for such projects, for which the establishment of a Lao subsidiary is nearly always required.

Agro-industry projects generally include industrial tree plantations (generally eucalyptus or acacia trees), rubber tree plantations, cassava plantations, maize plantations, and banana plantations. Hotel/resort development has mostly been centered in Vientiane and in (the ancient capital and UNESCO-listed city of) Luang Prabang, with a few casino hotels located elsewhere in the country near international borders. Certain large retail and up-scale accommodation developments have been approved for Vientiane. These include the Vientiane New World Complex and the New World Trade Center complex.

4.18 Real Estate Development and Construction

The government manages construction activities in a centralized and unified manner throughout the country by assigning the Ministry of Public Works and Transport as the focal point of coordination with other relevant sectors. These include the energy and mines sector, the agriculture and forestry sector, the industry and commerce sector, the science and technology agency, and relevant local administrations which manage according to their responsibilities. Individuals or organizations intending to invest in the real estate or construction business must apply to the relevant authorities under the Enterprise Law and the Investment Promotion Law. As mentioned, the land on which development is undertaken is usually granted to foreign investors through concessions or long-term leases.

4.19 Tourism and Hospitality

Under the Law on Tourism, foreign individuals or organizations are not permitted to conduct certain tourism-related activities that are reserved for Lao citizens.

The activities include:

- the tour guide profession; the business of domestic guided tours;
- the tour business in specific areas; the operation of guesthouses; and daily room services.

In 2013, a further restriction on the rights of foreigners to participate in hotel developments of 1- to 3-star grades was also imposed. However, foreign investment in hotels of 4- or 5-star grades is permitted. The land on which hotels are built is granted to foreign investors through concessions or long-term leases.

4.20 Retail

The Decision on Whole and Retail Sale Businesses provides that the retail sale business is reserved for Lao citizens, who have the right to conduct all types of retail sale for all types of (legal) goods. However, foreign individuals and legal entities are able to:

- distribute goods within the country through Lao agents or franchisees; and,

- invest or enter into a joint venture for the construction or development of retail outlets such as hypermarkets, supermarkets, shopping centers, or malls, in accordance with the Investment Promotion Law and related laws and regulations.

Foreigners are also not entitled to engage in wholesaling (other than wholesaling of fabrics, clothing and footwear, in which case a maximum of 49 percent foreign equity interest is permitted).

Warehousing services are also limited to a maximum of 49 percent foreign equity participation.

The land on which retail businesses are located is granted to foreign investors through concessions or long-term leases.

4.21 Agriculture and Plantations

Individuals or organizations intending to utilize land for agricultural production or for plantations must seek approval from the state. The conversion of one type of agricultural or forest land into another type of agricultural or forest land must first be approved by the Agriculture and Forestry authorities. The land on which plantations are operated by foreign investors is granted through concessions or long-term leases. Access to accurate titling records has limited the amount of investment in agricultural projects.

4.22 Mining

The Minerals Law requires approval to be obtained from the Ministry of Energy and Mines for various activities, including:

- the gathering of basic geological data;
- the analysis of mineral samples in Lao PDR or overseas;
- the approval of a feasibility study;
- the granting of licenses for prospecting, exploration, and mining activities; and,
- the establishment of a mineral processing plant.

Mineral exploration and exploitation activities are open to investment from both domestic and foreign entities. Mining activities, including prospecting/exploration and exploitation, are subject to the negotiation of a concession agreement with the government, as per the requirements of the Investment Promotion Law. The land on which mining-related activities are conducted is granted to foreign investors through concessions.

4.23 Hydropower

Electricity projects with an installed capacity of greater than 100 megawatts, or having a reservoir which has an area of more than 10,000 hectares, or having considerable impact on the environment, society, or nature, must be approved by the National Assembly/NASC.

Electricity generating projects with an installed capacity of more than five megawatts but less than 100 megawatts may be approved only by the Ministry of Planning and Investment. The land on which hydropower projects are undertaken is granted to foreign investors through concessions.

The Electricity Law permits electricity generating projects to be undertaken in various forms, including BOT, BOOT, BTF, BOO, or state-operated. For BOT and BOO arrangements, the Electricity Law specifies that the term of electricity generating concession is 30 years (including the construction period). A request for an extension of the term must be submitted five months prior to the expiration of the concession period.

4.24 Opportunities

The real estate market in Lao PDR is rapidly developing. However, the laws and regulations are complicated, and investors are advised to retain attorneys with technical expertise and a practical approach to both creatively structure the transaction and liaise with the relevant government authorities. Many investments will involve a secured project loan, a long-term lease, and a turn-key construction contract.

DFDL has developed solid experience in various types of Lao real estate transactions, such as hotel development, plantations, special economic zones, long-term leases, sales, purchases, and the granting of long-term concessions, and can structure the transaction, draft the required documentation, and assist with negotiations and meetings with the relevant project sponsors, lenders, contractors, and government authorities.

MYANMAR

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Myanmar at a Glance

Myanmar is the second largest country in Southeast Asia, with a population of over 63 million and a literacy rate of 89 percent. It is strategically situated, sharing a common border with China and India, as well as Thailand, Lao PDR, and Bangladesh. Rich in natural resources, including oil, gas, coal, and uranium, the economy is based primarily on agriculture and fisheries. Recently, a number of major hydropower projects were approved, representing no less than USD 5 billion in foreign direct investment.

Myanmar is also geographically diverse, with a vast coastline along the Bay of Bengal, studded with islands, estuaries, and pristine beaches. Tropical forests, mountainous regions (replete with snow-capped peaks in the far north on the border with Tibet) and Inle Lake, one of the largest freshwater lakes in Southeast Asia, all serve to demonstrate the many attractions that underpin a potentially robust tourism sector. In addition, famous historical and cultural attractions include the enormous temple complexes at Bagan, as well as historical attractions in many other parts of the country.

Due largely to political factors, Myanmar was politically and economically isolated over the last few decades, and the interest of foreign investors in the country has therefore been limited. However, there are now marked signs of political and economic reform such as the recent introduction of a parliamentary system of government and the adoption of a constitution that provides for the promotion and protection of a market-based economy. In 2010 and 2011, Myanmar received a record USD 20 billion in foreign investment, exceeding the amount of foreign investment over the previous 20 years combined. Foreign investment is now further increasing rapidly, as the highly anticipated new Foreign Investment Law ("FIL") was signed into law on November 2, 2012. The FIL supersedes the old Foreign Investment Law of 1988 ("FIL 1988").

The FIL grants special benefits to foreign investors, such as a guarantee against expropriation, foreign exchange benefits (guaranteed remittance of profits; remittance upon exiting

the investment), tax holiday (five years), and long-term lease interests over immovable property. In accordance, the Ministry of National Planning and Economic Development (“MNPED”) issued the Foreign Investment Rules (“FI Rules”), and the Myanmar Investment Commission (“MIC”) issued the Notification № 11/2013 regarding the Classification of Types of Economic Activities (“FI Notification”). Both the FI Rules and FI Notification were issued on January 31, 2013 and provide further details and guidance as to which business activities may be performed by foreigners under the FIL. It should be noted that the general regulatory environment in Myanmar is still in need of substantial reform. The MIC and officials typically exercise wide discretion as to whether investment projects will be permitted, and foreign investment projects, if approved, may be subject to conditions or restrictions. There are also certain sectors that remain, for now, closed to foreign investors. Furthermore, administrative procedures are not always clear, and it is therefore prudent to obtain legal advice before committing to an investment project in the country.

5.1 Legal Environment

As a former British colony, Myanmar’s legal system is largely based on English common law. Following independence from Britain in 1948, the country adopted numerous statutes and other instruments having the force of law through various legislative bodies that have prevailed from time to time. In May 2008, the new constitution was adopted, which entered into force in January 2011. This has ushered in a constitutional framework for the new parliamentary system.

Certain notable features of the new constitution, as they relate to foreign investors, include:

- the protection of economic enterprises from nationalization;
- the prevention of acts that injure public interests through monopolization or manipulation of prices by an individual or group with a view to endangering fair competition in economic activities;
- the rights of citizens, as well as the state, to take part in economic activities for the
- development of the economy; and,
- protection from the enactment of penal laws that are of retrospective effect.

As the supreme law of the land, the new constitution represents a clear break with past policy, which was influenced by the principles of a centralized command economy. In addition, Myanmar is now a member of the World Trade Organization (WTO) and the Association of Southeast Asian Nations (ASEAN), and has ratified the ASEAN Comprehensive Investment Agreement, 2009, which is expected to come into force shortly.

Furthermore, the FIL was signed into law by President Thein Sein on November 3, 2012.

One of the main reasons for foreign investors to invest under the FIL is the enjoyment of significant benefits and tax incentives, such as:

- five years exemption from corporate income tax and other reliefs (e.g. from import duties and export taxes);
- foreign investors under the FIL have the ability to lease private and government-owned land for a term of up to fifty (50) years initially, renewable for two additional ten (10) year terms, as opposed to a maximum one (1) year lease for foreigners not investing under the FIL.
- government guarantee against expropriation;
- foreign exchange benefits, such as a guaranteed remittance of profits and remittance upon exiting investment;
- shares in a FIL-approved entity, held by a foreigner or a Myanmar citizen, can now be transferred to foreigners and vice versa with the approval of the MIC. The pre-approval of the MIC is required to be given on the basis of the prescribed conditions, which implies it will continue to exercise discretion.

The parliament is composed of three houses – the Pyithu Hluttaw (Lower House), the Amyotha Hluttaw (Upper House), and the Pyidaungsu Hluttaw, which essentially acts as a joint sitting of the two former houses. Each house enjoys specific areas of legislative competency.

There are other legislative bodies, having limited and subordinate legislative power with respect to subject matter and geographical area. They are the Region Hluttaw, or the State Hluttaw, and the Leading Bodies of the Self-Administered Divisions or the Self-Administered Zones. An enactment of the Pyidaungsu Hluttaw takes precedence over those of the other legislative bodies.

The judicial system is organized and operated in accordance with the constitution and the Union Judiciary Law, 2010, which created the court system of Myanmar. The court system consists of the Supreme Court of the Union, the high courts of the regions, the high courts of the states, courts of the self-administered divisions, courts of the self-administered zone, district courts, township courts, and other courts constituted by law.

Besides the military and constitutional tribunal courts, the Supreme Court of the Union is the highest court of the land.

The constitution and the Union Judiciary Law provide for five kinds of prerogative writs: habeas corpus, mandamus, prohibition, quo warranto, and certiorari. Jurisdiction to issue

writs is given to the Supreme Court of the Union. The Supreme Court has jurisdiction over both civil and criminal matters. It is the final court of appeal against decisions of the lower courts.

The high courts of the states or the high courts of the regions are courts of first instance for civil matters that amount to a minimum of 500 million kyats (the Myanmar currency) and other civil and criminal matters for which the courts have jurisdiction according to specific legislation. They are also courts of appeal against decisions of the district courts, and also review the right of the lower courts in civil and criminal matters.

District courts are courts of first instance in both civil and criminal matters. Their jurisdiction in respect to civil matters is limited to claims not exceeding 500 million kyats, while their jurisdiction in respect to criminal matters is also limited to certain prescribed criminal offenses. District courts also act as courts of appeal against decisions of the township courts.

Township courts are the courts of first instance in respect to civil claims not exceeding 10 million kyats. Township courts also enjoy jurisdiction over criminal matters, depending on the nature of the offense and the magisterial powers of the presiding officers.

On July 15, 2013, Myanmar became a contracting state to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the “New York Convention”). This is a significant economic and legal reform with regards to foreign investment in Myanmar. However, domestic legislation is still to be enacted in order to implement the New York Convention in Myanmar.

Once the domestic legislation is enacted, Myanmar’s courts will be obliged to give effect to foreign arbitration clauses and to enforce arbitral awards made in other member states of the New York Convention. Foreign investors would then be able to choose a neutral offshore forum for the resolution for their disputes, insofar as the parties have agreed to arbitration.

In the meantime, foreign investors wanting to include an arbitration clause in an agreement will still have to look to the Arbitration Act of 1944 and the Arbitration (Protocol and Convention) Act of 1939. Having said that, it might also be possible (although it is untested) to seek the enforcement of an award under provisions of the Geneva Convention, depending on the location of the seat of arbitration tribunal. In addition, the provisions of the ASEAN Comprehensive Investment Agreement require a member state to make provision for the enforcement of arbitration awards made under its auspices, although this would apply only to investors who are granted protection thereunder.

5.2 Restrictions on Foreign Ownership of Real Property and Ways to Obtain Rights to Real Property

Pursuant to sections 3 and 4 of the Transfer of Immovable Property Restriction Act of 1987 (the 1987 “TIPRA”), immovable property cannot be transferred from and to a foreign individual or company in Myanmar. A company owned by a foreigner (a foreign company) is defined by Section 2 (c) of the TIPRA as a company or partnership whose management and control are not vested in the hands of Myanmar citizens, or a company or partnership whose major shares are not held by Myanmar citizens.

Despite the foregoing definition, in practice, even a company with a foreign minority shareholder has not been allowed to own real property. By way of a general rule, the relevant authorities in Myanmar have taken a dim view of any contractual or private arrangements that may serve to dilute the inherent rights of Myanmar citizens, or which suggest that Myanmar citizens are to be used as nominees for the purposes of circumventing foreign ownership restrictions. This point of view, although not documented, applies to more than immovable property, and extends to other instances where foreign participation in commercial activity is restricted or prohibited. Indeed, the penalties for contravening this policy have been severe, with the “blacklisting” of both the foreign and local entities, placing the investment at risk.

Furthermore, the rights of foreigners to take security interests over land are limited (see below for further comment on security over land).

In light of the foregoing, corporate landholding structures (i.e. structures whereby foreign minority shareholders in landholding companies are granted asset control or protection rights) are not advisable in Myanmar, and indeed may not be lawful or recognized.

Furthermore, the TIPRA prescribes a maximum 1 (one) year lease term for any lease of immovable property by a foreigner/foreign company, or lease of immovable property from a foreigner/foreign entity by any person.

Several types of land co-exist in Myanmar, in accordance with their use. In general, none of the following types of land can be leased by a foreign individual or entity:

- religious land;
- land used for state defense and security;
- land under litigation;
- land restricted for lease to foreigners by the state; and,
- land where the foreign investor’s business may cause public environmental problems, noise, pollution, or may negatively affect the urban residential area and culture.

A foreign individual or entity can lease real property in accordance with exemptions granted under sections 14 and 15 of the 1987 Law. With respect to leasehold interests, the main options for foreign investors are: that investors who qualify for tax incentives and investment guarantees under the FIL and have obtained a MIC permit - may lease state land or private land for a term of up to an initial period of fifty (50) years with two possible extensions often (10) years each.

The MIC is required to approve such leases and also has the power to terminate leases of state land on the following grounds:

- the foreign investor fails to pay rent;
- the foreign investor fails to observe or follow any terms and provisions of the lease agreement;
- the foreign investor violates Myanmar law on the land;
- the foreign investor has been blacklisted (by the Myanmar government);
- a court or authority rules that the foreign investor's business must be wound up due to violation of the law; or,
- the foreign investor causes water, air, or environmental pollution on the land or causes noise nuisance.

Furthermore, in respect of state land, and on special application, a "right of use" for the economic benefit of the state, of up to usually thirty (30) years may be granted, extendable upon the approval of the relevant authorities. (Directive No. 3/90 and 5/93.)

Finally, a foreign investor may obtain a long-term lease of thirty (30) years, renewable for two (2) consecutive periods (the duration of which depends on the scale of the project itself) by being established in an Industrial Zone or a Special Economic Zone.

5.3 Secured Transactions Involving Real Property

Mortgages over land in favor of foreigners are expressly prohibited by the TIPRA. However, pursuant to Section 17 of the FIL, investors may sub-lease or mortgage the land and buildings that are under the scope of an MIC Permit, provided that the mortgage is deposited within the term of the business and that the MIC gave its prior approval. The FI Rules provides that the investor will file such request with the MIC in the so-called "Mortgage Form 5", together with the consent of the person who has the right to use the land or who is entitled to lease the land. Furthermore, charges over immovable property are technically available to foreigners in that, unlike a mortgage, a charge does not necessarily involve the transfer of a legal right to the foreigner, the foreigner's rights to enforce the charge on default, particularly to take possession of the charged property in order to liquidate the collateral, are not clear in law. Certainly a court order would be required to enforce a charge of this nature.

There is no binding precedent available which provides guidance on whether such charges, or the enforcement of such charges, would be construed as a contravention of the 1987 Law or otherwise.

Any charge or mortgage taken over movable or immovable property must be perfected by way of filing with the Registrar of the Companies Registration Office (Section 109 of the Myanmar Company Act, 1913). Failure to file the security interest means that the interest is not enforceable against the liquidator or other creditor of the debtor. By inference, the necessary filing would perfect the security interest so that it is enforceable against third parties.

There is no binding precedent available which provides guidance on whether such charges (under the TIPRA) and mortgages of leases (under the FIL), or the enforcement of such charges and mortgages, would be construed as a contravention of the TIPRA or otherwise.

5.4 Zoning and Building Laws and Regulations

There are certain laws relating to zoning and building, though they are limited to certain metropolitan areas and are, in certain instances, outdated. These include:

- the City of Yangon Municipal Act of 1922;
- the City of Yangon Development Law of 1990;
- the Development Committees Law of 1993;
- the City of Mandalay Development Law of 2002;
- the Nay Pyi Taw Development Law of 2009, and
- the Yangon City Development Law enacted on 8 October 2013.

The City of Yangon Municipal Act, the City of Yangon Development Law, 1990, and the Yangon City Development Law, 2013, apply only to Yangon. The City of Mandalay Development Law is applicable to Mandalay, and the Nay Pyi Taw Development Law to Nay Pyi Taw. The Development Committees Law applies to other towns.

There are orders, directives, and rules under the City of Yangon Municipal Act and the City of Yangon Development Laws that relate to buildings, environmental protection and sanitation, roads and bridges, civil projects, and land administration. For example, there are prohibitions against erecting buildings of more than six stories in prescribed areas east, west, north, and south of Shwedagon Pagoda. It is further required by such notification that no building of more than 12 stories shall be erected in the remaining areas. If an owner wishes to construct a building exceeding 12 stories, a separate permit may be obtained from the government to do so. The modes for construction of new buildings are stipulated depending on the location and types of building.

In addition, the Rules Relating to Building for Construction (Notification No. 9/1999 of the Yangon City Development Committee) oblige developers to submit a construction plan covering all construction stages, from initial design to final stage, for all buildings and constructions in the Yangon area.

Likewise, there are orders relating to zoning issued under the City of Mandalay Development Law, the Nay Pyi Taw Development Law, and the Development Committees Law. For example, in Mandalay, there are prohibitions against erecting buildings of more than four stories in places near Mandalay Moat. No building of more than 12 stories shall be erected in the remaining areas. If an owner wishes to construct a building exceeding 12 stories, a separate permit may be obtained from the state to do so. As in Yangon, the Mandalay City Development Committee issues notifications related to the construction of buildings, but does not do so in a systematic way as in Yangon.

Moreover, there are orders, directives, and rules issued under the Municipal Act of 1898 (which was repealed by the Development Committees Law). Such orders, directives, and rules remain in force for Mandalay, Nay Pyi Taw, and other towns so long as they are not repugnant to the provisions of the City of Mandalay Development Law, the Nay Pyi Taw Development Law, and the Development Committees Law.

5.5 The Real Estate Market: Land Use, Trends, and Key Players

Real Estate Development and Construction, Property development and construction projects have typically been conducted on the basis of build-operate-transfer concessions on state land. Now that privately-owned land may be leased on a similar basis, more options are available to developers. There has recently been some public discussion regarding the introduction of a law regulating the construction and use of condominiums and a draft has been circulated. The salient feature of the draft condominium law will grant ownership rights to foreigners, but they will be limited to buy apartments that are six stories and above. Indeed, according to Section 15 (c) and Section 31 (d-ii) of the draft condominium law, foreign ownership of apartments should be possible, but not for more than 40 percent of the units on the sixth floor and above of the condominium.

5.6 Hospitality

While there is abundant potential for the development of Myanmar's tourism sector, most hotel projects thus far have been developed in accordance with Directive 3/90, under which leases of state land of 30 years have been procured on the build-operate-transfer concession basis. Now, with the introduction of similar leases for privately owned land, investors are availed of a wider range of options. Under the FIL, foreigners are now allowed to have a

100 percent foreign-owned investment for hotels with a three-star ranking and above. For hotels with a ranking below three stars, a joint venture with a local entity may be allowed.

It should be noted that under current practice, although this restriction may be levied soon the operation of bars, restaurants, or coffee shops in Myanmar is a restricted sector and foreigners may not engage in these types of businesses unless as part of the broader service offering of a hotel approved by the MIC.

5.7 Retail

It should be noted that retail operations are a restricted sector, although this restriction is set to be levied by 2015, under certain conditions, in accordance with the FI Notification. However we have heard that a foreign investor was recently granted an MIC Permit in relation to a fast-food business on a non-franchise basis which seems to contradict the current provisions of the FIL. The businesses of importing and exporting (i.e. cross-border trading) and wholesaling are similarly restricted, and foreigners may not engage in these types of businesses if they have no manufacturing activities in Myanmar.

5.8 Agriculture and Mining

The Vacant, Fallow and Virgin Lands Management Law (the “VFVLM”) and the Vacant, Fallow and Virgin Lands Management Rules (the “VFVLMR”) were enacted on March 30, 2012 and August 31, 2012 respectively under which the then Central Committee for the Management of Cultivable Land, Fallow Land, and Waste Land, formed in 1991 (the Previous Central Committee) was abolished and a new Central Committee for the Management of Vacant, Fallow, and Virgin Land (the New Central Committee) was formed.

The Previous Central Committee managed, inter alia, leases and grants of land by the government for agricultural purposes, livestock breeding, and other affiliated economic development purposes, whereas the Central Committee formed under the VFVLM and VFVLMR may allow foreign investors or those foreign investors wishing to do business in the form of joint ventures with government enterprises or with local entrepreneurs, the use of vacant, fallow and virgin land for the purposes of agricultural activities, livestock breeding, mining exploration, or other permitted enterprises.

It should be noted that vacant land in this context refers to rural land that has not yet been cultivated. The application procedures are established in the VFVLM and VFVLMR. Furthermore, the VFVLM regulates the land rights granted by the Central Committee.

Though the VFVLMML and VFVLMR includes the use of land for mining exploration, mineral rights must be granted under both the State-Owned Economic Enterprises Law of 1989 and the Mines Law of 1994, by the government and the Ministry of Mines respectively.

The Mines Law of 1994 is however set to be replaced by a new mining law, which is currently being drafted. Under the Mines Law of 1994, investment in the mining sector has to be made under a production-sharing contract between the private investor and the Ministry of Mines.

Likewise, electricity rights have to be granted under the State-Owned Economic Enterprises Law and the Electricity Law of 1984, by the government and the Ministry of Industry.

In light of the above, it should be noted that concession rights to land cannot be granted by the Central Committee alone.

Under present practice, in cases where state virgin land is required for a project, land is transferred to the relevant ministry in terms of directions issued under the Myanmar Land Revenue Directions, 1911.

5.9 Opportunities

Numerous reforms have been implemented and further legal and economic reforms are anticipated in the near future. The recent reforms have created much interest in the country, and the investment climate and protection to foreign investors have improved substantially.

However, Myanmar's administrative authorities have presided over an economy that has been closed to foreign investment for many decades, and investors are therefore urged not to take undue risks or to structure their investments in a manner that may offend either the letter or the spirit of the laws currently in place. Failure to observe a high degree of compliance with local law may place an investment at risk.

THAILAND

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Thailand at a Glance

Thanks to rapid industrialisation from the 1970s to the mid-1990s, Thailand has transitioned from a low-income agricultural economy to a country with a large industrial and services base, a booming tourism sector, and a growing, urban middle class.

After recovering from the 1997 Asian financial crisis and a severely depreciated baht, Thailand sustained an average of around 5 percent GDP growth for five consecutive years after 2001. This robust growth would have continued but for the US and European economic crises, the 2006 military coup, and the subsequent domestic political upheaval. Despite these setbacks and predictions of further economic problems in the euro zone, the US, and China, Thailand's economic growth is expected to continue for years to come.

Tourism especially is expected to go from strength to strength, as Thailand remains a favorite destination for holidaymakers from all over the world.

6.1 Key Indicators of GDP and the Labor Market

	2008	2009	2010	2011	2012
GDP Growth (percent)	5.0	5.3	7.8	0.1	6.5
GNP Per Capita PPP (USD)	8,400	8,100	9,700	9,700	10,300
Population (Million)	65.4	65.9	67.0	66.7	67.4
Unemployment (percent)	1.4	1.5	1.2	0.7	0.7
Real Wage Growth (percent)	-2.9	4.1	10.4	10.9	6.6

Sources: Bank of Thailand, CIA World Factbook, National Statistics Office Thailand

6.2 Legal Environment

The Kingdom of Thailand is a constitutional democracy with its King, Bhumibol Adulyadej as its head of state. The prime minister is the head of the executive branch and an elected member of parliament, with a maximum term in office of not more than eight consecutive years.

The national legislature is the National Assembly, comprising the House of Representatives (the lower House) and the Senate (the upper House). Under Constitution Amendment No. 1, BE 2554 (2011), there are 500 members of the lower House, with 375 members directly elected from 375 constituencies through the “one man, one vote” system. The remaining 125 members are indirectly elected via electors’ simultaneous voting for a favored political party, which puts members on a list when fielding its constituency candidates for the relevant general election. The 150-member upper House consists of representatives from each of the provinces (currently 77), with the remaining members appointed by a task force of the Selection Committee formed from a representative of each of the six constitutionally established independent organizations, and one each from the Supreme Court and administrative courts.

In the judicial branch, the court system of Thailand consists of four distinct courts:

- the Constitutional Court, established under the current constitution;
- the administrative courts, which handle administrative disputes between the private sector and state entities, and between state entities;
- the military courts, which handle criminal cases involving members of the armed forces; and,
- the Courts of Justice.

Thailand has no jury system. Between one to three judges decide on civil and/or criminal cases. The courts of first instance consist of the following nine courts: municipal courts, provincial courts, civil courts, criminal courts, labor courts, tax courts, bankruptcy courts, juvenile and family courts, and the Central Intellectual Property and International Trade Court. The upper courts comprise the Appeal Courts and the Supreme Court.

6.3 Real Estate

6.3.1 Immovable Property Interests

The Interior Ministry regulates Local Land Offices throughout the country for the recognition and registration of property interests under the Land Code, BE 2497 (1954), and the Civil and Commercial Code.

Various forms of immovable property interests are recognized under Thai law, including a title deed (chanote), confirmed certificate of land utilization (Nor Sor Saam Gor), certificate of land utilization (Nor Sor Saam), and certificate of possession (Sor Kor Neung). Generally, the more advanced forms of legally recognized property interests (Chanote and Nor Sor Saam Gor) are suitable for investment and land development purposes, with formal land surveys having been made, including aerial survey maps, and clearly defined boundaries.

A chanote contains all the information that is customary in a title deed, including a cadastral map with marked boundaries, identification of registered owners, transaction history, registered leases, mortgages, servitudes/easements, and other encumbrances. Accordingly, land due diligence procedures can identify all relevant information with respect to land ownership, location, and registered encumbrances (if any). A confirmed certificate of use (Nor Sor Saam Gor) is functionally equivalent to a title deed (chanote), and can easily be upgraded to a title deed. The other property “titles” can generally also be upgraded.

6.3.2 Forestry and Other Protected Areas

Areas along the coast, on islands, and in the mountains are often popular tourist destinations and are thus favored by developers and private buyers wanting to have a second home or retirement home.

Land transactions in these areas must be scrutinized very carefully because, in the last four decades of the twentieth century, the Thai government announced that many tracts of land in the mountains and along the Andaman and Gulf of Thailand coasts would be designated as national parks, marine national parks, forest reserves, mangrove reserves or were granted similar protected status. In these areas, government agencies – in particular the Treasury and Marine departments – also own or manage large tracts of land.

6.3.3 Registration of Property Interests

Local land offices maintain the registration records of most property interests, including land ownership under a title deed (chanote), long-term land leases, condominium ownership, condominium long-term leases, and ownership of structures (such as office buildings, hotels, residential villas, etc). Unless separately registered, a structure is deemed to be owned by the registered owner of the underlying land.

A foreign investor can purchase (or construct) a building on leased land. The ownership of the building, however, cannot be registered directly on the land title deed. Rather, documentary evidence of building ownership may include:

- a construction permit;
- a construction agreement or purchase and sale agreement; and,
- form Tor Or 5 filed with the local land office.

Unless the building is sold to, or built by, the developer on behalf of the first buyer, and unless the building permit is applied for in the name (or on behalf) of the buyer or principal under the construction agreement (or transferred to such principal), buyers should always insist on registration of ownership of the building at the Land Department.

Otherwise, uncertainty over the legal ownership of the building may become an issue in the case of a future resale.

Often, building permits are applied for by a local developer or contractor. Generally, foreign nationals who do not live in Thailand, or foreign corporations, cannot apply for a building permit. However, building permits can be transferred to foreign nationals or corporations before the expiry date of the permit.

Under Section 538 of the Civil and Commercial Code, a land lease with a term of more than three years must be made in writing and registered at the local land office. Otherwise, the lease term is only enforceable during the first three years. Under Section 540 of the Civil and Commercial Code, a land lease may not exceed 30 years. The lease term may be renewed, but the renewal term may not exceed one further term of 30 years.

6.3.4 Foreign Ownership of Land

Under the Land Code and the Foreign Business Act (FBA), BE 2542 (1999), foreign corporations and foreign citizens are strictly prohibited from owning land. A locally registered company will be regarded as a “Thai” company and may own land in Thailand if more than 51 percent of the total issued shares in the company are held by Thai shareholders and the number of Thai shareholders is greater than the number of foreign shareholders.

Section 36 of the FBA prohibits any Thai national or juristic person from “aiding or abetting or taking part” in any business restricted under the law, including “land trading”. Nevertheless, foreign investors have often formed Thai corporations to own land in cooperation with Thai majority shareholders.

In recent years the Interior Ministry has adopted a strict enforcement policy and issued a series of regulations to limit the use of Thai land-holding companies by foreign investors. The local land offices now require Thai shareholders to provide evidence of the source of funds for capitalization of any Thai corporation with foreign shareholders (or foreign directors) engaged in land development. The Ministry of Commerce also requires evidence of the source of funds of Thai shareholders if the foreign shareholding exceeds 39 percent (or if any directors are foreign citizens).

An Interior Ministry regulation (Mor Tor 0515/Wor 2227) dated July 21, 2008 confirms that any Thai person who owns land for the beneficial interest of foreigners shall be subject to both civil sanctions under the Land Code as well as criminal sanctions under the Criminal Code.

Based upon the Interior Ministry's strict enforcement policy, foreign investors interested in land development are well advised to hold property rights through registered, long-term leasehold interests (as opposed to freehold land ownership) or in cooperation with legitimate Thai shareholders who are not considered "nominees."

6.3.5 Recent Developments Regarding Investigation of Nominees

There were several news reports in July 2012 that the Department of Business Development (DBD) of the Ministry of Commerce would soon announce six new guidelines for inspecting 27,000 companies in Thailand (out of a total of 32,000 registered companies in which foreigners have shares) that may be breaching the FBA.

Businesses that will be closely inspected are those categorized in annexes I, II, and III of the FBA, which are involved with the country's security or stability, or affect local competitiveness. Included are companies involved in such enterprises as agriculture and land leasing.

The six guidelines concern percentage of shareholding, voting rights, management power, source of funds and investment capital, dividend payments, and financial transactions. The guidelines are expected to be applied by the DBD's legal officers and the Department of Special Investigation (DSI) in inspecting businesses that may be in breach of the FBA.

If the DBD finds any company at risk of a breach under those guidelines, the case will be passed on to the DSI for further in-depth investigation.

Please note, however, the reports did not mention that the DSI, DBD, and Land Department would investigate land-holding companies specifically. Thus land-holding companies are not specifically targeted but may be subject to investigation if they operate businesses such as land trading, land development, or leasing.

6.3.6 Land Allocation License

Property developers subdividing a land plot (or contiguous land plots) into 10 or more subdivided plots for sale are required to obtain a "land allocation license", as required under the Land Allocation Act, BE 2543 (2000). Property developers must prepare detailed land allocation license applications to be filed with the local land office. Such an application includes the following documents:

- land development master plan;
- land improvement plan;
- public utilities maintenance plan and bank guarantee in relation thereto;

- list of encumbrances (if any) affecting the subdivided plots;
- land purchase and sale agreement; and,
- copies of the relevant land title deeds (chanote) and/or confirmed certificates of land utilization (Nor Sor Saam Gor).

The subdivision of land plots for leasing purposes (as opposed to the sale of subdivided land plots) is not regulated under the Land Allocation Act unless the Land is subdivided nevertheless.

6.3.7 Long-Term Land Leasing

As noted above, Section 540 of the Civil and Commercial Code provides that a land lease may not exceed 30 years. The lease term may be renewed once and the renewal term may not exceed 30 years.

Certain risks may apply to long-term leases granted by Thai Natural Persons (as opposed to long-term leases granted by Thai corporations). A recent decision of the Supreme Court of Thailand has raised doubts over the enforceability of lease renewal terms against the heirs of individual lessors. The Supreme Court ruled that heirs are not bound by a contractual renewal term contained in the long-term lease entered into between the lessee and the deceased lessor. Accordingly, lessees are advised to enter into long-term leases with Thai corporations instead. In addition, long-term lease agreements should provide that the lessor cannot transfer land without the consent of the lessee (in order to avoid the possible transfer of the land to an individual lessor or a corporate lessor who uses the company for other business ventures; see below). Even in the case of a Thai limited company being the lessor, there is always remains the bankruptcy/insolvency risk. This risk can be further mitigated by ring-fencing the company by limiting the lessor's business objectives. Much can happen in 30 years; we therefore always recommend that lessees require that the lessor company cannot engage in other, unrelated businesses by amending its objects clause if it contains broad objects (which is generally the case because of the widespread use in Thailand of standard corporate memoranda and articles of association with long form objects clauses).

6.3.8 Condominium Ownership

Sales and ownership of condominium buildings and units are governed under the Condominium Act, BE 2535 (1992, as amended). Under the Condominium Act, foreign investors are permitted to own up to 49 percent of the unit space (excluding common areas) in a condominium project. Therefore, each condominium project has a "foreign quota" of units available for foreign ownership. Once the foreign quota is filled, the remaining units

may only be purchased by Thai citizens (or qualified Thai corporations), or leased to foreign citizens (or foreign corporations).

A foreign investor (who does not work or reside in Thailand) purchasing a condominium must utilize funds transferred from abroad and obtain a corresponding foreign exchange transaction form (FET form) issued by the recipient bank in Thailand. A foreign investor is required to produce a duly issued FET form in order to repatriate funds (including any profit) following the future resale of the condominium unit.

6.3.9 Added Protection for Condominium Buyers

The Condominium Act, BE 2522 (1979), allows foreign ownership of individual condominium units, provided that only up to 49 percent of the total livable area in a particular condominium building is owned by foreigners.

Following the growth of the condominium market, Thai authorities have tried to strengthen regulation through the amended Condominium Act No. 4 (2008). Under this act, condominium buyers will be protected with respect to claims made by developers in advertisements such as brochures, handbills, or leaflets.

Developers are responsible for products (condominium units and common areas) advertised in such media, and these products have to match the advertisements. The law makes developers accountable for claims made in their advertisements, and imposes fines of THB 50,000 to THB 100,000 for violations.

The law sets the standard for contracts, and clarifies that developers are responsible for the monthly common-area fees for unsold units. If a unit-holder fails to pay the fees, the condominium juristic person can charge a maximum interest rate of 12 percent per year for payments which are one month overdue, and up to 20 percent per year for payments that are six months or more overdue.

The new law also details the requisite qualifications of the manager of the condominium juristic person, and provides that the management must be registered within 30 days from the day of the first condominium owners' meeting. Most of the amendments in the Condominium Act add duties and obligations on the developer for the benefit and protection of the buyers. These rights of condominium buyers have been implemented since July 4, 2008.

6.4 Applicable Taxes

6.4.1 Leases

Registration fee applicable to a registered lease is 1 percent of the contractual total rental and 0.1 percent stamp duty on this same amount.

If the lessor is a foreign corporation, rental income will be subject to corporate income tax at the same rate that applies to Thai corporations (currently 30 percent). The lessor must also obtain the permission of the Bank of Thailand to repatriate leasing income. If the foreign property owner is an overseas resident, the rental income will be subject to personal income tax at progressive rates (ranging from 0 percent to 37 percent).

If a property is leased to a Thai corporation as lessee, the lease payments are subject to withholding tax at a rate of 5 percent. The withholding tax does not apply to individual lessees.

Rental income on fully furnished and serviced properties is generally considered a service, and the rental is subject to VAT and the lessee must withhold taxes at rates of between 3 and 5 percent.

Rental income is subject to a local land and house tax of 12.5 percent which is based on the actual rental income or the annual government assessed rental value, whichever is higher. This tax is paid to the local municipality by the owner of the property which is rented.

6.4.2 Land, House and Condominium Freehold Transfers

Various taxes, fees and duties will be payable and the calculation of these taxes and duties will be based on either the actual contractually agreed sales price or the government appraised value of the property. These government appraised values are adjusted regularly to keep pace with the market but are rarely as high as market prices.

Transfer fees are 2 percent of the government-appraised value of the property and are payable at the Land Department.

Specific Business Tax (SBT) is also payable at the Land Department and is calculated on the basis of the higher of the actual sales value or the government appraised value. If SBT is payable, no stamp duty applies.

Stamp duty of 0.5 percent of the registered sales value is also payable (except as explained below).

Finally, withholding tax is payable at the rate of 1 percent of the actual sales price or the government-appraised value, whichever is higher if the seller is a company.

If the seller is an individual, this withholding tax is calculated based on the appraised value and at progressive (personal income tax) rates.

If an individual seller has owned the property for at least five years and has had his or her name on the house registration for at least one year, such seller does not have to pay SBT. Stamp duty does apply in such a case.

Payment of all the above taxes are the legal obligation of the seller except transfer fees which, in practice, are often split equally between the seller and the buyer. In the case of the first transfer of a condominium the developer can only ask the buyer to pay for up to half of the 2 percent transfer fees. This is mandated by the applicable consumer protection law.

6.4.3 Share Transfers

Many properties are sold by the owners selling the shares in the property holding company. There are advantages in doing so, in particular tax savings and significantly lower transactional costs. However, even when selling the shares in an offshore shareholder of a Thai property holding company, significant Thai withholding taxes may be due on such a sale even if they take place wholly offshore, and the seller has to realize the potential tax issues he or she may run into.

Today with increased transparency and reporting of banking transactions by one nation to another, and the prevalence of various applicable banking regulations and money laundering laws, a seller who wishes to avoid paying taxes in Thailand is well advised to carefully consider the consequences of offshore transactions involving shares which directly or indirectly provide control over the Thai property holding company, which may in the worst-case scenario include allegations of tax evasion which is considered a criminal offense.

6.4.4 Exceptions to Land Ownership and Land Lease Restrictions

A foreigner who invests not less than THB 40 million in designated investments in Thailand will be allowed to acquire land with an area of not more than one rai for use as a residence, subject to permission from the Interior Ministry.

The Industrial Estate Authority of Thailand (IEAT) has authority to approve foreign ownership of land located within duly designated industrial estates for the purposes of industrial production. In addition, the Thailand Board of Investment (BOI) has authority to approve foreign ownership of land relating to BOI-promoted projects (including the land underlying the foreign investor's facility, residential homes for senior foreign executives, and residential housing for local employees).

The Petroleum Act, BE 2514 (1971) permits petroleum concessionaires to own onshore land for use in connection with petroleum operations, subject to prior approval by the Petroleum Committee. The same rules on long-term leases of land as for individual and corporate entities are applicable to land leases of petroleum concessionaires.

Under the Hire of Immovable Property for Commerce and Industry Act, BE 2542 (1999), land leases for certain "commercial and industrial" purposes may be registered for a term of "more than 30 years but not exceeding 50 years". The act is implemented in accordance with regulations issued by the Interior Ministry.

Moreover, a foreign financial institution formed under the Financial Institution Business Act, BE 2551 (2008) can purchase or permanently hold immovable properties for use as business premises, or as facilities for its officers and employees, with the approval of the Bank of Thailand.

In addition to the above law, a foreign juristic person is allowed to have ownership over immovable property in Thailand for the operation of a branch office in Thailand pursuant to the following laws:

- the Commercial Banking Act, BE 2505 (1962);
- the Life Insurance Act, BE 2535 (1992); and,
- the Insurance Act, BE 2535 (1992).

6.4.5 Construction

Construction in Thailand is primarily governed by the Building Control Act and the Town Planning Act. The Building Control Act controls and sets the standards for design and construction, which apply to new buildings and most alterations and renovation to existing buildings. It also mandates punishment in the case of violations. The Town Planning Act regulates the use of land in different zones. The zoning restrictions may include some or all of the following depending on the location:

- height of the construction;
- width of the construction;

- distance from the beach and/or shore;
- proximity to adjacent property;
- type of usage;
- slope of the land; and,
- land height above sea level.

In addition, there are, under both acts, numerous ministerial regulations and notifications governing building and construction in Thailand.

6.4.6 Escrow Law

A new legal measure to safeguard the interests of investors in Thai real estate has been implemented through the enactment of the Escrow Act, BE 2551 (2008), which came into effect on May 20, 2008.

While the escrow law identifies the specific types of transactions governed by the acts (namely, any reciprocal contract where a contractual party is obligated to transfer or deliver property or documents embodying the obligation, and where the other contractual party is obligated to make payment under the contract), the business sector that seems mostly to benefit is the real estate sector.

For example, a buyer in a real estate project, such as a condominium or villa project, must often pay a substantial amount to the developer before completion, and must hope that the developer completes the project on budget and on time. In the Thai real estate market, developers often finance their projects by using funds received from buyers. The main reason for this is that bank financing is not always easy to obtain.

Occasionally these projects stall due to lack of funding, leaving buyers with the difficult task of attempting to recoup their payments through time-consuming litigation in the Thai courts. Even with a positive outcome, the enforceability of the court award is often an issue. The developer may have become insolvent and/or mortgaged the land to third parties. Sometimes developers end up in bankruptcy court. The Escrow Act was designed to eliminate or, at least, mitigate these problems.

An escrow agent has the duty to ensure that the contractual parties perform their obligations within the period of time under the conditions set forth in the escrow agreement. The agent may also have a duty to hold funds, property, and/or documents embodying the obligations that the contractual parties have placed under its custody, and to deliver funds and arrange for the transfer of ownership or rights in the property subject to the escrow agreement.

An agent that intends to engage in escrow business is required to obtain a license from the competent authority, namely the Ministry of Finance, with a recommendation from the Escrow Business Operation Supervision Committee (the Committee), the governing body for the escrow service business. Further, an agent must be a financial institution or other type of juristic person (legal entity) as prescribed in the ministerial regulations.

Many financial institutions now offer escrow services. As of December 2009, seven financial institutions had received escrow licenses.

The escrow agreement is a tripartite contract and must be made in writing and signed by the contractual parties and the escrow agent. It must contain certain particulars as prescribed in the act, including:

- the name of the reciprocal contract prescribed between the contractual parties;
- the period of time or conditions governing the delivery of property or documents embodying the obligation;
- the delivery of money of the contractual parties;
- rights; and,
- the duties and liabilities of the contractual parties and the escrow agent.

An escrow agent must not co-mingle the property of the contractual properties with its own, and it must prepare a list of property of each contractual party separate from its own properties, and must also maintain the same according to the requirements prescribed by the Committee.

In case of transfer of rights in relation to immovable property, the escrow agent must notify in writing the relevant officer under the Land Code, and the officer records the notice as evidence. Such a record restricts the land office from registering any transfer of rights in such property until the officer is so notified by the escrow agent.

To date, escrow arrangements are not yet widely used, probably because the law is not yet widely known and understood, and because of the associated costs and perceived added complexity to the transaction.

6.5 The Real Estate Market: Land Use, Trends, and Key Players

6.5.1 Hospitality

Thailand has a well established hospitality and tourism sector. All major hotel chains are well represented in the country, from the JW Marriot chain through to the Accor Group's Sofitel,

Novotel, Grand Mercure, and Ibis brands. A notable transaction that occurred recently was the acquisition of the Sofitel on Silom Road in central Bangkok, and the negotiations surrounding its rebranding to a Pullman Hotel, whereby the hotel owners were able to negotiate Accor's first franchise agreement in Thailand, as opposed to a hotel management contract.

6.5.2 Offices, Apartments, and Retail Space

The customer profile among the property markets in Thailand varies from region to region, with Bangkok and other tourist locations being the key markets.

The capital city is the national and regional headquarters of many Thai and foreign companies, and thus there is an active market for office space, traditionally in the central business district but slowly expanding along the BTS "skytrain" routes and the underground train route. Foreigners typically invest in condominiums and long-term lease apartments. Many higher-end investment properties can be found in the Sukhumvit, Silom-Sathon and Rama IV areas and along the riverside. Established Thai developers that have earned their stripes in the Bangkok market have recently started to build condominium projects in the THB 1.5 million-THB 3.5 million range, with considerable success amongst Thai buyers.

The resorts of Pattaya and Cha-am/Hua Hin are popular with both foreign and Thai buyers of condominiums, with Pattaya increasingly becoming a higher-end destination with five-star condominium developments such as The Sails and The Palm.

On the resort island of Koh Samui, developers target mostly foreign clientele with long-term lease villa developments. Phuket is also a popular destination for foreigners who wish to have a second home or holiday home, with developers offering both villa projects with long-term lease contracts as well as condominiums. Phuket is becoming home to a growing expat population, many of whom require services and/or office space for their businesses. As a result, modern retail/office space is being developed to meet this demand.

6.5.3 Industrial Estates

The biggest industrial estate manager in the country is the Industrial Estate Authority of Thailand. The Amata City industrial estate, south of Bangkok, was fortunate to escape the floodwaters that inundated other similar facilities north of the capital in late 2011. Affected estates such as Rojana, Hi-Tec, and Navanakorn, among others, are continuing to improve their flood defenses to avoid a repeat of 2011.

6.5.4 Opportunities

Thailand's real estate market still has much room to grow in the coming years, with healthy condominium sales anticipated in both the high-end and budget markets to foreigners and to Thais. Most buyers are from East Asia and the Middle East, and the market traditionally includes investors from Hong Kong and Singapore and expats living in Asia and the Middle East. Newer customers are now coming in from the Indian subcontinent, China, and Russia in the wake of increasing tourist arrivals from those regions.

Thailand is again trying to encourage high-end foreign interest by re-launching its "elite card" program. In well-known tourist areas like Pattaya, Hua Hin, Phuket, and Samui, there will always be foreign interest in property. Most investors who bought over the past five years or so and resold their units have enjoyed healthy returns despite the ongoing domestic political turmoil and economic malaise affecting many regions of the world.

The economic problems (and poorly performing property markets) plaguing many European countries and the US will continue for some years to come, and we expect that this may have some impact on the inflow of money from Europe and the US. However, with the continuing economic success in Hong Kong and Singapore, and wealth accumulating in many Southeast Asian countries and the Indian subcontinent, we believe the downturn in property investment from European and US customers will at least be partially offset by new investment from within Asia.

Bangkok will continue to offer attractive opportunities for real estate investors and developers in areas adjoining the expanding mass transit systems. Recent skytrain expansions have been followed by increased interest in the previously unpopular areas they now serve. Further lines are planned, and this is likely to keep the condominium market active for some time to come.

Cha-am and Hua Hin are still popular choices for those wanting to buy condominiums but prime beachfront property is no longer available, and new developments are expected to move to areas further inland but concentrated along the main thoroughfare, Petchkasem Road.

The fact remains that foreigners enjoy living in and spending holidays in Thailand. The 2011 floods have not diminished foreign interest in the country, and depending on a resolution of the current political unrest, Thailand's real estate sector will continue to prosper for the foreseeable future.

VIETNAM

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Vietnam at a Glance

Since 1986, when the Doi Moi (“Open Door”) policy was launched, economic and political reforms have significantly transformed Vietnam, making it one of the fastest-growing economies in the world today.

While Vietnam’s political system remains assimilated to a socialist regime, the Vietnamese authorities have reinstated their commitment to economic liberalization and international integration by pursuing implementation of the structural reforms needed to modernize the economy.

Vietnam is now officially a member of 63 international organizations, including the United Nations (since 1977), the Association of Southeast Asian Nations (ASEAN; since 1995), the Asia-Pacific Economic Cooperation (APEC; since 1998), and the World Trade Organization (WTO; since January 2007). Vietnam became an official negotiating partner of the Trans-Pacific Partnership Trade Agreement in 2010. It has also established bilateral diplomatic relations with more than 160 countries.

Vietnam’s per capita income is estimated to have reached USD 1,400 per person in 2012, which is more than six times the figure of 1994 (USD 220). The steadily growing income of Vietnam’s population makes it one of the most attractive global markets for distribution activities, a sector that legally opened up in 2009.

According to figures provided by the Ministry of Planning and Investment (MPI), in 2012 Vietnam attracted nearly USD 16.3 billion in registered foreign direct investment (FDI), an 11 percent increase over the previous year. FDI disbursed decreased slightly to USD 10.4 billion from USD 11 billion in 2011. Although disbursed FDI was not as high as targeted, its structure was improved. By sectors, manufacturing and construction made up the largest proportion of about 72 percent, much higher than the 54.1 percent recorded in 2010. Real estate’s share represented 12 percent of FDI in 2012, up sharply after the decline to 5.8 percent recorded in 2011.

By the end of the fourth quarter of 2011, Vietnam's GDP was estimated to have grown 5.89 percent, slower than the 6.78 percent reached in 2010, as policymakers struggled to counter soaring inflation, which remains an ongoing concern in Vietnam.

Inflation reached 23 percent in 2008, fell to 6.9 percent in 2009, then climbed back to an annualized rate of 20.82 percent at the end of the second quarter of 2011.

In 2012, Vietnam reached the targets set by the National Assembly with 6.4 percent GDP growth, the budget deficit kept at 4.8 percent, and inflation contained to 6.8 percent. The lower inflation rate was due to tight monetary policy and a dip in demand caused by the slowdown in GDP growth. As of March 2014, inflation was hovering at 4.39 percent.

The government's continuing battle against inflation put the greatest pressure on real estate companies, curtailing new developments, and with credit significantly tightened. This has resulted in a catalyst effect with the sector seeing more merger and acquisition activity.

Yet in general, Vietnam remains an attractive investment option. Analysts see the country's economic growth momentum as strong and upbeat in comparison to other regions of the world, and they forecast that annual real GDP growth will average 7.2 percent between 2012 and 2014. A narrowing trade deficit, coupled with government efforts to "de-dollarize" the economy, will help to reinvigorate investor confidence in the currency.

7.1 Legal Environment

Vietnam's legal system is based on the civil law system, which originates from French civil law, and has been influenced by the legal systems of China, the US, and the former Soviet Union. Nowadays, when drafting a law, Vietnamese lawmakers tend to take into account laws from various legal systems regardless of whether such laws originate from a civil law system or a common law system. Vietnamese laws promulgated recently seem to reflect both civil and common laws.

Under the legal system of Vietnam, legal instruments are organized in the following hierarchy:

- the constitution and laws and resolutions of the National Assembly;
- ordinances and resolutions of the Standing Committee of the National Assembly;
- orders and decisions of the state president;
- decrees of the government;
- decisions of the prime minister;
- resolutions of judges of the Council of the Supreme People's Court;

- circulars of the president of the Supreme People's Court;
- circulars of the director of the Supreme People's Procuracy;
- circulars of ministers and heads of ministerial-level agencies;
- decisions of the state auditor-general;
- joint resolutions of the Standing Committee of the National Assembly or the government and a central agency of a socio-political organization;
- joint circulars of the president of the Supreme People's Court and the director of the Supreme People's Procuracy;
- joint circulars of ministers and heads of ministerial-level agencies; and,
- legal documents of the people's councils and people's committees.

7.2 Judicial Bodies

The Vietnamese judicial system comprises the people's courts and other courts; military courts, where the judges are often officers with a background in the armed forces (these are not discussed in this book); and organizations for mediation and conciliation.

The people's courts include the Supreme People's Court, the provincial people's courts, the district people's courts, the military courts, and other courts. These courts have jurisdiction over commercial, labor, and administrative litigation.

The judiciary in Vietnam is comprised of two primary judicial levels, namely: the Court of First Instance, and the Court of Appeal. The Supreme Court is the highest court, and supervises the judgments of the lower courts. The Supreme Court is also empowered to rule on important cases and may intervene in the judicial proceedings of lower courts. An award by the court of first instance may be overruled by the court of appeal if an appeal is lodged by the applicant, the defendant, a competent body such as a higher court, the procuracy, or certain social organizations. An award by a court of appeal is, in principle, final and binding. However, the Supreme Court may intervene by demanding a case be re-litigated by the lower court if an error was made at any stage of the proceedings, or if an appeal has been lodged by a competent party. In this event, the involvement of the Supreme Court is unlimited. Further to the first intervention of the Supreme Court, a second binding award may be issued on the same case. The Supreme Court is entitled to oversee the validity of such a second award. Civil cases may require up to 10 years to complete (including appeals). While the framework of substantive laws has been greatly improved over the last few years, it is commonly recognized that the mechanisms for dispute resolution and enforcement are neither comprehensive nor sufficiently strong.

7.3 Restrictions on Foreign Ownership of Real Property and Ways to Obtain Rights to Real Property

There is no private ownership of land in Vietnam: all land belongs to the state. The state either allocates or leases land through the grant of long-term land use rights (LUR). Under such LUR, the land user generally has the right to use an area of land for a specific purpose and for a specified length of time, and to inherit, transfer, exchange, lease, and mortgage such LUR. Currently, only Vietnamese individuals and companies may receive a “land allocation” – which is essentially equivalent to freehold property ownership – from the relevant people’s committee. From July 1, 2014 the new Land Law allows Vietnamese residing overseas and foreign-invested companies to receive land allocations for constructing residential houses for sale or for sale and lease.

Foreign organizations and individuals are not entitled to a land allocation, except in the case of constructing residential houses for sale or for sale and lease; they may only acquire LUR through a land lease with the state, under which they pay land rental on an annual or lump-sum basis. Except for certain cases, the term of LUR must not exceed 50 years, although for some major projects it is possible for the term to be longer, although not exceeding 70 years.

In order to obtain the right from the state to use the land, an application must be made with the local Department of Natural Resources and Environment (DONRE) under the relevant people’s committee of each province or city. For foreign-invested companies, such application can only be made after an investment certificate has been granted.

Foreign-invested companies wishing to extend their lease term must obtain approval to do so. Specifically, they must apply for an extension six months prior to the expiration of their LUR, and include in their application an amended business plan as approved by the relevant authorities. Importantly, although an investment certificate for a particular project may be extended, there is no warranty that the LUR will be extended, as this is subject to the discretion of the state. It is unclear how the assets on such land would be disposed of in the event that such a lease term was not extended.

7.4 Real Estate Transaction Structures

Three common investment structures for foreign-invested real estate development projects include:

7.4.1 Establishment of a Wholly Foreign-Owned Enterprise (WFOE)

Foreign investors are entitled, under the Law on Investment, to establish WFOEs in Vietnam to engage in the real estate business, pursuant to a validly issued investment certificate

upon the formation of a company. In such cases, the project company will secure land use rights from the local people's committee by virtue of a land use right certificate issued by the local DONRE.

The term of the land use right is usually limited to 50 years. Pursuant to the Land Law, a duly licensed, foreign-owned enterprise may be authorized to engage in the transfer, lease, mortgage, and use of the project. Payment for LUR may be made directly to registered LUR certificate holders and/or to the local people's committee. Any payments made directly to existing LUR certificate-holders are credited against the leasing fee paid (in lump sum) to the local people's committee.

Tax-wise, the foreign-owned project company may be wholly owned by an offshore special purpose vehicle; however, the application dossier submitted to the Department of Planning and Investment (DPI) during the incorporation process must provide detailed information concerning the ultimate parent corporation(s) (i.e. the major shareholders of the offshore special purpose vehicle).

7.4.2 Joint Venture

A foreign investor (either directly or through an offshore special purpose vehicle) may enter into a joint venture to establish a project company to engage in real estate development.

Customarily, the local Vietnamese partner contributes the land as an in-kind capital contribution to the project company, while the foreign partner contributes equity to finance the project construction. Ownership percentage may vary among various joint ventures depending on the negotiation between the parties.

7.4.3 Share/Capital Sale and Purchase

The third common investment structure involves the establishment of a "domestic company" wholly owned by Vietnamese persons (including Vietnamese citizens, Viet Kieu, and Vietnamese juristic persons). The procedures for establishing a domestic company are less burdensome and less time consuming than the procedures required for the establishment of a foreign-invested company. Following the establishment of the domestic project company, with a duly issued investment certificate, the shareholders (or capital holders, in the case of a limited liability company) sell shares (or capital) to the foreign investors.

While the transfer of such shares (or capital) is theoretically unlimited, procedures and formalities for share transfer (or capital transfer) are unclear in practice, which may prevent or delay the acquisition of the domestic company by foreign investors.

From a risk management perspective, it is often preferable for a foreign investor to place investment capital (or advance deposits) in escrow with an internationally recognized escrow agent. The release of the escrow funds would be conditional upon the DPI's issuance of an investment certificate to the project company to develop the project land.

Note that a foreign person (individual or juristic person) cannot receive a mortgage over land in Vietnam. Therefore, it is difficult to securitize investment capital and deposits under any of the above three investment scenarios. Escrow accounts, share/capital pledge agreements, and personal guarantees are, therefore, often utilized.

7.4.4 Individual Ownership of Residential Housing

Vietnamese persons residing overseas, who reside in Vietnam for a permitted duration of three months or more and who fall into the following categories shall be entitled to own a house in Vietnam to reside in:

- a person with Vietnamese nationality;
- a person of Vietnamese origin (in categories);
- a person returning for a direct investment in Vietnam, pursuant to the Law on Investment;
- a person whose work has contributed to the country;
- a scientist, cultural activist, or person with special skills required by a body or organization of Vietnam, and who is working in Vietnam; or,
- a person whose husband or wife is a Vietnamese citizen living in Vietnam.

A person of Vietnamese origin not in the above-mentioned categories and issued by the competent Vietnamese authority with a visa exemption certificate and permitted to reside in Vietnam for a duration of three months or more, shall be entitled to own one separate residence or one apartment in Vietnam.

With regard to foreign organizations and foreign individuals, the state has decided to enable such foreign organizations and individuals to buy and own certain property in Vietnam. Accordingly, a pilot program started on January 1, 2009 allows foreign organizations and individuals to buy apartments in areas that allow foreign residency. The purchase of houses will remain banned. Under the program, which is slated for a five-year trial, the five categories of non-Vietnamese eligible to buy residences in Vietnam are as follows:

- foreigners coming to Vietnam to invest in the country in accordance with investment regulations;
- foreigners who have contributed to Vietnam and are granted orders or methods by the president and the prime minister;

- foreigners with Vietnamese spouses living in Vietnam;
- much-needed foreign specialists working in Vietnam; and,
- foreign-invested businesses, not dealing in property, that are buying residences to lease to their foreign staff working in Vietnam.

Those who want to buy houses or apartments in Vietnam must have the proper documentation to remain in the country, and have been living in the country for at least one year. Expatriates can own an apartment for a maximum of 50 years, non-extendable, and the apartments must be either given or sold to others upon expiry of the term. Expatriates also have the right to mortgage, transform, inherit, and transfer these apartments one year after they are granted housing ownership certificates. Foreign enterprises are allowed to own apartments for the duration of their business investment licenses.

7.4.5 Secured Transactions Involving Real Property

The following types of collateral are allowed to be provided as security under Vietnamese law: objects, moneys, valuables, papers, and property rights.

As for project finance transactions, typical security packages include immovable property (LURs, properties attached to the land), movable assets, contractual rights (including rights under an insurance policy), onshore and offshore bank accounts, and conditional assignment of equity.

Collateral can also be property that arises in the future – for example, a construction or an agreement to be signed.

Specifically relating to loans, offshore loans of up to one year (short-term loans) are not subject to registration with the State Bank of Vietnam (SBV). It is compulsory that medium- and long-term loans (over one year) be registered with and certified by the SBV within 30 days of signing the loan contract and before the money is transferred to the borrower (including a short-term loan, if such loan is extended and the total loan term, including both the original term and the extended term, exceeds one year). Failure to register, in the worst-case scenario, will cause the loan to be unenforceable, and no monies for repayment of interest and principal can be remitted abroad.

Note that any amendment to the details of the SBV registration certificate (including the loan assignment/novation or anticipated repayment date) must also be registered with the SBV within 30 days from the date of such amendment, and before the effective date of such amendment. In practice, the SBV is lenient and will consider on a case-by-case basis for late registration, with a penalty being applied.

The following Vietnamese law peculiarities should, however, be noted when considering collateral types available in Vietnam involving real property:

- in the case of a borrower leasing land from the state, a land lease may be assigned provided that land rental is paid in advance to the state for the whole duration of the lease period.
- LURS may only be mortgaged to credit institutions that are licensed to operate in Vietnam, and not to offshore lenders including shareholders.
- a (foreign or domestic) shareholder may pledge any shares in favor of a foreign lender (in lieu of LURs). However, as there are practical (although not legal) limits on foreign ownership of Vietnamese real estate companies, foreign lenders can only be transferred shares up to the applicable practical maximum foreign ownership cap, and would need to sell the remainder to Vietnamese purchasers.
- a foreigner (individual or organization) cannot receive a mortgage over land.

Due to the above peculiarities, it is difficult for foreign lenders to securitize mortgages involving real property. Thus, the use of Vietnamese credit institutions as the middleman, share/ capital pledge agreements, and personal guarantees is common.

In cases where mortgages over property are allowed, the registration of a mortgage is required and carried out at the LUR registration office. The procedure for registration is fairly clear, and LUR registration offices have a limited time period to carry out the formalities of registration.

Enforcement of mortgages is based upon contracts. However, if the parties can agree, a lender (local or foreign) can enforce its securities without a court order. A court order will be required where agreement cannot be reached. Where parties have not agreed otherwise, and in the case of LURs and property attached to land, relevant assets must be sold at auction by an authorized state body.

With regard to a security in the form of guarantee, a lender may make demands against a guarantee without recourse to a court order. In the case of a court order being requested and subsequently enforced, timing is difficult to assess, and realization may take many months if not years.

7.5 The Real Estate Market: Land Use, Trends, and Key Players

7.5.1 Real Estate Development and Construction

While Vietnamese developers are faced with many difficulties regarding funds, foreign investors, especially Asian investors, have found potential opportunities in Vietnam's real estate market.

Recently, the market has seen transference of property projects in the country to foreign corporations that have strong capital. In addition, Asian investors have expressed interest in some sectors with good potential, including office and retail space, as well as resort complexes.

Although foreign investment funds coming into Vietnam have fallen significantly in comparison to previous years, most investors still have a positive outlook on the market over the next few years.

Government figures show there are 158 Korean construction entrepreneurs operating in Vietnam, with a total investment capital of over USD 10 billion. In the real estate sector there are 61 projects with total registered capital of over USD 6.1 billion, accounting for 26.5 percent of total Korean projects, and making up 13.3 percent of total foreign investment projects. According to the director of the Inpyung Company, one of the biggest real estate companies in Korea, the current decline in investment is only short term and Korean investors will continue to invest in Vietnam because they see the country as a high-potential market. Meanwhile, the director of Hibrand Vietnam Company insisted that, although the real estate sector faces many difficulties, the company is still committed to the quality and progress of its projects in Vietnam and to providing the market with projects that are of an international standard.

Singaporean investors also have a strong presence in Vietnam's real estate market, with recent years seeing prominent property deals involving Singaporean investors.

CapitaLand Vietnam, for example, purchased a 65 percent stake in a Quoc Cuong Gia Lai Company project in Binh Chanh district, valued at 121.2 billion Vietnamese dong, and with a total area of 9,000 square meters. In addition, CapitaLand has entered into a joint venture with Mitsubishi Estate Asia (MEA) and GIC Real Estate Company to continue to invest in the apartment sector in Ho Chi Minh City and Hanoi. Likewise, Keppel Land – another investor from Singapore – has signed joint venture agreements with local partners such as Riviera Cove, The Estella, and Riviera Point.

Alongside these acquisitions, several Singaporean real estate companies also plan to increase their investments in Vietnam. The most significant of these at present is the Mapletree Investment Company (of Temasek Holdings Corporation), which has announced a long-term investment strategy in Vietnam with a fund of up to USD 500 million. The company is mainly targeting the market for serviced apartments in Hanoi, and for serviced apartments and retail space in Ho Chi Minh City.

Malaysia is one of the most positive Asian investors in Vietnam. Statistics show Malaysia ranks fifth among foreign investors in the country, with numerous real estate projects registered and ready to deploy in the near future. Berjaya Land Berhad Real Estate Company (of Berjaya Holdings) entered Vietnam in 2006 with a total fund of about USD 7.1 billion. In addition, SP Setia – one of the best-known real estate investment companies in Malaysia – has two large projects in Vietnam: Ecolakes in Binh Duong province, and Eco Spring-Lai Thieu, with investment capital of USD 100 million and USD 177 million respectively. Moreover, Gamuda Land has signed a joint venture with a local company to invest in the Celadon City project in Tan Phu district.

Other Asian investors from Hong Kong, the Philippines, and Japan also have real estate investment projects in Vietnam. In June 2011, Asia New Generation of Hong Kong cooperated with the local Minh Thanh Company to build a resort complex at Vinh Hy Bay (God Mountain), with total capital of USD 800 million.

In general, although the domestic real estate market is currently facing some difficulties, there is great potential and profit to be gained in the future for those who intend to invest mid- to long-term – as evidenced in the confidence shown by the above-mentioned Asian companies investing in Vietnam.

7.5.2 Hospitality

Vietnam has 68 resorts in the central Binh Thuan-Mui Ne region, 19 resort projects in Danang, 17 resort projects in the south, and three resort projects in the north, according to the Real Estate Association.

Due to the lack of national development plans, almost all resorts are located in the central region. Thus, some attractive coastal areas with an appealing environment and high living standards have become saturated with resorts.

The initial success in recent years of popular resorts in the south and south-central regions created a wave of investment in resort projects nationwide. However, after a short period of intense development, the sector has now cooled.

Lately, international hospitality groups have begun joining forces with local Vietnamese players in this sector, among them Hilton Worldwide.

Hilton Worldwide is by no means the first or the last established brand to seek a share of Vietnam's burgeoning tourism and hospitality sector. In December 2011, the InterContinental Hotels Group (IHG) increased its presence in the country with the signing of agreements for two Holiday Inn resorts.

Previously, Starwood Hotels & Resorts Worldwide Inc. signed a deal with the Ho Chi Minh City-based Tien Phuoc & 990 Company Limited to introduce the Le Meridien brand to Vietnam. Scheduled to open in July 2015, Le Meridien Saigon is part of a mixed-use, 22-story tower comprising hotel and office space.

The Accor Group, with 16 hotels in Vietnam – with brand diversity in the luxury Sofitel, the upscale MGallery, and the mid-scale Novotel and Mercure – also sees potential in the emergence of a strong domestic travel market, with increasing numbers of Vietnamese travelling both for business and pleasure seeking international hotel brands.

Twenty-three hotel projects ranked in the three- to five-star range are scheduled for Ho Chi Minh City as of 2014, and will add approximately 5,000 rooms to supply. Seven projects have been completed or are under construction. In the first half of 2014, three new hotels with more than 680 rooms are expected to come online, according to the latest report from real estate consultants Savills. Most of the rest are now under construction.

Hanoi, meantime, has 40 known future projects, of which 18 will provide more than 5,500 rooms. Most future projects are in Tu Liem, Ba Dinh, and Hoan Kiem districts. Five-star hotel projects are more concentrated in the outlying Tu Liem district, with four-star and three-star projects being clustered in the inner districts.

All of this activity is a sure sign that Vietnam's developing tourism market has considerable potential, especially as we continue to see global brands sourcing and investing in quality accommodation in the country. Additional international competitors will no doubt hope to enter the market, and those operating already will hope to expand. Vietnam will continue to see solid growth, year-on-year, according to hoteliers and investors.

7.5.3 Retail

Vietnam is one of the five most lucrative retail markets in the world. The country's retail sector has shown strong growth and buoyant expansion compared to its neighbors, including China and India, despite its small size compared to other developing Asian economies. Although the market is still fragmented and underdeveloped, rapid urbanization – leading to changes in the shopping habits of local consumers – is offering ample business opportunities for both local and international retailers. Vietnam has a young population, which is the main reason for the robust growth in the sector. Furthermore, the Vietnamese government continues to encourage local players to participate in the retailing industry, in order to stimulate growth. Although the country's retail market is dominated by traditional stores, the concept of modern retailing is constantly growing, with the entry of foreign players and changes in

consumer buying patterns. Modern retail formats, such as hypermarkets, supermarkets, air-conditioned minimarts, and small shopping complexes are expected to become more popular, and will attract more consumers. Consequently, it is anticipated that the share of modern outlets in the country's overall retail sales will reach 61 percent by the end of 2017. Despite the gloomy news on macro-economic issues like high inflation and consumers cutting back on spending and altering their buying habits, foreign retailers are still keen to enter and expand in the local market.

E-Mart, South Korea's top discount-store chain, has made inroads in the local market in a joint venture with the Binh Duong-based U&I Group, setting up a supermarket chain with total investment of USD 1 billion. The E-Mart Vietnam supermarket chain has initial investment of USD 80 million, with 80 percent coming from E-Mart. The joint venture will open its first outlets in 2015, and its planned chain of 52 supermarkets and shops in large urban areas is expected to be completed before 2020, providing fresh food and agro-seafood products for the Vietnamese market.

Meanwhile, AEON Company (Japan) retail group, with its Jusco supermarket chain, plans to enter the Vietnamese market in 2014. With annual gross revenues of USD 15 billion, AEON expects to become one of the three leading retailers in Asia in 10 years time. It plans to make Vietnam its fourth-largest foreign market after China, Thailand, and Malaysia.

In late 2010, Japanese convenience store operator Ministop, a member of the AEON Group, signed a strategic cooperation agreement with G7 Service and Trading Joint Stock Company (G7Mart, a member of Vietnam's Trung Nguyen Group) to open hundreds of stores in Vietnam. G7Mart has said it will set up a 75 percent/25 percent joint venture with Ministop. Steven H. L. Goh, director of Retail Asia Publishing, has said that compared to other retail markets in the region, which were already saturated, there are still numerous development opportunities in Vietnam.

Parkson, a well-known shopping brand for high-end fashion, which has seven stores nationwide, says Vietnam boasts rapid economic development, especially in the retail sector, and Parkson sees the country as its most important market.

The leading retailer from Malaysia has said its business in Vietnam recorded the highest growth of the international markets where it is present, and plans to expand further its investment in the country.

Many retailers say that high real estate prices in Vietnam have increased investment costs in the area of distribution. However, they still plan to open more stores, as Vietnam's distribution market has been among the top growth markets in the world, attracting keen interest from international distributors.

Vietnam's retail sales and service revenue was expected to top USD 123.4 billion in 2013. Retail sales, as measured by the General Statistics Office, rose 13.35 percent in January 2014. Between 2002 and 2014, retail sales grew an average 23.4 percent annually, reaching a record high of 76.8 percent in November 2011 (although that was followed by a decline of 20.7 percent a year later).

7.5.4 Agriculture

The government is looking to promulgate policies to facilitate direct investment in agriculture, forestry, aquaculture, and salt production. It will also promulgate policies for investment incentives, for occupational training and development, and creation of employment for laborers in rural areas, in conformity with the process of conversion of the land use structure and conversion of the rural economic structure in the direction of industrialization and modernization.

Family households and individuals who work directly in agriculture, forestry, aquaculture, or salt production are currently entitled to be allocated agricultural land without land-use levies – they are allocated agricultural land within a quota in accordance with the land law. For now, organizations are entitled to use agricultural land by way of land lease or land allocation with land-use levies, but from July 1, 2014, land allocation with land-use levies will no longer be applicable to organizations. Foreign investors may only lease land.

7.5.5 Mining

Vietnam is now exploiting some 38 kinds of minerals, which are used for the production of 54 commodities. The total sum generated from minerals and products manufactured from minerals reached USD 25 billion in 2011.

Foreign direct investment in the mining sector remains small when compared to total investment. Iron, titanium, and copper were the leading metals exported, though imports still outpace exports in the mining sector.

Vietnam boasts rich mineral reserves, but these have not yet been exploited effectively. Among the many kinds of minerals available are tungsten, lead, zinc, titanium, limestone, copper, manganese, iron, and apatite. The government wishes to access new technologies

through cooperation with foreign experts and investors in order to effectively exploit mineral and natural resources and increase environmental protection, thus helping Vietnam's mining industry to develop further.

Now looks to be a good time to invest in this sector because of demand for minerals from within Vietnam and around the world. The new Minerals Law that came into effect on July 1, 2011 was welcomed by foreign investors because of its favorable regulatory measures. The duration of a minerals exploration license has been doubled under the new law, and license-holders are now allowed 48 months plus an extension that may not exceed an additional 48 months.

Key players in this sector include the Vietnam Coal Mineral Corporation and Ha Tinh Mineral Corporation.

7.5.6 Opportunities

Regardless of domestic developers' difficulties in sourcing funds, foreign investors, especially Asian investors, continue to see opportunities in Vietnam's real estate market, and the country stands out in the region as a very stable investment environment.

Vietnam has a great deal to offer as an emerging market with favorable demographics, skilled labor resources, and its strategic location. In recent years, foreign investors have seen opportunities in office buildings, retail developments, mixed-use developments, the rapidly growing residential sector, as well as in the hospitality sector, including city-center hotels and coastal resorts. With manufacturing interest in Vietnam set to increase as the global economy seeks growth, and Asian demand reaches new heights, the Vietnamese industrial real estate sector is also set to become more attractive. The rapidly growing retail sector, coupled with rising consumer spending, will set new challenges for distribution in Vietnam while offering huge opportunities for investors active in the logistics sector.

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