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GUIDE FOR INDIAN INVESTORS

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



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by DFDL India Desk

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Dear Reader,

It gives me great pride and pleasure to introduce to you the DFDL India Desk's Pocket Guide to investing in the ASEAN region.

This guide was created by experts from DFDL in various countries and is intended to serve in providing Indian investors with valuable information when considering investing in the ASEAN region. This guide provides a brief background on the various instruments used by each of the respective countries to facilitate outbound investment from India.

This guide is divided into various chapters on each jurisdiction (Cambodia, Laos PDR, Vietnam, Thailand, Myanmar and Indonesia) in which DFDL can provide assistance to Indian investors. This guide also contains a chapter on the India – ASEAN relationship and how the impending ASEAN Economic Community in 2015 will affect Indian Investments into the region.

Should you wish to have access to further information, we have a team of over 250 staff, including 120+ lawyers and advisers working closely together within a fast growing network of 12 offices in Asia, we provide personalized and cost-effective legal, tax and consulting services and solutions throughout the ASEAN region, and beyond.

I am convinced that this publication will be an important tool for every Indian investors looking for a road map to the ASEAN region to become more competitive in anticipation of the ASEAN Economic Community.

If you have any questions in regard to the information contained herein please do not hesitate to contact us.

Yours sincerely,

Vinay Ahuja
Head - Regional India Desk

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ASEAN



■ INDIA-ASEAN INVESTMENT

India's ever-growing presence in global trade can be linked to its increased integration with Asian countries in recent times. In 2012 India's relationship with the Association of South-East Asian Nations ("ASEAN") entered its third decade since India became a sectoral partner in 1992. India's current trade with ASEAN-member countries accounts for 10 percent of its total global trade. Two-way trade between India and the ASEAN member countries (Indonesia, Malaysia, Philippines, Singapore, Thailand, Brunei, Vietnam, Myanmar, Laos and Cambodia) for 2012-2013 was USD 76 billion. The trade target set between Indian and ASEAN is USD 125 billion by 2015 and USD 200 billion by 2022.

Economic and commercial relations between India and ASEAN have recently undergone significant changes with the signing and implementation of the ASEAN-India Trade in Goods Agreement ("AITIGA").

India and ASEAN are also expected to sign a mutual free trade agreement on trade in services and investments in early 2014.

Both sides have negotiated the terms of the agreement on trade in services, which includes an "annex" on the movement of natural persons as part of the pact. The agreement is also said to be able to facilitate investment from Indian investors in ASEAN. This agreement will aid Indian investors in:

- accessing ASEAN markets easily;
- facilitating the movement of Indian professionals into ASEAN markets; and,
- becoming a services export hub to the ASEAN region.

■ INDIA-ASEAN INVESTMENT BENEFITS

The ASEAN-India Joint Sectoral Cooperation Committee promotes trade and commerce between India and ASEAN, supported by the AITIGA.

In June 2013, India inaugurated the ASEAN-India Centre in New Delhi to facilitate the ease with which Indian investors can access information under the above agreement. India's Ministry of External Affairs is also in the process of setting up a separate ASEAN-India Trade and Investment Centre to facilitate greater investments into the ASEAN region.

■ ASEAN-INDIA TRADE IN GOODS AGREEMENT (“AITIGA”)

India and ASEAN signed the AITIGA on August 13, 2009, and it came into effect on January 1, 2010. The agreement marks the creation of one of the world's largest free-trade markets, comprising 1.8 billion people with a combined GDP of USD 2.8 trillion. The AITIGA has played a significant role in boosting trade between India and ASEAN, which increased 41 percent in the year 2011-2012. The intention of the AITIGA is to attain a zero-duty customs regime for all substantial trade between India and ASEAN member countries.

The IATIGA facilitates trade and commerce between the two regions by:

- according national treatment to the goods of both parties;
- providing for the steady liberalization of tariff rates on originating goods;
- ensuring that customs policies are applied in a predictable, consistent, and transparent manner, and that they are harmonized with international standards and recommended practices; and,
- ensuring that the concessions granted under the agreement are not nullified or impaired.

Tariff Liberalization

The tariff liberalization schedule for IATIGA, which aims for a zero-duty customs regime, has five components:

- normal track;
- sensitive track;
- special products;
- highly sensitive list; and,
- exclusion list.

To that end, the IATIGA provides for a number of measures including, but not limited to:

- the reduction and subsequent elimination of customs tariffs by 2016 on 4,000 products that account for 80 percent of traded goods;
- the reduction to a rate of 5 percent on a further 560 products that account for 10 percent of traded goods;
- the reduction of tariffs for products in a phased manner; and,
- the exclusion of 489 items deemed not eligible for tariff reduction.

Rules of Origin

Under the IATIGA, enjoyment of the preferential tariff is subject to compliance with the Rule of Origin (“ROO”). The ROO is available for two categories of products:

- Wholly-produced or-obtained products such as plants, animals, and products obtained from plants and animals;
- Not wholly-produced or-obtained products which, however, meet the following criteria:
 - Value-added is at least 35 percent or more, with provisions for regional cumulation;
 - The non-originating materials have undergone a change in tariff sub-heading; and,
 - The final process of manufacture is in the exporting country.

■ **MULTILATERAL INVESTMENT GUARANTEE AGENCY (“MIGA”)**

MIGA operates as an arm of the World Bank Group and is responsible for providing Indian investors with political risk insurance and credit enhancement when investing in one of the member countries. Indian investors are eligible for various guarantees derived from MIGA in Cambodia, Lao PDR, Myanmar, Vietnam, Thailand, and Indonesia.

The benefits to Indian investors when investing in a MIGA member country are:

- guaranteed protection of investments against the risk of transfer restrictions;
- defending investors against the risk of expropriation;
- providing a safeguard from breach of commercial contracts;
- providing protection to investors from the non-honoring of financial obligations; and,
- shielding investments from outbreaks of war and civil disturbances.

As India is a MIGA member, Indian investments further benefit from MIGA’s assistance in:

- deterring harmful actions that might adversely affect investments;
- resolving disputes;
- accessing funding from local banks and equity partners;
- lowering borrowing costs;
- increasing tenors by providing insurance coverage for up to 15 years (in some cases 20), which may increase the tenor of loans available to Indian investors; and,
- providing environmental and social expertise.

Cambodia



■ INDIA-CAMBODIA INVESTMENT

India and Cambodia have maintained a strong, multi-faceted relationship, which in recent years has seen an expansion of cooperation in diverse fields including trade, commerce, institutional capacity-building, human resources development, security, and defense. The two countries cooperate with one another in various regional and international forums such as: MIGA, the Mekong-Ganga Cooperation and the World Trade Organization, and ASEAN.

Total trade and investment between the two countries in 2012-2013 was valued at USD 112 million. Presently 60 percent of total Indian investment into Cambodia is in the pharmaceutical sector with the remainder going to the fast-moving consumer goods, and food and beverage sectors. There are a number of Indian business entities in Cambodia, including: Bank of India, Ranbaxy Laboratories, Glenmark Pharmaceuticals, WAPCOS, Kirloskar Brothers, NIIT and Kamadhenu Ventures.

■ BILATERAL RELATIONSHIP

The Indian Chamber of Commerce in Cambodia (“**ICCC**”) and the Indian Association, Cambodia promotes economic, trade, and investment between the two countries with the support of AITIGA, MIGA and other regional investment agreements.

■ INVESTMENT BENEFITS IN CAMBODIA

The Cambodian Investment Board (“**CIB**”) is an operational arm of the Council for the Development of Cambodia (“**CDC**”) which proactively supports and welcomes investment from India by offering various incentives to those Indian investors looking to enter Cambodia. These incentives are subject to achieving the status of a Qualified Investment

Project (“QIP”) and obtaining certain regulatory licenses and approvals by the CIB.

Incentives given to Indian QIPs

- Elective Incentives

Indian QIPs may elect one of the following incentives:

- Profit Tax Exemption

QIPs electing a tax holiday enjoy a profit tax exemption for a period of up to three years from the date of issuance of the registration certificate.

- Special Depreciation

Those Indian QIPs not electing the profit tax exemption are entitled to a special depreciation of 40 percent of the value of the new or used tangible properties used in their production or processing.

- Import VAT Exemptions

From March 6, 2010 the Cambodian government has granted Indian QIPs a suspension on the 10 percent VAT that is charged on imported items.

- Customs Duty Exemption

Indian QIPs enjoy customs duty exemptions for imports of production equipment, construction materials, and production inputs.

Indian investors who do not wish to apply for QIP status are still eligible for a number of other incentives such as:

- 99-year lease of land for foreign individuals and companies;
- no restrictions on international currency transfer and remittance; and,
- 100 percent foreign ownership for the majority of businesses.

In addition, Cambodia offers all Indian investors certain guarantees such as:

- equal treatment of all investors regardless of nationality;
- no nationalization adversely affecting investors' properties;
- no price controls on investors' products or services;
- no restrictions on forex convertibility; and,
- no requirement for local equity participation in the majority of businesses activities.

It is worth noting that the Indian Trade Promotion Office set up by the ICCB in 2012 acts on behalf of Indian business organizations and individuals for the purpose of business facilitation and regulatory exchange, as well as to promote India-Cambodia economic and bilateral relations.

Similarly, the CIB offers a one-stop service in regards to helping Indian investors with the following:

- information and applications;
- specific approvals;
- customs duty and tax exemptions;
- visa and work permits; and,
- company registrations.

Other reasons to invest in Cambodia include the following:

- an open economy;
- political stability;
- a sound macroeconomic environment;
- competitive investment incentives outlined above;
- low labor cost (although minimum wage rates outside of the garment sector have been discussed for some time in Cambodia, the government has yet to implement this);

- its strategic location;
- preferential trading status; and,
- access to ASEAN and world markets.

General Taxes

Indian business entities and their respective employees are subject to certain taxes and levies such as: tax on profit, minimum tax, withholding tax, tax on salaries and Value-Added Tax.

A resident taxpayer is defined as an enterprise that has a place of management and carries on business in Cambodia.

A non-resident taxpayer is defined as a business enterprise that is not a resident taxpayer but maintains a permanent establishment in Cambodia.

- Tax on profit (Corporate Income Tax) is levied at a basic rate of 20 percent and is imposed on a resident taxpayer's worldwide income. Taxable profit is the net profit from all types of business operations including capital gains realized, interest, rental income, royalty income, and income from financial or investment activities.
- Minimum tax is a yearly tax calculated at 1 percent of annual turnover inclusive of all taxes except VAT. Minimum tax is payable if it is greater than the tax on profit.
- Withholding tax is applied to certain payments, and ranges from 4 percent to 15 percent.
- Resident taxpayers are subject to tax on salary on Cambodian and foreign-sourced salary income at progressive rates from 0 percent to 20 percent. Non-resident taxpayers are subject to a flat rate of 20 percent on Cambodian-source salary income only.
- VAT is applicable to the supply of goods and services. An enterprise is required to charge VAT at the standard rate of 10 percent on taxable supplies in Cambodia.

Indonesia



■ INDIA-INDONESIA INVESTMENT

India and Indonesia share two millennia of a multi-faceted relationship spanning economic, cultural, and social ties. In more recent times, Indonesia has become the second-largest trading partner of India in the ASEAN region thereby further strengthening economic and commercial ties. Bilateral trade increased from USD 6.9 billion in 2007-08 to USD 20.1 billion in 2012-13. The two nations have set a target of USD 25 billion by 2015. As a result Indonesia remains an attractive regional destination for Indian investment.

There are numerous Indian companies in Indonesia including: Tata Power, Reliance Industries, Adani Group, LandT, GMR Group, GVK, Trimex Group, Videocon Industries, Punj Lloyd, CG Power Systems, Madhucon, Spice Group, Indo Rama Synthetics, Aditya Birla Group, Bombay Dyeing, J.K. Industries, Jindal Stainless, Essar Group, Tata Motors, Mahindra, TVS Motor Company, Bajaj Auto, Minda, Classic Stripes, Godrej Group, Wipro, State Bank of India, and Bank of India.

■ BILATERAL RELATIONSHIP

The India-Indonesia Business Association and the India Indonesia Chamber of Commerce and MIGA promote and facilitate trade and commerce between the two nations with support under the following agreements:

- India-Indonesia Agreement for Promotion and Protection of Investment (“**IIAPPI**”);
- India-Indonesia Trade Agreement (“**IITA**”);
- AITIGA¹; and,
- India-Indonesia Double Taxation Avoidance Agreement (“**IIDTAA**”).

1 Please refer to the India-ASEAN chapter for details.

■ INVESTMENT BENEFITS IN INDONESIA

The Indonesia Investment Coordinating Board provides one-stop services to reduce the number of procedures and the amount of documentation needed by Indian investors when investing in Indonesia. The 2007 Indonesia Law on Investment sets out the policies and framework for:

- equal treatment of foreign investors;
- protection against nationalization of foreign investments;
- no restrictions on repatriation in foreign exchange of capital profit, interest income, dividends, royalties, revenues from asset sales, and other business revenues; and,
- dispute resolution through international arbitration.

The Indonesian government offers numerous tax and non-tax incentives to attract Indian investment. These incentives are subject to certain conditions being met under the 2007 Indonesia Law on Investment and include:

- reduction in taxable income of up to 30 percent of the capital investment spread over five years;
- accelerated depreciation and amortization;
- availability of a loss carry-forward facility for a five-year period with the possible extension for an additional five-years;
- 10 percent income tax on dividends;
- reduction/elimination of import duties for the production of raw materials or components for a specified period upon fulfillment of specified requirements;
- Value-Added Tax exemption or deferment for a specified period for importation or production of capital goods or machinery or equipment not yet produced in Indonesia;
- Corporate Income Tax (“CIT”) exemptions or reductions based on whether business entities are conducting their business in certain selected “Pioneer Industries” (those industries having extensive

interconnection, giving high value-added and externality, introducing new technology, and having strategic value for the nationwide economy); and,

- Land and Buildings Tax relief for specified business fields in specified regions, areas or zones.

Other benefits available to Indian investors in Indonesia include:

- protection of intellectual property rights;
- ease of labor availability;
- lowest wages among ASEAN members;
- low cost of office space;
- no set minimum capital for foreign direct investment; and,
- foreign investment licenses valid for a period of 30 years.

India-Indonesia Agreement for Promotion and Protection of Investment (“IIAPPI”)

IIAPPI was entered into on February 8, 1999 to create and promote a better investment climate between the two countries. The IIAPPI ensures:

- fair and equitable treatment of investments;
- protection from expropriation;
- compensation for losses;
- repatriation of investments and returns;
- a framework that outlines the mechanisms for any dispute resolution between investors and local authorities; and,
- entry and sojourn of personnel.

India-Indonesia Trade Agreement (“IITA”)

The original IITA was entered into between India and Indonesia on January 30, 1953, and was later renewed and extended on June 3, 1978. The two countries have used this agreement as a means of

promoting trade and economic relations based on the principles of equality and mutual benefit.

This trade agreement along with the AITIGA provides a framework to facilitate, strengthen, maximize, and diversify trade between the two countries by ensuring:

- that Indian investments into Indonesia are afforded no less favorable treatment than is accorded to any other country, particularly in regards to customs rules and formalities, customs duties, charges of any kind, and regulations governing the import and export of goods or commodities;
- that merchant vessels of either contracting party are accorded with “most-favored-nation” treatment while entering, putting off, and laying at ports; and,
- the promotion of trade by providing mechanisms to allow Indian investors to hold trade fairs, exhibitions, and visits of businessmen and trade delegations.

In 2011, the IITA was used to create a Memorandum of Understanding (“**MoU**”) between India’s Ministry of Commerce and Industry and Indonesia’s Ministry of Trade on the establishment of the biennial Trade Ministers’ Forum. The MoU aims to:

- realize bilateral trade volume of USD 25 billion by 2015 with the emphasis on establishing a balanced two-way trade volume;
- contribute to the identification and elimination of trade barriers through related working groups;
- encourage consultations and coordination between governments and the private sector for enhancing bilateral investment flows by setting up a Trade and Investment Forum comprising business leaders and government representatives of both countries; and,
- promote trade in services across various sectors.

Taxation and the India-Indonesia Double Taxation Avoidance Agreement

Entities and their respective employees operating in Indonesia are subject to various taxes such as: CIT, individual income tax, withholding taxes, capital allowances (on depreciation, asset transfers, and upon revaluation of fixed assets), Value-Added Tax, Luxury-goods Sales Tax (“LST”), stamp duty, and Land and Building Tax.

General Taxes

- CIT is generally applied at a fixed rate of 25 percent.
- Income earned by individual tax residents is subject to income tax; the rates are dependent on annual income up to a maximum of 30 percent.
- In the absence of a tax treaty, withholding tax is generally applied at a rate of 15 percent of the gross amounts on dividends, interest, and royalties.
- VAT is generally applied at a rate of 10 percent. This may be increased to 15 percent or decreased to 5 percent subject to certain governmental regulations. It is worth noting that VAT on the export of taxable tangible and intangible goods as well as on the export of services is fixed at zero percent. Deliveries or imports of certain manufactured taxable goods may be subject to LST. According to the VAT and LST Law, the LST rate is generally applied at between 10 percent and 75 percent, respectively. The LST may be increased to a maximum rate of 200 percent.

India-Indonesia Double Taxation Avoidance Agreement

India and Indonesia originally entered into the IIDTAA on December 19, 1987. This agreement was re-inked on July 27, 2012. The IIDTAA aims to facilitate mutual economic cooperation and stimulate the flow of investments, technology, and services.

- What Taxes are covered by the IIDTAA?

The treaty provides for tax benefits in the form of withholding tax exemptions for service fees and for reduced withholding tax rates on dividends, interest, royalties, and branch profits received by residents of either country.

- Who is entitled to the benefits under the treaty?

The IIDTAA applies to those business entities that qualify as residents of either India or Indonesia (or both). A company that is incorporated under the laws of Indonesia is classified as an Indonesian resident for taxation purposes and is thus entitled to the various benefits available under the Treaty.

- What types of Income?

The agreement provides for rationalization of the tax rates on dividends, royalties, and fees for technical services in the source state.

- Tax Rates under the Treaty?

Withholding tax is generally applied at the maximum rate of 10 percent for interest and 15 percent for dividends and royalties.

Lao PDR



INDIA-LAO PDR INVESTMENT

Diplomatic ties between India and Lao PDR were first established in February 1956 and have since been maintained in a warm and cordial fashion. The two countries cooperate closely in various regional forums such as the Mekong-Ganga Cooperation, ASEAN, and MIGA. India currently ranks 8th in terms of FDI in Lao PDR with 33 projects and investments totaling USD 151 million. Combined trade between the two countries in 2012-2013 was USD 167 million.

Major Indian companies in Lao PDR include: Aditya Birla Group, Apollo Tyres, Kirloskar Brothers, Tata Group, Exim Bank of India, Jaguar Overseas, KEC International, Angelique International, WAPCOS, and Glenmark Pharmaceuticals.

BILATERAL RELATIONSHIP

With the constant support of the Indian Chamber of Commerce in Lao PDR, the two countries facilitate bilateral trade and commerce with the aid of the following agreements:

- India-Lao PDR bilateral Investment Promotion and Protection Agreement (“**ILIPPA**”); and
- AITIGA²;

INVESTMENT BENEFITS IN LAO PDR

The Ministry of Planning and Investment and the Ministry of Industry and Commerce have the responsibility to formulate policies for the promotion and protection of domestic and foreign investments in Lao PDR. The 2009 Law on Investment Promotion (the “**Investment Law**”) contains provisions

² For more information please refer to the India-ASEAN chapter.

which offer various tax and non-tax incentives to Indian investors for a period between one and ten years depending on the investment type and location.

The following benefits are available to Indian investors under the Investment Law:

- exemption from profit tax in the next accounting year provided net profit derived from business activities is used for business expansion;
- exemption from import duties when importing raw materials, equipment, spare parts, and vehicles used in the production process;
- exemption from export duties when exporting general goods and products – however the export of all types of fuel is not exempt;
- the ability to carry forward losses for up to three consecutive accounting years;
- the ability to access financial sources and borrow money from commercial banks and other financial institutions in Lao PDR;
- the ability (subject to certain conditions) to own office space;
- the ability to invest in the real estate sector through concessions from the government of Lao PDR;
- the ability to repatriate capital, assets and income (subject to the payment of statutory duties, taxes and fees);
- the ability to hire foreign labor;
- the protection of intellectual property; and,
- the ability to select from various forms of dispute resolution.

The Investment Law provides a **one-stop service** by the Ministry of Planning and Investment aimed at hastening and facilitating all investment procedures when investing in Lao PDR. It brings together representatives from all key ministries to facilitate investment applications and business start-ups. In addition, this one-stop service aids in providing Indian investors with information and education in relation to investing in Lao PDR.

There are a number of other reasons for Indian investors to look at Lao PDR as a feasible investment opportunity:

- its strategic location (bordering Cambodia, Myanmar, Thailand, Vietnam, and China's Yunnan Province);
- a fast-growing economy with annual GDP growth of 8.5 percent;
- low labor cost;
- political stability;
- high safety;
- low risk of natural disasters;
- an abundance of natural resources; and,
- membership of the WTO and several international organizations.

India-Lao PDR Bilateral Investment Promotion and Protection Agreement ("ILIPPA")

India and Lao PDR entered into the ILIPPA on November 9, 2000 in order to create favorable conditions for fostering greater investment by investors from each country. The agreement aims to further stimulate individual business initiatives that will increase prosperity in both countries.

To this end, the ILIPPA provides a number of measures to:

- ensure that Indian investments and their returns are accorded fair and equitable treatment;
- ensure that Indian investment in Lao PDR is given treatment not less favorable than that accorded to domestic investments and investments from any other state;
- guarantee that Indian investments shall not be nationalized or expropriated, and that if they are then the ILIPPA guarantees that the government of Lao PDR will provide fair and equitable compensation;
- compensate for losses incurred owing to war, armed conflicts, and national emergencies;
- provide for the repatriation of all funds of Indian investors;

- provide a framework for any disputes between Indian investors and the government of Lao PDR; and,
- ensure the entry and sojourn of Indian investors and their employees.

Taxation in Lao PDR

Indian business entities in Lao PDR are subject to various taxes and levies such as: CIT, withholding tax, VAT, customs duty, property tax, and income tax for employees.

General Taxation

- The CIT rate is generally applied at 24 percent; it is applied to domestic and foreign businesses, except for those companies listed on the Lao Stock Exchange. Withholding taxes are generally applied at the following rates: 10 percent for interest and dividends, and 5 percent for royalties.
- VAT is generally applied at a rate of 10 percent and is levied on a wide range of products.
- The rates for customs duty vary between 5 percent and 40 percent; duties are levied on all types of imported and exported commodities. Personal income tax for employees varies depending on the annual salary; the highest rate is 24 percent.

Although there is presently no double taxation avoidance agreement between India and Lao PDR, both countries are negotiating with a view to signing a tax treaty for the avoidance of double taxation and prevention of fiscal evasion. It is expected that the tax treaty will cover the entire ambit of income tax for business profits at rates lower than those currently provided for in the law. These rates will likely be applied to those companies that qualify as residents of either India or Lao PDR.

Myanmar



■ INDIA-MYANMAR RELATIONSHIP

Diplomatic relations between India and Myanmar have their foundations in 1951 when the two countries signed a Treaty of Friendship. By declaring itself “open for business” recently, Myanmar has seen rapid growth in foreign direct investment resulting in stronger commercial ties between India and Myanmar. India is currently Myanmar’s fourth-largest trading partner after Thailand, Singapore, and China. India’s investment in Myanmar currently stands at USD 273.5 million; the two countries have tentatively set a target for bilateral trade of USD 3 billion by 2015.

India’s economic involvement in Myanmar has been predominantly in the oil, gas, and manufacturing sectors, and has been spearheaded by entities such as: ONGC Videsh Limited, GAIL (India), Telecommunications Consultants India, Essar Energy, and the Escorts Group. In the past, private sector companies showed a reluctance to enter Myanmar; however that has now changed, and among the entrants are: Tata Motors, Aditya Birla Group, Jubliant Oil and Gas, Sonalika Tractors, Sun Pharmaceuticals Limited, Cadila Healthcare Limited, Shree Balaji Enterprises, TCI Seaways, Dr. Reddy’s Laboratories, Shree Cement, Cipla, Gati Ship, Apollo Tyres, RITES, and AMRI Hospital.

■ BILATERAL RELATIONSHIP

With the aid of the India-Myanmar Joint Trade Committee Meeting the Myanmar-India Business Club and MIGA, trade and commerce between the two countries is being encouraged with the assistance of the following bilateral and multilateral agreements:

- the India-Myanmar Bilateral Investment Promotion Agreement (“**BIPA**”);
- the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (“**BIMSTEC**”) Free Trade Area (“**BIMSTECFTA**”); and,

- the India-Myanmar Double Taxation Avoidance Agreement (“IMDTAA”)

■ INVESTMENT BENEFITS IN MYANMAR

Myanmar’s recent focus on reforms has opened up a wide range of economic opportunities, including foreign direct investment in key sectors. Its raw and untapped allure combined with an abundance of natural resources, lower costs, and large internal markets have attracted Indian and international investors. As a result, Myanmar’s global trade numbers have risen significantly from USD 5.6 billion in 2003 to USD 25 billion in 2012. Experts predict that by 2030, specific sectors in Myanmar could generate jointly more than USD 200 billion of economic output.

Under the Foreign Investment Law (2012), the government of Myanmar is intent on creating a favorable investment climate by offering several incentives and benefits to investors including:

- guaranteed remittance of investment gains in the same foreign currency that investors brought in at the outset;
- permission to stipulate a variety of dispute resolution mechanisms;
- no minimum capital requirement in regard to foreign ownership in a business;
- the ability to lease land from the government or authorized private owners for a period of 50 years (with two consecutive terms of ten-year extensions possible);
- a guarantee against nationalization; and,
- guarantees against termination without sufficient cause.

The Myanmar Investment Commission also offers various incentives to Indian investors in order to promote foreign investment in the state including but not limited to:

- CIT exemption from the year in which production or service activities commence, including the years prior to commencement, for five continuous years; and, if beneficial for the state and depending upon the progress of investment activities, further tax exemption or relief may be available for a suitable period.

- tax exemption on profits that are reinvested into the company within one year.
- entitlement to accelerate depreciation in respect of machinery, equipment, buildings, or other capital assets used in the business.
- a tax exemption of up to 50 percent of the profit earned on the export of any goods produced from an investment..
- foreigners have the right to pay income tax at the same rate as ordinary citizens. Expenses incurred in necessary research and development may be deducted from income.
- the right to carry-forward and set-off losses up to three consecutive years from the year in which the losses are sustained.
- to enjoy exemption from duty and other internal taxes as well as relief on machinery, equipment, tools, machinery, or parts imported for use during the establishment period.
- exemption/relief of duty and other internal taxes on imported raw materials for three years after the initial investment.
- exemption or relief on duty and other internal taxes on imported machinery, equipment, tools machinery parts, and accessories necessary for the expansion of business (with the approval of the relevant authority).
- exemption and relief of commercial taxes that are generally imposed on products manufactured for export purposes.

Other significant benefits of investing in Myanmar include:

- a labor force estimated at 33.41 million; and,
- a low daily minimum wage for laborers of 500 Kyat (equivalent to USD 0.62).

Bilateral Investment Promotion Agreement (2008) (“BIPA”)

The BIPA was signed in 2008 to facilitate greater Indian investment into Myanmar and vice versa. In addition, BIPA provides a framework for:

- the resolution of disputes;

- the promotion and protection of investments;
- the extension of “most-favored-nation” treatment;
- the repatriation of investment and return on that investment; and,
- the sojourn of technical and managerial personnel.

BIMSTECFTA

In February 2004, the member countries of BIMSTEC were joint signatories to a framework agreement to establish a free trade area. Myanmar currently trades with Thailand and India in the BIMSTEC region with major exports coming from agricultural products.

The BIMSTECFTA is currently in the final stages of negotiation and is expected to come into force later in 2014. Some significant aspects of the agreement deal with:

- **Trade in Goods**

Negotiations cover the reduction and elimination of tariffs on certain trade in goods, with more flexibility granted to the less developed countries.

- **Investment**

BIMSTEC members have unanimously agreed to promote investment and to create a facilitative, transparent, and competitive investment environment. This agreement is intended to work hand-in-hand with the BIPA to ensure the promotion and protection of foreign investment.

India-Myanmar Tax Treaty

Any enterprise operating under the Myanmar Foreign Investment Law or the Myanmar Companies Act must pay income tax at a flat rate of 25 percent after the last of its income tax holidays has ended. As a result of Myanmar entering into a tax treaty with India on April 2, 2008, entities in both countries can avoid double taxation and their governments can counter fiscal evasion with respect to taxes on income.

- Double Taxation Avoidance Agreement (2008) (“IMDTAA”)

The agreement aims to provide tax stability to the residents of both countries and to facilitate mutual cooperation as well as stimulate the flow of investments, technology, and services between India and Myanmar. Business profits are taxable in the source state if the activities of an enterprise constitute a permanent establishment in the source state.

- What Taxes are covered by the IMDTAA?

The IMDTAA covers income tax and surcharges in the case of India, and income tax imposed under the Income Tax Law 1974 (Law No. 7 of 1974) in the case of Myanmar. Generally, the tax rates prescribed within the IMDTAA are lower when compared to the various domestic taxes.

A provision under the IMDTAA provides that those profits accruing from a construction, assembly, or installation project will be taxed in the source state if the project operated in that state for 270 days or more.

Under the IMDTAA, business profits will be taxable in the source state if the activities of an enterprise constitute a permanent establishment in the source state. Examples of permanent establishments include a branch, factory, place of management, and sales outlet.

- Tax Rates

Withholding tax is generally applied at a rate of 10 percent for interest and royalties under the IMDTAA. The local withholding tax rates on interest and royalties are 15 percent and 20 percent respectively. A resident of India may also avail themselves of an exemption from the local withholding tax rate of 3.5 percent for income from trade in goods, services, and other business profits provided that the Indian recipient does not have a permanent establishment in Myanmar.

Dividends are not subject to tax in Myanmar. Capital gains tax exemption is also available particularly in the case where an Indian resident disposes of shares whose underlying value does not

principally consist, directly or indirectly, of immovable property situated in Myanmar.

India-resident individuals working in Myanmar may also avail themselves of an exemption from Myanmar tax on salary if their stay in Myanmar is less than 183 days and their salary is not borne by or recharged to a permanent establishment in Myanmar or to a resident of Myanmar.

Thailand



INDIA-THAILAND INVESTMENT

Though diplomatic ties between India and Thailand officially began after India's independence in 1947, the two nations have been socially and culturally linked for centuries. In 2012, the two countries celebrated 65 years of strong and mutually prosperous diplomatic ties.

The past few years have seen rapid growth in economic and commercial links between India and Thailand. Indian investments in Thailand are estimated to have totaled around USD 2 billion since the 1980s. In the year 2012-2013, trade between India and Thailand crossed the USD 9 billion mark, further strengthening mutual ties. From 2010 until April 2013, 41 new investment proposals from India valued at approximately USD 160 million were approved. Indian groups doing business in Thailand include: Tata Group, Aditya Birla Group, the Indo Rama Group, Ranbaxy Laboratories, Dabur India Limited, Lupin Limited, Bharti Airtel Limited, NIIT, Punj Lloyd Group, Kirloskar Brothers, and Mahindra Satyam. Public sector entities such as Indian Overseas Bank, Bank of Baroda, Air India, and New India Assurance are also present.

BILATERAL RELATIONSHIP

The two countries facilitate and encourage mutual trade and commerce with the aid of organizations such as the India-Thai Chamber of Commerce, the India-Thai Business Association and MIGA. Trade and commerce between the two countries is supported through the following bilateral agreements:

- India-Thailand Free Trade Agreement (“ITFTA”);
- Bilateral Investment Treaty (“BIT”);
- Bay of Bengal Initiative for Multi-Sectoral, Technical and Economic Cooperation (“BIMSTEC”) Free Trade Area (“BIMSTECFTA”);

- India-Thailand Taxation Treaty (“ITTT”); and,
- AITIGA³.

■ INVESTMENT BENEFITS IN THAILAND

With the pending implementation of the ASEAN Economic Community in 2015, Thailand intends to become a value-adding logistics hub and a regional importing and exporting platform. Thailand is considered a preferred destination for foreign direct investment in various key economic sectors given its adequately developed infrastructure and government-supported policies. As such, and to facilitate investment into Thailand, the Thailand Board of Investment’s (“BOI”) current and proposed strategy for the future provides certain incentives (both tax and non-tax based) when investing in a prescribed list of core industries.

It is worth noting that the BOI has an office in Mumbai to help educate potential investors on the benefits of investing in Thailand.

Indian investors investing in Thailand are eligible for incentives such as:

- exemption on CIT;
- duty exemption on machinery;
- permission to own land;
- facilitation as regards to visas and work permits; and,
- permission to take out or remit foreign currency.

In addition to the incentives listed above, the BOI offers numerous support services that aid potential/current Indian investors, such as:

- investment matchmaking programs;
- one-stop shop for visas and work permits;
- interaction with other government agencies on behalf of investors;
- industrial subcontracting services (vendors meet customers program); and,
- India-specific desks (at Mumbai).

³ Please refer to the India – ASEAN chapter for more details.

Those companies receiving investment promotion privileges from the BOI are not subject to foreign equity restrictions in the manufacturing sector, and there are no local content requirements or export requirements, as Thailand's investment regime is in complete compliance with WTO regulations.

Other benefits for Indian investors investing in Thailand include:

- low labor minimum wage rate;
- companies are permitted to establish their own arbitration agreements under the Arbitration Act 2002; and,
- low corporate income tax rates at 20 percent until at least 2014 (if the tax relief measure is not renewed);

India – Thailand Bilateral Investment Treaty (“ITBIT”)

Both India and Thailand signed the ITBIT in 2001, and it ratified by Thailand in 2005. The treaty is intended to create favorable conditions for fostering greater investments by investors in each country.

To ensure the main benefits, the ITBIT requires that each country:

- is obligated to encourage and create favorable conditions for investors to make investments in their respective territories;
- ensures that investors are at all times accorded fair and equitable treatment including protection and security under local laws; and,
- promotes the entry and sojourn of personnel employed by investors to enter and remain in its respective territory.

India – Thailand Free Trade Agreement (“ITFTA”)

It is expected that the final revised ITFTA between the two countries will be concluded in 2014.

The agreement is designed to promote and enhance economic cooperation in areas beneficial to both countries, such as information and communications technology, tourism, banking and finance, healthcare, and construction, to name a few.

As the framework currently stands, certain types of goods and services are entitled to tariff reduction/elimination when being imported or exported.

India – Thailand Taxation Treaty (“ITTT”)

Thailand continues to enforce its tax treaty entered into with India in 1986 for the avoidance of double taxation and to ensure the prevention of fiscal evasion with respect to taxes on income.

- Who is entitled to the benefits under the Treaty?

The ITTT only applies to those companies which qualify as residents of either Thailand or India (or both). Under the treaty, a company that is incorporated under the Civil and Commercial Code of Thailand is classified as a Thai resident and is thus entitled to the benefits offered under the treaty.

- What taxes are covered by the Treaty?

The Treaty applies only to income taxes. Specifically for India, those taxes covered under the Income Tax Act 1961; for Thailand, Personal Income Tax, CIT, and Petroleum Income Tax. Furthermore, other types of indirect taxes are omitted – for example Value-Added Tax and Specific Business Tax (“**SBT**”) – and are thus not covered by the Treaty.

As such, India and Thailand can tax investment income at a rate not exceeding the rate prescribed within the agreement. In many cases, the tax rates within the Treaty are lower when compared to domestic tax rates, so as to reduce tax impediments for cross-border trade and investments.

- What types of Income?

Certain types of income are subject to special treatment under the ITTT. Currently, some of these include: income from immovable property, business profits, dividends, interest, royalties, and capital gains.

- Tax rates

Under the ITTT, withholding tax is generally applied at a rate of 10 percent for interest and 15 percent for dividends and royalties. The domestic income tax rate based on net income (currently 23 percent) is applied where the Indian recipient of dividends, interest, and royalties has a fixed base (referred to as a “Permanent Establishment”) in Thailand.

An individual resident of India may avail themselves of the exemption from Thai personal income taxes on compensation provided that individual is present in Thailand for periods not exceeding in aggregate 183 days in the relevant year and his/her remuneration is not paid by, on behalf of, or recharged to a permanent establishment in Thailand or a resident of Thailand.

Vietnam



■ INDIA-VIETNAM INVESTMENT

Diplomatic ties between India and Vietnam go back more than 40 years, and in that time the two nations have cooperated closely in various regional forums including ASEAN, the East Asia Summit, the Mekong-Ganga Cooperation, MIGA, and the Asia-Europe Meeting (ASEM), as well as through the United Nations and the World Trade Organization. In 2012, the two countries celebrated the “Year of Friendship between India and Vietnam”, marking the 40th anniversary of the establishment of full diplomatic relations.

The two nations have maintained a growing economic and commercial engagement, with Indian investments in Vietnam reaching an estimated USD 4.75 billion in 2013. The two countries have set a target of USD 15 billion for bilateral trade by 2020. At present Indian companies have more than 70 investment projects in Vietnam including: OVL, Essar Exploration and Production Ltd, Nagarjuna Ltd, Venkateswara Hatcheries, Philips Carbon, McLeod Russel, NIIT, APTECH and Tata Steel.

■ BILATERAL RELATIONSHIP

With the aid of the India-Vietnam Business Forum, the Indo-Vietnamese Chamber of Commerce and Industry, and the Indian Business Chamber in Vietnam, the two countries facilitate trade and commerce between each other with support provided under the following agreements:

- India-Vietnam Bilateral Investment Promotion and Protection Agreement (“**IVBIPPA**”);
- AITIGA⁴;
- India-Vietnam MoU on the recognition of Vietnam’s full market economy; and,
- India-Vietnam Taxation Treaty (“**IVDTAA**”).

⁴ Please refer to the India – ASEAN chapter.

■ INVESTMENT BENEFITS IN VIETNAM

The Ministry of Planning and Investment and the Foreign Investment Agency are responsible for the development of investment policies in Vietnam. Under the Vietnamese Law on Investment (No. 59/2005QH11), the Vietnamese government guarantees that all foreign investments into the country will be/are treated fairly and equally. Indian investors investing in Vietnam are accorded several other guarantees including, but not limited to:

- investors' assets will not be nationalized or confiscated;
- any intellectual property rights will be protected;
- capital and assets can be remitted abroad; and,
- investors will be protected in the event of changes in laws or policies.

Indian investors are also entitled to receive preferential treatment in certain areas in the form of incentives subject to certain conditions, such as:

- exemption or reduction of CIT from the first profit-making year;
- import duty exemptions on the importation of equipment and other goods for the implementation of investment projects in Vietnam in accordance with the Law on Export Duties and Import Duties;
- accelerated depreciation of fixed assets;
- exemption or reduction from land rented from the government; and,
- carry-forward of losses (ability to set off losses against taxable income).

To further attract Indian investors, the Vietnamese government has removed certain restrictions that had previously applied to Indian invested enterprises:

- there are no restrictions on the economic sectors that are available to foreign investors (except investment projects which

are: (i) detrimental to national defense, security, and the public interest; (ii) harmful to historical and cultural relics, morality, and Vietnamese fine customs; (iii) harmful to people's health or which destroy natural resources and the environment; or, (iv) which involve the treatment of hazardous waste brought from overseas into Vietnam; projects on the manufacture of toxic chemicals, or the use of toxic agents prohibited under treaties;

- there are no restrictions on the minimum capital investment requirement (except in several special sectors such as banking operations, BOT projects, etc.); and,
- there are no restrictions on the repatriation of profits or dividends.

Other benefits of investing in Vietnam include:

- low wage rates for Vietnamese employees; these are variable depending on the location classifications set by the government;
- the low cost of office rental;
- support services offered to potential/current Indian investors;
- land may be leased from the state for a period of 50 years (or 70 years if granted); and,
- companies are able to resolve any disputes through arbitration proceedings.

Bilateral Investment Promotion and Protection Agreement

India and Vietnam entered into the IVBIPPA on March 7, 1997 in order to create conditions favorable for fostering greater investments by investors in each other's territories. This agreement is intended to work hand-in-hand with the AITIGA. The IVBIPPA achieves its goals by ensuring:

- favorable conditions for Indian investors and that their returns be accorded fair and equitable treatment under the laws of Vietnam;
- that investments made by Indians are treated no less favorably than those made by locals or by investors from any third state;

- an extra layer of protection from nationalization and expropriation;
- compensation of losses owing to war and other forms of civil disturbance;
- repatriation of investments and returns;
- a framework for the settlement of disputes between investors and local authorities; and,
- the sojourn of technical and managerial personnel.

Taxation and the Avoidance of Double Taxation Agreement

A foreign invested enterprise in Vietnam is generally subject to five main taxes: CIT, Import-Export Duties, Value-Added Tax, Special Sales Tax (“SST”), and Personal Income Tax.

General Taxes

- The statutory CIT rate is computed at 22 percent from January 1, 2014, and 20 percent from 2016. This is applied to all domestic and foreign entities that invest in Vietnam. However it is worth noting that Indian investors may be able to obtain preferential tax rates based on investment promotion sectors and projects.
- Indirect tax is levied in Vietnam through VAT. The standard VAT rate in Vietnam is 10 percent. Exports of goods and services are subject to zero percent VAT, while a concessionary rate of 5 percent applies to specified essential goods. Certain items are exempt from VAT.
- SST (Excise Tax) is an indirect tax and similar to excise tax in other jurisdictions, and applies to the production or import of certain goods and the provision of certain services which are considered luxurious in comparison with the economic conditions of the country and/or those which are discouraged for local consumption. The SST rate varies from 10 percent to 75 percent, depending on the goods or services concerned.
- An individual who stays more than 182 days in a calendar year (or 12 consecutive months from the first date of arriving

in Vietnam in the case of an expatriate) is subject to personal income tax at a progressive tax rate on his/her total annual income (regardless of whether the income is sourced in Vietnam or outside Vietnam).

- Import duty is generally assessed on an *ad valorem* (according to value) basis. Import duty tariffs fall into three categories: ordinary rates, preferential rates, and special preferential rates. The preferential rates generally range from 1 percent to 90 percent (although many items of imported goods are entitled to zero percent import rate).
- Import duty exemption is available for goods imported to form fixed assets of particular investment projects, provided certain conditions are satisfied.
- Due to the 'encouragement policy', most exported goods are exempted from tax. Export duties are imposed on a few items, mainly natural resources such as minerals, forest products, and scrap metal with a range of applicable rates from zero percent to 40 percent.

India-Vietnam Double Taxation Agreement

India and Vietnam entered into the IVDTAA on February 2, 1995. This agreement is still in effect. The treaty deals with the issues of avoiding double taxation and preventing evasion with respect to taxes on income.

- What Taxes are covered by the IVDTAA?

The IVDTAA covers all types of income taxes. More specifically for India it covers income tax under the Income Tax Act 1961; for Vietnam it covers personal income tax, profit tax, and profit remittance tax.

- Who is entitled to the benefits under the Treaty?

The IVDTAA applies to those business entities that qualify as residents of either Vietnam or India (or both). A company that is incorporated under the laws of Vietnam is classified as a

Vietnamese resident for taxation purposes and is thus entitled to the benefits derived under the treaty.

- What types of Income?

Income from immovable property, business profits, shipping and air transport, associated enterprises, dividends, interest, royalties, capital gains, independent personal services, and technical fees are subject to special treatment under the IVDTAA.

- Tax Rates under the Treaty?

Withholding tax is generally applied at the rate of 10 percent for interest, dividends, and royalties. It is worth noting that the current Vietnam's domestic withholding tax rate (i.e. 5 percent) is more beneficial than the tax rate provided in the treaty, and there is no dividend withholding tax on after-tax dividends if such dividends are distributed to corporate shareholders.

About DFDL

■ DFDL IN A FEW WORDS

Founded in 1994, DFDL is the first leading international law firm specialized in emerging markets with pan-regional legal and tax expertise developed throughout the Mekong region (Cambodia, Lao PDR, Thailand, Myanmar, Vietnam), Indonesia, Singapore and Bangladesh with a dedicated focus on ASEAN and the middle East.

With a team of over 250 staff, including 120+ lawyers and advisers working closely together within a fast growing network of 12 offices in Asia, we provide personalized and cost-effective legal, tax and consulting services and solutions with particular expertise in:

- Energy, Mining and Infrastructure
- Real Estate and Construction
- Corporate and Commercial
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- Taxation
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Since its foundation, DFDL has acquired an outstanding reputation for providing seamlessly integrated and solution-oriented legal and tax services to establish, structure and protect our clients' business interests. DFDL is also actively involved, in tandem with local jurisdiction stakeholders, in developing the legal and regulatory environment of the emerging markets in which we operate.

Our experts are committed to providing international standard, state of the art legal and tax solutions throughout the ASEAN region and beyond.

■ INDIA DESK

DFDL's India Desk is comprised of lawyers with dedicated South Asia experience to focus on the business needs of our esteemed Indian clients. The India Desk focuses on all aspects of business and investment opportunities in connection with outbound investments into Southeast Asia, South Asia and beyond. Drawing on DFDL's international and local expertise in legal and tax services combined with our understanding of Indian business culture and the interests of our Indian clients, DFDL is the go-to firm for Indian corporations looking to expand their businesses further into Asia.

DFDL has notably assisted clients such as: Aditya Birla Group, Apollo Tyres, Tata Steel, Tata Motors, Tata Chemicals, Tata Communication, Essar Projects, Wolkem India, Spice Mobile, Bank of India, Exim Bank of India, Mahindra Holiday and Resorts, Kirloskar Brothers, Nav Bharat Ventures, Nexus Capital and Bajaj Limited.

■ ABOUT VINAY AHUJA



VINAY AHUJA

Head - Regional India Desk,

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Vinay specializes in investment laws, general corporate and commercial law and legal and practical aspects of cross-border transactions in the ASEAN Region. Vinay is the head of Regional India Desk and significantly focuses on outbound investment needs of the India Inc. into ASEAN markets mainly Cambodia, Lao PDR, Thailand, Vietnam, Myanmar and Indonesia. His regional transactional and advisory experience includes advising and representing various multinational clients in complex transactions related to Energy, Mining and Infrastructure, Banking and Finance, Information Technology, Agriculture and Plantations, Automotive, and Telecommunications.

Vinay also has basic experience in litigation and dispute resolution. Vinay is a gold medalist graduate from Symbiosis Law School, University of Pune, India. He is a member of Bar Council of India, Bar council of New Delhi, International Bar Association and Inter-Pacific Bar Association. He is also an active member of India-Lao Chamber of Commerce, India-Cambodia Chamber of Commerce and India-Thai Chamber of Commerce.

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DFDL

The Essential, Up-To-Date Pocket Guide for Indian Investors

This guide was created by experts from DFDL in various countries and is intended to serve in providing Indian investors with valuable information when considering investing in the ASEAN region. This guide provides a brief background on the various instruments used by each of the respective countries to facilitate outbound investment from India.

About Us

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