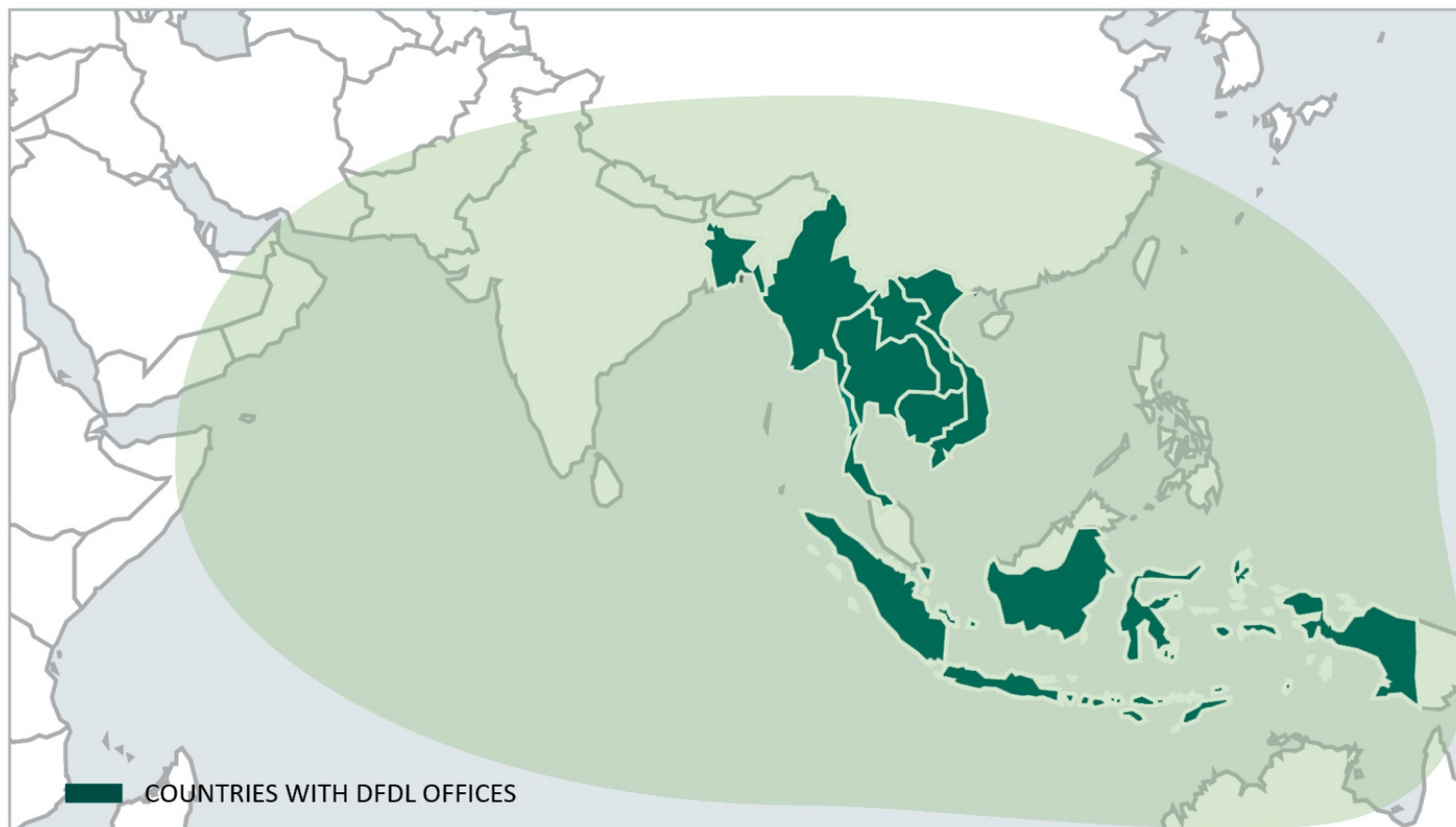




Opportunities in Cambodia Briefing

Presentation for the UK-ASEAN Business Council

June 20 2013



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

* In exclusive association with Mataram Partners

DFDL PEOPLE

- 250 staff
- 120+ advisers
- 40% expatriate advisers
- 10 regional partners

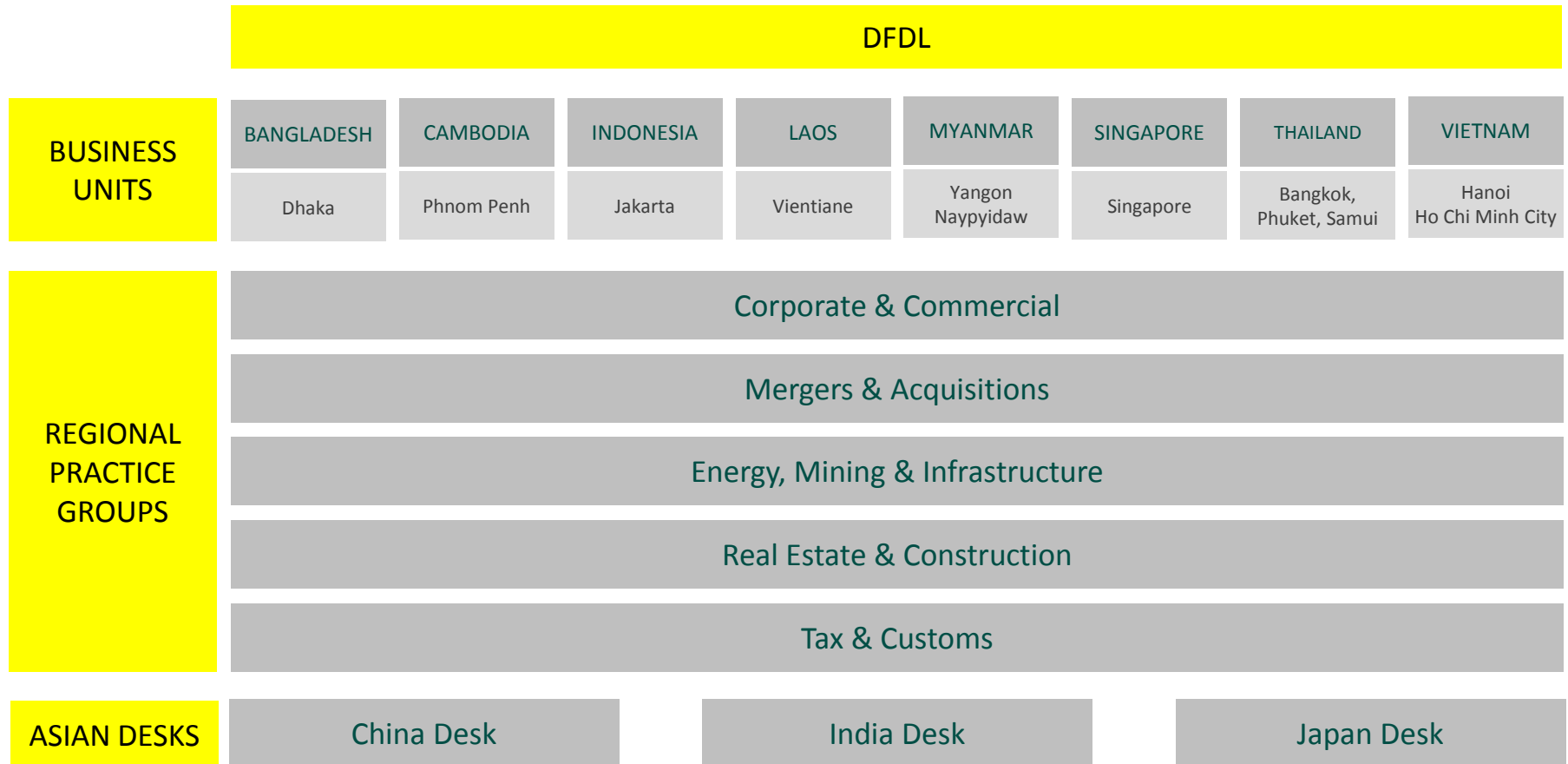
INTERNATIONAL PRESENCE

- Established in 1994 in the Mekong region
- 12 offices in 8 countries: Bangladesh, Cambodia, Indonesia, Myanmar, Laos, Singapore, Thailand, Vietnam
- Asia Desks, focused on outbound investment into Southeast Asia:
 - India Desk
 - Japan Desk
 - China Desk

CAPABILITIES

- Full-service Legal & Tax firm
- Extensive experience with local business cultures and practices with international standards
- Core expertise: Energy, Mining & Infrastructure, Real Estate, M&A, Corporate & Commercial, Tax & Customs, English Law Governed Transactions

* In exclusive association with Mataram Partners



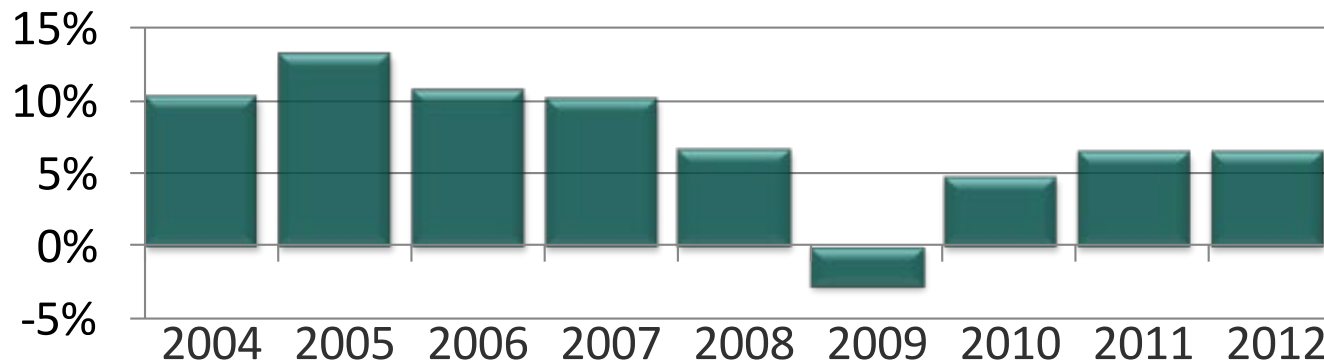
Part 1



- Oil and Gas
- Mining
 - Gemstones
 - Iron ore
 - Phosphates
- Hydropower potential
- 443 km coastline
- 4.85 million hectares of unforested land
- Only 2.5 million hectares under cultivation



GDP



- Strong growth last decade but the impact of the financial crisis was strong in 2009
- Inflation is contained
- Nominal GDP valued at USD 12.88 billion in 2011

- Predicted to have the second fastest growing economy in Southeast Asia over the next two years
- Economic growth expected to reach between 6.7% - 7% in 2013
- Sectors to Watch in 2013
 - Agriculture
 - Banks and MFIs
 - Energy Infrastructure
 - Mining (Hydrocarbons & Minerals)
 - Tourism
 - Garment Exports
- Increased foreign investment targeting:
 - Agriculture; Tourism; Energy; Mining; Telecoms; new niche markets in 2013
 - Banking and Finance Products

Part 2



1995-2005 Assessment

- Lack of law in key areas
- Governmental discretion
- Non-enforcement of laws and regulations
- Lack of transparency

- Grey zones
- Implementation issues
- Legal & judicial uncertainty. State of Courts.

What has changed since 2005?

- Numerous positive implications for investors:
 1. Adoption of a complete legal framework; Civil Code, umbrella laws
 2. WTO accession; agreements supersede national law;
 3. Greater transparency and internationalized standards; mining; transactional;
 4. Improvements in judicial and quasi-judicial process; binding arbitration

1. Rule of Law

a. Enforceability of Foreign Judgments

- Choice of Law: Cambodian court applies Cambodian law.
- No treaty on the enforcement of foreign judgments.
- Foreign court judgment is not recognized nor enforceable.
- Mitigant: Foreign Arbitration.

b. Alternative Dispute Resolution

- Negotiation is common, advisable and preferred.
- First arbitrators of National Arbitration Center were selected in Nov 2011 but are still not in operation.
- Foreign arbitral awards are recognized and may be enforced.
- Cambodian court is required to refer the case to arbitration if it is subject to a binding arbitration agreement. Political endorsement.

c. Civil Code

- The Civil Code came into force on 21 December 2011.
- The Civil Code has a significant impact on contractual relationships and generally on Cambodia's legal framework.
- The Law on Enforcement of the Civil Code terminated Decree 38 (except carriage contract) and some provisions of the Land Law (such as the immovable security provisions).
- Continuing legal relations occurring before 21 December 2011 and still existing thereafter are enforceable pursuant to the Civil Code.

- The Civil Code introduces the concept of the formation of a contract based on an offer and acceptance.
- Unlike the Contract Law, no writing is generally required, except for some specific contracts such as loans with interest or contracts for the sale of immovable property.
- Under the Civil Code, even where the declarations of intention of both parties are made without any defects, the contract shall be void in the following cases (a) where the contents of the contract violate a mandatory provision of law; or (b) where the contents of the contract contravene the public order and good customs.

- Security rights are limited to those established under the Civil Code or in special laws, and no other type of real security may be created.
- Under the Civil Code, five types of security rights can be established: (i) rights of retention (general possessory), (ii) preferential rights (secured interest; priority), (iii) pledge, (iv) hypothec (tangible movable/immovable) and (v) security right by way of transfer of title (intangible movable).
- Immovable assets can be subject to (i) rights of retention, (ii) preferential rights, (iii) pledge, and/or (iv) hypothec.
- Secured transactions can be governed by either the Civil Code or the Law on Secured Transactions at the choice of the parties.

2. Commercial Contracts

- New draft law on commercial contracts has been finalized.
- Comprehensive new Civil Code applies to both commercial and civil contracts.
- Contract: offer + acceptance. Basic principles.
- Contract with Cambodian party, both Khmer and English languages are highly recommended.
- Foreign governing law is possible in most cases.
- Assignment is possible, unless otherwise restricted.

4. Laws on Anti-corruption/Anti-bribery

- Previous practice and background: Criminal Code (1992)
- New laws: Criminal Code (2009)/Anti-corruption Law (2010)/Amendment to the Anti-corruption Law (2011)
- Specific offenses (Article 605 delivery of bribery)
- Anti Corruption Unit
- Reform and government policy
- Status of the implementation of the law
- Actual practice vs official fees

5. Recently Adopted Laws

- Law on Public Procurement (14 January 2012)
- Law on Enforcement of Civil Code enacted by the National Assembly on 6 April 2011 and came into force on 21 December 2011
- Criminal Code (2009) and Amendment to the Anti-corruption Law (2011)
- Anti-Money Laundering Law (2008)
- Code of Civil Procedures (2007)

- Law on Secured Transactions enacted on 24 May 2007, to promote economic activity through a unified set of rules on securing obligations with collateral. 'On-line' aspects
- Law on Concession adopted on 19 October 2007
- Law on Commercial Enterprises (2005)

General Commercial considerations for Investors

- Evaluation of business potential and partnering
- Legal, Tax & Financial Due Diligence. Key issues.
- Legal & Contractual Structuring
- Investment Registration/Selection of business form
- Obtaining industry-specific operating (upstream) licenses
- Obtaining general (downstream) licenses

- Choice of business form – commercial registration
 - Representative Office/Branch Office
 - Limited liability company
- Industry-specific operating license requirements
 - Banks, insurance, telecommunications, pharmaceuticals, mining etc.
- Other licenses/authorizations required:
 - Tax registration (including VAT registration)
 - Labor registration
 - Patent Tax Certificate

Comparison of Available Forms

Form	Definition	Pros	Cons
Limited liability company	Company – shareholders’ liability limited to capital contribution	<ul style="list-style-type: none"> Widely accepted KHR 4 M approx USD 1,000 Flexible forms 	<ul style="list-style-type: none"> Taxable activity in Cambodia Higher reporting and administrative burden Approvals required for share transfers and change of directors and change of directors [APPLY TO ALL FORMS]
Branch office	Division of offshore parent company	<ul style="list-style-type: none"> Simplifies internal, legal and accounting structure 	<ul style="list-style-type: none"> Not eligible for investment incentives Exposes parent to liabilities of branch Not available to all industries Taxable activity in Cambodia
Represent-ative Office	Local representative of offshore company	<ul style="list-style-type: none"> Rapid approval with minimum legal documentation No taxable activity in Cambodia 	<ul style="list-style-type: none"> Not eligible for investment incentives Limited scope of permitted activities Lacks legal definition Cannot invoice on its own account Cannot engage in business activities in Cambodia
Business Cooperation Contract	Contractual relationship with government entity	<ul style="list-style-type: none"> No legal entity required Eligible for investment incentives 	<ul style="list-style-type: none"> Limited availability Liability of contracting parties unclear, including for offshore contractors withholding tax

- Cambodia legal and regulatory landscape has been completely revamped following WTO accession: 40-50 new fundamental laws and regulations in 5-6 years!
- Faced with such legislative growth: implementation issues!
- Judicial System / Enforcement: slowly improving!
- Most open to foreign investment; political will plus incentives.

Thank you



Rashed Idrees

*Partner, Cambodia, Singapore, Bangladesh and Indonesia
Managing Director, Singapore, Bangladesh and Indonesia*

rashed.idrees@dfd.com

Excellence · Creativity · Trust

Since 1994