

# ASEAN Legal & Business Guide

**DEJ-UDOM & ASSOCIATES**  
**ATTORNEYS-AT-LAW**

# DEJ-UDOM & ASSOCIATES

Attorneys-at-Law



Founded in 1986, Dej-Udom & Associates is a large, family run Thai law firm in Bangkok, Thailand with an international reputation. It is an independent law firm that provides legal services to a diverse client base that ranges from leading multinational corporations to local companies and individuals. Led by Dr Dej-Udom Krairit, the firm consists of 35 Thai lawyers and a supporting staff of 30 paralegals and assistants who deliver professional legal services to clients who value expert counsel and confident, astute representation coupled with personal contact and attention. The firm's practice areas are Litigation, Immigration & Employment, Intellectual Property, Corporate Law and Services, Taxation, and Banking and Securities. With strong roots in Thailand's business community and government, the firm has grown and flourished over the last 27 years and is represented by two generations of the Krairit family. As the International Lawyers Network's member law firm in Thailand since 1990; Dej-Udom & Associates is part of a leading association of high-quality, full-service law firms represented by over 5,000 lawyers in 66 countries.

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## Dej-Udom & Associates' ASEAN Legal & Business Guide

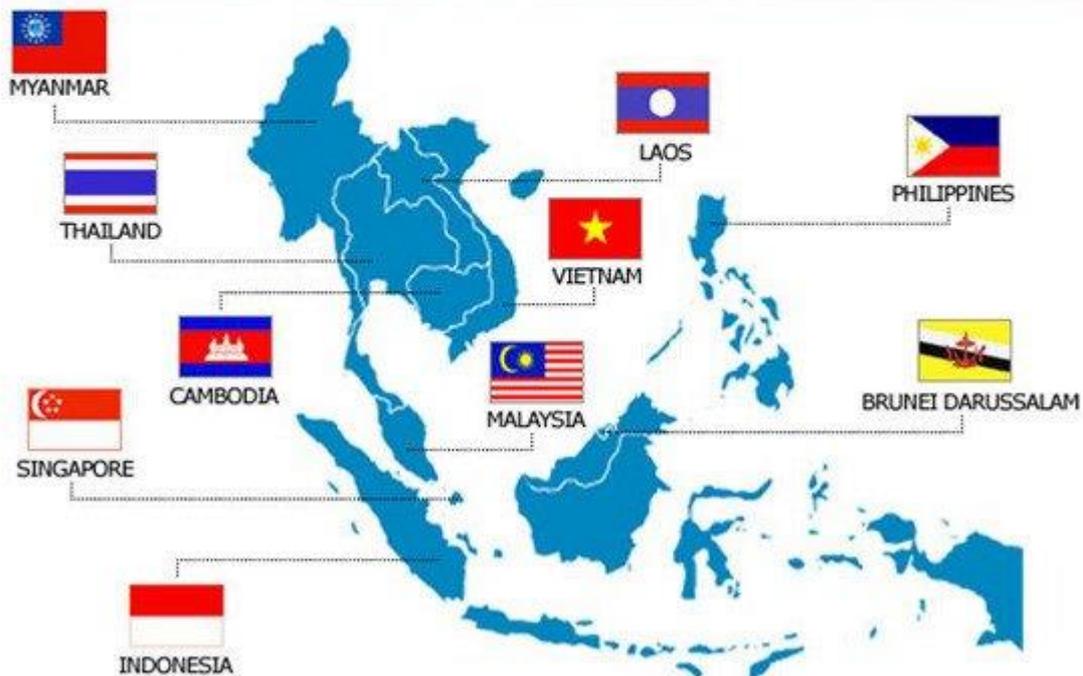
The ASEAN Economic Community integration is rapidly approaching, and Dej-Udom & Associates is already providing clients with specialized regional advice and legal services on labor movement, cross-border investment, and trade integration. With the great benefits of ASEAN come great challenges, and Dej-Udom & Associates plans to stay on the cutting edge of this landmark expansion of South East Asia. One of the firm's strengths is its ability to serve as a cross-cultural law resource for transnational clients, so for both potential and current clients, our professionals have created the ASEAN Legal & Business Guide. The Guide has pertinent, up-to-date information for every ASEAN member ranging from a country's investment environment and taxation policies to its demographics and legal system.

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**ASEAN ECONOMIC COMMUNITY**  
One Vision, One Identity, One Community



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Attorneys-at-Law



## **Dr. Dej-Udom Krairit**

### **Founder and Managing Director**



The founder of the firm, Dr. Dej-Udom Krairit has 45 years of experience in local and international law practice and is now serving his third three-year term as President of the Lawyers Council of Thailand. He also serves as counsel to many multinational companies and is a member of numerous international organizations. He is currently a Foreign Affairs Director and Member of Committee of the Thai Bar. Over the past 35 years, he has been a lecturer at the Thai Bar, at Thammasat and Chulalongkorn Universities, and the Lawyers Council of Thailand

## **Worawut Krairit**

### **Senior Partner & Executive Director**



Mr. Worawut Krairit's fields of specialization are Corporate Law, Customs, Taxation, Property, and Intellectual Property. In addition to his other duties, Mr. Krairit has worked closely with many major Fortune 500 companies in obtaining Board of Investment privileges including one to undertake a multi-million dollar manufacturing project in Thailand.

## **Dr. Poondej Krairit**

### **Senior Partner**

### **Intellectual Property & Technology Law**



Dr Poondej Krairit heads the firm's Intellectual Property Department and currently serves on the Committee of the Design Group of Asian Patent Attorney Association (APAA), the Committee for Intellectual Property Association of Thailand (IPAT) and the Intellectual Property Promotion Association of Thailand (IPPAT). He is a Professional Patent Agent certified and registered by Department of Intellectual Property in the Ministry of Commerce.



**Nipa Pakdeechanuan**  
**Senior Partner**

**Corporate Law, Incorporation and Business Startup**

Ms. Nipa Pakdeechanuan is the firm's senior corporate partner and has advised many foreign clients on the regulations and requirements for establishing businesses in Thailand. Her areas of expertise include undertaking legal due diligences for foreign companies entering into joint ventures with Thai companies.



**Punjaporn Kosolkitiwong**  
**Senior Partner**

**Commercial & IP Litigation and Arbitration**

Ms. Punjaporn Kosolkitiwong heads the Litigation Department and has over twenty-seven years' experience in litigation. She also specializes in financial restructuring and employment & labor law. Currently, she serves as a lecturer in Bankruptcy and Rehabilitation Law for Lawyers Council of Thailand and on the committee on Anti-Counterfeiting of Asian Patent Attorney Association.



**Aim-on Larpisal**  
**Senior Partner**

**Employment, Labor Law and Immigration**

Ms. Aim-on Larpisal has headed the firm's Employment & Immigration Department for over ten years. This department offers expert advice on and handles all aspects of employment under Thai law and also routinely assists a number of international relocation service providers whose clients are large multinational corporations.

## INTRODUCTION

### 1. The ASEAN Economic Community

As the 2015 ASEAN Economic Community (AEC) integration approaches, global interest in Thailand and Southeast Asia continues to increase. The AEC is home to 600 million people and a combined gross domestic product of more than US \$1.13 trillion, and while the member countries all have their own goals and objectives, the AEC itself has four primary objectives:

- Become a single market and production base – Its five core elements are the free flow of goods, services, investment, and labor, and the freer flow of capital. Its industrial sectors are made up of the twelve Priority Integration Sectors: agro-based products, air travel/transport, automotive, e-ASEAN, electronics, fisheries, healthcare, rubber based products, textiles and apparel, tourism, wood-based products, and logistics; and the food, agriculture and forestry sectors.
- Create a stable, prosperous competitive economic region – Its six core elements are completion policy, consumer protection, intellectual property rights, infrastructure development, taxation, and e-commerce. ASEAN members have committed to nation-wide competition policies and laws to ensure a level playing field and develop a culture of fair business competition for enhanced regional economic performance.
- Allow for equitable economic development – Its two elements are Small and Medium Enterprise (SME) development and initiatives for ASEAN integration. The goal is to bridge the development gap at the SME level and between Cambodia, Lao PDR, Myanmar and Vietnam, and then assist in their economic integration in order to benefit the individual member countries and enhance ASEAN competitiveness as a whole.
- Facilitate integration into the global economy – Its two approaches are Free Trade Agreements (FTA) and enhanced participation in global supply networks. These will allow ASEAN to be competitive internationally, become a dynamic, mainstream global supplier, and ensure the internal ASEAN market remains attractive to foreign investment.

### 2. The ASEAN +1 Free Trade Agreements

At this time, there are free trade agreements between ASEAN and China, India, Japan, South Korea, and Australia and New Zealand:

- The ASEAN-China Free Trade Area (ACFTA) went into effect in January 2010, and China is ASEAN's largest trading partner with trade reaching US\$400.9 billion in 2012. The ASEAN-China Free Trade Area is the largest free trade zone in the world in terms of population and third largest in terms of nominal GDP. In 2011,

it represented a market of 1.94 billion consumers with a combined GDP of US\$9.5 trillion.

- The ASEAN-Japan Comprehensive Economic Partnership (AJCEP) went into effect in December 2008, and Japan is ASEAN's second largest trading partner. As of 2011, ASEAN and Japan had a combined GDP of US\$8.0 trillion with total bilateral trade between ASEAN and Japan valued at US\$273.3 billion.
- With the ASEAN-Korea Free Trade Area (AKFTA), Korea is now ASEAN's fifth largest trading partner with trade in 2011 valued at US\$124.5 billion. Foreign direct investment flows from Korea into ASEAN in 2011 were valued at US\$2.4 billion.
- The ASEAN-India Trade in Goods (AITIG) Agreement went into effect in January 2010 and is another one of the world's largest free trade zones which represents 1.8 billion people with a combined GDP of approximately US\$3.84 trillion. India is ASEAN's sixth largest trading partner, and ASEAN-India trade was valued at US\$68.4 billion in 2011.
- The ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) went into effect in January 2010 and aims to integrate 12 markets into a single market of 632 million people with a combined GDP of US\$3.82 trillion and a trade value of US\$67.7 billion.

### **3. The Regional Comprehensive Economic Partnership**

At the East Asia Summit in November 2012, ASEAN leaders initiated negotiations on the Regional Comprehensive Economic Partnership (RCEP) between ASEAN and China, Japan, Korea, India, Australia and New Zealand to form the world's largest free-trade region. The RCEP would have a combined market of 3.35 billion people and account for 40% of the world's trade. Its combined GDP would be more than US\$ 17 trillion and account for 27% of the global economy.

### **4. ASEAN and Thailand**

One of the founding members of ASEAN, Thailand was instrumental in the formation of the ASEAN Free Trade Area (AFTA). With its strategic location and successful economic relationships with the ASEAN member countries and China, Japan, Korea, India, and Australia and New Zealand, Thailand is in position to become the ASEAN hub. Thailand offers convenient trade with China, India and the ASEAN countries, and easy access into the Greater Mekong sub-region, where newly emerging markets offer great business potential. Free flows of goods and services under the AEC and the increasing trend of intra-regional trade will further provide the Kingdom with greater access to markets at sub-regional and regional levels. Between ASEAN, China and India alone, the total market size of 2 billion people will be available in the form of cross-border trade with lower costs.

**CHAPTER 1 - BRUNEI****1. General Information****1.1. Geography**

Located on the northwest coast of Borneo, the Nation of Brunei is made up of two unconnected parts and covers 5,765 square kilometers. It has a 161-kilometer coastline along the South China Sea and is bounded by the Malaysian state of Sarawak on the other three sides. Brunei has a tropical equatorial climate with no dry season and an average annual temperature of 26 °C.

**1.2. Government**

Brunei is a constitutional sultanate, and the Sultan is the Prime Minister and is both chief of state and head of government. The Council of Cabinet Ministers oversees executive matters, and the Sultan presides over the Cabinet and appoints all members. The Sultan also appoints all members to the Religious Council, the Privy Council, the Legislative Council and the Council of Succession.

**1.3. Population**

Totaling 408,706 people, most of Brunei's population lives in urban areas and is over 65% ethnic Malay. 65% of the population is Muslim and Islam is the country's official religion. The official language is Malay, and the principal spoken language is the Malay Brunei dialect. Both English and Chinese also spoken, and the literacy rate is 92.7%.

**1.4. Economy**

Brunei's small, high-income, open economy is dominated by the oil and gas sector which accounts for over half of Brunei's GDP and over 90% of its exports. Brunei imports most of its manufactured products and 80% of its total food requirements. The public sector is largest employer of Brunei's population and provides employment for over half the workforce. Industry is 67% of its GDP and 62% of its employment with the service sector at 32% of the GDP and 33% of its employment. Agriculture is minimal at 0.8% of the GDP and 4% employment. Brunei joined ASEAN in 1984.

**1.5. Legal System**

Brunei has a dual legal system. One part is based on based on English common law and the other on Islamic law. In the common law courts, there is no jury system and a higher court's decisions are binding on the lower courts, and decisions from higher courts in the British Commonwealth, especially those from Singapore and the UK, have persuasive authority and are often used by the Brunei courts in statutory interpretations. Also, all judges and magistrates are appointed by the Sultan. In the Syariah Courts, Islamic law supersedes civil law in a number of areas, but mostly deals with divorce and Islamic family laws. The Supreme Court of Brunei is made up of the Court of Appeal and the

High Court. It has jurisdiction over the High Court's original and appellate criminal and civil cases and appellate criminal and civil jurisdiction by the Court of Appeal. Under the Supreme Court is the Intermediate Court and its criminal jurisdiction runs concurrent with the High Court for original criminal jurisdiction except for any death penalty or life imprisonment cases, and its civil jurisdiction is mostly for cases with claims or valued amounts that don't exceed USD 80,000. The Intermediate Court also has registrars and deputy registrars responsible for the administering oaths and notary public functions. Under the Intermediate Court are the Magistrate Courts, the first tier of Brunei's common law courts, where Magistrates try, determine and dispose of summary prosecutions or inquire into offences that must be sent to the High Court. Its civil jurisdiction is mostly for cases with claims or valued amounts below USD 25,000. Brunei's Islamic law system is made up of the Syariah High Court, the Syariah Subordinate Courts, and the Syariah Appeal Court, and all judges are appointed by the Sultan and different religious bodies. The Syariah Courts' civil jurisdiction revolves around Islamic family law and includes betrothal, marriage, divorce, and the disposition of property arising from these, and wills, and inheritances and division of property. The Syariah Court of Appeal is the final court of appeal for Islamic law matters.

### 1.6. Environment for Foreigners

Brunei is a small, modern, wealthy Islamic country where the cost of living for foreigners is comparable to Singapore. It's a dry country, so alcohol is not sold or drunk in public, and foreigners can only bring in small quantities for personal consumption. Most foreigners enjoy living in Brunei as housing, health care, foreign schools, foods, sports and recreation facilities are of high quality, and there is no personal income tax. All foreigners wishing to live or work in Brunei must comply with the country's immigration and work-permit regulations. In Brunei, different Malay dialects are spoken, but English is also widely spoken and understood, and most signage includes Roman letter equivalents.

**1.6.1. Visas** - All foreign nationals need a valid visa to enter Brunei; however, some are exempted from visa requirements for social, business or professional visits for certain time periods. To work in Brunei, foreigners must obtain an Employment Visa from the Department of Immigration and National Registration which is valid for 2-3 years. Malaysia and Singapore nationals are exempt.

**1.6.2. Work Permits** - After receiving an Employment Visa, a foreigner must then apply with the Department of Immigration and National Registration for an Employment Pass. A Pass is valid for 2 to 3 years and can be renewed.

## 2. Investment Environment

### 2.1. Economic Growth

According to the Brunei Economic Development Board in the Prime Minister's Office, Brunei has a small, wealthy economy that grows at a slow, steady rate and has remained

stable with an average inflation rate of 1.5% over the past twenty years. Its people enjoy a high quality of life with an estimated US\$31,000 per capita income – the second highest in the ASEAN region. Brunei has a low tariff regime and no capital gains or personal income tax. Brunei imports about 80% of its food requirements, and the government subsidizes rice, sugar and milk for its citizens along with housing, electricity, water and oil. Brunei also provides comprehensive medical services and free education through to university level for its people.

### **2.2. Openness to Investment and Incentives**

In order to rely less on its oil and gas sector, Brunei encourages foreign investment into the country. The Brunei Economic Development Board and the Ministry of Industry and Primary Resources are the leading economic development agencies for Brunei. They work with foreign and domestic investors to develop new economic opportunities where Brunei has competitive advantage. Brunei grants incentives for foreign investment which include tax incentives, tax breaks, pioneer status, and 100% foreign ownership except for natural resources and national food security which can be up to 70% foreign owned.

### **2.3. Banking and Foreign Exchange**

The evolution of financial institutions in Brunei has been marked by rapid growth over the last decade. It's divided into two categories: Banking System and Non-Bank Financial Institutions. Brunei has no central bank, and most functions of a central bank are carried out by the Treasury, the Ministry of Finance, and the Brunei Currency Board - which is also responsible for the circulation and management of currencies in Brunei.

### **2.4. Intellectual Property Protection**

The Intellectual Property Division of the Attorney General's Chambers (AGC) governs Brunei's IP rights system and offers IP protection for trademarks, copyrights, industrial designs and layout designs. The Patent Registry Office at the Brunei Economic Development Board oversees all patents. Brunei is a member of WTO's TRIPS agreement and a part of the Berne Convention since 2006, the Paris Convention since February 2012, and the Patent Cooperation Treaty since July 2012. Brunei opened its Patent Registry Office in January 2012 and began processing applications. In the past, there was not much enforcement and no specialized court. Currently, Brunei is improving its intellectual property rights protection through political commitment and legislative reform.

### **2.5. Labor**

The regulations and procedures on foreign worker recruitment are straightforward, and the Government's assistance is readily available in securing approval for foreign workers ranging from laborers to executive managers. As most citizens are employed in the public sector, the Government continues to promote local employment in the private sector. The push towards diversification and foreign direct investment promotion is seen

as the answer to the problem of overdependence on public service employment. Foreign workers have eased the labor shortage and currently make up over a third of the workforce.

### 3. Types of Business Organizations

**1.1. Sole Proprietorship** - A sole proprietorship is a privately-owned company that's not subject to company income tax. However, the owner is personally liable for the obligations of their business. Foreigners are not allowed to register.

**1.2. Partnership** - A partnership can consist of individuals, local companies and branches of foreign companies with a maximum of 20 partners and are not subject to corporate tax. At least one partner must be a citizen of Brunei or a Brunei Permanent Resident. Under special circumstances, the Registrar will approve foreign individuals to register.

**1.3. Company** - Governed by the Companies Act, there are four types of companies that can be incorporated in Brunei: companies limited by shares, companies limited by guarantee, companies limited both by shares and guarantee, and unlimited companies. These companies can be either private or public companies.

**1.3.1. Branch of a Foreign Company** - If a foreign company wants to establish a business in Brunei, but does not incorporate as a local company, it must register as a branch of the foreign company. The branch must have a registered office in Brunei and must appoint a local agent.

**1.3.2. Joint Venture** - A joint venture can be a corporation or a partnership. Several factors including the nature of the project determine the type of joint venture. In a corporate joint-venture, the owners have limited liability, and in a partnership joint venture, the partners have unlimited liability. If the parties to a partnership joint venture are corporations, then liability is limited to that of the participating corporations.

### 4. Taxation

In Brunei, there are no capital gains, export, manufacturing, VAT or payroll taxes, and individuals are not liable for income tax either. Brunei has signed Double Taxation Agreements with 11 countries.

**4.1. Corporate Income Tax** - The corporate income tax rate is 22% except for oil and gas companies which have a 55% rate. There is no capital gains tax. Resident companies pay tax on income derived in Brunei and from overseas, and non-resident companies only pay tax on their Brunei income.

**CHAPTER 2 - CAMBODIA****1. General Information****1.1. Geography**

The Kingdom of Cambodia covers 181,035 square kilometers and is bordered by Thailand, Vietnam, the Lao PDR, and the Gulf of Thailand. The Kingdom consists mainly of a large alluvial plain made up of paddies and forests ringed by mountains and seriously influenced by the Mekong River and the Tonlé Sap. Cambodia has a tropical monsoon climate with two seasons – the rainy season from May to October and the dry season from November to April – and temperatures can range from 22°C to 40°C.

**1.2. Government**

Cambodia's government is a constitutional monarchy that operates as a parliamentary representative democracy. The Prime Minister is the head of government, while the King of Cambodia is the head of state. The Prime Minister is appointed by the King on the advice and with the approval of the National Assembly. The Prime Minister and the Council of Ministers exercise executive power, and the legislature is the Parliament of Cambodia made up of the Senate and the National Assembly. The Cambodian People's Party (CPP) is the major ruling party in Cambodia.

**1.3. Population**

Totaling 14.95 million people, 90% of Cambodia's population is Khmer and 95% speak the Khmer language. Over 95% of Cambodians practice Theravada Buddhism, the country's official religion. Due to tourism, English is widely spoken, and the country's literacy rate is 74%. Many older Cambodians speak French, and it is taught in some schools. Overall, Cambodia's population is very young with over 50% of it under 25 years of age.

**1.4. Economy**

The two driving forces of Cambodia's economy are textiles and tourism. The garment industry employs a sizable amount of the total workforce and is responsible for over 70% of the country's exports. Tourism continues to grow with over 2 million visitors yearly, and Angkor Wat, the beaches in Sihanoukville, and the capital city Phnom Penh are the country's main attractions. Its main exports are clothing, timber, rubber, rice, fish, tobacco, and footwear. At present, the mining, oil, and hydropower sectors keep gaining interest from foreign investors. The country's rural population depends on agriculture which is 35% of the GDP and 57% of its total employment. Industry is 24% of the GDP and 15% of its employment, and the services sector is 41% of the GDP and 26% of its employment.

### 1.5. Legal System

Cambodia has a civil law system influenced by the UN Transitional Authority, customary law, Communist legal theory, and common law. Because of its past, Cambodia's current legal system is very young and still growing, and its 1993 constitution provides for the independence of the judiciary from the executive and the legislative branches. While legislation is the primary source of law, other sources include the Constitution, government decrees and regulations adopted under UNTAC, and human rights conventions ratified by Cambodia. The country has a three-tiered judicial system: the Municipal and Provincial Court – courts of first instance, the Appellate Court, and the Supreme Court. The Military Court handles cases related to military offences. The Supreme Court is the country's highest court, court of final appeal, and constitutional court. It has the power of review on the other branches of government, and it has the final decision on all lower court cases. It usually only settles questions of law on appeal from the Appeal Court, and the Appeal Court hears appeals on questions of fact and law from the lower courts. The Municipal and Provincial Courts have jurisdiction over their respective territories. Domestic custom is an important part of Cambodian legal system, and the Khmer tradition of conciliation that starts at the village level before moving to a court of first instance is part of the dispute resolution process.

### 1.6. Environment for Foreigners

For foreigners in Cambodia, living conditions can be inadequate especially compared to Thailand, the Philippines, or Malaysia. It is a very poor country and lacks reliable medical facilities, doctors, clinics, hospitals and medication, especially in rural areas. Except in the main tourist areas, there is little quality accommodation, few activities and little entertainment for foreigners. All foreigners wishing to live or work in the Cambodia must comply with the country's mild immigration and work-permit regulations. The official business language is Khmer, and English is widely spoken. Cambodia is a member state of the Organisation Internationale de la Francophonie, so French is also widely spoken and understood

**1.6.1. Visas** - All visitors to Cambodia need a visa, but some ASEAN nationalities can enter visa free. Foreigners can apply for a business visa on arrival or at a Cambodian embassy which can then be extended for one month, three months, six months or twelve months and can be a single or multiple entries.

**1.6.2. Work Permits** - After receiving a business visa, foreigners can apply for a temporary or permanent work permit. A temporary work is only valid for the approved visa's duration, and a permanent work permit has an initial validity of two years.

## 2. Investment Environment

### 2.1. Economic Growth

Driven by an expansion in garment manufacturing, construction, agriculture, and tourism, Cambodia's economy grew about 10% yearly from 2004 to 2008. After a small contraction in 2009, the GDP grew over 6% in 2010 and 2011. Cambodia's garment industry employs 5% of its total workforce and makes up 70% of its exports. Rubber exports increased about 50% in 2011, and the tourism sector continues to expand with 2.85 million visitors in 2011 – a 14% increase on 2010.

### **2.2. Openness to Investment and Incentives**

Foreign investment in Cambodia is very open and liberal and is governed by the 1994 Law on Investment. All sectors are open to foreign investment and most allow for 100% foreign ownership. There are a few sectors subject to government conditions, local equity participation and prior approval, but overall Cambodia does not discriminate against foreign investors. Cambodia grants incentives for foreign investment which include 99-year land leases for companies and individuals, no restrictions on international currency transfer and remittance, and 100% foreign ownership for most businesses.

### **2.3. Banking and Foreign Exchange**

Under the Law on Banking and Financial Institutions, the National Bank on Cambodia is the central bank which supervises and monitors the Kingdom's banking sector. It is one of Cambodia's most developed sectors and made up of commercial banks, specialized banks, and microfinance institutions. At this time, there are no restrictions on the repatriation of profit or capital derived from investments made in Cambodia, nor on most transfers of funds abroad.

### **2.4. Intellectual Property Protection**

Cambodia has been part of the World Intellectual Property Organization (WIPO) since 1995, is a signatory to the Paris Convention since 1998, and a World Trade Organization member since 2004. Several entities are responsible for IP administration based on the type of IP protection needed. Trademarks are under the Department of Intellectual Property Rights (D/IPR) at the Ministry of Commerce. Patents, utility models, industrial designs, and plant varieties are under the Department of Industrial Property (DIP) at the Ministry of Industry, Mines and Energy, and copyright protection is under the Ministry of Culture and Fine Arts.

### **2.5. Labor**

The Labor Code for the Kingdom of Cambodia covers all labor and employment matters in the country. Most Cambodians work in agriculture. By law, minimum wage is only set for the garment, footwear and textile industries. The minimum age of regular employment is 15, but those over 12 can do "light work" if it's not hazardous and doesn't affect school attendance.

### 3. Types of Business Organizations

- 1.1. Joint Stock Company (S.A)** - In a Joint Stock Company, stockholders are unknown to the public and commit only their stake, and the company is only identified by the object of its business and the amount of its business capital.
- 1.2. Limited Liability Company (S.A.R.L.)** - With a Limited Liability Company (S.A.R.L.), shareholders are not liable beyond their contributions and not considered merchants. It is a commercial entity and subject to commercial laws and practices. Certain business types are not allowed to form this type of company.
- 1.3. Sole Proprietorship Limited Company** - A Sole Proprietorship Limited Company only has one shareholder, but that shareholder must be a natural person and not another company. Management must be performed by the shareholder or by an individual appointed by the shareholder.
- 1.4. Commercial Partnerships - Société En Nom Collectif (SNC)** - A Commercial Partnership joins two or more partners to carry on commercial operations under the same trade name. Each of the partners is deemed a merchant and is held liable for the debts of the partnership.
- 1.5. Representative Office** - An eligible foreign investor can establish a Representative Office to source local goods and services and collect information for its parent company. A Representative Office is regarded as a cost center, should derive no income, and is not subject to Cambodian tax laws.

### 4. Taxation

Under the 2004 Law on Taxation and the 2007 Law on Customs, the General Department of Taxation in the Ministry of Economy and Finance governs all of Cambodia's tax matters. At this time, Cambodia has no Double Taxation Agreements with other countries.

- 4.1. Value Added Tax (VAT)** - A 10% Value Added Tax is levied on the supply of goods or services by a taxable person and the import of goods into Cambodia.
- 4.2. Tax on Salary** - Residents pay tax on worldwide income at a progressive rate of up to 20%. Non-residents are taxed at a flat rate of 20% on all their income from Cambodia.
- 4.3. Corporate Tax on Profits** - The Corporate Tax on Profit rate is 20%. It's 30% for oil and natural gas production and the exploitation of natural resources.
- 4.4. Minimum Tax** - The Minimum Tax is a separate and distinct tax from the tax on profit. It's 1% of the annual turnover inclusive of all taxes except for VAT.

**CHAPTER 3 - INDONESIA****1. General Information****1.1. Geography**

Straddling the equator, the Republic of Indonesia is an archipelago between the Indian Ocean and the Pacific Ocean made up of 17,508 islands of which 6,000 are inhabited, and its largest island is Java on which 58% of the population lives. Covering 1,904, 569 square kilometers, Indonesia is the world's 15<sup>th</sup> largest country and 4<sup>th</sup> most populous country. Its terrain is mostly coastal lowlands, but the larger islands have interior mountains. Indonesia is on the Ring of Fire and has over 150 active volcanoes and frequent volcanic and seismic activity. Indonesia has a tropical climate with only a rainy season and a dry season, two monsoons, and uniform length of daylight hours. The relative humidity is always high and temperatures range from 26°C to 32°C. In the lowland areas, average annual rainfall averages 1,780 to 3,175mm a year and up to 6,100mm a year in the mountains.

**1.2. Government**

Indonesia is a republic with a presidential system. The President is the head of state, commander-in-chief, and the director of domestic governance, policy-making, and foreign affairs. Since 1999, there have been constant changes to the constitution, and many political and governmental structures have undergone major reforms. The 2004 Presidential election was the first time the people directly elected the President and Vice President. Indonesia has only been a bicameral government since 2004, and its legislative branch is the People's Consultative Assembly. Indonesia's judicial branch is led by the Supreme Court and its judges are appointed by the President.

**1.3. Population**

With 248.6 million people, Indonesia has 300 distinct ethnic groups speaking 742 different languages and dialects. 40% of the population is Javanese, the largest ethnic group, and they are politically and culturally dominant. While not an Islamic state, 86% of Indonesia's population is Muslim, 5.7% is Protestant, and 3% is Roman Catholic. The official national language is Indonesian. It is universally taught in schools, spoken by almost all Indonesians, and is the language of business, politics, and education. Most Indonesians also speak one or more local or regional languages, and Javanese is the most widely spoken of them. Except for tourism and international business, English is not spoken or used regularly. The literacy rate is 90.4%.

**1.4. Economy**

Indonesia has a mixed economy where the state and the private sector direct the economy. It has the largest economy in Southeast Asia, is an emerging global market economy, and a member of the G-20 major economies. Manufacturing and processing of food and beverages, machinery, chemicals, and textiles account for 47% of the GDP

followed by services at 38% and agriculture at 14%. It has a labor force of 117.4 million with 49% working in services, 38% in agriculture, and 13% in industry. Indonesia ranks 27<sup>th</sup> in the world for exports and is expected to keep rising. Its natural resources include petroleum, tin, natural gas, nickel, timber, bauxite, copper, fertile soils, coal, gold, and silver. Its major imports are machinery and equipment, chemicals, fuels, and foodstuffs, and its major exports include oil and gas, electrical appliances, plywood, textiles, and rubber. Tourism is another important part of the economy and a significant source of foreign exchange revenue. Indonesia recently regained its investment grade rating from both Fitch Rating and Moody's Rating after losing it in 1997.

### 1.5. Legal System

Indonesia's legal system is a civil law system based on Dutch colonial law, customary law (Adat), and the national legal system enacted after its independence in 1945. The Supreme Court is the highest court and supervises all the lower courts in Indonesia's judicial system. It is the final court of appeal, but does not have the power of judicial review. In Indonesia, all judges are selected by the President from a list approved by the Legislature, and under their civil law traditions, courts do not apply the principle of precedent. State Courts are separate courts of first instance that try most civil and criminal cases, and High Courts hear all State Court appeals. All civil cases begin in a regional State Court, and after a case is registered, it is then heard by a panel of judges over a series of eight sessions. If an appeal is not submitted, a Lower Court's verdict takes effect fourteen days after the verdict's delivery. Most appeals are heard by the High Courts and can move on to the Supreme Court. While the Supreme Court is technically the country's highest appeal court, a separate Constitutional Court was established in 2003. It has sole authority over constitutional review of legislation and laws, disputes over constitutional competence and electoral results, the dissolution of political parties, and the impeachment of a president or vice president. Indonesia's other specialized courts include Military courts, a State Administrative Court, a Religious Court that deals with codified Sharia law, and the Commercial Court. Established in 1998, the Commercial Court is a court of first instance that appeals directly to the Supreme Court. It has jurisdiction over bankruptcy and other commercial dispute matters including intellectual property rights. Under the Indonesian National Board of Arbitration (BANI), companies can settle a wide range of business disputes out of court. The Board is autonomous and independent, and State Courts have no authority over cases under the BANI arbitration process.

### 1.6. Environment for Foreigners

Indonesia attracts many foreigners for tourism and employment, and most workers are in the oil and mining sector and the telecommunications industry. For expatriates, Indonesia is a beautiful, exciting place to live with diverse options for everything. Cost of living can be expensive, especially for quality accommodations and schooling, and the hot humid weather can take some adjustment. Outside Jakarta, health care is poor, and many go to Singapore for serious medical attention. Influenced by Islam, it is a conservative country, and foreigners, especially women, will have to conform to the local way of life. All foreigners wishing to live or work in Indonesia must comply with the

country's complex, bureaucratic immigration and work-permit regulations. English is not widely spoken except in the big cities and tourist areas.

1.6.1. **Visas** - All visitors to Indonesia need visas, and free 30-day Short Term Visitor Visas are available for some ASEAN members including Brunei, Malaysia, the Philippines, Thailand, Vietnam, and Singapore. Visitors from 64 countries are eligible for a 30- to 60-day Visa on Arrival for tourism purposes. 60-day Business Visas are also available for normal business activities and must be obtained at an Indonesian embassy or consulate outside the country. To receive this visa, a person must be sponsored and cannot be locally employed or receive payments. For employment, Indonesia has strict and complicated immigration requirements for foreigners. A regular employment visa is only valid for 60 days, and for longer stays, a Temporary Residence Permit is needed.

1.6.2. **Work Permits** - To live and work in Indonesia, foreigners must obtain work permits. They are usually issued for 12 month periods and may be extended. Along with a work permit, foreigners must also obtain a Limited Stay Permit (KITAS), and Indonesia is serious about only having foreigners in positions that cannot be filled by locals. Companies that hire foreigners must provide education and training programs for Indonesians to replace the foreigners within certain time frame.

## 2. Investment Environment

### 2.1. Economic Growth

Under President Yudhoyono's 2004-09 administration, the government made economic advances and introduced significant reforms in the financial sector including tax and customs reforms, the use of Treasury bills, and capital market development and supervision. During the global financial crisis, Indonesia outperformed its regional neighbors and joined China and India as the only G20 members posting growth in 2009, and its GDP grew an estimated 6.2% in 2010 and 6.5% in 2011. Through its fiscally conservative policies, the country has a debt-to-GDP ratio of less than 25%, a small current account surplus, a fiscal deficit below 2%, and historically low rates of inflation.

### 2.2. Openness to Investment and Incentives

With its growing middle class, strong domestic demand, stable political situation, sound macroeconomic policy, and GDP growth, Indonesia is an attractive destination for foreign direct investment. The government is actively attracting investors, especially for the formation of public-private partnerships for infrastructure development. Its natural resources also continue to attract serious foreign investment. The Negative List, a 2010 presidential decree, lists all foreign investment restrictions. All foreign companies must obtain both administrative and legislative approval in order to establish a business.

### 2.3. Banking and Foreign Exchange

Under Indonesian law, there are only two bank types: commercial and rural. The rural banks are not directly involved in the payment system and have restricted operational areas. Operationally, Indonesian banks are classified as Sharia or Non-Sharia. At the 2009 Indonesian Annual Banking Summit, a national banking industry policy was drafted to prepare the industry for the arrival of the ASEAN Economic Community in 2015 and to increase protection from the effects of a global economic crisis.

### 2.4. Intellectual Property Protection

The Directorate General of Intellectual Property Rights (DGIP) is responsible for all of Indonesia's intellectual property matters and offers protection for patents, trademarks, designs, plant varieties, and copyright. Foreign businesses with no local place of business must use an Indonesian IP attorney or agent for all IP applications. Indonesia is a member of WTO and WIPO, compliant with the TRIPS Agreement and part of the Berne Convention since 1997, the Paris Convention since 1950, the Patent Cooperation Treaty since 1997 and the Hague Agreement since 1950. Its Copyright Law and Trademark Law provide a solid foundation for enforcement, and the Copyright Law requires courts to try cases and render judgments within 90 days.

### 2.5. Labor

Under the 2003 Labor Law, the Ministry of Manpower and Transmigration (MOMT) is responsible for all labor matters. The country's employees have a wide range of fundamental labor rights, and employee termination is highly regulated and requires permits from unions, management and the MOMT.

## 3. Types of Business Organizations

**3.1. Sole Proprietorship** - Sole proprietorships are very informal and require no formal registration.

**3.2. Partnership** - The three types of partnerships are Persekutuan Perdata, Persekutuan Firma, and Persekutuan Komanditer and only apply to Indonesian citizens.

**3.3. Company** - Indonesia has three company types: the PT Biasa or Local Company, the Domestic Investment Company (PT PMDN), and the PMA Company or Foreign Investment Company. 100% foreign-owned PMA companies are possible in many cases.

**3.4. Joint Venture Company** - A Joint Venture Company is a foreign direct investment company between foreign and domestic capital that is owned by Indonesian citizens or organizations or through straight investment.

**3.5. Branch Office** - Except in the banking sector, a branch office is not allowed.

**3.6. Representative Office** - A foreign company is permitted to establish a representative office in Indonesia. It can only perform marketing and promotional activities and market & business opportunity research, and it cannot generate revenue or engage in business.

### 4. Taxation

Indonesia's tax system is governed by the General Tax Provisions and Procedures Law, the Income Tax Law, and the Value-Added Tax and Luxury Sales Tax Law, and Indonesia has Double Taxation Agreements with 59 countries.

**4.1. Value Added Tax (VAT) & Luxury Goods Sales Tax** – A 10% VAT rate is levied on the import of goods and the sale of almost all goods and services. Consumption of foreign services or intangible goods is also taxed at the 10% VAT rate.

**4.2. Personal Income Tax** - Personal Income Tax rates apply for tax residents and non-residents. Tax residents have a progressive tax rate that runs up to 35%, and non-residents pay a flat 20% tax rate on their Indonesian income. A tax resident is someone who resided in Indonesia for 183 days or more in any 12 month period.

**4.3. Corporate Income Tax** - Indonesia has a flat Corporate Income Tax rate of 25%. Capital assets are depreciated differently for tax and accounting purposes, and carrying back tax losses is not allowed and tax consolidation is not available.

**4.4. Withholding Tax** - The comprehensive Withholding Tax system applies to both resident and non-resident taxpayers. Dividend, royalty, interest, and branch remittance payments along with technical services fees remitted abroad are subject to a 20% rate. Under certain tax treaties, reductions are possible.

**CHAPTER 4 – LAO PDR****1. General Information****1.1. Geography**

A very mountainous, densely forested country, the Lao PDR covers 236,800 square kilometers and is landlocked and surrounded by China, Vietnam, Cambodia, Thailand, and Myanmar. Part of its border between Myanmar and Thailand, the Mekong River runs 932 miles (1,500 km) through the country. Lao has three geographic regions and a tropical monsoon climate with two seasons where temperatures can range from 5°C to 40°C.

**1.2. Government**

The Lao PDR is a communist single-party, socialist republic, and its single party is the Lao People's Revolutionary Party (LPRP). The President is head of state and also the General Secretary of the Lao People's Revolutionary Party. The Prime Minister is the head of government and also a senior member of the Politburo of the Revolutionary Party. Government policies are determined by the Political Bureau and the Central Committee, and the Council of Ministers vets important government decisions.

**1.3. Population**

Totaling 6.58 million people, the Lao PDR's population is mostly Buddhist and is 55% Lao, 11% Khmou, and 8% Hmong with over 100 different ethnic groups making up the rest of the population. The official and dominant language is Lao, but only half the population can speak it, and the country's literacy rate is over 70%. French is still commonly used in government and commerce and is still compulsory in schools. Due to ASEAN, English use is increasing.

**1.4. Economy**

Subsistence agriculture, mostly in rice cultivation, is 28% the Lao PDR's GDP and 75% of its total employment. Industry is 35% of the GDP and 15% of its employment, and the service sector is 37% of the GDP and 10% of its employment. It has a poorly developed infrastructure, but is rich in timber and mineral resources, gypsum, tin, gold and gemstones and has benefitted from foreign investment in hydropower, mining, and construction. Its major exports include wood products, coffee, electricity, tin, copper, and gold. Lao initiated a VAT tax system in 2010, and the government appears committed to raising the country's profile among investors and opened the country's first stock exchange in 2011. Tourism has also become a major industry. Laos became an ASEAN member in 1997.

**1.5. Legal System**

The Lao PDR has a civil law system based on traditional customs, French legal norms and procedures, and socialist practices. The People's Supreme Court is the highest court, and the president of the People's Supreme Court is elected by the National Assembly which also appoints the rest of the People's Supreme Court judges. The Appellate Court is next in the hierarchy followed by the People's Provincial and Municipality Courts, and the People's District Courts.

### 1.6. Environment for Foreigners

The Lao PDR has a very relaxed style of living and retains an “old Asia” appeal for many; however, for foreigners in Lao, living conditions can be inadequate especially compared to Thailand, the Philippines, or Malaysia. The capital, Vientiane, has the best facilities, accommodations, hospitals, doctors and health care. There are few activities and little entertainment for foreigners. All foreigners wishing to live or work in the Lao PDR must comply with the country's immigration and work-permit regulations. The official business language is Lao, and as a member state of the Organisation Internationale de la Francophonie, French is also widely spoken and understood. The country's signage is bilingual in Lao and French.

**1.6.1. Visas** - All visitors to the Lao PDR need a visa; however; most ASEAN nationalities can enter visa free. Visitors can obtain a 15-day visa on arrival or go to a Lao PDR embassy for a one-month visit visa. One year work visas are available for foreigners working in Lao, but a trip out of the country is necessary.

**1.6.2. Work Permits** - After a foreigner acquires a one-year work visa, it's relatively easy to apply for a work permit and residence card.

## 2. Investment Environment

### 2.1. Economic Growth

The Lao PDR has one of the world's ten fastest-growing economies and keeps increasing its foreign investment totals, especially in mining, hydropower, and agriculture. Vietnam, China, and Thailand are its largest sources of foreign investment with each investing about US\$2.5 billion in Lao from 2000 to 2010. The country initiated a VAT tax system in 2010, and its overall economic growth reduced official poverty rates from 46% in 1992 to 26% in 2010.

### 2.2. Openness to Investment and Incentives

While the Lao PDR strives to be more transparent and is open to foreign investment, matters pertaining to business transactions and investment can be very opaque. The 2009 Law on Investment Promotion governs foreign investment in Laos and states that foreign and domestic investment will receive equal treatment and incentives; however, this is open to interpretation. 100% foreign ownership of businesses is allowed, and all sectors are open to foreign investment unless they impact national security, national

traditions, health and the environment. Laos grants incentives for foreign investment, and agriculture, industry, handicraft and services are current promoted activities.

### 2.3. Banking and Foreign Exchange

The Lao PDR banking sector consists of the central bank, Bank of the Lao PDR, state-owned commercial banks, private banks, joint stock banks, and branches of foreign banks and non-bank financial institutions. The Lao PDR has strict foreign exchange controls with a limited list of permissible foreign currency transactions.

### 2.4. Intellectual Property Protection

The Department of Intellectual Property, Standardization and Metrology (DISM) within the Science, Technology and Environment Agency (STBA) under the National Authority for Science and Technology (NAST) is responsible for IP protection in the Lao PDR. It consists of the Industrial Property Division (IPD), the Copyright Division, the General Affairs Division, the Standards & Quality Division, and the Metrology Division. The IPD is specifically responsible for trademark and geographical indication, patent, petty patent, industrial design, and plant variety protection. Lao is a member of the World Intellectual Property Organization Convention and the Paris Convention. There are no specialized IP courts; nonetheless, overall enforcement is good.

### 2.5. Labor

The Labor Law of 1994 covers labor and employment in the Lao PDR. It applies to domestic and foreign companies, covers all employer/employee rights and obligations, and allows for fixed or indefinite term contracts. It permits foreign investors to employ foreign workers if there are no qualified Lao workers available.

## 3. Types of Business Organizations

**3.1. Sole Trader** - A sole trader is a business entity where the owner acts on behalf of it and is fully liable for all its activities.

**3.2. Partnership** - There are no capital requirements for partnerships, and partners can contribute funds, capital equipment, land, patents and trademarks, and technological know-how at any ratio. All partners are jointly and severally liable for the liabilities of the partnership.

**3.3. Limited Liability Company** - A limited liability company is the most common structure for conducting business in Laos and has one to twenty shareholders. It is regarded as a juristic person that has the right to own property and carry out business under its name.

**3.4. Public Company** - Initially, a public company must have a minimum of seven shareholders. Shares of public companies are transferable and may be sold to outsiders as well as inside shareholders. A limited company can be transformed into

a public company.

- 3.5. 100% Domestic or Foreign-owned Investment** - A 100% domestic or foreign-owned investment is wholly invested by domestic or foreign investors and there can be one or more investors.
- 3.6. Joint Venture** - A joint-venture is an investment between domestic and foreign investors to share ownership and do business together and is a new legal entity. Foreign investors investing in a joint-venture must contribute no less than 10% of the total capital.
- 3.7. Joint Venture by Contract** - A joint venture by contract is an investment between domestic and foreign legal entities via a contract that does not establish a new legal entity or branch in the Lao PDR.
- 3.8. Branch Office** - A foreign legal entity can establish a branch office in the Lao PDR after approval by the Ministry of Industry and Commerce.
- 3.9. Representative Office** - A foreign legal entity can establish a representative office in the Lao PDR after approval by the Ministry of Planning and Investment. A representative office can collect information for its headquarters to serve as a basis for future investment, but cannot engage in business.

#### 4. Taxation

On 1 October 2012, the Amended Tax Law came into effect and made significant changes to taxation in the Lao PDR. Under it, the Business Turnover Tax and the Minimum Tax were abolished, a Value Added Tax and a Lump Sum Tax were created, and Profits Tax and Personal Income Tax rates were adjusted. The Lao PDR has Double Taxation Agreements with 10 countries.

- 4.1. Value Added Tax (VAT)** - The Business Turnover Tax on Sales was abolished and replaced with a 10% Value Added Tax on the supply and importation of goods and services.
- 4.2. Personal Income Tax** - The Amended Law abolished the previous 180 day residency rule for foreigners. Now, all foreigners are liable for Personal Income Tax on their total worldwide income at a progressive rate ranging from 0% to 24%.
- 4.3. Company Profits Tax** - Businesses now pay a standard rate of 24% on profits; however, businesses with lower tax rates from incentives will still pay the lower rate.
- 4.4. Lump Sum Tax** - The Lump Sum Tax applies to SMEs with revenues of less than LAK 400 million. It has progressive rates ranging from 3% to 7% that depends on the business type.

**CHAPTER 5 - MALAYSIA****1. General Information****1.1. Geography**

Malaysia covers 329,847 square kilometers and is made up of two separate geographical regions. West Malaysia is on the peninsula between Thailand and Singapore, and East Malaysia is the northern third of the island of Borneo and borders Kalimantan, Indonesia and Brunei. Both regions share similar landscapes of coastal plains rising to hills and mountains. Malaysia has an equatorial climate with maritime influences, four seasons, three local climates - highland, lowland, and coastal - and two monsoons. The average yearly rainfall is 2400 mm, and temperatures range from 22°C to 33°C.

**1.2. Government**

Malaysia is a federal constitutional elective monarchy made up of thirteen states and three federal territories. The head of state is the King who is elected to a five-year term by and among the nine hereditary rulers of the Malay states. Melaka and Penang on the peninsula and Sabah and Sarawak in East Malaysia only have governors and do not participate in electing the King. Malaysia has a bicameral Parliament made up of a non-elected upper house and an elected lower house. All state and territory governments are regulated by the federal constitution. Executive power is vested in the Cabinet led by the Prime Minister who is the head of government and head of cabinet.

**1.3. Population**

Totalling 29 million people, Malaysia's population is 50% Malay, 24% Chinese, 11% Indigenous, and 7% Indian. 60% of the population is Muslim; it's the official religion, and 19% is Buddhist, 9% is Christian, and 6% is Hindu. Malaysia's official language is Bahasa Malaysia, and English remains an active second language. Tamil, Thai, and Punjabi are also commonly spoken, and Chinese Malaysians speak multiple dialects including Cantonese, Mandarin, and Hakka. Malaysia is a multi-ethnic, multicultural, and multilingual society and has an 85% literacy rate.

**1.4. Economy**

An emerging multi-sector economy, Malaysia plans to achieve high-income status by 2020 and move higher up the value added production chain. It also plans to reduce the country's dependence on exports, mainly electronics, oil & gas, palm oil, and rubber, which are a major driver of the economy. Its natural resources include tin, petroleum, timber, copper, iron ore, natural gas, and bauxite. The service sector is 47% of the GDP and 51% of its total employment, and industry is 36% of its total employment and 40% of the GDP with agriculture at 12% of the GDP and 13% total employment.

### 1.5. Legal System

Malaysia has a mixed legal system that incorporates English common law, Islamic law, and customary law. The court system follows the principle of precedent, and decisions by the higher courts are binding on the lower courts. In Malaysia, the Federal Court is the highest court and final appellate court. It hears appeals on decisions from the Court of Appeal and the High Courts and on civil and criminal cases from the Court of Appeal. The Federal Court has original jurisdiction over any disputes between the Federation and any States and over the validity of any laws passed by the Parliament or Legislature of State. The Court of Appeal is next in the hierarchy and hears all civil appeals from the High Courts for cases where the claim is more than RM 250,000. Malaysia has two High Courts, the High Court of Malaya for Peninsular Malaysia and the High Court of Sabah and Sarawak in Borneo, which have coordinate jurisdiction and status. They supervise and have jurisdiction over the Subordinate Courts and also hear appeals on civil and criminal cases from the lower courts. Their civil jurisdiction includes marriage and divorce, bankruptcy and matters relating to the dissolution of companies, wills and probate, injunctions, and contract performance and rescission. The Subordinate Courts are made up of the Sessions Courts, the Magistrate Courts, and the Courts for Children. Sessions Courts are located in most major towns and hear all civil matters for claims of RM 25,000 to less than RM 250,000. The Magistrate Courts hear all civil matters for claims of less than RM 25,000 and also include a less formal small claims procedure for claims that don't exceed RM 5,000. There are 151 Magistrates throughout Malaysia. For any offences committed by the hereditary rulers of the Malay states, there is also a Special Court. Islamic law runs parallel to the secular courts in the Syariah Courts, but only applies to Muslims. There is an Appeal Court, a High Court and Subordinate Court in the Syariah Court system that deal with religious and family matters including custody, divorce, and inheritance. Syariah Court decisions cannot be appealed to civil courts.

### 1.6. Environment for Foreigners

Most foreigners enjoy living in Malaysia, and as the country continues to expand its economy, expatriate employment opportunities keep increasing. Foreigners living in Malaysia enjoy an active lifestyle with first-world comforts, conveniences, food and entertainment along with high quality healthcare, international schools, and housing. All foreigners wishing to live or work in Malaysia must comply with the country's immigration and work-permit regulations. Many different languages are spoken, but English is also widely spoken and understood.

**1.6.1. Visas** - Malaysia has a very flexible visa policy, and 80% of the world's nationalities do not need a tourist visa for up to a 90-day stay. All others must obtain visas from a Malaysian embassy or consulate. To work in Malaysia, a foreigner must apply for a Multiple Entry Visa.

**1.6.2. Work Permits** - Foreigners are prohibited from working in Malaysia unless they have the relevant work permit. There are three work permit types: employment pass, temporary employment visit pass, and professional visit pass.

**2. Investment Environment****2.1. Economic Growth**

According to the Malaysia Investment Development Authority (MIDA), in 2011 there was RM 148.6 billion of total approved investments in the manufacturing, services, and primary sectors which included 4,964 projects and generated 149,496 job opportunities. The total investments approved exceeded the average annual investment target set under the 10<sup>th</sup> Malaysia Plan by 29.2%.

**2.2. Openness to Investment and Incentives**

As the country's attractiveness for lower-wage manufacturing diminishes, Malaysia encourages foreign direct investment, except in a few restricted sectors, and actively advertises itself globally to attract it. A number of incentives are available particularly for export-oriented high-tech industries and "back office" service operations, and it will also negotiate incentive packages for targeted industries. The top three countries investing in Malaysia are the United States, Japan and Hong Kong, and the United States had a US\$ 3.8 billion investment in the manufacturing sector in 2010.

**2.3. Banking and Foreign Exchange**

Malaysia's banking system is made up of commercial banks, investment banks, and Islamic banks. Bank Negara Malaysia is the country's central bank, and it directly supervises commercial banks and finance companies. Islamic finance in Malaysia is controlled by robust regulatory, legal and Sharia governance frameworks. In general, there are no restrictions on the repatriation of capital, profit, dividends, interest and rental income by foreign investors if the payments are made in foreign currency.

**2.4. Intellectual Property Protection**

The Malaysian Intellectual Property Corporation (MIPC) at the Ministry of Domestic Trade and Consumer Affairs governs, administers and supervises all IP matters in Malaysia and offers IP protection for patents, trademarks, industrial designs, copyright, geographical indications and layout designs of integrated circuits. Malaysia conforms to the WTO's TRIPS Agreement and is member of the World Intellectual Property Organization (WIPO) and part of the Paris Convention since 1990, the Berne Convention since 1988, and the Patent Cooperation Treaty since 2006.

**2.5. Labor**

Except for public servants and people employed in statutory bodies, the Employment Act of 1955 governs matters relating to employment in West Malaysia. Employment in East Malaysia comes under the Sabah and Sarawak Labor Ordinances. There are generally no statutory minimum wages, and benefits and related terms of employment are left to be agreed upon subject to the minimum Employment Act standards applicable.

### 3. Types of Business Organizations

- 3.1. Sole Proprietorship** - A sole proprietorship is an unincorporated business owned by one person. It is not a separate legal entity, so the owner is personally liable for all business debts.
- 3.2. Partnership** - A partnership is an unincorporated business entity where partners carry on a business in common and share profits and losses proportionately. All partners are subject to unlimited liability on all the partnership's risks and debts.
- 3.3. Limited Company** - Malaysia has three types of limited companies. One is a company limited by shares (Sendirian Berhad or Sdn. Bhd) which is the most popular company structure in Malaysia. Second is a company limited by guarantee, and third is an unlimited company. Companies can be either public or private companies, and foreign investors can hold 100% of the shares in a private company.
- 3.4. Joint Venture** - Foreigners can establish joint ventures with Malaysians. Incorporating a Malaysian company is relatively simple and can usually be completed within two months. An existing "shelf" company can also be acquired.
- 3.5. Branch Office** - A branch of a foreign company needs to register itself with the Companies Commission of Malaysia before it can start business in Malaysia.
- 3.6. Representative Office** - A representative office can be registered with the Ministry of Industry & Development Authority for the purpose of research & development, marketing, and sales support services.

### 4. Taxation

Under the Income Tax Act of 1967, the Inland Revenue Board and the Royal Malaysian Customs are responsible for all tax matters in Malaysia. Malaysia has signed Double Taxation Agreements with 70 countries.

- 4.1. Sales Tax and Service Tax** – With no official Value Added Tax, Malaysia has a 5% to 20% Sales Tax and a 6% Service Tax.
- 4.2. Personal Income Tax** – Residents and non-resident are only taxed on income derived from Malaysia. Non-residents pay a flat 26% rate, while residents pay a progressive rate up to 26% after deductions.
- 4.3. Corporate Income Tax** - The Corporate Tax Rate is 25% and levied only on income derived from Malaysia.
- 4.4. Real Property Gains Tax** – The real property gains tax rate runs from 5% to 10% and is charged on chargeable gains arising from the disposal of real property situated in Malaysia and the disposal of shares in real property companies.

**CHAPTER 6 - MYANMAR****1. General Information****1.1. Geography**

The Union of Myanmar, also called the Union of Burma, is the largest mainland Southeast Asian country and covers 676,578 square kilometers. Myanmar is bordered by Thailand, Bangladesh, India, and the Lao PDR and has 1,930 kilometers of contiguous coastline on the Bay of Bengal and Andaman Sea. Its terrain consists of central fertile lowlands ringed by steep, rugged highlands and mountain ranges. It has three major rivers systems, and the 2170 kilometer Irrawaddy River is Myanmar's longest river. Below 2000 meters, Myanmar has a tropical monsoon climate with two seasons that can be cloudy, rainy, hot and humid with temperatures that reach 40°C and coastal regions that accumulate 5000mm of rainfall a year. In the highlands and mountains, there's a subtropical temperate climate at 2,500 meters, a temperate climate at 3,000 meters, an alpine climate at 3,500 meters with an Arctic climate above it. The higher elevations are subject to heavy snowfall and bad weather.

**1.2. Government**

Myanmar's 2010 elections shifted the county to a civilian parliamentary government, and it is now a presidential republic with a bicameral legislature made up of members appointed by the military and members elected in general elections. The President is the chief of state and head of government. The legislative branch includes the House of Nationalities with 56 of its 224 seats appointed by the military and the House of Representatives with 110 of its 440 seats appointed by the military. The ruling government party, the Union Solidarity and Development Party (USDP), controls the majority of seats. After the 2010 elections, there were significant political and economic reforms that included permitting opposition political parties to register, the release of Aung San Suu Kyi and hundreds more political prisoners, a reduction of media censorship, opening travel for both locals and foreigners, an easing of many restrictions, and allowing for more open debate in Parliament and the expression of dissent by the populace.

**1.3. Population**

With an estimated population of 54.5 million people, Myanmar is 68% Burman, 9% Shan, 7%, Karen, 4% Rakhine, 3% Chinese, and 2% Indian and 2% Mon. The population is 89% Buddhist, 4% Christian, and 4% Muslim. Over 100 languages are spoken in Myanmar, and 65% of the population speaks Burmese, the official language, and Shan, Karen, Chin, Mon, and Rakhine are the principal minority languages spoken. Burmese is the language of business, politics, and education. English was the language of higher education until 1964, but it is not widely spoken today outside the tourism and business sectors and the educated. The country's literacy rate is 89.9%.

### 1.4. Economy

While rich in resources like oil, natural gas and timber, Myanmar is a very poor country that isolated itself from the rest of the world for the last 50 years. 32% of the population lives below the poverty line, and its economy is laden with pervasive government controls, inefficient economic policies, corruption, and inadequate infrastructure. Its macroeconomic imbalances include multiple official exchange rates, overvalued currency, and unpredictable inflation. Of its 32.5 million labor force, 70% work in agriculture which is 39% of the GDP, 23% work in the service sector which is 42% of the GDP, and 7% work in industry which is 18% of the GDP. Its natural resources include oil, timber, tin, antimony, zinc, copper, tungsten, lead, coal, marble, limestone, precious stones, natural gas, and hydropower, but due to many factors, foreign investment is still mostly in oil, gas, mining and timber. Manufacturing, tourism, and service sector growth is hampered by poor infrastructure, unpredictable trade policies, and the lack of an educated skilled workforce. However, in late 2012, the country made significant changes to its foreign investment policies.

### 1.5. Legal System

Myanmar's legal system is a mixed legal system of customary law and English common law that was introduced in its colonial period. There is no jury system in Myanmar, and many of the laws from its colonial period are still in use and the principle of precedent is adhered to. The judiciary is not independent of the executive, and the Supreme Court is the highest court, but has no powers over the Constitution.

### 1.6. Environment for Foreigners

For foreigners in Myanmar, living conditions can be inadequate especially compared to Thailand, the Philippines, or Malaysia. It is an extremely poor country and lacks reliable medical facilities, doctors, clinics, hospitals and medication. The majority of foreigners live in Yangon, Mandalay and Bagan. There is little quality accommodation and it is very expensive, few activities and little entertainment for foreigners, and the country's infrastructure, transportation, communication, and internet services are all problematic. All foreigners must comply with the country's immigration and work-permit regulations. The official business language is Burmese, and English is not widely spoken.

- 1.6.1. Visas** - In the past, Myanmar has strictly controlled travel to, from and within the country. Large portions of the country are restricted areas and foreigners need special permission to visit or work in them. However, current government reforms include lifting travel restrictions and opening the country to more visitors. In Myanmar, all visitors must show a passport with a valid visa at all airports, train stations, and hotels. Security checkpoints are common outside of tourist areas. For a 28-day tourist visa, a visitor must apply with a Myanmar embassy or consulate in another country. Multiple entry business visas are also available. As of June 2012, Myanmar now grants visas on arrival for business purposes to the nationals of 27 countries at the Yangon airport. These visas are good for 28-70 days.

**1.6.2. Work Permits** - Myanmar has two types of work permit: the Stay Permit and the Multi Re-Entry Permit. A Stay Permit is valid for either three months or one year, but is single entry. A Multi Re-Entry Permit is good for one year and allows for international travel; however, a valid Stay Permit is also required. Currently, the processing time for work permits in Myanmar is three months.

## 2. Investment Environment

### 2.1. Economic Growth

In the past, Myanmar had an investment climate which hampered the inflow of foreign investment. However, on November 2, 2012, Myanmar passed its new Foreign Investment Law, a business friendly investment law designed to attract foreign direct investment into the country and create a favorable investment climate. Also in November 2012, after a 25 year hiatus, the World Bank approved the resumption of aid for Myanmar and allocated US\$ 245 million in funds as an initial move. While Myanmar's most productive sectors continue to be extractive industries, manufacturing, tourism, and services struggle with poor infrastructure, unpredictable trade policies, undeveloped human resources, corruption, and inadequate access to capital for investment.

### 2.2. Openness to Investment – The New Foreign Investment Law and Investment Rules

Under the new law, Myanmar will develop and expand different business types including natural resource extraction and export, human resource development, banking and finance, infrastructure (roads, highways, and utilities), high technology, communications, and transportation (rail, water and air). Also, any investment in Myanmar can now be up to 100% foreign-owned, and it also dropped the minimum capital requirements for joint ventures and capital on foreign share ownership by allowing overseas firms to fully own joint ventures. Foreign investors will get five-year tax holidays, and manufacturing companies may be entitled to tax relief of up to 50% on profits made from exports. Foreign investors can also take advantage of fifty-year land leases that can be extended for another twenty years.

On January 31, 2013, Myanmar approved the Foreign Investment Rules. Notification 1/2013 lists the economic activities that are prohibited, the economic activities which require a joint venture with Myanmar citizens, and the economic activities permitted under certain conditions like the recommendation from a relevant ministry, environmental impact access, or other specific requirements. Activities not specified in the notification will be considered upon request.

Some prohibited economic activities may be approved for foreign investment; however, approval will depend on multiple factors and be subject to different conditions. If an investment in this category is approved, there is an 80% equity cap on the foreign investor's participation. Prohibited economic activities include:

- Administration of electric power systems, trading of electric power, and inspection of electrical works
- Exploitation of minerals, small and medium scale mineral production, and prospecting, exploration, and production of jade/gem stones
- Management of natural forests
- Air navigation services
- Pilotage services
- Joint printing and broadcasting services including periodicals in national ethnic languages including Myanmar

Any foreign investment in restricted economic activities must take the form of a joint venture with Myanmar citizens and be approved by the relevant authorities. Again, there is an 80% equity cap on the foreign investor's participation. Foreign investments in economic activities permitted under certain conditions must follow the requirements listed in Notification 1/2013 and the stipulations from the relevant ministry. The most common requirement is approval by the Union Government and a recommendation from a specific ministry while other requirements include caps on foreign investment participation, acquisition of permits and licenses, compliance with standards and practices, or participation in environmental or social impact assessments. There are 176 economic activities permitted under certain conditions listed in Notification 1/2013.

Notification 11/2013 contains the rules and procedures for investment licenses, and all potential foreign investment candidates must first obtain an investment license from the MIC. It also details the regulations on land use rights, employment matters, foreign capital and foreign currency transfer rights, and the rules for lease, mortgage, share transfer, or transfer of business. According to Notification 11/2013, the Myanmar Investment Commission (MIC) will designate the permitted economic activities applicable to the Foreign Investment Law. The criteria for approval include labor intensive industries that will create employment opportunities for Myanmar citizens and businesses which will produce value added products for the country, which are part of capital intensive industries, which utilize high technology, which produce goods and services focused on the welfare of citizens, which promote the living standard of the citizens, or which increase the capital for small and medium enterprises operated by citizens.

### **2.3. Banking and Foreign Exchange**

The new Central Bank of Myanmar Law, enacted on July 11, 2013, is another one of Myanmar's recent economic and political reforms and is news of interest for potential foreign investors. However, its implementation rules have not yet been released. The Central Bank Law secures the bank's autonomy from the Finance Ministry, states its responsibilities, and provides it with the authority to set rates and develop the country's banking sector independently from the Union Government. Its main objective is to stabilize and control local prices and is tasked with ensuring the stability of its currency and the monetary system, developing effective payment and transaction systems, and supporting the Union Government and its financial policies. The Union Government will fix the foreign exchange rate after taking into consideration the advice of the Central

Bank. As the Central Bank will regulate all local banks and financial institutions, it is responsible for their licensing, inspection, supervision, and is empowered to give directions to ensure their solvency and soundness.

### 2.4. Intellectual Property Protection

In general, Myanmar has very little Intellectual Property protection, but this is expected to change in its new economic climate. At this time, there is no patent protection system in Myanmar, and the country does not recognize foreign copyrights. Trademarks can be registered and then need to be reregistered every three years. Myanmar signed the basic World Intellectual Property Organization treaty 2001 and is a member of the World Trade Organization and signatory to the TRIPS Agreement since 1994.

### 2.5. Labor

The Department of Labor, the Social Security Board, the Central Inland Freight Handling committee, the Factories and General Labor Laws Department, and the Central Trade Disputes Committee under the Ministry of Labor are responsible for all employer and employee labor matters. In response to its past, Myanmar recently approved a new Labor Organization Law. The new law protects employees' rights, allows for labor unions, and establishes procedures for a strike. In private enterprises, salaries are negotiated directly between the employer and employee. Recruitment procedures are also straightforward and can be done directly at the local level or through employment agencies and advertisements. Private enterprises with more than five workers must contribute 2% of their wages to a social security fund. Along with free medical care, workers are entitled to cash sickness and maternity benefits, funeral grants, and temporary and permanent disability benefits.

## 3. Types of Business Organizations

**3.1. Sole Proprietorship** - A sole proprietorship is owned by an individual and operates under their name. No registration is needed, and the owner's liability is unlimited.

**3.2. Partnership** - A partnership's rights and obligation are governed by the Partnership Act of 1932. The number of partners is limited to twenty, registration is not compulsory, and all are considered unlimited.

**3.3. Company limited by shares** - For foreign enterprises, the most common company type is a limited company - either a private limited liability company or a public limited liability company. All limited companies are required to register under either the Myanmar Companies Act (CA) or the Union of Myanmar Foreign Investment Law (MFIL), and if one share is owned by a foreign member, a company is classified as a foreign company. A private limited liability company is limited to fifty members, and share transfers are restricted, and there's no public subscription. A public limited liability company must have a minimum of seven shareholders.

**3.4. Joint Venture** - A foreign investor can set up a joint venture, either as partnership or a limited company, with a Myanmar partner. According to the new Investment Law of 2012, for Joint Ventures, all minimum capital requirements have been dropped and the joint venture can be fully foreign owned. Any stake ratio between the partners is permitted.

**3.5. Branch Office** - A foreign company can set up a branch office under the Myanmar Companies Act (CA) or the Union of Myanmar Foreign Investment Law (MFIL). Under the CA, a branch office does not need a Myanmar Investment Commission permit, can be a manufacturing or service company, and must register and then apply for a trade permit. Under the MFIL, a branch office must obtain a Myanmar Investment Commission permit, a trade permit and a registration certificate.

**3.6. Representative Office** - A foreign company can establish a representative office in Myanmar. It can liaise with the head office and conduct research, but it cannot generate revenue or engage in business.

#### 4. Taxation

Under various laws, the Internal Revenue Department (IRD) under Ministry of Finance and Revenue administers commercial tax, income tax, profit tax, stamp duties and state lottery tax.

**4.1. Commercial Tax** - Commercial tax is a turn-over tax levied on domestic and imported goods and services. 72 essential commodities are exempt with a progressive rate from 5% to 25% for everything else. 19 specific goods including cigarettes, fuel oil, liquor, pearls, jade and gems are taxed between 30-200%.

**4.2. Value Added Tax (VAT)** - All goods and services that go to the Government are liable to a 10% VAT rate. There's also a 10% VAT rate on all hotel and restaurant services that must be shared among the employees.

**4.3. Individual Income Tax** - In Myanmar, different Individual Income Tax rates apply for tax residents and non-residents. If a foreigner is working for an enterprise under the Union of Myanmar Foreign Investment Law, they are considered a resident. For salaries, tax residents have a progressive tax rate that runs from 3% to 30% for income over Kyat 500,001, and non-residents pay a flat tax rate 35% on their Myanmar income. For residents, professional income, business income, property income, and all income from other sources is taxed at progressive rates ranging from 5- 35%, and for non-residents, it's taxed at 35%. Residents pay 10% capital gains tax and non-residents pay 40%.

**4.4. Corporate Income Tax** - All companies, foreign or local, are taxed on their total world income at a flat rate of 30%. Special tax exemptions may be granted.

### CHAPTER 7 - PHILIPPINES

#### 1. General Information

##### 1.1. Geography

With only about 2000 of its 7,107 islands inhabited, the Republic of the Philippines has a total land area of 300,000 square kilometers and is surrounded by four seas. The country is located on the typhoon belt and struck by multiple storms yearly, and it is on the Ring of Fire and has frequent volcanic and seismic activity. The Philippines has a tropical maritime climate with three seasons and two monsoon periods, and temperatures range from 21°C to 32°C.

##### 1.2. Government

The Philippines is a constitutional republic with a presidential system modeled on the United States. The President is the head of state, the head of government, the commander-in-chief of the armed forces, and can only serve a single six-year term. The Senate and the House of Representatives make up the bicameral Congress.

##### 1.3. Population

Totaling 103.7 million people, the Philippines' population is 28% Tagalog, 13% Cebuano, 9% Ilocano, 7.6 %, Bisaya, 7.5% Hiligaynon Ilonggo, 6%, Bikol, 3.4% Waray with various other ethnic groups making up the last 25%. The country is 85% Catholic and 5% Muslim. The official languages, Filipino and English, are used in government, education and business, and eight different dialects are also spoken and used as regional auxiliary official languages. The country's literacy rate is 92.7%.

##### 1.4. Economy

Today's Philippines is becoming more industrialized and moving away from its agricultural past. The service sector is 56% of the GDP and 52% of its total employment. While agriculture is 33% of its total employment, it's only 13% of the GDP, and industry is 31% of the GDP and 15% total employment. The country's natural resources include silver, gold, timber, and petroleum, and its major exports include semiconductors and electronic products, garments, and petroleum. Remittances from the millions of Filipinos working abroad also directly impact the economy. Tourism and business process outsourcing are also important and expanding parts of its service sector.

##### 1.5. Legal System

The Philippines has a mixed legal system that incorporates civil law, common law, Islamic law, and customary law. There is no trial by jury in the Philippines, and family relations, property, succession, and contract and criminal law are covered under civil law, and constitutional law, procedure, corporation law, negotiable instruments, taxation, insurance, labor relations, and banking and currency are covered under

common law. The Supreme Court is the country's highest court and has the power to review and revise, reverse, modify or affirm on appeal, final judgments and decrees of the lower courts. It can also promulgate enforceable rules on the protection and enforcement of constitutional rights, court proceedings, and the practice of law. Next in the hierarchy is the Court of Appeals, with permanent stations in the City of Manila, Cebu City, and Cagayan de Oro City, which has original jurisdiction over the issuance of writs and exclusive appellate jurisdiction over the Regional Trial Courts. Made up of 13 separate judicial regions with over 900 branches, the Regional Trial Courts have jurisdiction over civil actions that cover marriage, probate, property disputes with claims over P20 000, and any civil action where the damages, costs, claims or value of property exceed P2,000,000. Every metropolitan area has a Metropolitan Trial Court, and the country's other cities and municipalities have either a permanent Municipal Trial Court or are grouped in a Municipal Circuit Trial Court. Each has jurisdiction over all city or municipal ordinances in its territory. There are Sharia Courts for the Muslim communities in Mindanao that have jurisdiction over all matters pertaining to the Muslim Code of Personal Laws, and civil actions between Muslims that include marriage, divorce, betrothal, custody, guardianship, legitimacy, paternity and filiation, and most contractual relationships. Alternate dispute resolution is also available, and trial courts can direct civil cases to the Philippine Mediation Center. There's also an informal local system for mediating disputes outside the formal court system.

### 1.6. Environment for Foreigners

There are large numbers of foreigners living and working in the Philippines as they appreciate the weather, the beautiful surroundings, the low cost of living, the local culture that's been influenced by Spanish and US colonialism, and its diverse expatriate community. Quality housing, health care, foreign schools, foods, and sports and recreation facilities are available. All foreigners wishing to live or work in the Philippines must comply with the country's immigration and work-permit regulations. English is widely spoken.

**1.6.1. Visas** - All visitors to the Philippines need a visa, and all nationalities not on the restricted list can acquire a visa on arrival for up to 21 days. If on the restricted list, a visitor must apply for a visa at a Philippine embassy or consulate. To work in the Philippines, foreigners must apply for an Investor Visa.

**1.6.2. Work Permits** - All foreigners working in the Philippines must have an Alien Employment Permit (AEP) from the Department of Labor and Employment. Six months is the minimum validity and two years is the maximum.

## 2. Investment Environment

### 2.1. Economic Growth

The Philippines endured the global recession better than its neighbors because of its low dependence on exports, resilient domestic consumption, and large remittances from

Filipinos working overseas, and its growing business process outsourcing industry. The Philippine GDP grew 7.6% in 2010, but decreased to 3.7% in 2011. The Aquino administration has reduced public debt to below 50% of GDP and obtained several ratings upgrades so that the country is close to investment grade. The lack of government spending, especially on infrastructure, helped slow GDP growth in 2011, so the government announced a stimulus plan and increased public spending on infrastructure for 2012.

### **2.2. Openness to Investment and Incentives**

Under the Foreign Investments Act (FIA) of 1991, the Philippine Government actively seeks foreign investment to promote economic development and is generally open to foreign portfolio capital investment. Its advantages include free trade zones, a large English-speaking population, and a well-educated working class. Except for business types in the Foreign Investment Negative List (FINL), the domestic market is open to 100% foreign investment. 100% foreign ownership is also allowed.

### **2.3. Banking and Foreign Exchange**

Under the Manual of Regulations for Banks, the Bangko Sentral ng Pilipinas (BSP) controls the country's banking sector that includes universal, commercial, thrift, rural, cooperative, Islamic, and government-owned banks. Foreign exchange is freely bought and sold in the Philippines, and the BSP regulates its purchase and sale.

### **2.4. Intellectual Property Protection**

The Intellectual Property Code of the Philippines of 1998 codified the country's laws on intellectual property, created the Intellectual Property Office (IPO), and conforms to the WTO-TRIPS Agreement. The IPO is solely responsible for all IP matters and offers IP protection for copyrights, trademarks and service marks, geographic indications, industrial designs, patents, layout designs of integrated circuits, and protection of undisclosed information. The Philippines is a member of the Paris Convention since 1965, the Berne Convention since 1951, the Patent Cooperation Treaty since 2001, and the Madrid Protocol since 2012.

### **2.5. Labor**

Governed by the Department of Labor and Employment, the Labor Code of the Philippines contains the employment terms, conditions, and benefits that employers and employees must comply with. As a general rule, employees can form and join unions and engage in concerted activities for their collective protection.

## **3. Types of Business Organizations**

### **3.1. Organized under Philippine Laws**

- 3.1.1. Sole Proprietor** - In a Sole Proprietorship, the individual owner has full control and authority, owns all assets and profits, and answers for all losses and liabilities.
- 3.1.2. Partnership** - A partnership is a separate juridical person and can be a general and limited partnership. Corporations cannot be partners in a partnership, and foreigners cannot be a partner in a partnership which owns land.
- 3.1.3. Corporation** - Under the Corporation Code, a corporation is juridical person separate from its stockholders and regulated by the Securities and Exchange Commission. A corporation is considered a foreign-owned company if more than 40% is foreign-owned and can be a stock or non-stock company regardless of nationality.

### 3.2. Organized under Foreign Laws

- 3.2.1. Branch Office** - A Branch Office carries out business activities on behalf of the head office and derives income from the host country.
- 3.2.2. Representative Office** - A Representative Office is fully subsidized by its head office and cannot generate income.
- 3.2.3. Regional Headquarters** - As an administrative branch of a multinational company, a Regional Headquarters is limited to supervisory, communication and coordinating activities for the company's subsidiaries outside the country. It does not derive income from the Philippines.
- 3.2.4. Regional Operating Headquarters** - A Regional Operating Headquarters provides management and services to its affiliates, subsidiaries, and branches in the Philippines. It derives income in the Philippines.

## 4. Taxation

The National Internal Revenue Code contains all the laws governing taxation in the Philippines and is administered by the Bureau of Internal Revenue in the Department of Finance. The Philippines has Double Taxation Agreements with 37 countries.

- 4.1. Value Added Tax (VAT)** - The Value Added Tax rate is 12% of the gross selling price or gross value in money of all goods, properties, and services sold, bartered or exchanged in the Philippines and on goods imported into the country.
- 4.2. Individual Income Tax** - After deductions, Individual Income Tax has a progressive rate of 5% to 32%. The sale of real property has a 6% capital gains tax rate.
- 4.3. Corporate Income Tax** - The Corporate Income Tax rate is 30% along with multiple withholding taxes. A Regional Operating Headquarters is liable for a 10% tax rate. Most capital gains are taxed as income.

**CHAPTER 8 – SINGAPORE****1. General Information****1.1. Geography**

Located off the southern tip of the Malay Peninsula, the Republic of Singapore is a highly urbanized island country made up of 63 islands with land area of 687 square kilometers. Singapore is only 137 kilometers north of the equator and is separated from Malaysia by the Straits of Johor and from Indonesia by the Singapore Strait. Singapore Island, the biggest island, has two man-made connections to Johor, Malaysia, and Jurong, Pulau Tekong, Pulau Ubin and Sentosa are the largest of Singapore's smaller islands. Singapore has an equatorial climate with no distinct seasons, two monsoons, high humidity, an average rainfall of 2300mm a year, and uniform temperatures that range from 23°C to 32°C.

**1.2. Government**

Singapore is a parliamentary republic. The People's Action Party (PAP) dominates Singapore's political scene and has held power since 1959 and won thirteen successive general elections. The head of government is the Prime Minister who also leads the Cabinet which is responsible for all government policies and the day-to-day administration of the affairs of state. The chief of state is the President who appoints the Prime Minister and members of the Cabinet. In practice, the leader of the political party with the most seats in Parliament is Prime Minister. The Parliament is the legislative branch which has a single house made up of elected, non-constituency, and nominated members.

**1.3. Population**

Totaling 5.35 million people, 63% of Singapore's population are citizens while 37% are permanent residents or foreign workers. 77% of the population is Chinese, 14% is Malay, and 8% is Indian. There is no official religion, but Buddhism is most widely practiced followed by Islam and then Christianity. Singapore has four official languages, Mandarin, English, Malay, and Tamil, and English is the official language for business, law, and government. Most Singaporeans are fluent in English and another official language, and the literacy rate is 92.5%.

**1.4. Economy**

Singapore has a highly developed and successful free-market economy with little corruption, stable prices, and a high per capita GDP. Exports are an important economic driver and include consumer electronics, information technology products, pharmaceuticals, and financial services. Singapore is the world's fourth leading financial center and fourth largest foreign exchange trading center, one of the top three oil refining centers, one of the five busiest ports, and the world's top logistics hub. Tourism is another major industry and the country has one of the world's largest casino gambling

markets. The service sector is 73% of its GDP and employs 80% of the population with industry at 27% of the GDP and 19% employment.

### 1.5. Legal System

Singapore's legal system is based on English common law and incorporates written laws - the Constitution, Acts of Parliament, ordinances, and subsidiary legislation, and unwritten laws - case law and customary law. Singapore has no trial by jury, and the court system follows the principle of binding precedent where decisions by the higher courts are binding on the lower courts where the courts normally follow their previous decisions. Their case law resources are not limited to Singapore court decisions, and the courts regularly utilize English cases on common law issues and their interpretation and also refer to cases from other Commonwealth countries on occasion. Singapore's Supreme Court is made up of the Court of Appeal which exercises criminal and civil jurisdiction and is the court of final appeal, and the High Court which exercises both original and appellate criminal and civil jurisdiction over the lower courts. The Supreme Court has the power of judicial review, can strike down unconstitutional acts, and is the guardian of the fundamental constitutional liberties. The Chief Justice, Judges of Appeal, Judicial Commissioners and High Court Judges are appointed by the President from candidates recommended by the Prime Minister. Singapore's Subordinate Courts are made up of the District Courts, Magistrates' Courts, Children's Courts, Coroner's Courts, and the Small Claims Tribunal that is governed by its own specific rules. There is also a Sharia Court for Muslims that covers family matters, mostly marriage, and inheritances. For civil actions, the High Court has unlimited jurisdiction, but usually only hears matters for claims over SD 250,000. The District Courts hear all civil matters for claims under SD 250,000, the Magistrates Courts for under SD 60,000 and the Small Claims Tribunal for up to SD 10,000. In civil cases, judicial case management prevents unnecessary delays and ensures that all necessary steps are taken and all rules of procedure are followed. Singapore is also a popular choice for domestic and international Alternate Dispute Resolution in Asia.

### 1.6. Environment for Foreigners

Singapore is a globally well connected, multicultural, cosmopolitan city state that is easily accessible by foreigners living there and is one of the top rated Asian cities for expatriates; however, the cost of living is very high. Foreigners enjoy the tropical weather, the multicultural society, and the excellent sport, travel, dining and entertainment options. It has high quality transportation, communications and health care and has a low crime rate, low health risks and an excellent infrastructure. All foreigners wishing to live or work in Singapore must comply with the country's immigration and work-permit regulations. Almost everyone understands English, and it's the official business language. Mandarin and Malay are also widely spoken.

- 1.6.1. Visas** - All Singapore visitors must go through immigration clearance on arrival and obtain a Social Visit Pass even if they are from a country which doesn't require a visa to visit Singapore. Even with a visa, entry is not guaranteed, and visitors must meet entry requirements including proof of

sufficient funds and confirmed outbound tickets. Also available are Business Visas which allow for multiple 30 day visits for up to five years.

**1.6.2. Work Permits** - Singapore has multiple professional employment work permit schemes for foreigners, and only the S Pass is on a quota system, so work permits are individually approved based on the applicant's and employing company's credentials.

## 2. Investment Environment

### 2.1. Economic Growth

Singapore's real GDP growth averaged 8.6% between 2004 and 2007. The economy contracted 1% in 2009 as a result of the global financial crisis, but rebounded 14.8% in 2010 and 4.9% in 2011 on the strength of renewed exports. Over the longer term, the government hopes to establish a new growth path that focuses on raising productivity. The government takes a leadership role in planning Singapore's economic development and actively uses the public sector as both an investor and a catalyst for development. Singapore has attracted major investments in pharmaceuticals and medical technology production and continues efforts to establish Singapore as Southeast Asia's financial and high-tech hub.

### 2.2. Openness to Investment & Incentives

Overall, Singapore is an advantageous target for foreign investment especially in creative and knowledge driven industries. The combination of strong banking secrecy rules, generous tax exemptions for small-to-midsize companies, wide ranging industry-specific tax incentives and its global reputation for business excellence attracts high net worth individuals and corporations and keeps Singapore competitive and well positioned. The Government of Singapore provides a comprehensive package of tax concessions and incentives to businesses whose activities reflect the direction in which the state plans to steer economic development. Singapore's legal framework and public policies are favorable to foreign investment. Foreigners don't have to use joint ventures or surrender management control, and everyone is subject to the same laws. There are no restrictions on reinvestment or repatriation of earnings or capital, and the judicial system upholds contract sanctity and enforces decisions. Singapore uses low tax rates and aggressive fiscal incentives to attract foreign investment. Multiple government agencies offer tax breaks and incentives to a wide range of industries.

### 2.3. Banking and Foreign Exchange

With a robust supervisory framework in a pro-business environment, Singapore is one of the world's leading financial centers and is home to over 600 financial institutions including the Singapore Stock Exchange (SGX) which is the largest in Asia. It has numerous commercial, offshore, wholesale and merchant banks, and is the world's fourth largest foreign exchange market and a leading commodities derivatives trading

hub. Singapore has no foreign exchange controls and no approval is needed for any payment, remittance or capital transfer in any currency or to any country.

### 2.4. Intellectual Property Protection

The Intellectual Property Office of Singapore (IPOS) under the Ministry of Law is responsible for all of Singapore's intellectual property matters and offers protection for patents, trademarks, registered designs, plant varieties, and copyright. Singapore's legislative and administrative regime is fully compliant with the WTO's TRIPS Agreement and has been part of the Paris Convention since 1995, the Berne Convention since 1998, the Madrid Protocol since 2000, and the Patent Cooperation Treaty since 1995. As the country's IP regulator and policy advisor, the IPOS maintains a robust and pro-business IP regime for the protection and commercial exploitation of IP and works with economic agencies and the IP business community to formulate and review IP policies and practices. To promote IP in Singapore, IPOS has developed programs for both the general public and businesses to raise awareness, build capabilities and provide opportunities. Singapore strictly enforces its intellectual property laws.

### 2.5. Labor

Governed by the Ministry of Manpower, the Employment Act of 1986 provides the basic terms and working conditions for all types of employees except for seamen, domestic workers, those employed in managerial or executive positions, or anyone employed by a Statutory Body or the Government. The part of the Employment Act which stipulates rest days, hours of work and other conditions of service only applies to workmen earning no more than SD\$4,500 basic monthly salaries and employees earning no more than SD \$2,000 basic monthly salaries. An employer must pay their employees within seven days after the end of the salary period, and failure to pay salaries is an offence.

## 3. Types of Business Organizations

**3.1. Sole Proprietorship** - A Sole Proprietorship is not a separate legal entity. The owner has unlimited liability and is personally liable for debts and losses.

**3.2. Partnership** - A Partnership is not a separate legal entity. Partners have unlimited liability, are personally liable for a partnership's debts and losses incurred by other partners, and can sue or be sued in the partnership's name. A partnership cannot own property in its name.

**3.3. Limited Partnership (LP)** - In a Limited Partnership (LP), there must be at least one general partner and one limited partner. Both can be individuals or corporate bodies. It is not a separate legal entity, and the general partner has unlimited liability while the limited partner has limited liability. A limited partnership cannot own property in its name.

**3.4. Limited Liability Partnership (LLP)** - In Limited Liability Partnership (LLP), there must be at least two partners who can be individuals or corporate bodies, and it is a

separate legal entity from its partners. Partners have limited liability, can sue or be sued, and are personally liable for debts and losses resulting from their own wrongful actions, but not for debts and losses incurred by the other partners. An LLP can own property in its own name.

- 3.5. Company** - A Company is a legal entity separate and distinct from its shareholders and directors, and there are three company types: an Exempt Private Company with 20 or fewer members and no corporate ownership of shares, a Private Company with 50 members or less, and a Public Company with more than 50 members. Each is a separate legal entity from its members and directors.
- 3.6. Branch Office** - A Branch Office is an extension of the parent company and is not a separate legal entity. The allowed activities are the same as the parent company, and all liabilities extend to the parent company. It is taxed as a non-resident entity.
- 3.7. Subsidiary Office** - A Subsidiary Office is a separate legal entity distinct from its parent company. The allowed activities can be different from the parent company, and all liabilities are limited to the subsidiary. It's taxed as a resident entity.
- 3.8. Representative Office** - A Representative Office is a temporary administrative arrangement, has no legal status, and cannot generate income. It can only conduct market research or feasibility studies, and all liabilities extend to the parent company.

#### 4. Taxation

Singapore's Income Tax Act governs corporate and individual taxation, and the Inland Revenue Authority of Singapore (IRAS) is the administering body which assesses, enforces payment, and collects all taxes. Singapore has 69 comprehensive Double Tax Agreements and 7 limited Double Tax Agreements in force.

- 4.1. Goods and Services Tax (GST)** - Singapore's Goods and Services Tax (GST) has a standard 7% rate. It's a consumption tax levied on the import of goods and the sale of almost all goods and services.
- 4.2. Personal Income Tax** - Personal Income Tax rates apply for tax residents and non-residents. Tax residents have a progressive tax rate that runs up to 20% for income over S\$ 320,000, and non-residents pay a flat 15% tax rate. A tax resident is a Singaporean, a Singapore Permanent Resident (SPR), or a foreigner who resides in Singapore for 183 days or more in a year. All others are considered non-residents.
- 4.3. Corporate Income Tax** - Singapore has a single-tier corporate income tax system, and its headline corporate income tax rate is 17%. There is no tax levied on capital gains, dividend distribution, or foreign-sourced income not brought into Singapore.

**CHAPTER 9 – Thailand****1. General Information****1.1. Geography**

The Kingdom of Thailand covers 514,000 square kilometers and is bordered by Malaysia, Myanmar, Laos, and Cambodia. The Kingdom has extensive coastlines on the Gulf of Thailand and Andaman Sea and controls the only land route from Asia to Malaysia and Singapore. The country has four different geographic regions and has a tropical climate with three distinct seasons where temperatures can range from 15°C to 40°C.

**1.2. Government**

In 1932, Thailand became a constitutional monarchy structured similarly to the United Kingdom. Under the constitution, the government is divided into three branches: the executive, the legislative and the judiciary. While His Majesty the King signs all laws, acts and decrees, the decision making is left to the three government bodies.

**1.3. Population**

Totaling 67 million people, Thailand's population is 75% Thai and 14% Chinese with the other 11% made up of different ethnic groups. While religious freedom is permitted, the nation is 94% Buddhist. Muslims, many who live in the Southern region, are the second largest religious group at 4.6%. The national language, Thai, is a tonal language like Mandarin Chinese, but is written phonetically. Thai is the educational and administrative language, and the country has a 92% literacy rate. English is also widely spoken especially among Thais with higher education.

**1.4. Economy**

Since World War II, Thailand has continued to attract foreign investment due to its relative stability and strong economy. Thailand has a free-enterprise economy with generally pro-investment policies, strong export industries, and a well-developed infrastructure. The government has actively encouraged the development of industry over the years and continues to take measures to increase trade and manufacturing. Thai exports include textiles and footwear, fishery products, rice, rubber, jewelry, automobiles, computers and electrical appliances, and its natural resources include tin, rubber, natural gas, tungsten, tantalum, timber, lead, fish, gypsum, lignite, and fluorite. Tourism has also become a major industry with 22.3 million visitors arriving in Thailand in 2012, up 16% from 2011. Agriculture employs 40% of the country's labor force, but only accounts for 13% of the GDP. Industry is 43% of the GDP and employs 13% of the population, and the service sector is 43% of the GDP and 46% of total employment. Thailand is a charter ASEAN member from 1967.

### 1.5. Legal System

The Kingdom of Thailand has practically adopted a civil or codified law system influenced by the United Kingdom's common law system and European (Continental) civil law systems; however, the practice of law in Thailand is not as comprehensive as that in the United States and the United Kingdom. Trial by jury is not practiced. The Constitution is the supreme law of the Kingdom and there are thousands of organic laws, i.e., acts, which include, but are not limited to, decrees and governmental notifications and regulations, and are regulated from time to time by the Parliament, the administrative agencies, and the courts. The Constitutional Court settles matters pertaining to issues of validating or invalidating the laws in draft bills under the Constitution. The Administrative Court settles any disputes and litigation between the private sector, the Government, and State organs, and the Military Court is specifically for criminal cases in the armed forces. The Court of Justice, the Kingdom's civil and criminal court system, is comprised of the Courts of First Instance, the Courts of Appeal, and the Supreme Court (Dika). The Central and nine Regional Courts of Appeal hear civil and criminal cases from all parts of the country and either reaffirm, dismiss, reverse, or amend the lower courts' decisions. The Supreme Court (Dika) is located in Bangkok and only hears appeals on points of law and/or points of fact which are important material issues; nevertheless, often Specialized Court cases go directly to the Supreme Court when under appeal. Its decisions are final, but not binding as precedents for new cases though. Lower courts tend to follow the decisions of the Supreme Court, nonetheless a challenge on points of different facts is normally expected, and ultimately, a final judgment is at the discretion of the court.

### 1.6. Environment for Foreigners

There are a large number of foreigners living and working in Thailand. Japanese represent the largest number of expatriates followed by Americans and Europeans. All foreigners wishing to live or work in Thailand must comply with the country's strict immigration and work-permit regulations. English is fairly widely spoken and most international business including contracts, documentation, and banking transactions is conducted in English. In most cases, official dealings with the Thai government must be conducted in Thai. Most foreigners enjoy living in Thailand as housing, health care, foreign schools, foods, sports and recreation facilities are of high quality. There are many foreign business associations, two daily English language newspapers and a Japanese newspaper.

**1.6.1. Visas** - Visa rules vary according to nationality. Visitors to Thailand from certain countries can enter for a 30-day period with no visa, and others can obtain a visa waiver on arrival and are permitted to stay for 15 days. However, certain nationals must obtain a visa before entering the Kingdom. For longer stays, single or multiple entry 60-day tourist visas are available at Thai consulates or embassies.

**1.6.2. Work Permits** - All foreigners must obtain a work permit to engage in paid or unpaid work in Thailand. A foreigner must first obtain a non-immigrant visa

from overseas and then subsequently apply for a work permit with the Employment Department after entering the Kingdom. Certain nationals are required to obtain pre-work permit approval before they can obtain a non-immigrant visa.

## 2. Investment Environment

### 2.1. Economic Growth

From 2000 to 2007, Thailand had solid growth of more than 4% per year with exports accounting for more than half the GDP. In 2009, the economy contracted 2.3%, but in 2010, it expanded 7.8%, its fastest pace since 1995, as exports rebounded. With the severe domestic flooding that affected 60 of country's 77 provinces in 2011, the economy contracted again which resulted in annual GDP growth of 1.1%. However, the industrial sector recovered in the second quarter of 2012, and GDP grew 5.8% in 2012.

### 2.2. Openness to Investment and Incentives

Thailand encourages foreign direct investment as a means of promoting economic development, employment, and technology transfer. In recent decades, Thailand has been a major global destination for foreign direct investment, but avoids dependence on any one country as a source of investment. The Foreign Business Act of 1999 defines and regulates which business activities foreigners can participate in. Some activities are prohibited, some may need prior approval, and some don't require any special approval. The Treaty of Amity and Economic Relations between the United States and Thailand exempts Americans from most restrictions on foreign investment and allows them to engage in business on the same basis as Thais. The 1977 Investment Promotion Act offers investment incentives for both foreign and domestic investment and is administered by the Board of Investment of Thailand (BOI). Companies which have been granted BOI status receive special privileges and exemptions from certain laws. The Industrial Estate Authority of Thailand (IEAT) was established to provide special facilities for industrial development.

### 2.3. Banking and Foreign Exchange

Under the Financial Institution Act of 2008, Thailand's bank sector is regulated by the Ministry of Finance and the Bank of Thailand. The Ministry of Finance sets fiscal and economic policy, and oversees public finances, taxation, and the treasury. The Bank of Thailand is the central bank which sets monetary policies, controls foreign exchange, and supervises all banks and financial institutions, and prints and issues all currency. All foreign exchange transactions must be done through commercial banks or authorized non-banks. Both direct and portfolio foreign investments are freely permitted. Repatriation of investment funds and repayment of overseas borrowing in foreign currency can be remitted freely upon submission of supporting evidences.

### 2.4. Intellectual Property Protection

In recent years, Thailand has vastly improved its intellectual property rights protection through determined political commitment, major legislative reforms, strengthened law enforcement, proactive actions to combat piracy and by raising awareness. The Central Intellectual Property and International Trade Court was established in 1996 where IP cases are decided by career judges and associate judges, separately recruited laymen, who possess competent knowledge and are experienced in intellectual property and international trade. The Department of Intellectual Property (DIP) at the Ministry of Commerce governs Thailand's IP rights system and through its recordation and registration procedures offers IP protection for trademarks, patents, designs, plant varieties, and layout & design of integrated circuits. The DIP is also responsible for domestic Thai IP protection, facilitating mediation, and settling disputes. Thailand is a party to the Berne Convention, is a WTO member and party to Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement, acceded to the Patent Cooperation Treaty in 2009, and is in the process of becoming a member of the Madrid Protocol Concerning the International Registration of Trademarks.

### 2.5. Labor

The Ministry of Labor and Social Welfare is responsible for implementing all labor laws, protecting workers from exploitation, skill development, and promoting employment in Thailand. Foreigners are allowed to work in Thailand and must comply with the country's strict immigration and work-permit regulations.

## 3. Types of Business Organizations

The following are various types of business entities available in Thailand's jurisdiction; however, a foreigner's ability to engage in them is regulated by the Foreign Business Act.

**3.1. Sole Proprietorship** - Under the law a person acting as a sole proprietor can engage in almost any lawful type of business with the exception of those businesses which have been otherwise regulated by the government. Taxation of a sole proprietorship business is calculated on a progressive personal tax rate.

**3.2. Unregistered Ordinary Partnership** - An Unregistered Ordinary Partnership is when two or more persons join together to conduct business without formally registering their operation. Unregistered ordinary partnerships are taxed as natural persons, but each partner must also separately file their own personal tax return.

**3.3. Registered Ordinary Partnership** - To form a Registered Ordinary Partnership, all particulars including the partnership contract, capital contribution, management and objectives must be submitted to the Ministry of Commerce. Partner profits are subject to taxation, so profits are subject to two levels of taxation.

**3.4. Limited Partnership** - In a limited partnership, the managing partners who are jointly held personally liable for the partnership's debts with other non-managing

partners only liable for the amount of any undelivered or withdrawn capital contribution. Partner profits are subject to taxation, so profits are subject to two levels of taxation.

- 3.5. Private Limited Company** - Basically a corporation, a Private Limited Company must have a minimum of three persons join together to start a business with the capital divided into shares of equal par value. A Private Limited Company is taxed as a juristic entity.
- 3.6. Public Limited Company** - A Public Limited Company is formed in order to offer shares to the general public and must have a minimum of 15 persons join together. A Public Limited Company is a juristic entity and taxed as one. Individual shareholders must pay tax on their earnings, and foreign corporate shareholders pay tax on all dividends.
- 3.7. Joint Venture** - In Thailand, a Joint Venture is not a legal entity under the Civil and Commercial Code. If two parties do enter into an agreement to work together as a Joint Venture, it is valid as long as it conforms to Thai laws. A Joint Venture's income is subject to corporate tax as a single entity.
- 3.8. Branch Office** - A Branch Office does business on behalf of a company based outside Thailand, but only for specific business activities granted by the authority under the Foreign Business Act. A company must bring in a minimum capital of at least 3 million Baht; however, this is the minimum threshold and the actual amount is calculated at 25% of the average per year of three years estimated expenditures. For tax payment, a Branch Office is treated as a juristic person.
- 3.9. Representative Office** - A Representative Office does business on behalf of a company based outside Thailand and must obtain a business license according to the Foreign Business Act. A Representative Office cannot engage in any revenue earning activities in Thailand and pays no taxes. A company must bring in a minimum capital of at least 3 million Baht; however, this is the minimum threshold and the actual amount is calculated at 25% of the average per year of three years estimated expenditures.

#### 4. Taxation

Governed by the Revenue Code, Thailand has Value Added Tax (VAT), Personal Income Tax, and Corporate Income Tax along with customs duty and excise tax, property tax, municipal tax, stamp tax, and sign board tax. Thailand has Double Tax Treaties in force with 55 countries, and seven ASEAN members – Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, and Vietnam – are included in this number. In March 2012, the Thai government approved nine new tax treaties between Thailand and Brunei, Estonia, Ireland, Kenya, Lithuania, Morocco, Papua New Guinea, Tajikistan, and Zimbabwe that will come into effect when the diplomatic procedures are complete. Regarding a Double Tax Treaty between Thailand and Cambodia, in a press release by the Director-General of the Revenue Department in May 2012, he stressed the importance of having a tax treaty between

Thailand and all AEC members and that negotiations with Cambodia would start as soon as possible.

**4.1. Value Added Tax (VAT)** - Value Added Tax (VAT) is a non-cumulative consumption tax levied on all goods and services at a reduced rate of 7% that will return to 10% in 2014. Individuals and businesses that supply goods or services must register as VAT operators except when annual turnover is less than 1.8 million Baht. Some business types are excluded from VAT payment and pay the Specific Business Tax (SBT) that’s 0.1% to 3% of gross receipts.

**4.2. Personal Income Tax** – Personal Income Tax rates apply for tax residents and non-residents. Residents pay tax on all income from sources within Thailand and any foreign income remitted into the country. Non-residents only pay tax on their Thailand income. Individuals living in Thailand for 180 days or more in a year are considered residents. Thailand recently changed its personal income tax rate structure, and for the 2013 and 2014 tax years, all personal income will be taxed at a progressive rate of 5% up to 35% and tax brackets have been expanded from five to seven. Most capital gains are considered income. The standard deduction for a taxpayer is up THB 60,000 plus up to another THB 60,000 for their spouse along with THB 15,000 a child (limited to 3 children), and other qualified donations aggregating to not more than 10% of the net income before tax.

**4.3. Corporate Income Tax** - All juristic persons, entities created or registered according to the law, are subject to Corporate Income Tax. To become more competitive before the 2015 ASEAN Economic Community integration, Thailand dropped its corporate tax rate to 23% on 1 January 2012 and dropped it further to 20% on 1 January 2013. For Thai SMEs with a paid up capital not exceeding Baht 5 million and an income not exceeding Baht 30 million, the first THB 150,000 is exempt and then up to THB 1 million is taxed at 15%. Above THB 1 million comes under normal corporate tax rates.

**Table: Double Tax Elimination Method when Thailand is Eliminating Party**

Eliminating Party: Thailand	Type of Income	Method for Elimination of Double Tax
Indonesia	1. All types of Income under the Tax Treaty. 2. Income that had not been taxed at a reduced rate or exempted from tax in accordance with the provisions of the Agreement and the special incentive laws of the other Country.	1. Ordinary Credit 2. Tax Sparing Credit
Lao PDR	1. All types of Income under the Tax Treaty. 2. Dividend paid by a company which is a resident of Lao PDR to a company which is resident of Thailand and which owns not less than 25% of the shares of the company paying the dividend. 3. Income that had not been taxed at a reduced rate or exempted from Lao tax in accordance with the provisions of the Agreement and the special incentive laws of Lao PDR.	1. Ordinary Credit 2. Ordinary Credit 3. Tax Sparing Credit
	1. All types of Income under the Tax Treaty. 2. Dividend paid by a company which is a resident of Malaysia to	1. Ordinary Credit 2. Ordinary Credit

<b>Malaysia</b>	a company which is resident of Thailand and which owns not less than 15% of the shares of the company paying the dividend. 3. Income that had not been taxed at a reduced rate or exempted from Malaysia tax in accordance with the provisions of the Agreement and the special incentive laws of Malaysia.	3. Tax Sparing Credit
<b>Myanmar</b>	1. All types of Income under the Tax Treaty. 2. Income that had not been taxed at a reduced rate or exempted from Myanmar tax in accordance with the provisions of the Agreement and the special incentive laws of Myanmar.	1. Ordinary Credit 2. Tax Sparing Credit
<b>Philippines</b>	1. All types of Income under the Tax Treaty. 2. Dividend paid by a company which is a resident of the Philippines to a company which is resident of Thailand and which owns not less than 15% of the voting shares of the company paying the dividend. 3. Income that had not been taxed at a reduced rate or exempted from Philippine tax in accordance with the provisions of the Agreement and the special incentive laws of the Philippines.	1. Ordinary Credit 2. Ordinary Credit  3. Tax Sparing Credit
<b>Singapore</b>	1. Dividend paid by a company which is a resident of Singapore to a company which is resident of Thailand and which owns not less than 25% of the voting shares of the company paying the dividend. 2. Other Income	1. Full Exemption  2. Ordinary Credit
<b>Vietnam</b>	1. All types of Income under the Tax Treaty. 2. Income that had not been taxed at a reduced rate or exempted from Vietnamese tax in accordance with the provisions of the Agreement and the special incentive laws of Vietnam.	1. Ordinary Credit 2. Tax Sparing Credit

**CHAPTER 10 - VIETNAM****1. General Information****1.1. Geography**

Vietnam is very mountainous country with dense forests and has very little level land. It covers 331,688 square kilometers, extends 1650 kilometers from north to south, and is bordered by China, the Lao PDR, Cambodia, the Gulf of Thailand, the Gulf of Tonkin, and the South China Sea. Vietnam's combined land boundaries total 4,639 kilometers, and it has 3,444 kilometers of coastline. It has two distinct climates, tropical in the south and monsoonal in the north, and two seasons. In the south, temperatures range from 21°C to 28°C, and in the north, from 5°C to 37°C

**1.2. Government**

Vietnam is a single-party, communist state in which the Communist Party of Vietnam controls all organs of government, politics and society. The General Secretary of the Communist Party sets policy and controls most administrative and executive functions. The President is the titular head of state and the nominal commander-in-chief of the military, and the Prime Minister is the head of government. The National Assembly of Vietnam is the unicameral legislature of the state.

**1.3. Population**

Totaling 91.5 million people, 85% of Vietnam's population is ethnic Kinh (Viet) with another 54 ethnic groups making up the rest, and 80% of the population is not religious. The majority speaks Vietnamese, the official language, and English is a popular second language and studied in most schools. French is still spoken especially by older, educated people. The country's literacy rate is 94%.

**1.4. Economy**

In 1986, the government of Vietnam commenced free market economic reforms that led to their current socialist-oriented market economy. Currently, the economy is dominated by state-owned enterprises that account for 40% of the GDP, and the government is implementing reforms to modernize the economy and produce more competitive export industries. It has one of Asia's most open economies, and its natural resources include phosphates, coal, manganese, rare earth elements, bauxite, chromate, offshore oil and gas deposits, timber, and hydropower. The Vietnam War destroyed most of Vietnam's agricultural sector, but today, the country is the world's largest cashew and black pepper exporter and second largest rice exporter. Agriculture is 22% of the GDP and employs 48% of the population, and industry is 40% of the GDP with 22% employment and the service sector at 37% of the GDP and 30% of its employment. The country's main exports are clothing, shoes, marine products, crude oil, electronics, wooden products, rice, and machinery. Vietnam became an ASEAN member in 1995.

### 1.5. Legal System

Vietnam has a civil law system based on communist legal theory and the French civil law system. Vietnam has a two-tier court system which includes courts of first instance and courts of appeal, and the courts operate in five divisions: criminal, civil, administrative, economic and labor. The Supreme People's Court is the highest court of appeal and review and reports to the National Assembly of Vietnam. Underneath the Supreme People's Court are the Provincial People's Courts and the District People's Courts. The People's Procuracy runs parallel to the court system and exercises the right of prosecution and supervises all judicial activities. It can review cases and dispute judgements and is only accountable to the National Assembly. The Vietnamese Fatherland Front nominates People's Jurors which are then appointed by the National Assembly. People's Jurors are not trained legal professionals and serve for a five-year term. One judge and two jurors make up the usual court structure and decisions are made by majority vote. So, jurors play an essential role in the court system as they have to power to outvote the judge in a trial. In 2005, the National Assembly passed a new Civil Code, Commercial Law, Law on Investment, and Law on Enterprises. Under the Civil Code, contract law was reformed and now all contracts are civil contracts subject to uniform rules, and all commercial contracts between businesses are regulated by the Commercial Law. Alternate dispute resolution practices are a significant part of the country's legal system and for civil, labor, family, and marriage litigation, mediation is mandatory. Arbitration is available for commercial cases, and Vietnam is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and foreign and domestic arbitral awards are legally enforceable in Vietnam.

### 1.6. Environment for Foreigners

There are an increasing number of foreigners living and working in Vietnam as they appreciate the weather, low cost of living, interesting culture and continued improvements to the country's infrastructure. All foreigners wishing to live or work in Vietnam must comply with the country's immigration and work-permit regulations. English is commonly spoken, and Vietnam is a member state of the Organisation Internationale de la Francophonie, so French is also widely spoken and understood. Quality housing, health care, foreign schools, and food, sports and recreation facilities are also available.

**1.6.1. Visas** - All visitors to Vietnam need a visa; however; most ASEAN nationalities can enter visa free for up to 30 days. Visitors can obtain a 30-day tourist visa from a Vietnam embassy or apply for a visa-on-arrival online. Different types of business visas are available for foreigners working in Vietnam.

**1.6.2. Work Permits** - After a foreigner acquires a business visa to work, the employer must apply for a work permit at their local Department of Labor, War Invalid & Social Affairs. Foreigners cannot start working until the application is approved and considered legal.

### 2. Investment Environment

#### 2.1. Economic Growth

Currently, Vietnam's state-owned enterprises produce about 40% of its GDP; however, the government is committed to modernizing the economy and producing more competitive export-driven industries. Vietnam joined the World Trade Organization in 2007 and was an official negotiating partner in the Trans-Pacific Partnership trade agreement in 2010. Vietnam's current labor force is 48.2 million and expanding at a rate of over one million people a year. The global recession hurt Vietnam's export-oriented economy and, while exports increased by 33% in 2011, the country suffered from high inflation rates which reached 23% in August 2011 and averaged 18% for the year. To combat this, in February 2011, Vietnam shifted its focus from economic growth and is now concentrating on stabilizing its economy.

#### 2.2. Openness to Investment and Incentives

Foreign investment in Vietnam is encouraged and governed by the Investment Law of 2005. The Foreign Investment Agency (FIA) is part of the Ministry of Planning and Investment and manages foreign direct investment activities in Vietnam. Investment incentives are available in strategic sectors that include the production of new materials or new energy, high-tech, bio-technology or info-technology products, manufactured mechanical products, the cultivation and processing of agricultural products, and infrastructure construction and development, and any business that will employ large numbers of Vietnamese. Located in its key economic zones, Vietnam has 267 industrial zones (IZs) and export processing zones (EPZs). Projects in these zones are eligible for incentives and pay no duties on raw materials until the finished products are exported.

#### 2.3. Banking and Foreign Exchange

Vietnam's banking sector has two tiers. The first tier, the State Bank of Vietnam (SBV), is responsible for setting monetary policy and supervising and regulating the banking system. The second tier includes commercial banks, financial companies, credit cooperatives, people's credit funds, and insurance companies. Foreign exchange is controlled by the government through the Ministry of Planning and Investment and the Ministry of Finance with the State Bank of Vietnam implementing it. The Government actively channels foreign currency inflows while strictly monitoring outflows to keep an international balance.

#### 2.4. Intellectual Property Protection

Under the 2005 Civil Code and the Intellectual Property Law of 2006, the National Office of Intellectual Property and the National Copyright Office govern Vietnam's IP rights system and offers IP protection for trademarks, copyrights, patents, utility solutions, and industrial designs. Vietnam is part of the Berne Convention since 2004, the Madrid Protocol since 2006, the Paris Convention since 1949, and the Patent Cooperation Treaty since 1993. Vietnam has one of the highest piracy rates in the world, and while they are

establishing a legal framework, enforcement is inconsistent and weak. There are no specialized IP courts, and the judiciary's IP knowledge is poor.

### 2.5. Labor

The Labor Code of 1994 is the legal base for all labor matters in Vietnam, applies to domestic and foreign companies, and covers all employer/employee rights and obligations. It allows for foreign capital enterprises to do direct recruitment, for employees to strike against employers, and for representatives of both employers and employees in a foreign capital enterprise to negotiate and sign a collective agreement.

## 3. Types of Business Organizations

**3.1. Private Enterprise** - A private enterprise is not considered a legal person, and the owner is financially liable for its debts.

**3.2. Partnership** - A partnership can have general and limited partners. General partners are financially liable for all the debts and other liabilities of the business with all of their assets. Limited partners are financially liable for the debts of the partnership to the extent of the capital they contribute. A partnership is not permitted to issue shares.

**3.3. Limited Liability Company** - A Limited Liability Company can either be a Single Member LLC or a Multiple Member LLC and has legal person status. Members of a limited liability company are responsible for the debts and other liabilities of the enterprise within the amount of capital that they committed to contribute to the enterprise. It cannot issue shares.

**3.4. Joint Stock Company** - In a Joint Stock Company, the charter capital is divided into shares; it must have common shares and may have preferred shares, and held by three or more organizations or individuals who must hold at least 20% of the common shares. A recognized legal entity, a JSC can issue securities to raise capital and list itself on the Securities Exchange. Shareholders can be Vietnamese or foreign.

**3.5. Business Cooperation Contract (BCC)** - A Business Cooperation Contract is a contractual relationship, is not a new legal entity, and can only engage in business activities for a specific project in Vietnam.

**3.6. Build-Operate-Transfer (BOT), Build-Transfer-Operate (BTO) and Build Transfer (BT) Contracts** – These contracts are usually between an investor who constructs an infrastructure project in contract with the State.

**3.7. Public-Private Partnership (PPP)** - A Public-Private Partnership is an improvement of the Build-Operate-Transfer concept and is only allowed in limited infrastructure areas. In a PPP, in contract with a State body, an investor either implements an infrastructure development project or provides public services.

- 3.8. Joint Venture Company (JVC)** - Presently, Vietnam's Enterprise Law does not include a Joint Venture Company as a form of enterprise. While allowed in the past, if a JVC did not re-register as an LLC before June 2011, it lost the ability to expand its scope of business and extend its term of operation.
- 3.9. Enterprise with 100% Foreign-owned Capital (EFOC)** - Presently, Vietnam's Enterprise Law does not include an EFOC as a form of enterprise, and the investors in an existing EFOC needed to re-register as an LLC before June 2011.
- 3.10. Branch Office** - Vietnam has a very restrictive list of business types that can apply to be a Branch Office. In practice, it only allows foreign law firms and banks to do so.
- 3.11. Representative Office** - A foreign party can establish a Representative Office to engage in market research, soft marketing and liaison duties with the head office abroad. It is not a legal entity and cannot engage in profit-making activity or receive revenue.
- 3.12. Foreign Contractor** - A Foreign Contractor is a foreign business organization with or without a permanent establishment in Vietnam or a foreign business individual whether resident or non-resident of Vietnam that conducts business in Vietnam or has income derived from Vietnam. No legal entity is established for foreign contractors.

#### 4. Taxation

Regulated under the 2006 Law on Tax Administration, Vietnam has Value Added Tax, Personal Income Tax, Corporate Income Tax, Foreign Contractor Tax, along with special sales tax, withholding tax and import/export tax. Vietnam has Double Taxation Agreements with 54 countries.

- 4.1. Value Added Tax (VAT)** – A 10% Value Added Tax (VAT) is levied most goods and services except on exported goods and services and on many agricultural products.
- 4.2. Personal Income Tax** - There are different Personal Income Tax rates for tax residents and non-residents in Vietnam. Non-residents pay a flat 20% rate on their Vietnam income. After deductions, tax residents pay a progressive rate of up to 35% on their worldwide taxable income.
- 4.3. Corporate Income Tax** - The standard Corporate Income Tax rate is 25% with rates from 32% to 50% for businesses in the oil and gas industry.
- 4.4. Foreign Contractor Tax** - Foreign companies and individuals doing business in Vietnam or having income in Vietnam are liable for the Foreign Contractor Tax and also pay the same taxes as local enterprises. This can be a very complex issue, but the government recently promulgated Circular 60 to make things clearer.