

Identifying actions and technical assistance to improve investment facilitation in Cambodia

for the

ASEAN-Australia New Zealand Free Trade Area (AANZFTA)
Economic Cooperation Work Program (ECWP)

Investment Facilitation and Technical Assistance for Newer ASEAN Members
(AANZ-0018-INV-02)

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Proposed Actions & Technical Assistance

This report makes recommendations for improving investment facilitation processes in Cambodia. These recommendations, in the form of proposed actions and technical assistance activities to support them, are set out as an **implementation plan** in Annex A and summarised in the tables below.

The report reviews four processes in Cambodia: **approving foreign investment, registering a business, issuing a specific business licence, and issuing a construction permit**. It is based on desk research and two in-country visits to consult with officials and businesses.

The clear message from business during the first visit was one of overall satisfaction with existing processes in Cambodia for approving foreign investment and registering a foreign business, recognising some inevitable constraints in certain instances.

The Council for the Development of Cambodia (CDC) Qualified Investment Project (QIP) process is operating satisfactorily: CDC advises that investment approval applications are processed within the statutory 28 days. Therefore, **no recommendations are made in respect of CDC processes**.

Investors applying through the Ministry of Commerce (MOC) advise they can face delays registering a new business and could benefit from access to further information about what is required. MOC is in the midst of revising aspects of these procedures. Further improvements to existing processes were identified by officials.

These conclusions and recommendations for technical assistance were finalised following consultations with Cambodian officials during a second visit to Phnom Penh.

Summary of proposed actions & recommended technical assistance

Registering a foreign business (Relevant agencies: MOC, MOEF, MLVT)

| Proposed actions | Recommended technical assistance |
|--|---|
| <ul style="list-style-type: none"> Integrate existing internal IT systems within MOC to improve efficiency. | <ul style="list-style-type: none"> Conduct an IT needs analysis for MOC Department of Business Registration to review existing database information systems and provide recommendations. |
| <ul style="list-style-type: none"> Improve capacity of officials to interpret and apply relevant laws and how these laws operate together. | <ul style="list-style-type: none"> Deploy an expert to design a training program on how to interpret and apply relevant laws. |
| <ul style="list-style-type: none"> Work with locally-based professional services firms to ensure they are well informed on procedures for registering a business. | <ul style="list-style-type: none"> Deploy an expert to assist with the development of a program to train officials to design and implement regular information sessions with professional services firms on business registration processes. |
| <ul style="list-style-type: none"> Improve information for investors through the MOC website by: <ul style="list-style-type: none"> Developing a more user-friendly website and updating content; | <ul style="list-style-type: none"> Deploy a technical expert to MOC to advise the Statistics Department (who manage information dissemination) on options to improve provision of online information to investors on |

| | |
|---|---|
| <ul style="list-style-type: none"> - Ensuring application forms are prominent and available in English; - Ensuring relevant laws and regulations relating to investment and business registration are available in English. | <ul style="list-style-type: none"> requirements for registering a business. ▪ Provide funds to translate relevant documents into English. |
|---|---|

Issuing a business licence (Relevant agencies: MIME)

| Proposed actions | Recommended technical assistance |
|---|---|
| <ul style="list-style-type: none"> ▪ Improve capacity of officials to interpret and apply relevant laws and how these laws operate together. ▪ Work with locally-based professional services firms to ensure they are well informed on procedures for issuing a business licence. | <ul style="list-style-type: none"> ▪ Deploy an expert to design a training program on how to interpret and apply relevant laws. ▪ Deploy an expert to train officials on how to liaise with local professional services firms. |
| <ul style="list-style-type: none"> ▪ Improve information for investors through the MIME website by: <ul style="list-style-type: none"> - Developing a more user-friendly website and updating content; - Ensuring application forms are prominent and available in English; - Ensuring relevant laws and regulations relating to investment and business licensing are available in English. | <ul style="list-style-type: none"> ▪ Deploy a communications expert to develop a program for provision of relevant documents to investors, including translation, and creation of an online platform. ▪ Provide funds to translate relevant documents into English. |

Issuing a construction permit (Relevant agencies: MLMUPC)

| Proposed actions | Recommended technical assistance |
|--|---|
| <ul style="list-style-type: none"> ▪ Improve capacity of officials to interpret and apply relevant laws and how these laws operate together. ▪ Work with locally-based professional services firms to ensure they are well informed on procedures for issuing a construction permit. | <ul style="list-style-type: none"> ▪ Deploy an expert to design a training program on the application of existing processes to issue a construction permit. ▪ Deploy an expert to train officials on how to liaise with local professional services firms. |
| <ul style="list-style-type: none"> ▪ Improve information for investors through the MLMUPC website. <ul style="list-style-type: none"> - Developing a more user-friendly website and updating content; - Ensuring application forms are prominent and available in English; - Ensuring relevant laws and regulations relating to investment and construction permits are available in English. | <ul style="list-style-type: none"> ▪ Deploy a communications expert to develop a program for provision of relevant documents to investors, including translation, and creation of an online platform. ▪ Provide funds to translate relevant documents into English. |

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Abbreviations

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|---------|---|
| AANZFTA | ASEAN-Australia-New Zealand Free Trade Agreement |
| APEC | Asia-Pacific Economic Cooperation |
| ASEAN | Association of Southeast Asian Nations |
| ASEC | ASEAN Secretariat |
| CDC | The Council for the Development of Cambodia |
| CRC | Conditional Registration Certificate |
| CSEZB | Cambodia Special Economic Zone Board |
| DBR | Department of Business Registration |
| DLMUPC | Department of Land Management, Urban Planning and Construction |
| ECWP | Economic Co-operation Work Programme |
| FRC | Final Registration Certificate |
| JICA | Japan International Cooperation Agency |
| MIME | Ministry of Industry, Mining and Energy |
| MLMUPC | Ministry of Land Management, Urban Planning and Construction |
| MLVT | Ministry of Labour and Vocational Training |
| MOC | Ministry of Commerce |
| MOE | Ministry of Environment |
| MOEF | Ministry of Economy and Finance |
| MOL | Ministry of Labour |
| PDLMUPC | Provincial Department of Land Management, Urban Planning and Construction |
| OSS | One Stop Shop |
| QIP | Qualified Investment Project |
| VAT | Value Added Tax |

1. Introduction

1.1 The project

The project on Investment Facilitation and Technical Assistance for Newer ASEAN Members, First Phase (Cambodia and Lao PDR) (AANZ-0018-INV-02), is part of the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) Economic Cooperation Work Program (ECWP), approved under the ECWP's investment program. It was endorsed by the AANZFTA Joint Committee in September 2011.

The ASEAN Secretariat requires a review of investment facilitation processes in Cambodia and Lao PDR and seeks recommendations – in the form of an “implementation plan” – that can form the basis of a new technical assistance program for these countries. The program aims to assist newer ASEAN members improve regulatory processes relating to approving foreign investment, registering a business, issuing a specific business licence, and issuing a construction permit. It is intended that this will help facilitate foreign direct investment.

The project methodology involved:

1. Obtaining ASEAN-wide buy-in for the project and agreement on principles of investment facilitation;
2. Desk research of existing investment facilitation processes in Cambodia and Lao PDR to understand existing processes and to begin to identify possible areas for improvement; and
3. In-country consultations with government and business to supplement desk research and to confirm findings and recommendations (proposed actions and recommended technical assistance).

1.2 What is investment facilitation?

A key objective of the ECWP is to assist newer ASEAN members in their efforts to facilitate inward investment and further improve business registration and licensing processes. To make best use of foreign investment governments should have investment procedures in place that do not unnecessarily increase the costs or risk of doing business, or constrain business competition.

Investment facilitation refers to government efforts to attract foreign investment and administer it efficiently through all stages of the investment cycle. Stated simply, investment facilitation aims to make it easier to invest and do business in the country in question.

Investment facilitation is not new to the newer ASEAN members and considerable progress has been made in this area over the last decade. Section 2 summarises this for Cambodia.

Transparency, simplicity and predictability are among the most important objectives of investment facilitation. Investment policies adhering to these objectives will help ensure investment applications are dealt with expeditiously and fairly. Business set-up requirements and administrative procedures should be efficient (e.g. as little ‘red tape’ as possible) and effective. Applying these objectives to investment approval, business registration, and licensing

processes amongst newer ASEAN members suggests three aims for government:

- Transparency of investment-related laws and policies;
- Simplifying business regulation; and
- Reducing investor risk.¹

The project examines these aims in relation to four processes:

1. Approving foreign investment; and
2. Registering a foreign business;
3. Issuing a business licence; and
4. Issuing a construction permit.

1.3 Regional Forum

A Regional Forum for ASEAN Member States was organised to discuss existing investment facilitation processes, share experiences of best practices in these areas and build support for the project. The Consultant presented a desk review of current practices to the Regional Forum which drew on earlier reports by multilateral organisations.

The Regional Forum produced broad consensus on a series of 'investment facilitation best practice principles'. These were presented to the AANZFTA Committee on Investment in May 2012. The principles are set out in Annex C and included in the implementation plan.

1.4 Consultation visits to Cambodia

Analysis of investment facilitation processes in this report is based on desk research and two visits to Phnom Penh to consult with officials and businesses.

The first consultation visit, conducted in June 2012, was used to seek further information on the four abovementioned processes from government officials and to hear views from the private sector on the operation of these four processes. A workshop was conducted for 43 officials from six ministries, and meetings were held with six companies operating in Cambodia (Annex B has further details).

Following the visit, a draft framework paper and draft implementation plan for Cambodia was prepared and, after discussion with ASEC, circulated to Cambodian officials.

The Consultant conducted a second consultation visit to Phnom Penh in February 2013. This visit sought comments on the report and implementation plan from key stakeholders, then their endorsement of the report following consultations. A group consultation workshop with 45 officials revealed the draft report had been well received by key officials in CDC. Questionnaires were used to obtain feedback from officials.

¹ These themes have been highlighted in APEC.

Specifically, the second consultation visit was used to:

1. Confirm flowcharts for existing processes and **identified areas for improvement ('problems')** that foreign investors concur (see section 3 of this report)
2. Review **proposed actions** to address these problems (section 3); and
3. Review **technical assistance** recommendations (section 4) that can guide future investment facilitation work in Cambodia.

Findings and proposed areas for action in this report have been discussed with officials and their feedback is documented in sections 3 and 4.

The report and the accompanying implementation plan in Annex A have been finalised through consultation with focal points, Mr Youn Heng, Director of Project Evaluation and Incentives Department, Council for the Development of Cambodia and Mr Suon Sophal, Deputy Director, Department of Public Relations and Investment Promotion, Council for the Development of Cambodia. The depiction of the decision-making chain in the Ministry of Commerce (MOC) was approved by the Senior Minister, Minister of Ministry of Commerce.

2. Regulatory environment for foreign investment in Cambodia

Cambodia has carried out a successful program of legislative and institutional reform over the past decade to strengthen its domestic investment climate and create pro-business investment entry and establishment processes. The Cambodian Government encourages investment and supports a market-driven approach to investment through a direct and open process.

At the centre of this institutional framework is the Council for the Development of Cambodia (CDC), an executive agency of the government created under the 1994 Law on Foreign Investment. The CDC oversees approval of investment projects eligible for investment incentives such as profit tax exemptions or special depreciation and import duty exemptions ('Qualified Investment Projects').² A conditional registration certificate (CRC) is issued within 28 days. A further 3 days is required to issue the investment licence (final registration certification or FRC). An FRC is automatically granted after 31 days if it has not already been issued.

To start a foreign business in Cambodia, investors can incorporate a business entity in Cambodia through registration with the MOC.³ If an investor is also seeking incentives through the CDC licensing process, this can be done after registration with MOC; otherwise the CDC One Stop Shop (OSS) will coordinate all requirements, including incentives and registration with MOC. Foreign businesses preferring to establish a branch office or representative office will register with MOC as these forms of establishment are not available through the CDC process.

In addition to registration with the MOC or the CDC, a number of approvals, permits and licences are required specific to the sector in question. For example, domestic and foreign investors may require an Operating Licence. This licence may be conditional on approvals from the Ministry of Economy and Finance (MOEF), Ministry of Labour (MOL), Ministry of Environment (MOE), and Ministry of Industry Mines and Energy (MIME).

A Construction Permit may also be needed. The CDC OSS will coordinate issuing this permit for a prospective investor, but the MOC does not offer this service to would-be investors.

² The Qualified Investment Projects (QIP) regime is governed by the 2003 Law on the Amendment to the Law on Investment. The 2003 Law updated the 1994 Law on Investment and simplified the CDC registration process.

³ Incorporation of a company is governed by the 2005 Law on Commercial Enterprises and earlier laws from 1999 and 1995.

3. Actions to improve processes for foreign investment

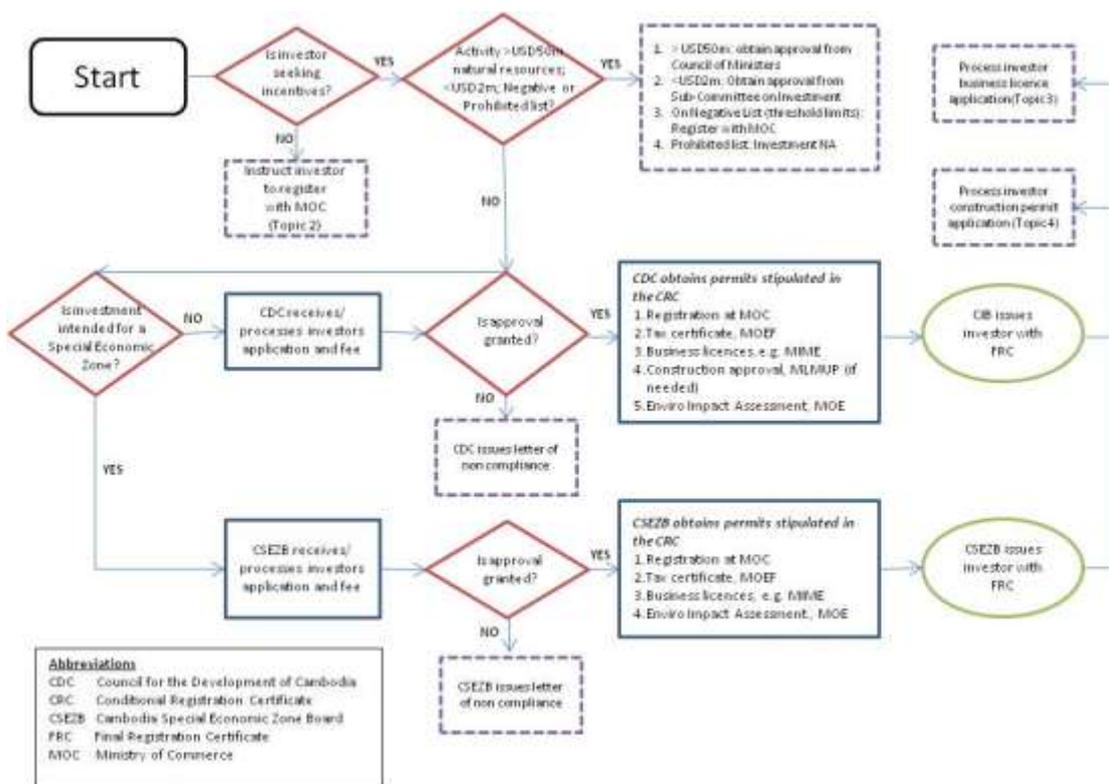
For each process – approving foreign investment (with incentives), registering a foreign business, issuing a business licence, and issuing a construction permit – problems faced by foreign investors in the form of impediments to the efficient operation of processes were identified. Suggested actions for government to address these problems and improve processes were developed.

3.1 Approving foreign investment (with incentives)

Figure 3.1 maps the process for CDC investment approval. Consultations revealed a high level of satisfaction with the CDC investment approval process for the QIP investments. ‘Investment approval’ is not required for non-QIP related investments.

There are ongoing programs in Cambodia to further improve investor servicing, particularly in the CDC.⁴ No areas for further action were identified for Cambodia for this process.

Figure 3.1, Approving foreign investment



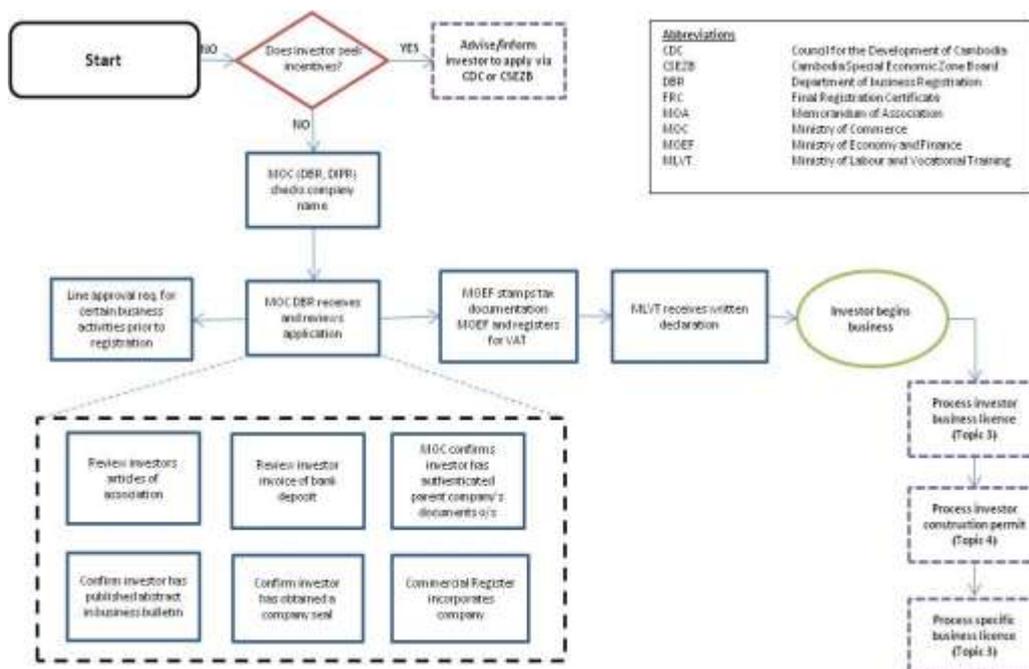
Source: ITS Global

⁴ For example, the Project on Enhancing the Investment-related Service of CDC, a joint CDC-JICA project. <http://www.cambodiainvestment.gov.kh/the-project-on-enhancing-the-investment-related-service-of-council-for-the-development-of-cambodia-has-launched.html>

3.2 Registering a foreign business

Incorporating a foreign business through commercial registration with the MOC is typically completed in less than two weeks. Following consultation with MOC, the Senior Minister, Minister of Ministry of Commerce has signed off on the process shown in Figure 3.2.

Figure 3.2 Registering a foreign business



Source: ITS Global

This Figure also shows that in addition to steps and approvals required within MOC for a business to be registered, certain more sensitive business activities (gambling, radio or television broadcasting, etc.) may require approval from the responsible agency before a business can be registered. The order in which these approvals and licences must be obtained varies from investment to investment.

Consultations and research revealed several aspects of this process that could be improved. The second round of consultations asked whether ministries agreed with the problems identified and suggested actions to address them. The range of opinions is recorded below.

Problem 1: Starting a new business requires too many steps for the investor; this can be a deterrent.

Business registration processes through the Ministry of Commerce should be straight forward and well coordinated. However, the MOC does not have a One Stop Shop service playing a coordinating role in the MOC's interactions with other agencies similar to that played by the CDC. Investors must therefore deal with multiple agencies to complete all the steps required to register a business.

Figure 3.1 shows the steps an investor must complete to register and start a foreign business in Cambodia. A more coordinated approach could ensure some

steps are conducted in parallel. Where these steps are undertaken as part of a Qualified Investment Project (QIP), the CDC OSS coordinates their completion. For non-QIP projects registered through the MOC, there is no central coordination of these steps and they are undertaken by the investor applicant.

This identified problem was discussed with officials during the second round of consultations. Respondents were mixed in their assessment of whether the number of steps for investors to register a business was in fact a problem. Some agreed or highly agreed, but more respondents disagreed.

Proposed action 1: Introduce a One-Stop Shop service in MOC to coordinate steps on behalf of investors and improve workflow

An option for introducing an MOC OSS was presented to officials for consideration during the second round of consultations. The question was posed: could an OSS within MOC simplify the process for investor applicants and significantly reduce the time taken to start a foreign business. This could make it easier for investors not applying for a QIP through the CDC to incorporate with MOC and attain necessary approval and licences from other MOC departments and agencies outside MOC.

Some feedback from officials and businesses suggested the MOC registration process could be improved by more closely replicating the level of service investors receive when dealing with the CDC.

However, MOC officials also noted that introducing an OSS service in MOC would require the endorsement of senior ministers. Officials were apprehensive about being able to obtain the necessary support for this initiative. It was noted by MOC officials that CDC – which has an OSS – is overseen by the Prime Minister.

CDC representatives were open to the idea, however acknowledged they would not be directly affected as it relates to non-QIP projects. Other ministries did not support this option.

It was clear to the Consultant that aggregation of functions among existing agencies into one agency required significant changes to machinery of government that could only be achieved by executive action by government central agencies. Addressing questions such as this were outside the scope of the brief for this assignment.

Therefore, introducing an OSS in MOC is **not proposed**. No technical assistance activities are recommended in section 4 of the report.

Problem 2: Process delays can add to the time it takes to register a company.

MOC advises it typically takes around two weeks to complete the steps outlined in Figure 3.2.

Delays to these processes are defined as occurring where they are not concluded within time limits prescribed in regulations and policy documents.

Officials have advised that process delays for starting a foreign business commonly add to the two weeks. Research suggests delays in registering a business are greatest for:

- incorporating the company with the Commercial Register at the Commercial Court; and
- registering the company for VAT.

Again, respondents were mixed in their assessment of whether process delays added to the time taken to register a company, though slightly more agreed this was a problem than disagreed.

Proposed action 2: Integrate existing internal IT systems within MOC to improve efficiency.

Consultation with MOC officials revealed that the Business Registration Department stores information on registered businesses in three legacy databases. These should be integrated and updated to allow for more efficient searching of files. A more detailed specification of the Department's requirements could be a useful next step.

Proposed action 3: Increase the number of staff in relevant ministries to help improve workflow of registering a business.

Desk research and the first round of consultations revealed that approval of licences in MOC's Business Registration Department is slowed by human resource constraints. However, during the second round of consultations the Business Registration Department did not raise any concerns about staffing levels.

Feedback from the Ministry of Labour and Vocational Training during the second round of consultations was that they identify a need for more staff.

Overall, the conclusion is that there was insufficient support for this proposal and **no further action is recommended.**

Proposed action 4: Increase the number of staff with authority to approve registration of business.

Improving the workflow of steps relating to business registration could also involve increasing the number of decision points – that is, the number of officials who can issue an approval – for steps in the business registration process.

MLVT representatives agreed this could improve the efficiency of their work, however this proposal was not supported by other ministries involved in business registration. **No further action is proposed.**

Proposed action 5: Improve capacity of officials to interpret and apply relevant laws and how these laws operate together.

Officials support further education efforts to improve the capacity of government officials to understand, interpret and apply the law. All respondents during the second round of consultations either highly agreed or agreed with this suggested action.

This requires a systematic approach to training those officials required to interpret and apply laws affecting foreign investors.

Problem 3: Insufficient information is readily available for investors looking to register a non-QIP investment through the MOC.

Making information about registering a new business readily available to investors is an important element of a country's investment facilitation efforts.

Research and consultation for this study revealed that information can be more efficiently provided by MOC to investors (the Statistics Department is responsible for website), including documentation and forms and laws, regulations and policy documents.

MOC officials during the first round of consultations recognised the benefits of such enhancements and were interested in doing more, but did not have funding for this. Most respondents in the second round of consultations agreed there is insufficient information readily available on registering non-QIP investments.

Proposed action 6: Work with locally-based professional services firms to ensure they are well informed on procedures for registering a business.

Regular meetings and briefings with professional services firms in Cambodia – including lawyers, business consultants and accountants – could be a cost-effective means of improving the quality of information accessed by prospective investors. This suggested action received widespread support during consultations and no-one opposed the idea.

Consultations have confirmed the Cambodian Government has a good relationship with business and an effective process of interacting and working with business to resolve issues. This government-business relationship could be leveraged to ensure professional services firms have access to current information about registering a company and starting a new business.

MOC plans to hold a workshop for businesses to explain changes to the 'Checking company name' process.

A workshop for professional services firms providing up to date information from all involved ministries on all steps of the business registration is suggested.

Proposed action 7: Improve information for investors through the MOC website

The Ministry of Commerce should improve information on how to register a new business by addressing the shortcomings listed above through three key activities:

- developing a more user-friendly MOC website with up-to-date information about how to start a foreign business to guide investors through the MOC processes

(one option would be for websites for the CDC and MOC approval and registration processes to be integrated or co-located);
- making application forms for company registration available in English and prominent on the MOC website; and
- ensuring relevant laws and regulations relating to foreign investment and business registration are available in English.

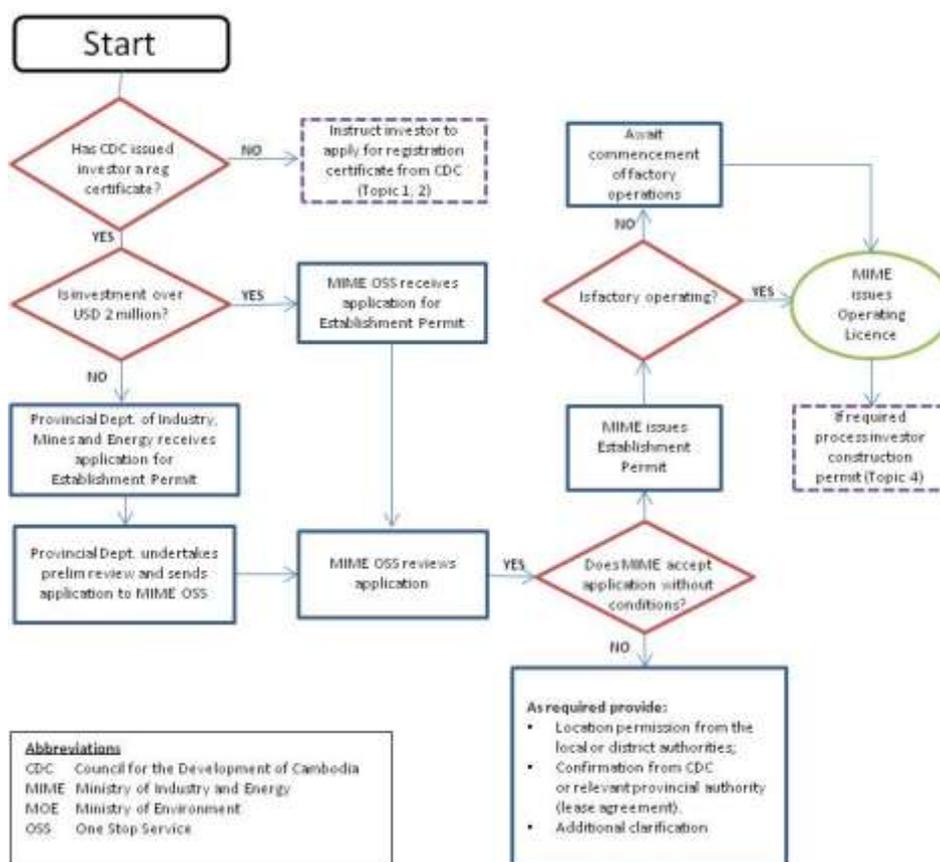
There was a high degree of support during the second round of consultations for improving information for investors through the MOC website. The MOC Statistics Department is responsible for providing information on business registration processes.

3.3 Issuing a specific business licence

After issuing foreign investors with investment approval (for QIP projects) and having registered a new company with the MOC, relevant ministries issue investors with a business licence specific to the industry in which they intend to operate.

For investors in garment manufacturing (to take one example), the Ministry of Industry Mines and Energy issues an Operating Licence. This process is detailed in Figure 3.3, below.⁵

Figure 3.3 Issuing an Operating Licence



Source: ITS Global

For QIP investors, the CDC coordinates for the investor the process of applying for and being issued with an Operating Licence as part of its OSS service. For non-QIP investors, the Operating Licence is separate to the company registration process and is not issued as part of the company registration process.

Figure 3.3 shows the steps that are completed before issuing an Operating Licence.⁶ Four permits or approvals may be required as prerequisites for an Operating Licence:

⁵ Garment manufacturing has been selected as a sector that is important across the four countries covered by this study: Cambodia, Lao PDR, Myanmar and Viet Nam.

⁶ New businesses in other sectors may require mining licences, agriculture licences and concessions, major construction permits, licences for tourism-sector investments, etc.

- an establishment permit (MIME, Prakas No. 607);
- a location permission (local authorities);
- an environmental impact evaluation (Ministry of Environment); and
- confirmation from CDC or provincial authority.

Once these are issued to the investor, factory construction begins. On completion of the construction phase, MIME issues an Operating Licence.

Consultations and research revealed several aspects of this process that could be improved.

Problem 1: Process delays in issuing an Operating Licence.

It was noted during initial consultations that there can be delays in the MIME OSS issuing investors outside the QIP process with an Operating Licence, though no elaboration as to the cause of delays was given. At the second round of consultations MIME strongly agreed with the need to reduce the time taken for approval of Operating Licences.

Several options for reducing delays in issuing a business licence were explored with officials. An MOC OSS to better coordinate with MIME was not supported and feedback from MIME officials indicated no additional resources were thought necessary.

Proposed action 1: Improve capacity of officials to interpret and apply relevant laws and how these laws operate together.

Officials strongly support further education efforts to improve the capacity of government officials to understand, interpret and apply the law. This requires a systematic approach to training those officials required to interpret and apply laws affecting foreign investors.

A training program on legal interpretation could be designed to train officials in MIME and other agencies responsible for issuing a business licence on how to interpret and apply relevant laws.

Problem 2: Insufficient information is available for investors applying for an Operating Licence through MIME.

It is apparent from consultations and research that inadequate information is made available by MIME to investors wanting to start a new business in the garment manufacturing sector.

MIME does not offer investors a clear picture of what must be done to obtain a business licence and what other permits are required. Investors rely on information from professional services firms, or from visits to the Ministry.

At the second round of consultations, MIME noted that the ministry has all relevant information for investors but highly agreed with the need to improve information available through the MIME website.

Proposed action 2: Work with locally-based professional services firms to ensure they are well informed on procedures for issuing a business licence.

As for registering a business, regular meetings and briefings with professional services firms in Cambodia – including lawyers, business consultants and accountants – about the issuing of business licences could be a cost-effective means of improving the quality of information accessed by prospective investors. Consultations revealed support for this suggested action.

Proposed action 3: Improve information for investors through the MIME website.

Update the online presence for MIME by:

- Developing a more user-friendly website for foreign investors and updating information available through the website;
- Making application forms available on the website in English and ensure they can be easily found from the homepage;
- Making relevant laws and regulations relating to investment and business registration available in English.
- Links from the CDC website to information about requirements for obtaining an Operating Licence.

As reported above, MIME strongly supported this suggested action during consultations.

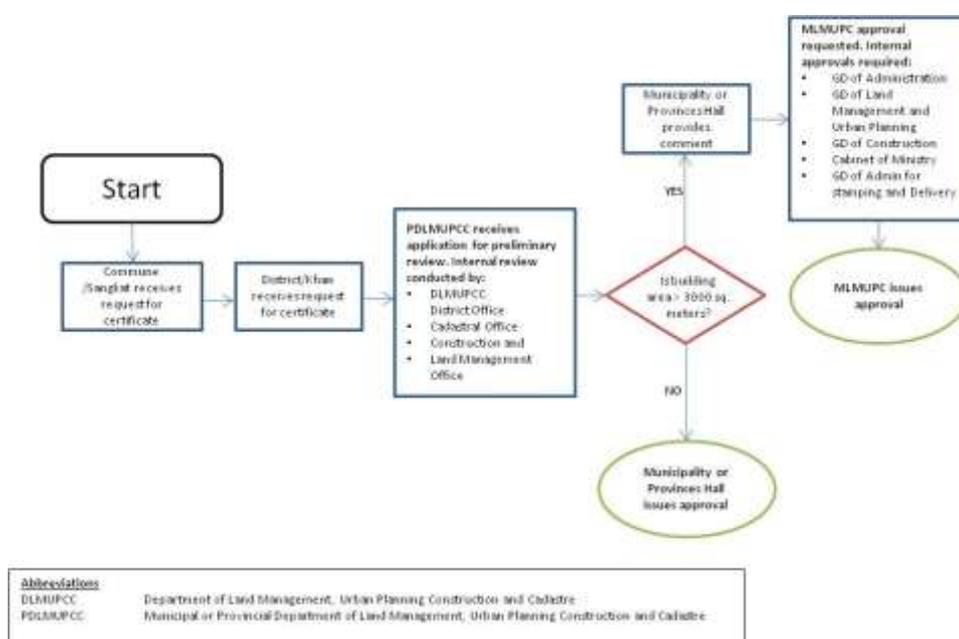
3.4 Dealing with construction permits

In most countries construction permits are issued to businesses planning to build work premises such as a warehouse or factory facility. Some governments issue construction permits to foreign investors planning a new business during the investment approval process. This is the scenario for QIP investment activities in Cambodia.

For other (non-QIP) investments, construction permits are issued by the Municipal or Provincial Department of Land Management, Urban Planning, Construction and Cadastre. Figure 3.4 details this process.

Issuing a construction permit involves filing documents with the Sangkat, the Khan and the Ministry of Land Management Urban Planning and Construction (MLMUPC). Within the Ministry, internal review is carried out by multiple offices.

Figure 3.4 Issuing a construction permit



Source: ITS Global

Problem 1: There is a need to improve quality of approval process.

Consultations revealed that approval of licences in some departments is slowed by human resource constraints. Feedback from officials differed across the two in-country visits. During the first consultation it was revealed that the time to process the construction permit for small premises (<3000 sq. m) and large premises (>3000 sq. m) was not meeting the performance standards prescribed in the relevant regulation. No further details were offered about existing resources or where bottlenecks occur.

However, during the second consultation, officials noted that the timeframe for issuing construction permits was “always respected”.

Proposed action 1: Improve capacity of officials to interpret and apply relevant laws and how these laws operate together.

Respondents at the second consultation indicated support for further education efforts to improve the capacity of government officials to understand, interpret and apply the law. This requires a systematic approach to training those officials required to interpret and apply laws affecting foreign investors.

MLMUPC staff could be included in a training program on how to interpret the laws to develop a greater capacity to apply those laws.

Proposed action 2: Work with locally-based professional services firms to ensure they are well informed on procedures for issuing a business licence.

Regular meetings and briefings with professional services firms in Cambodia – including lawyers, business consultants and accountants – about the issuing of construction permits could be a cost-effective means of improving the quality of information accessed by prospective investors not using the QIP process through CDC. Consultations revealed support for this suggested action.

Proposed action 3: Improve information for investors through the MLMUPC website.

Update the online presence for MLMUPC by:

- Developing a more user-friendly website for foreign investors and updating information available through the website;
- Making application forms available on the website in English and ensure they can be easily found from the homepage;
- Making relevant laws and regulations relating to investment and business registration available in English.
- Links from the CDC website to information about requirements for obtaining a construction permit.

Consultations revealed support for this proposed action.

4. Recommended technical assistance

Recommended technical assistance activities are presented for registering a foreign business; issuing a specific business licence; and issuing construction permits. Foreign investment approval through CDC is operating satisfactory.

4.1 Registering a foreign business

Technical assistance 1: Conduct an IT needs analysis for MOC Department of Business Registration to review existing database information systems and provide recommendations.

The Department of Business registration files and tracks company registration using three legacy database systems. MOC officials indicated that the current IT architecture impinges on workflow and that improved IT systems could streamline business registration workflow in the Department.

A technical expert could be deployed to advise on replacing the three databases with a single database.

Technical assistance 2: Deploy an expert to design a training program on how to interpret and apply relevant laws.

A training program for officials on how to interpret and apply laws affecting foreign investors received strong support from officials during consultations. This would involve training officials in MOC and other agencies on the content and impact of the laws.

Technical assistance 3: Deploy an expert to assist with the development of a program to **train officials to design and implement regular information sessions** with professional services firms on business registration processes.

There was agreement by officials during consultations about the need to work with professional services firms to ensure they have an up-to-date understanding of regulation and policy as it affects business registration.

Technical assistance 4: Deploy a technical expert to MOC to advise the Statistics Department on options to improve provision of online information to investors on requirements for registering a business.

Consultations revealed broad agreement that current information available from the MOC about registering a business is limited.

MOC officials offered in principle support for the deployment of technical experts to advise the Statistics Department on options for improving information about business registration activities.

Technical assistance 5: Provide funds to translate relevant documents into English.

Consultations revealed broad agreement that current information available from the MOC about registering a business is limited. Translating application forms, relevant laws and regulations and policies into English is a priority and need not wait until a technical expert reports on options to improve the provision of information to investors.

4.2 Issuing a specific business licence

Technical assistance 1: Deploy an expert to design a training program on how to interpret and apply relevant laws.

See technical assistance activity 4 for registering a business (above).

Technical assistance 2: Deploy an expert to train officials on how to liaise with local professional services firms.

Consultations confirmed the need to ensure the private sector has an up-to-date account of policy and regulation affecting Operating Licences. There was general agreement that a workshop or dialogue between MIME and professional services firms would be an effective approach to do this.

Technical assistance 3: Deploy a communications expert to develop a program for provision of relevant documents to investors, including translation, and creation of an online platform.

There was general agreement for deploying an expert to help identify what information should be made available and accessible for investors. Participants commented that this will help investors to better understand policy and regulation affecting Operating Licences.

Technical assistance 4: Provide funds to translate relevant documents into English.

Consultations revealed broad agreement that current information available from MIME about specific business licences is limited. Translating application forms, relevant laws and regulations and policies into English is a priority and can be done in advance of finalisation of a program on improving information.

4.3 Issuing a construction permit

Technical assistance 1: Deploy an expert to design a training program on the application of existing processes to issue a construction permit.

Feedback from officials is that existing processes to issue a construction permit are satisfactory, however further training is sought to improve interpretation of existing policy and regulation and to improve workflow.

Technical assistance 2: Deploy an expert to train officials on how to liaise with local professional services firms.

Consultations confirmed the need to ensure the private sector has the most up-to-date information about laws, regulations and policies relating to the issuing of construction permits. There was general agreement that deploying an expert to train officials on how to design and run periodic meetings between MLMUPC and local professional services firms would be an effective approach.

Technical assistance 3: Deploy a communications expert to develop a program for provision of relevant documents to investors, including translation, and creation of an online platform.

Consultations confirmed the need to improve the information available to investors for obtaining a construction permit. Officials agreed that a program should be devised to update information online about obtaining a construction permit.

Technical assistance 4: Provide funds to translate relevant documents into English.

Consultations revealed broad agreement that current information available from MLMUPC about registering a business is limited. Translating application forms, relevant laws and regulations and policies into English is a priority and can be done in advance of finalisation of a program on improving information.

Annex A. Implementation plan

An Implementation Plan for future technical assistance activities has been developed in consultation with Cambodian officials to improve the operation of certain investment facilitation processes examined in this report.

Table A.1: Investment Facilitation Implementation Plan, Cambodia

| Topic | Best practice | | | Technical assistance |
|-----------------------------------|--|--|--|---|
| | Principles | Possible improvements to process (problems) | Proposed actions (Cambodia) | |
| 1. Approving foreign investment | | <ul style="list-style-type: none"> Process found to be operating satisfactorily. | No suggested actions. | <ul style="list-style-type: none"> None required. |
| 2. Registering a foreign business | <ul style="list-style-type: none"> Streamline processes to promote effective and efficient business registration | <ul style="list-style-type: none"> Improve workflow for registration and start-up through the MOC | <ul style="list-style-type: none"> Integrate existing internal IT systems within MOC to improve efficiency. | <ul style="list-style-type: none"> Conduct a systems needs analysis for MOC Department of Business Registration to review existing IT information systems and provide recommendations. |
| | <ul style="list-style-type: none"> Promote predictability of how regulation is applied Improve consistency in the application of the law | <ul style="list-style-type: none"> Improving information for potential investors | <ul style="list-style-type: none"> Improve capacity of officials to interpret and apply relevant laws and how these laws operate together. | <ul style="list-style-type: none"> Deploy an expert to design a training program on how to interpret and apply relevant laws. |
| | <ul style="list-style-type: none"> Promote transparency of investment approval | <ul style="list-style-type: none"> Improving information for potential investors | <ul style="list-style-type: none"> Work with locally-based professional services firms to ensure they are well informed on procedures for registering a business. | <ul style="list-style-type: none"> Deploy an expert to assist with the development of a program to train officials to design and implement regular information sessions with professional services firms on business registration processes. |
| | <ul style="list-style-type: none"> Promote transparency of business registration | <ul style="list-style-type: none"> Improving information for potential investors | <ul style="list-style-type: none"> Improve information for investors through the MOC website by: <ul style="list-style-type: none"> - Developing a more user-friendly website and updating content; - Ensuring applications forms are prominent and available in English; - Ensuring relevant laws and regulations relating to investment and business registration are available in English. | <ul style="list-style-type: none"> Deploy a technical expert to MOC to advise the Statistics Department on options to improve provision of online information to investors on requirements for registering a business. |
| 3. Issuing a business licence | <ul style="list-style-type: none"> Streamline processes to promote effective and efficient business licensing | <ul style="list-style-type: none"> Improve workflow for obtaining an establishment permit from MIME | <ul style="list-style-type: none"> Improve capacity of officials to interpret and apply relevant laws and how these laws operate together. | <ul style="list-style-type: none"> Deploy an expert to design a training program on how to interpret and apply relevant laws. |
| | <ul style="list-style-type: none"> Promote predictability of how | <ul style="list-style-type: none"> Improving information for potential | <ul style="list-style-type: none"> Work with locally-based professional services firms to ensure | <ul style="list-style-type: none"> Deploy an expert to train officials on |

| Topic | Best practice | | | Technical assistance |
|----------------------------------|--|---|---|--|
| | Principles | Possible improvements to process (problems) | Proposed actions (Cambodia) | |
| | <p>regulation is applied</p> <ul style="list-style-type: none"> • Improve consistency in the application of the law | <p>investors</p> | <p>they are well informed on procedures for issuing a business licence.</p> | <p>how to liaise with local professional services firms.</p> |
| | <ul style="list-style-type: none"> • Promote transparency of business licensing processes | <ul style="list-style-type: none"> ▪ Improving information about obtaining a specific business licence | <ul style="list-style-type: none"> ▪ Improve information for investors through the MIME or CDC website by: <ul style="list-style-type: none"> - Developing a more user-friendly website and updating content; - Ensuring application forms are prominent and available in English; - Ensuring relevant laws and regulations relating to investment and business registration are available in English. | <ul style="list-style-type: none"> ▪ Deploy a communications expert to develop a program for provision of relevant documents to investors, including translation, and creation of an online platform. |
| 4. Issuing a construction permit | <ul style="list-style-type: none"> • Streamline processes to promote effective and efficient issuance of construction permits | <ul style="list-style-type: none"> ▪ Improve workflow for obtaining a construction permit | <ul style="list-style-type: none"> ▪ Improve capacity of officials to interpret and apply relevant laws and how these laws operate together. | <ul style="list-style-type: none"> ▪ Deploy an expert to design a training program on the application of existing processes to issue a construction permit. |
| | <ul style="list-style-type: none"> • Promote predictability of how regulation is applied • Improve consistency in the application of the law | <ul style="list-style-type: none"> ▪ Improving information for potential investors | <ul style="list-style-type: none"> ▪ Work with locally-based professional services firms to ensure they are well informed on procedures for issuing a construction permit. | <ul style="list-style-type: none"> ▪ Deploy an expert to train officials on how to liaise with local professional services firms. |
| | <ul style="list-style-type: none"> • Promote transparency of construction permit processes | <ul style="list-style-type: none"> ▪ Improving information about obtaining construction permits | <ul style="list-style-type: none"> ▪ Improve information for investors through the MLMUPC or CDC website. <ul style="list-style-type: none"> - Developing a more user-friendly website and update content; - Ensuring application forms are prominent and available in English; - Ensuring relevant laws and regulations relating to investment and business registration are available in English. | <ul style="list-style-type: none"> ▪ Deploy a communications expert to develop a program for provision of relevant documents to investors, including translation, and creation of an online platform. |

Annex B. In-country consultations

Two in-country visits have been held to consult with officials and business in Phnom Penh.

- Visit 1: 28-29 June, 2012
- Visit 2: 11-14 February, 2013.

B.1 Visit One

This section provides details of in-country consultations and summarises points raised in discussions with Government officials and industry representatives.

The field work presented an opportunity for participants to discuss and clarify investment facilitation processes. The Project Team sought input from Cambodian officials responsible for and engaged in decision-making in the following areas:

1. Approving investment;
2. Registering a foreign business;
3. Issuing a specific business licence; and
4. Issuing a construction permit.⁷

Business representatives with practical experience investing and starting business operations in Cambodia were also invited to share their experiences and insights as to what processes work well and where future efforts to improve investment facilitation can focus.

A. Workshop

The Project Team conducted a workshop for government officials and industry representatives on Thursday 28 June. 45 government officials from 12 government ministries attended the workshop along with one private sector representative.

Table B.1 Workshop attendees, Phnom Penh, 28 June 2012

| Ministry | Attendees (No.) |
|---|--------------------|
| Council for the Development of Cambodia | 20 |
| Ministry of Commerce | 3 |
| Ministry of Economy & Finance | 5 |
| Ministry of Industry, Mines & Energy | 2 |
| Ministry of Environment | 2 |
| Ministry of Land, Urban Planning & Construction | 1 |
| Ministry of Foreign Affairs | 1 |
| Ministry of Labour & Vocational Training | 2 |

⁷ A fifth topic, getting access to electricity, was also discussed during consultations in Lao PDR. No evidence of any problems with existing processes has meant this topic has been removed from the project scope.

| | |
|--|---|
| Ministry of Public Works & Transport | 1 |
| Ministry of Posts & Telecommunications | 1 |
| Ministry of Transport | 2 |
| Unknown | 3 |

The workshop:

- Introduced the project and explained the input sought from officials and industry representatives;
- Offered insights into best practice approaches in Australia and New Zealand relating to investment approval processes, registering a new business and issuing a construction permit;⁸
- Introduced government officials to the Investment Facilitation Template which was used to direct discussion; and
- Discussed reforms currently being considered in Cambodia and possible actions for improving approvals and business start-up processes identified in the draft Template.

B. Consultations with government officials

Over the remaining day and a half, the Project Team consulted with relevant Ministries. A number of comments from these discussions are reflected in the suggested actions in section 3.

Additional key points are:

- Many investment projects (possibly a majority) register with the MOC and not the CDC.
- The Cambodian Government's consultative process with the private sector is well established and highly regarded (business sees it as effective). Eight working groups meet periodically. Public and private sector meet twice a year to discuss leading issues in sectoral working groups. The Government of Cambodia is open to creating a two-way effective dialogue with industry.
- Amendments to data researched for benchmarking purposes were provided:
 - the QIP FRC approval process is completed in 31 days (three days to obtain the CRC and 28 to obtain the FRC).
 - company registration at the MOC takes five to seven days.
 - Construction permits are provided within 30 days for small projects and 45 days for larger projects.
- Japan International Cooperation Agency (JICA) is working with MOC to redevelop its website.

⁸ This was a capacity building component that sought to share experiences of other AANZFTA parties. It was a response to requests from member countries following the Regional Forum in Palawan, the Philippines in April.

- JICA partnered with the CDC to produce an Investment Guidebook for Cambodia published January 2012.
- United Nations Industrial Development Organization (UNIDO) has undertaken a feasibility study for MOC on transitioning the company registration process online.
- A World Bank initiative has developed a system for tracking progress of investment applications in the CDC. The pilot phase is being reviewed.

C. Consultations with private sector

The Project Team met with representatives from three companies and three industry associations – see Table 3.2. Consultations were held with business representatives in the offices of the Council for the Development of Cambodia, at the Cambodian Chamber of Commerce, and at business offices in Phnom Penh.

Business investors spoke very highly of the Cambodian investment climate and the regulation and requirements that support investment approval and business start-up. In particular, the services provided by the CDC for QIP were considered to be of high quality. Investors also commented on the effectiveness of private and public sector dialogue and the ease of doing business with government on a range of issues.

The key points are:

- Greater focus could be accorded to issues investors face once established and operating in Cambodia, including contract enforcement and judicial processes, the administration of business taxes, and customs procedures;
- Small and medium-sized enterprises have poor access to finance and lack innovative practices – i.e. business models and managerial approaches. SME associations seek a greater Government role in training and skills development, better infrastructure, new technology and financial arrangements.

Table B.2 Firms & industry associations consulted in Phnom Penh, 28-29 June 2012

| Chamber/Company | Sector/Industry |
|---|----------------------|
| Cambodia Chamber of Commerce | Industry association |
| Federation of Associations for Small & Medium Enterprises of Cambodia | Industry association |
| American Cambodian Business Council | Industry association |
| Sciaroni& Associates | Legal services |
| ANZ Royal Bank | Banking |
| DFDL Legal & Tax | Legal services |

B.2 Visit Two

A second round of in-country consultation was held in Phnom Penh undertaken from February 11 to 14, 2013. Consultations were designed to seek further clarification on key issues, and seek support for problems, suggested actions and possible technical assistance identified as a result of research and consultations conducted in 2012.

The Project Team for this visit included Alan Oxley, Team Leader, Tom Westcott, Project Manager and Investment Analyst, and Andrew Moon, Investment Analyst.

A. Group consultation

The Project Team conducted a group consultation for government officials on Monday 11 February, 2013. 44 government officials from 8 government ministries attended the workshop.

Table B.1 Workshop attendees, Phnom Penh, 11 February 2013

| Ministry | Attendees (No.) |
|---|-----------------|
| Council for the Development of Cambodia | 26 |
| Ministry of Commerce | 1 |
| Ministry of Economy & Finance | 2 |
| Ministry of Industry, Mines & Energy | 3 |
| Securities and Exchange Commission | 1 |
| Ministry of Land, Urban Planning & Construction | 2 |
| Ministry of Labour & Vocational Training | 3 |
| Council of Ministers | 2 |
| Unknown | 3 |

The workshop addressed four areas:

- **Further clarification of current practices.** Participants were provided with copies of relevant flowcharts and invited to review and discuss these with colleagues in an open and consultative environment. A group discussion was led by ITS Global and revisions were discussed and agreed.
- **Possible areas for improvement.** The topic was introduced with a brief slide presentation. Questionnaires were then provided to participants about possible areas for improvement for each of the three processes. Participants completed the questionnaire and engaged in a group discussion facilitated by ITS Global facilitators. Facilitators also moved around the room and discussed the task with individual participants. Responses were collected and reflected in updates to the Framework Paper.
- **Suggested actions.** The topic was introduced with a slide presentation and a second questionnaire was distributed to participants about possible action to improve process and streamline workflow. Facilitators again discussed issues relating to these questions with individual participants. A group discussion was also conducted.
- **Possible technical assistance activities.** The same format was used for this session. The Project Team presented and discussed technical

assistance options with participants. Questionnaires were distributed and participants' views were discussed one-on-one and with the group.

- During the lunch break, the Project Team reviewed responses to questions in all three questionnaires and prepared a summary of findings. These were presented to the group and everyone was in agreement that they represented an accurate summary of the group consultation.

B. Separate consultations with ministries

The Project Team consulted with the MOC Department of Business Registration and explored in more detail their processes and areas for possible further improvement. Technical assistance options were presented and discussed. The outcome of these discussions is reflected in this report. They advised that the Senior Minister, Minister of the Ministry of Commerce advised the flow chart depicting MOC processes was correct.

Annex C. Investment facilitation guiding principles

Discussions at the 'AANZFTA Regional Forum on Best Practices for Investment Approval and Business Licensing Processes', held on 23-24 April 2012 in Palawan, the Philippines produced broad consensus on a series of investment facilitation best practice principles. These were documented in a Progress Report produced at the conclusion of the forum and were presented to the AANZFTA committee on investment in May 2012.

The principles have been used to broadly assess impediments to investment facilitation in Cambodia. Possible actions, on the part of the government, have then been developed to aid in the removal of these impediments so that each principle can be met. The Implementation Plan captures this information for Cambodia (Annex A).

The principles are:

1. Promoting **transparency** to ensure the appropriate information on investment facilitation processes is made available to potential investors.
2. Ensuring **consistency** between policy documents and relevant laws.
3. Promoting **predictability** in the business environment where laws are clearly understood and consistently applied. This helps reduce corruption and increase business confidence.
4. Efficiency and effectiveness through **streamlining** processes. This removes duplicated processes and unnecessary requirements of investors.
5. **Replicating** intra-jurisdictional best practices to ensure investment approval processes involving national and sub-national agencies are coordinated. This can be achieved by reviewing the responsibilities and policy roles of different levels of government to ensure there is no duplication or overlap.