

## ～国際研修～

### 2007年度国際民商事法研修報告 —非市場型コーポレート・ガバナンス— (2008年2月4日～3月7日)

国際協力部教官 (現神戸地方検察庁検事)

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#### 第1 国際民商事法研修について

法務総合研究所国際協力部では、JICAの技術協力事業の多国間研修又は地域別研修として、1997年から毎年1回「国際民商事法研修」の実施に協力してきました。これは、アジア諸国から数名ずつの海外研修員を参加させ、英語で実施してきたものであり、2003年からはカンボジア、ラオス、ミャンマー及びベトナムのいわゆる CLMV 諸国から3名ずつ参加させる地域別研修として実施されてきましたが、2008年度をもって終了することとなりました。

地域別研修の特徴は、一定地域の国々の法律家を集め、相互の法制度・運用実態を比較検討させることにより、国別研修では気付きにくい自国の法制度の特徴や問題点を理解させやすいことにあります。特に、本研修が他の JICA 研修と異なる大きな特徴は、日本人の法律実務家が、財団法人国際民商事法センターの協力及び法務省独自予算により、「研修員」として参加している点です。

#### 第2 2007年度国際民商事法研修の紹介

##### 1 本研修のテーマを非市場型コーポレート・ガバナンスとした趣旨

近年、企業活動はますますグローバル化し、ASEAN 内の後発開発途上国である CLMV 諸国も、外資誘致に努めています。

他方、外資側は、本社におけるコーポレート・ガバナンスが強化され、かつ、連結決算で子会社と会計上も一体化しつつある現在、途上国内に設置する子会社や合弁先においても、コーポレート・ガバナンスを徹底した企業運営をする必要に迫られています。近時、各種コンプライアンス・ルール等を現地法人向けに規定して整備することが進められています。その意味で、開発途上国側の政府担当者においても、外資誘致政策・法整備の一環として、国際的投資基準に合う形でのコーポレート・ガバナンスの構築をも視野に入れる必要があります。

ただし、ベトナム以外の CLM 諸国では、いまだ証券取引所が設置されていないことから、証券市場と関連しない場面におけるコーポレート・ガバナンス（非市場型）

を中心に各国法制度を比較研究することとしました。

## 2 研修参加者

研修員名簿（別添 1）記載のとおり，本研修の外国人研修員は，CLMV 諸国の司法省・通商産業省等の職員等 11 名です。

日本人研修員は，裁判官，検事，法務省民事局付（会社法立法担当者），民間企業の国際法務部の方の計 4 名です。

## 3 研修の目的

研修員らが，講義，見学，ファイナル・レポート作成過程における日本人研修員との緻密な協議等によって，コーポレート・ガバナンスに関して参照すべき外国法や国際ルールに関する知識を身につけ，経済効率的な会社法制度を構築し運用する能力を高めることを目的としました。

## 4 研修カリキュラムの概要

研修日程表（別添 2）記載のとおり，先進国と途上国とが共通に見直すべきコーポレート・ガバナンスの国際ルールとして，OECD コーポレート・ガバナンス原則の概要を紹介した上で，我が国の会社法制がコーポレート・ガバナンスの強化のためにどのように改正されてきたかを詳しく紹介し，それを実務にどう反映しているかの事例を紹介したり，企業見学をさせたりした上で，「非市場型」のコーポレート・ガバナンスに関する諸問題を講義・討議の形で採り上げました。

その上で，研修員らを 3 グループに分けてファイナル・レポート（別添 3）を作成させ，最後に発表させました。

## 第 3 金沢セミナー

本研修では，石川国際民商事法センター<sup>\*1</sup>と北國新聞社の御協力により，石川県内の企業見学の機会を設けていただくとともに，研修期間中の 2008 年 2 月 21 日，石川県金沢市の北國新聞会館 20 階ホールにおいて開催された「第 12 回国際民商事法金沢セミナー」（日英同時通訳）を研修員に聴講させました。同セミナーは，同センター及び北國新聞社主催で，協力者は，法務省法務総合研究所，国際協力機構北陸支部，ジェトロ金沢貿易情報センター，後援は，財団法人国際民商事法センター，テレビ金沢，エフエム石川，ラジオかなざわ・こまつ・ななお，金沢ケーブルテレビネットです。

今回のセミナーにおいては，「アジア諸国の会社法制に関する諸問題 ― 株主代表訴訟制度を中心に ―」をテーマに，一橋大学大学院国際企業戦略研究科教授の布井千博氏に中国について，名古屋大学大学院法学研究科教授の中東正文氏に韓国，台湾，シンガポールについてそれぞれ御講演を頂きました。

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\*1 石川国際民商事法センターは，1996 年，北國新聞社が中心となり，石川県の企業・団体が集まって結成された団体であり，財団法人国際民商事法センターと連携し，毎年，本セミナー開催などのアジア諸国の民商事法整備支援に貢献する活動を行っておられます。

#### 第4 日本弁護士連合会とのコラボレーション

本研修では、日本弁護士連合会とのコラボレーション企画として、同年2月27日、財団法人海外技術者研修協会（AOTS）主催・日弁連協力のコーポレート・ガバナンスに関する研修（参加者：アジア諸国の弁護士）と共同の演習を実施しました。

CLMV 諸国の研修員にとっては、シニア ASEAN 諸国の民間の弁護士とコーポレート・ガバナンスについて実例に基づく討論を実施することにより、経済発展のためにコーポレート・ガバナンスが実際にどのような場面で法律的な問題となり、弁護士がどのように対応しているか、そのためには政府側もどのような法整備をする必要があるのかを実践的に理解する良い機会となったと思われます。

また、翌28日、法曹会館において、国際法曹連盟・日弁連主催のコーポレート・ガバナンスに関するシンポジウムを傍聴する機会を得ました。同シンポジウムには、欧米各国の弁護士が講演者として招かれており、研修員にとっては、欧米各国のコーポレート・ガバナンスについて学ぶ良い機会となりました。

#### 第5 本研修の終了について

私が国際民商事法研修に関わるのは、これで5回目です。1回目は、1999年度第3回国際民商事法研修に研修員として参加し、以後、2001年・2002年・2006年・2007年度は当部教官として運営を担当しました。

1990年代は、ベトナム・ラオスは、市場経済化の揺籃期であり、カンボジアは内戦終結からまだ間もない復興期であり、市場経済を支える法制度は全く整備されておらず、研修員は、民法や商法のごく初歩的な基礎知識すらないのが普通でした。また、パソコン、電子メールなどを使える研修員は一人もいませんでした。

約10年が経過し、研修員のほとんどがレポートをメールで提出し、昼休みには教室備付けのパソコンでインターネットにアクセスし、自国の法令をインターネット経由で検索してレポート作成を進めるというように大きく変化しました。

中でも、ベトナムの法整備の進み具合は目覚ましく、研修期間中の議論をリードするのもベトナム人が中心であり、ファイナル・レポートの作成でも活躍しました。

カンボジアとラオスの研修員も以前に比べると、随分英語も上手な研修員が増え、議論も活発になり、それぞれ、企業法等に規定している、外国投資受入れのためのワン・ストップ・サービスの拠点となる窓口を整備しつつあるのは喜ばしいことでした。しかし、彼らは、レポート作成段階になると、文章作成能力において、ベトナム人の後塵を拝していたことは否めません。これは、中華圏で科挙制度が長く続き、書籍に親しむ習慣の強いベトナムと、書店というものがほとんど見当たらないカンボジア・ラオスの識字率、読書習慣、小学校以来の基礎教育の差ではないかと感じました。カンボジアとラオスの場合、口頭表現能力と文章作成能力に相当な開きがあるのが普通です。

ミャンマーの場合、以前から、本研修に参加する研修員は、経済実態が研修テーマに合わずに苦勞していました。今回は特に顕著でした。このまま経済面でも法制

面でも周辺国と格差が広がるであろうと思われ、この種の研修でミャンマーを他の国と一緒に行うことの困難さを感じました。

このように、後発 ASEAN 諸国といっても、CLMV 諸国を同列に扱うことはもはや困難であるというのが、研修担当者の率直な感想であり、本研修は、約 10 年余を経て、後発 ASEAN 諸国の立法担当者・法律実務家に民商事法の基礎を教えるという所期の役割を果たし終えたと思います。

今後は、それぞれの国に対し、そのニーズに沿った具体的な法整備を実施していくべきであろうと思えますし、JICA では、既にそのような法整備支援活動をベトナム、カンボジア、ラオスにおいて実施しており、当部もこれに協力しています。

本研修は、各講師、見学受入先、通訳・翻訳者、財団法人国際民商事法センター、石川国際民商事法センター、日本人研修員と彼らを送り出してくださった職場の方々など、実に多くの方々に御協力いただきました。改めてここに深くお礼申し上げます。

## 第 6 別添資料一覧

- 1 研修員名簿
- 2 研修日程表
- 3 研修員作成のファイナル・レポート 3 通

## 2007年度国際民商事法研修日程表

月 日	10:00 12:30	14:00 15:00	17:30	備考
2 ／ 月 4	オリエンテーション, 研修員自己紹介, グループ分け 国際協力部教官 田中嘉寿子	講義 コーポレート・ガバナンスの観点から見た日本の会社制度の変遷 【CG原則 I】 (会社法改正経緯全般) 講師 同志社大学 川口恭弘教授 於: 法総研(大阪)2F1CR	GD	
2 ／ 火 5	講義 OECDコーポレート・ガバナンス原則について りそなホールディングス取締役, 立命館アジア太平洋大学教授 永井秀哉 於: 法総研(大阪)2F1CR		GD	
2 ／ 水 6	講義 コーポレート・ガバナンスの観点から見た日本の会社制度の変遷② 【CG原則 II, III】 (株主の権限を中心に) 講師 神戸大学 近藤光男教授 於: 法総研(大阪)2F1CR	国別発表① (CLMV4か国. 各発表20分, 質疑20分) 各国の外国投資受入制度 於: 法総研(大阪)2F1CR	GD	
2 ／ 木 7	部長あいさつ 稲葉一生 国際協力部長 松本真 (法務省民事局付) 於: 法総研(大阪)2F1CR	国別発表② (CLMV4か国. 各発表20分, 質疑20分) 各国企業法における各機関の権限と運営について 於: 法総研(大阪)2F1CR	GD	13:40~ 記念撮影
2 ／ 金 8	研修員発表② 日本の会社実務におけるコーポレート・ガバナンスについて 吉武寛(住友電工) 於: 法総研(大阪)2F1CR	企業見学とブリーフィング (株)山喜		於: 山喜
2 ／ 土 9	休み			
2 ／ 日 10	休み			
2 ／ 月 11	休み			
2 ／ 火 12	講義 コーポレート・ガバナンスの観点から見た日本の会社制度の変遷③ 【CG原則 V】 (ディスクロージャーと業務監査を中心に) 講師 名古屋大学 中東正文教授 於: 法総研(大阪)2F1CR	講義 コーポレート・ガバナンスの観点から見た日本の会社制度の変遷④ 【CG原則 VI】 (取締役会の権限と責任を中心に) 講師 関西学院大学 伊勢田道仁 於: 法総研(大阪)2F1CR	GD	
2 ／ 水 13	研修員発表③ 日本会社法における各機関の権限と運営に関する諸問題 (コーポレート・ガバナンスに関する民・刑事の著名事件の判例を中心に) 志賀勝判事補, 望月亜紀検事 (各発表30分, 質疑20分) 於: 法総研(大阪)2F1CR	国別発表③ (CLMV4か国. 各発表20分, 質疑20分) 各国企業法制における業務監査とコンプライアンス制度について 於: 法総研(大阪)2F1CR	GD	
2 ／ 木 14	講義 アジア諸国の労使紛争解決制度に関する諸問題 【CG原則 IV】 講師 大阪女学院大学香川孝三教授 於: 法総研(大阪)2F1CR	講義 合弁企業におけるコンプライアンスに関する諸問題 【CG原則 I】 講師 大江橋法律事務所 石川正弁護士 於: 法総研(大阪)2F1CR	GD	
2 ／ 金 15	企業見学・ブリーフィング パナソニック(株) 於: OBP	講義 企業のCSR活動について 講師 国際協力部教官 田中嘉寿子 於: 法総研(大阪)2F1CR	GD	
2 ／ 土 16	休み			
2 ／ 日 17	休み			
2 ／ 月 18	国際セミナー傍聴のためのグループ・ディスカッション - "Implementing the White Paper on Corporate Governance in Asia" 輪読 - コーディネーター 国際協力部教官 田中嘉寿子 於: 法総研(大阪)4CR	国際セミナー傍聴: アジア株主代表訴訟セミナー シンガポール, 中国, 台湾, 韓国 於: 法総研(大阪)2F1CR		
2 ／ 火 19	講義 シンガポールにおけるコーポレート・ガバナンス 講師 Mr. Ewing-Chow Michael 於: 法総研(大阪)2F1CR	講義 企業におけるコーポレート・ガバナンスの実務的諸問題 講師 池田崇志弁護士 於: 法総研(大阪)2F1CR	GD	
2 ／ 水 20	金沢へ移動	中小企業見学・ブリーフィング 中小企業におけるCSR活動について 三谷産業(株) 於: 三谷産業 金沢本店		
2 ／ 木 21	金沢セミナー(石川国際民商事法センター/北国新聞社主催, 法総研/ICLCLC後援) アジア諸国の会社法制に関する諸問題 - 株主代表訴訟制度を中心に - 講師 一橋大学 布井千博教授(中国), 名古屋大学 中東正文教授(他のアジア諸国) 金沢 北国新聞社			
2 ／ 金 22	東京へ移動	15:00~ 事務次官表敬 (官房長・官房審議官)	15:30~ 民事局長表敬	
2 ／ 土 23	休み			
2 ／ 日 24	休み			

曜日	10:00	14:00	15:00	16:00	17:30	備考
2 /月 25	講義 OECD外国公務員贈賄防止条約について 刑事局 講師 是木刑事局付 於：法総研(東京)第6教室	講義 日本の新会社法におけるコーポレート・ガバナンスについて 【CG原則 V】 (質疑応答を中心に) 講師 小松民事局付 於：法総研(東京)第6教室			17:10 法総研所 長表敬	
2 /火 26	ファイナルレポート作成のための論点整理 コーディネーター ICD教官田中 於：国際協力総合研修所201AB	講義 合弁企業の知的財産問題 講師 立命館大学安藤哲生教授 於：国際協力総合研修所201AB			GD	
2 /水 27	合同カンファレンスの準備のためのグループ・ディスカッション コーディネーター ICD教官田中 於：国際協力総合研修所201AB	日弁連/AOTS研修と合同 コーポレート・ガバナンスに関する合同カンファレンス(13:00-) コーディネーター 小口光弁護士 於：AOTS東京研修センター(北千住)				
2 /木 28	IBA/日弁連主催 コーポレート・ガバナンスに関するシンポジウム 於：法曹会館(高砂の間)	大阪へ移動				
2 /金 29	ファイナルレポート作成, 発表準備				GD 於：OSIC SR15&16	
3 /土 1	休み					
3 /日 2	休み					
3 /月 3	ファイナルレポート作成, 発表準備				於：OSIC SR15&16	
3 /火 4	ファイナルレポート作成, 発表準備				於：OSIC SR15&16	
3 /水 5	ファイナルレポート作成, 発表準備				於：OSIC SR15&16	
3 /木 6	ファイナルレポート発表				於：法総研(大阪)2F1CR	
3 /金 7	評価会 於：JICA大阪国際センターSR14	閉講式 於：JICA大阪国際センターSR13	資料整理			

## SEMINAR ON CIVIL AND COMERCIAL LAW AT OSAKA

***Participant Name:***

1. Mr. DO Van Su
2. Ms SENGAPHONE Senghaivanh
3. Ms THI Thi Shwe
4. Ms MOCHIZUKI Aki
5. Mr. YOSHITAKE Hiroshi

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## **Topic:**

### **Invitation of Investment in each country**

#### **I. Why do we need to invite the Foreign Direct Investment (FDI)?**

The tendency of foreign investment to developing countries and especially in oriental Asian countries is an increasing tendency. Especially FDI, it is becoming an increasingly interesting topic. FDI is important because it provides investment necessary for economic growth and development of technology that domestic savings cannot provide. The allocations of FDI flows are not even, as well as the factors that drive such flows vary upon different region. The nature of FDI flow also depends on the country of origin and the recipient country.

FDI also helps the host country improve its export performance. By raising the level of efficiency and the standards of product quality, FDI makes a positive impact on the host country's export competitiveness. Further, because of the international linkages of transnational corporations, FDI provides to the host country better access to foreign markets. Therefore, FDI is important for those countries which have a small domestic market and must increase vigorously to maintain their tempo of economic growth. However, together with acknowledged benefits, FDI also associated with a number of negative impacts onto the host country's economy. Those possible drawbacks include industrial dominance, technology dependence, the disturbance of economic plan, and change in host country's culture.

VLCM is the newly developing countries. So, the benefits of FDI onto the country's growth and development are also well appreciated.

#### **II. The Comparison of FDI allowed in each countries.**

##### ***2.1 Brief Comparison.***

Kind of Criterion		Cambodia	Lao PDR	Myanmar	Vietnam
<b>Business area</b>	License (period)	License Required. License period (max): 99 years	License Required. License Period: 50 years + 25 years more.	License Required. License period: – 02 years and renewed, – 01 year for trade companies and renewed	No License. Only register with the procedure of Investment Certificate. – Enterprises: No limit the operating duration. – Project: 50 years (70 years in particular case)
	Needs special license	None	About main 13 business sectors – Natural resources, tourism, mining, electricity, agro forest,... (Other details in other Decrees that implementing the Law).	12 business: – Forest plantation, petroleum, natural gas, telecommunication, air and railways transport metal, electricity, banks,...	About 13 business sectors – Commitments of Vietnam in WTO; – Appendix III of Decree 108/2006/ND-CP, include: Broadcasting and television; cultural products; mining; telecommunications; Real estate business; Hospitals and clinics;..
	Prohibited	Addicted materials, drugs, poisons,...	Addicted materials, drugs, poisons, military weapon,...	Addicted materials, drugs, poisons, military weapon,...	Addicted materials, drugs, poisons, military weapon, ...
<b>Form of Investment</b>		<ol style="list-style-type: none"> <li>100% Foreign owned companies.</li> <li>Joint Venture Companies</li> <li>Partnership: include General partnership (Unlimited Liabilities) and Limited partnership.</li> <li>Capital Companies: include Private Limited and Public Limited.</li> </ol> (No limit shares of foreign investors)	<ol style="list-style-type: none"> <li>100% Foreign owned companies.</li> <li>Joint Venture Companies</li> <li>Business Cooperation Contract.</li> </ol> (Foreigner should hold more than 30% of the share)	<ol style="list-style-type: none"> <li>100% Foreign owned companies.</li> <li>Joint Venture Companies</li> <li>Partnership (Unlimited Liabilities)</li> <li>Limited Companies.</li> </ol> (Foreigner should hold more than 35% of the share)	<ol style="list-style-type: none"> <li>100% Foreign owned companies             <ul style="list-style-type: none"> <li>Limited liability company</li> <li>Joint stock company</li> <li>Partnership</li> <li>Holding company</li> </ul> </li> <li>Joint Venture Companies</li> <li>Business Cooperation Contract</li> <li>Capital contribution, purchase of shareholding, M&amp;A</li> </ol>

Kind of Criterion			Cambodia	Lao PDR	Myanmar	Vietnam
<i>Form of Investment</i>						5. Forms of indirect investment (through stock market, investment funds etc.)  (No limit shares of foreign investors)
<i>Capital (Minimum)</i>			500.000 USD	100.000 USD – Legal Capital should be more than 30% of investment capital.	500.000 USD (in manufacturing sectors) / 300.000 USD (in Services sectors)	No minimum requirement
<i>Land Ownership</i>	Owned		N/A (Non- available)	N/A	N/A	N/A
	Leased		Max lease period: 99 years.	Max lease period: 50 years + 25 years or more.	Lease periods depend on the project's capital: Up to 01mil USD: 10+5years 1-3mil USD: 15+5years 3-5mil USD: 20+5years 5-10mil USD: 25+5years Over 10mil USD: 30+5years. – Over 30 years must have approvals from Myanmar Investment Commission	Max lease period: 70 years.
<i>Tax Incentives</i>	Income Tax	Standard	20% (excluding natural resource development projects)	For domestic enterprises: 35% For foreign investors: 20%	30%	28%

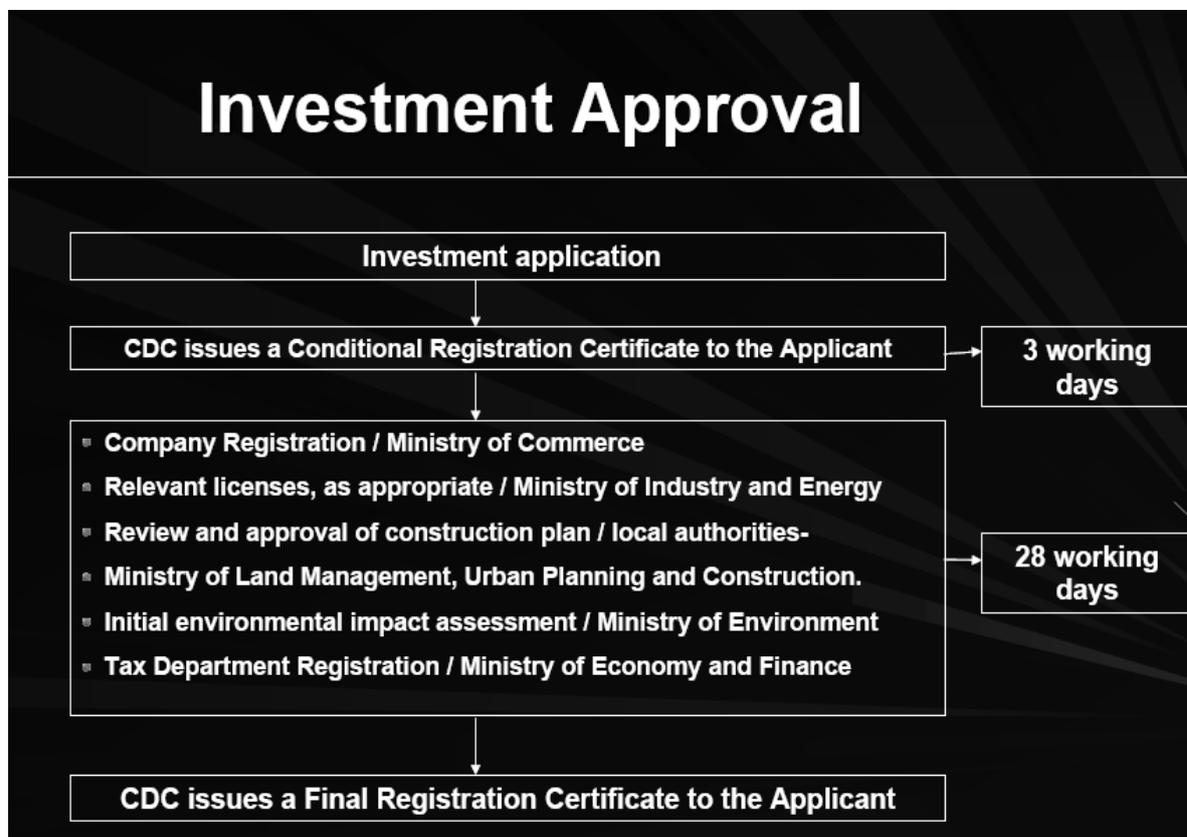
Kind of Criterion			Cambodia	Lao PDR	Myanmar	Vietnam
<b>Tax Incentives</b>	Income Tax	Incentives	<p><b>Exemption:</b></p> <ul style="list-style-type: none"> <li>– Trigger period (max 03 years) + 03 years + Priority period (max 03 years).</li> <li>– Only Qualified Investment Projects (QIPs) can enjoy Incentives.</li> </ul>	<p><b>Exemption:</b></p> <ul style="list-style-type: none"> <li>– 2 years, 5 years, 7 years depend on the investment locations and sectors.</li> </ul> <p><b>Reduction</b></p> <ul style="list-style-type: none"> <li>– 10%, 15%, 20% depend on the investment locations and sectors.</li> </ul>	<p><b>Exemption</b></p> <ul style="list-style-type: none"> <li>– 0% in <u>first 3 years</u></li> </ul>	<p><b>Preferential rates + (Exemption &amp; Half Reduction)</b></p> <ul style="list-style-type: none"> <li>– Preferential rates; 10%, 15% and 20% for a period of 15 years, 12 years and 10 years (depending on the scope of activities and location of the investment)</li> <li>– Exemption from CIT for a certain period (max 4 years), followed by a period where tax is charged at <u>half rate</u> (max 9 year)</li> <li>– Additional tax reductions available for investment expansion, R&amp;D, employ of disabled people, etc.</li> </ul>
	Import Tax		<p><b>Exemption + Reduction</b> 0%, 7%, 15%, 35%</p> <ul style="list-style-type: none"> <li>– 0%-5%: for importing from ASEAN countries from 2010.</li> <li>– Only QIPs can enjoy Incentives.</li> </ul>	<p><b>Exemption + Reduction</b> 0%, 3% -40%;</p> <ul style="list-style-type: none"> <li>– 0%-5%: for importing from ASEAN countries from 2010.</li> <li>– 0% of import duties apply for the all plants, equipments that are the fixed assets.</li> </ul>	<p><b>Exemption</b></p> <ul style="list-style-type: none"> <li>– For equipment during construction period.</li> <li>– For materials for 03 years after construction period.</li> </ul>	<ul style="list-style-type: none"> <li>– <b>Exemption</b> applied to projects in investment encouraged sectors and regions on (ex. machinery which cannot be produced in Vietnam comprising the fixed assets/ materials imported for the processing of goods for export)</li> <li>– <b>Preferential rates</b> applied to imported goods from countries that enjoy MFN with Vietnam (89 countries). Rates vary by the category of goods.</li> </ul>

Kind of Criterion		Cambodia	Lao PDR	Myanmar	Vietnam	
<i>Tax Incentives</i>	Import Tax				- <b>Special preferential rates</b> applied to imported goods from countries that signed special agreement with Vietnam (e.g. ASEAN)	
	Export Tax	<b>Exemption</b> - For limited number of items (timber, certain animal products,...) - Only QIPs can enjoy Incentives.	<b>Exemption + Reduction</b> - Detail regulated for each goods in the Export Taxation Table. (It includes the reductions and exemptions for each goods depend on the law and agreements between Government and other countries or international organizations).	<b>Reduction</b> - Standard 10% (comprising of 8% commercial tax and 2% income tax) - Investors can enjoy exemption income tax during 03-years tax holiday period. - The exporters who export certain selected items of goods notified by Ministry of Finance and Revenue are exempt from tax.	<b>Exemption + Reduction</b> - Detail regulated for each goods in the Export Taxation Table. (It includes the reductions and exemptions for each goods depend on the law and agreements between Government and other countries or international organizations).	
	VAT	Standard	10%	10%	---- (different system)	5%, 10%
		Incentives	<b>Exemption</b> - For export goods and services, international transport.	<b>Exemption</b> - For export goods and services.	-----	<b>Exemption</b> - For export goods and services.
	Losses carry	05 years	03 years	03 years	03 years	05 years
<i>Office Contact</i>		<b>1. Council for the Development of Cambodia;</b> <b>2. Cambodian Special Economic Zone Board.</b>	<b>Investment Promotion Department</b> <b>Ministry of Planning and Investment</b> Add: Luang Prabang Road, Vientiane, Lao PDR. Tel: 00.85621217005 Fax: 00.85621215491 E-mail: fmc@laotel.com	<b>Ministry of National Planning and Economic Development.</b>	<b>Foreign Investment Agency</b> <b>Ministry of Planning and Investment</b> Add.: 2 Hoang Van Thu St., Hanoi, Vietnam Tel. (84) 08048431 Fax: (84-4) 7343769	

## 2.2. The Investment Procedures:

### 2.2.1. Cambodia:

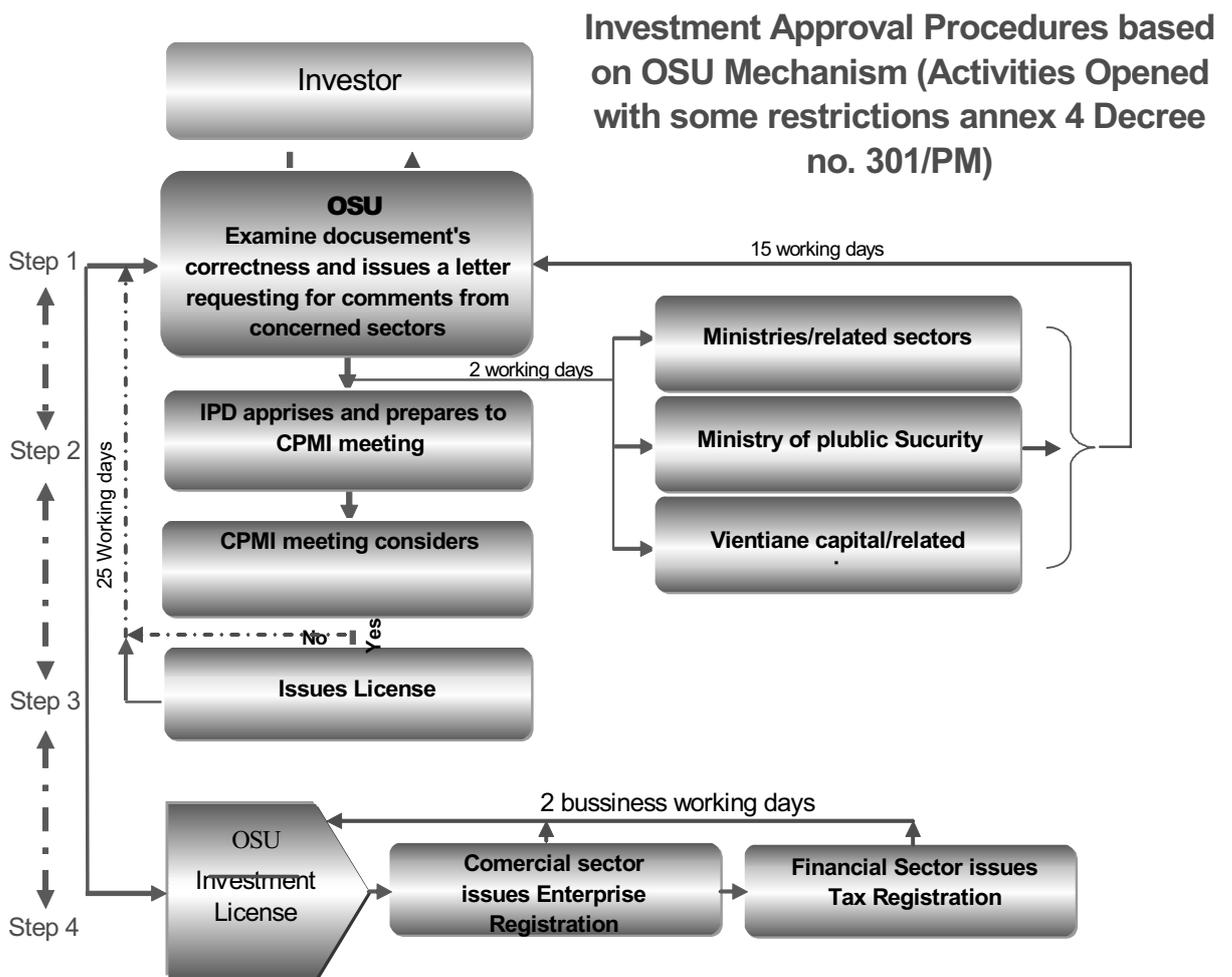
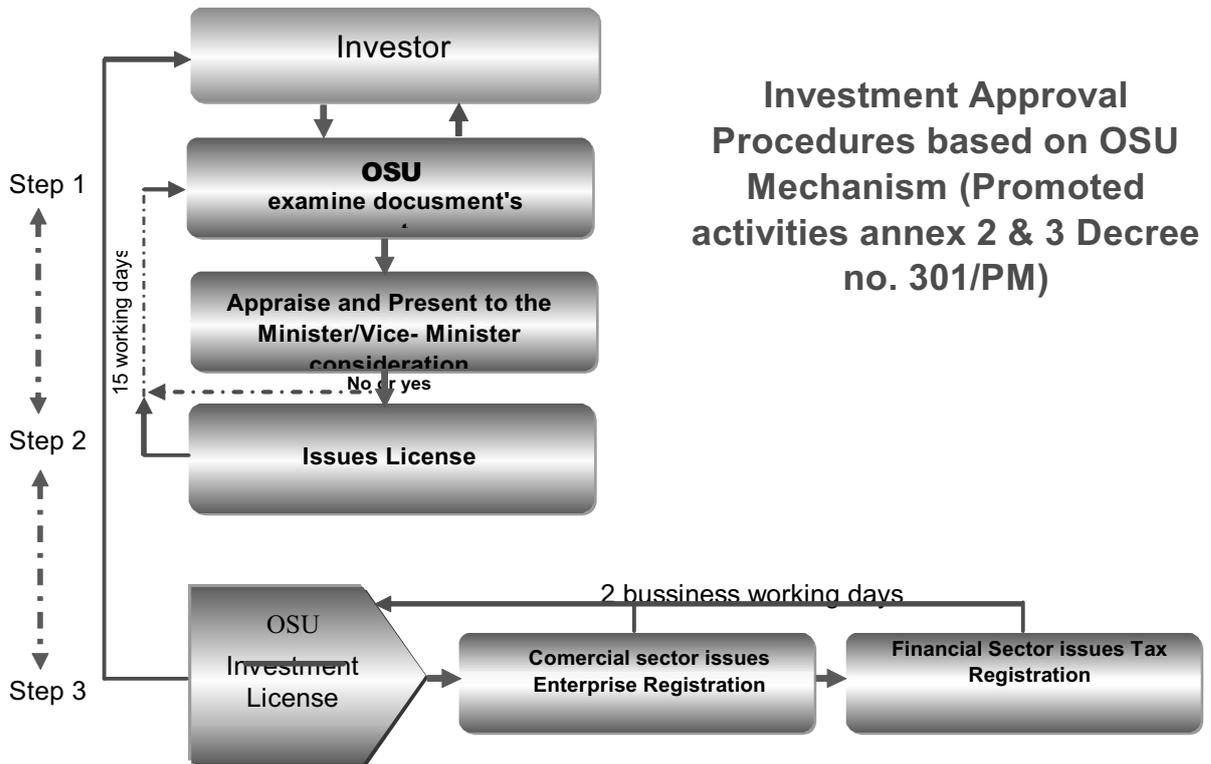
- Respond to license application shall be done within total 31 days.
- CDC provides investors with one-stop service.



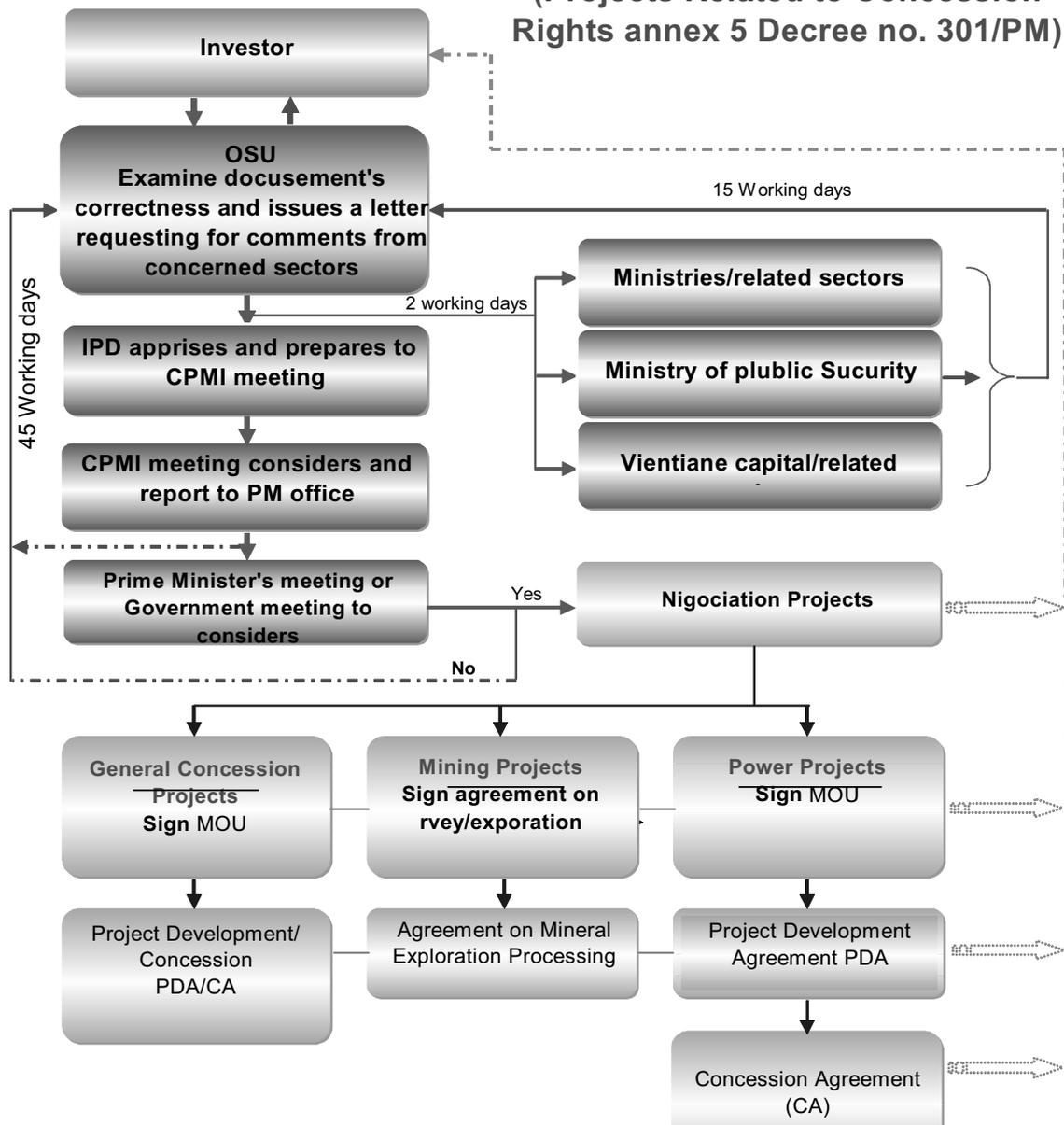
### 2.2.2. Laos:

#### Procedures for investment consideration at central level

- Respond to license application shall be done;
  - within total 15 days (for Laos promoted activity)
  - within total 25 days (for opened activity with some restrictions)
  - within total 45 days (for project related to concession right)
- OSU provides investors with one-stop service.



## Investment Approval Procedures (Projects Related to Concession Rights annex 5 Decree no. 301/PM)



### 2.2.3. Myanmar:

#### Application Procedures for Foreign Investment

- a) A Promoter for foreign investment must submit a proposal in prescribed form to the Myanmar Investment Commission. With the proposal the following must be attached.
  - i. Documents supporting financial credibility. “audited that final accounts of most recent year of the person or the firm that intends to make investment”.
  - ii. Bank recommendation regarding the business standing.
  - iii. Detail calculation relating to the economic justification of the proposed project indicating inter alia
    - Estimated annual net profit.

- Estimated annual foreign exchange earnings or savings and foreign exchange requirement for the operation.
  - Recoupment period.
  - Prospects of creating employment.
  - Prospects of increase in national income.
  - Local and foreign market conditions and the requirement, if any, for local consumption.
- iv. If it is a hundred percent foreign investment, a draft contract to be executed with an organization determined by Ministry concerned.
  - v. If it is a joint venture, a draft contract to be entered into between the foreign investor and local counterpart.
  - vi. If it is a joint venture in the form of limited company, draft Memorandum and Articles of Association and also a draft contract between the foreign and local investors.
  - vii. The promoter may apply for the exemptions and relief from taxes stated in chapter 10 Article 21 of the Union of Myanmar Foreign Investment Law.
- b) If MIC is satisfied the proposal, MIC put up the application for approval from Trade Council and Cabinet. The MIC will issue a permit if the proposal is approval.
  - c) If the approval economic activity is to be formed as a limited company, it must apply for permit under Section 27 (A) of the Myanmar Companies Act from National Planning and Economic Development through the company Registration Office.
  - d) After being granted the permit, the company must be registered with the company Registration Office under the Ministry of National Planning and Economic Development.
  - e) Permit for foreign investor about six weeks provided that document submitted are completed.
  - f) To get permission for company registration that it take about five weeks.

#### 2.2.4. Vietnam

- a) Investment Registration Procedures applied if:
  - Projects not fall in conditional sectors; and
  - Investment capital is less than VND300 billion (approx. US\$19 million)
  - Respond shall be done within 15 working days
- b) Investment Evaluation Procedures applied if:
  - Projects fall in conditional sectors; or
  - Investment capital is VND300 billion (approx. US\$19 million) or above
  - Respond shall be done within 45 working days

## 2.3 Law and regulation

**Table 2: Relevant Laws and Regulations related to the FDI in C.L.M.V**

Cambodia	Lao PDR	Myanmar	Vietnam
<ul style="list-style-type: none"> <li>- Law on Amendment of the Law on Investment of the Kingdom of Cambodia (2003) (revision of the Investment Law of 1994)</li> <li>- Sub-Decree No. 053 ANK-BK on the Amendment of Sub-Decree</li> <li>- No.88 ANK-BK dated 29 December 1997 of the Law on Investment of the Kingdom of Cambodia (1999)</li> <li>- Law on the Commercial Code and Commercial Registration (1995; Amendment 1999)</li> <li>- Law on Commercial Rules and Registration and Amendments, November 1999.</li> <li>- Law on Amendment of the Law on Taxation (2003) (revision of the Taxation Law of 1997)</li> <li>- Law on Corporate Accounts, their Audit and the Accounting Profession (2002)</li> <li>- Land Law (2001)</li> <li>- Law on Trademarks and Acts of Unfair Competition (2002)</li> </ul>	<ul style="list-style-type: none"> <li>- Law on Promotion of foreign investment in Lao People's Democratic Republic;</li> <li>- Decree 301/PM dated October 12th 2005 implementing the Law on Promotion.</li> <li>- Enterprises Law No 11/NA dated November 9th 2005.</li> <li>- Law on Taxes September 19th 2005.</li> <li>- Law on Customs June 06th 2005.</li> <li>- Law on VAT Tax June 02nd 2006</li> <li>- Law on Land</li> <li>- Law on Bankruptcy 1994</li> <li>- Law on Accounting July 18<sup>th</sup> 2007</li> <li>- Arbitration Law June 13<sup>th</sup> 2005</li> <li>- Audit Law July 2007</li> </ul>	<ul style="list-style-type: none"> <li>- The Union of Myanmar Foreign Investment Law 1988</li> <li>- The Myanmar Companies Act 1914</li> <li>- Special Company Act 1950</li> <li>- The Myanmar Partnership Act 1932</li> <li>- The State-Owned Economic Enterprises Law 1989</li> <li>- Transfer of Immovable Property Restriction Law 1987</li> <li>- Commercial Tax Law 1990.</li> </ul>	<ul style="list-style-type: none"> <li>- Law on Investment 2005 ratified and promulgated by the National Assembly of the Socialist Republic of Vietnam on November 29th, 2005;</li> <li>- Law on Enterprises ratified and promulgated by the National Assembly of the Socialist Republic of Vietnam on November 29th, 2005;</li> <li>- Decree No 108/2006/ND-CP dated September 22nd 2006 implementing the Law on Investment 2005.</li> <li>- Decree No 88/2006/ND-CP dated August 29th 2006 implementing the Law on Enterprises 2005.</li> <li>- Decree No 139/2007/ND-CP dated September 05th 2007 implementing the Law on Enterprises 2005.</li> <li>- Law on Export and Import Taxes 2005.</li> <li>- Law on Corporate Interests Tax 2003.</li> <li>- Law on VAT Tax 2003.</li> <li>- Law on Land 2003</li> <li>- Law on Corporate Bankruptcy 2005</li> <li>- Law on Accounting 2004</li> </ul>

### **III. Analysis and Recommendations:**

#### ***3.1. Tax incentives of C.L.M.V reflect intent of each country.***

Therefore, it should not be said that one country's policy is superior to other countries. However, there is an opinion that efficiency of implementation of these tax incentives system seems to differ among 4 countries (Laos; one-stop service, Vietnam; need to get permission of several authorities i.e. construction,...). So, in order to realize the aiming effect of tax incentives, it is recommended to build up a strong mechanism (i) that can be suitable to their own social-economic situations and (ii) that ensures its accessibility of such incentive system not only for domestic investor but also foreign investors.

#### ***3.2. The land-use right of the enterprises.***

C.L.M.V countries do not allow any company to own the land. Company needs to get land-use right. There is an opinion that the transparency on the legal system of land transactions is somehow ambiguous. So, the system need to be sophisticated and clarified especially about:

- (i) The method of ensuring the effect of setting up against the third party, as for the land-use right.
- (ii) Procedure of transfer, return, and disposal of the land-use right.

#### ***3.3. Laws and regulations system:***

Now, the Laws and regulations related to FDI increased so much, and became complicated. There is an opinion that the relevant conditions on business & investment are regulated among many laws, which reduces transparency. Our recommendations are to (i) build an united and streamline law on FDI, (ii) make clear the powers of the relevant authorities (including Ministries, local governments,...), and (iii) allow investors to have a look at all the business relevant conditions. Therefore, it is necessary to establish or give power for an independent state authority that summarize all the business relevant conditions in the major business sectors into a guideline book.

#### ***3.4. Promotion:***

At the same time with completing the institution issues above, there is an opinion that the C.L.M.V countries should build up the Investment Promotion Plans for each own. It is not only for attracting oversea capital but also supporting, keeping and expanding the current projects and companies. In other word, all their difficulties, disclosure / transparency requirement or supporting requests should be solved timely by the relevant authorities (that

means the local authorities should keep contacts actively with foreign investors). We also should remind that the small and medium companies' abilities and needs differ from such abilities and needs of the TNC.

Our recommendation is that the Investment Authorities should keep the close contact with the private sector and other relevant authorities in order to supply the trustworthy supporters and good consultants, and to help investors overpass the administrative difficulties and barriers

### ***3.5. Implementation:***

There is an opinion that one of the most difficulties faced by the foreign investors, when they commence business in the C.L.M.V countries, is the implementation of the laws. It means that, the practice of laws and regulations is sometime different from what laws and regulations say.

For example, time for procedures in the almost cases are longer than the time regulated.

Second point is acknowledged level of laws and regulation by the authorities. When an unified explanation from the state organs cannot be achieved, some authorities may have the different understandings and then may make the foreign investors confuse. Our recommendation is, besides promotion above, that it is necessary to take into account the enforceability of the laws and regulations when they are made.

### ***3.6. Support methods from regional countries.***

(i) Infrastructures: electricity, water supply, roads, transportation, communications, logistic services,...

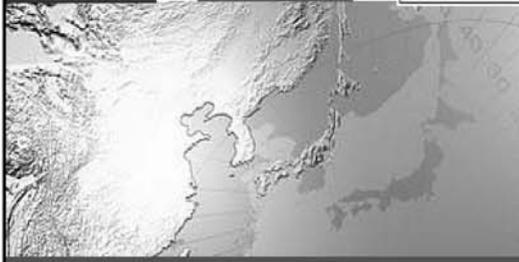
(ii) Skill labors: qualities, quantities, disciplines,...

(iii) Other public services

- The aids before making decision of investment.
- Information, marketing services.
- Finding the local partner.
- Coordinating the investment procedures and getting incentives.
- The Aids on the loans.
- Post-License supporting: tax register, construction permits, customs procedures,...

**INTERNATIONAL SEMINAR ON CIVIL AND COMERCIAL LAW  
(OSAKA-2008)**

**Invitation of Investment in Cambodia,  
Laos, Myanmar and Vietnam**



**Group 1:**

1. Mr. DO Van Su
2. Ms SENGAPHONE Senghaivanh
3. Ms THI Thi Shwe
4. Ms MOCHIZUKI Aki
5. Mr. YOSHITAKE Hiroshi

**Presenter: Ms THI Thi Shwe**

**Presentation Outlines**

**Brief Comparison of FDI allowed in each countries**

**The Investment Procedures**

**Law and regulation**

**Recommendations**

Tax incentives

The land-use right

Laws and regulations system

Promotion

Implementation

Support methods

2

## Brief Comparison of FDI allowed in each countries

This report consider the group of C.L.M.V in the 05 main criteria, including:

1. The business areas: License periods (years): C (99); L (50+25); M (2 + renewed); V (50and70max), conditional business permits, prohibited sectors.
2. Forms of Investment: C (4), L (3), M (4), V (4).
3. Capital (Min: .000USD): C (500), L (100), M (500), V (No required)
4. Land Ownership (years max): C (99), L (50+25), M (depend on capital), V (70)
5. Tax Incentives:
  - CIT Standard(%): C (20), L (domestic: 35; FDI: 20), M (30), V (28).
  - Incentives: depend on the sectors and locations of investment projects

**Please see details in the Table 1 in Final Report of Group 1**

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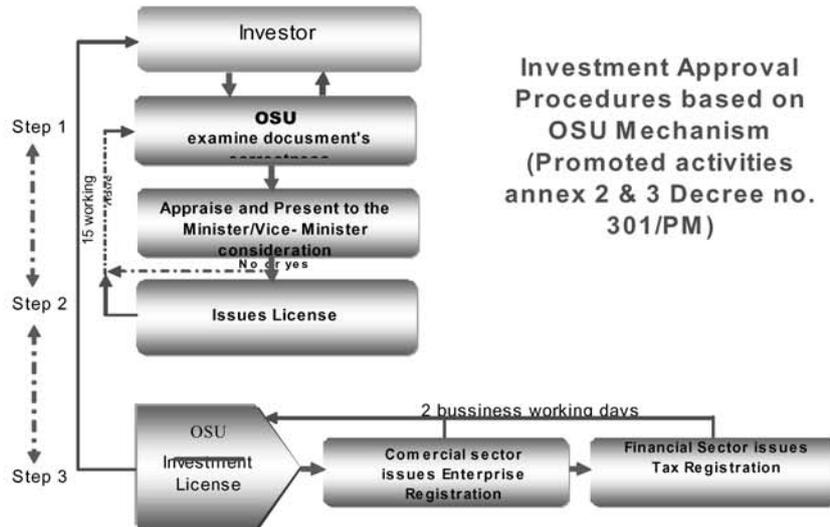
## Investment Procedures

### 1. Cambodia:



## Investment Procedures

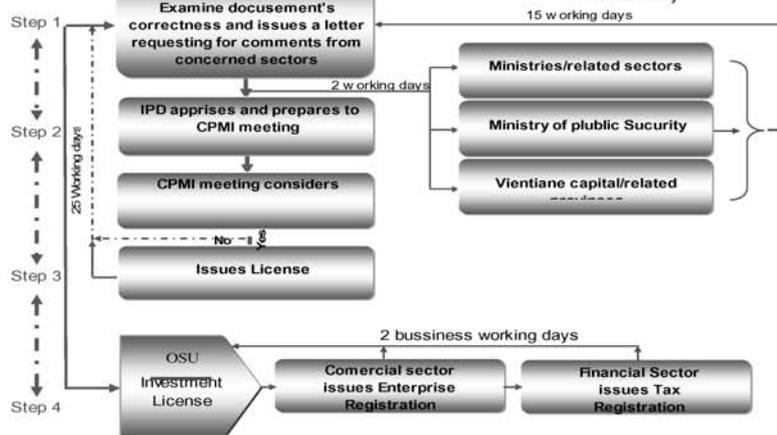
### 2. Laos: Procedures for investment consideration at central level



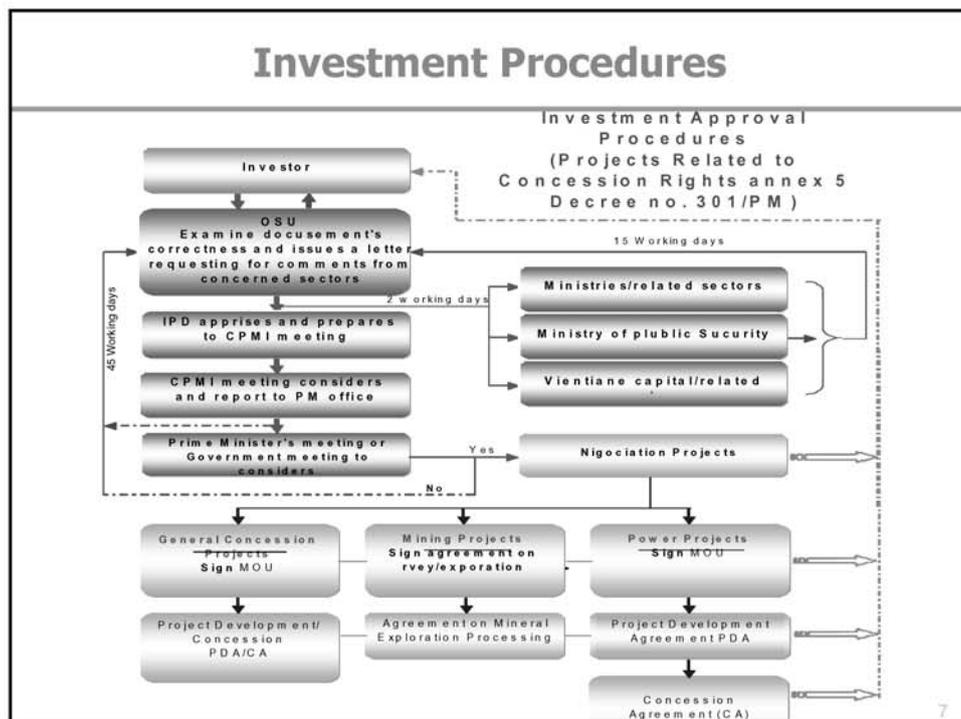
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## Investment Procedures

### Investment Approval Procedures based on OSU Mechanism (Activities Opened with some restrictions annex 4 Decree no. 301/PM)



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## Investment Procedures

**2. Myanmar:**

A Promoter for foreign investment must submit a proposal in prescribed form to the Myanmar Investment Commission.

If MIC is satisfied the proposal, MIC put up the application for approval from Trade Council and Cabinet. The MIC will issue a permit if the proposal is approval.

If the approval economic activity is to be formed as a limited company, it must apply for permit under Section 27 (A) of the Myanmar Companies Act from National Planning and Economic Development through the company Registration Office.

After being granted the permit, the company must be registered with the company Registration Office under the Ministry of National Planning and Economic Development.

Permit for foreign investor about six weeks provided that document submitted are completed.

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## Investment Procedures

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#### b) Investment Evaluation Procedures applied if:

- Projects fall in conditional sectors; or
- Investment capital is VND300 billion (approx. US\$19 million) or above
- Respond shall be done within 45 working days

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## Laws and Regulations

**In this Part, the Report of Group 1 has indicated some laws and other regulations of C.L.M.V related to the Foreign Direct Investment (not all but the key laws and regulations; in each particular sector, there are some relevant specific regulations that cannot present all here)**

**Please see more details in the Final Report of Group 1**

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## Analysis and Recommendations

### 1. Tax incentives of C.L.M.V reflect intent of each country.

to build up a strong mechanism (i) that can be suitable to their own social-economic situations and (ii) that ensures its accessibility of such incentive system not only for domestic investor but also foreign investors.

### 2. The land-use right of the enterprises

- the system need to be sophisticated and clarified especially about:
- (i) The method of ensuring the effect of setting up against the third party, as for the land-use right.
- (ii) Procedure of transfer, return, and disposal of the land-use right.

### 3. Laws and regulations system:

- (i) build an united and streamline law on FDI,
  - (ii) make clear the powers of the relevant authorities (including Ministries, local governments,...), and
  - (iii) allow investors to have a look at all the business relevant conditions.
- ➔ Therefore, it is necessary to establish or give power for an independent state authority that summarize all the business relevant conditions in the major business sectors into a guideline book.

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## Analysis and Recommendations

### 4. Promotion:

the C.L.M.V countries should build up the Investment Promotion Plans for each own. It is not only for attracting oversea capital but also supporting, keeping and expanding the current projects and companies. In other word, all their difficulties, disclosure / transparency requirement or supporting requests should be solved timely by the relevant authorities

the Investment Authorities should keep the close contact with the private sector and other relevant authorities in order to supply the trustworthy supporters and good consultations, and to help investors overpass the administrative difficulties and barriers

### 5. Implementation:

- the practice of laws and regulations is sometime different from what laws and regulations say. When an unified explanation from the state organs cannot be achieved, some authorities may have the different understandings and then may make the foreign investors confuse ➔ besides promotion above, that it is necessary to take into account the enforceability of the laws and regulations when they are made.

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## Analysis and Recommendations

### 6. Support methods from regional countries:

- (i) Infrastructures: electricity, water supply, roads, transportation, communications, logistic services,...
- (ii) Skill labors: qualities, quantities, disciplines,...
- (iii) Other public services
  - The aids before making decision of investment.
  - Information, marketing services.
  - Finding the local partner.
  - Coordinating the investment procedures and getting incentives.
  - The Aids on the loans.
  - Post-License supporting: tax register, construction permits, customs procedures,...

# **ORGANIZATION OF ENTERPRISE**

06 March 2008

Group 2

Civil and Commercial Law

## **Members Name**

Shin Matsumoto

Sing Sarath

Paseuth Phou Ngeun

Aye Min San

Cao Dang Vinh

## ORGANIZATION OF ENTERPRISE

Corporate governance does not just focus on the internal environment of the company; it also focuses on the external environment factor. Based on the definition of OECD, April 1999 specified “The distribution of rights and responsibilities among different participants in a corporation, such as the board, managers, shareholders and other stakeholders, and spells out the roles and procedures for making decisions on corporate affairs”.

The role of Corporate Governance has attracted more attention in competitive global market. A number of misconducts by companies such as Daiwa Bank Scandal case in Japan led to a surprisingly high demand of compensation by the shareholders to the directors of the company. In the US, Enron and Worldcom scandals have culminated in the adoption of Sarbanes-Oxley Act of 2002 and related rules as well as enhanced stock exchange governance requirements.

In order to have a better understanding of corporate governance systems in Asian countries, we have chosen one developed country such as Japan, and the other developing countries such as Vietnam, Cambodia, Laos and Myanmar, to study on specific area and make some comparison between those countries. Since the topic of corporate governance is very wide and broad, our group decided to focus on the organization of enterprise, especially shareholder’s right and the independent directors or independent auditors.

### FINDING

#### **1. Shareholder’s right of participating and voting at shareholder meeting**

*Procedural and/or legal mechanisms available to a company do not permit it to impede entitled shareholders from participating and voting in a general shareholder meeting. Effective means of redress are available for those whose rights have been impeded or violated.*

In all the countries, the law states the right of shareholder to attend the meeting and the right to vote, in principle, one share shall carry one vote. Each share of the same class shall give each shareholder the equivalent rights, interests

and obligations. There are some exceptions in Vietnam and Laos that dividend preference shareholders and redeemable preference shareholders shall not have the right to vote, the right to attend general shareholders meetings or the right to nominate candidates to the Board of Directors.

In all the countries, except for Myanmar, any shareholder has the right to file a lawsuit to the court to cancel any decision made at such meeting. The only difference among the countries is the time limit for requesting cancellation of resolution. In Cambodia, there is no time limit, but the shareholder must have proof that he or she did not receive any written notice of the meeting. In Laos, the period is 60 days from the date of resolution and in Vietnam, 90 days from the date that the notice is received. In Japan, it is three months from the date of resolution.

## **2. Shareholder's right to elect and remove members of the Board.**

*Procedural and/or legal mechanisms available to a company do not permit it to impede entitled shareholders from electing and removing members of the board. Effective means of redress are available for those whose rights have been impeded or violated.*

During the shareholders meeting in each country, the law allows the shareholder to vote for electing and removing director and auditor of the company and for deciding any other matters that may arise within the company. In the case of misconduct or violation of the law with respect to director's or auditor's performance of his or her duties, shareholder have right to remove the directors or auditors by the resolution of shareholders meeting.

The shareholder may request the directors to call a general shareholders meeting depending on the number of shares. Cambodia requires 51% of the issued shares of the company that exercise the right to vote at the meeting but the request may consist of several request forms signed by one or more shareholders to achieve 51% for calling the meeting. In the case where directors do not call the meeting within twenty-one (21) days after receiving the request; any shareholder who signed the request may call the meeting. Laos has very similar number of percentages for request to the director to call a shareholders meeting, requiring more than 50% for making the request. In Vietnam, a shareholder or group of shareholders that hold 10% or more of total shares have the right to request Board of Directors to call shareholders meeting; in case where the Board of

Directors and Board of Supervision do not call the shareholders meeting, such shareholder or group of shareholders may call the shareholders meeting. In Japan, it is 3% (proposing the agenda is 1%, putting items for discussion on the agenda can be made by single shareholder). But in Myanmar, there is no general rule that an individual shareholder can call shareholders meeting.

### **3. Advance notice of shareholders meeting**

*The corporate governance framework requires or encourages companies to provide sufficient advance notice of shareholder meetings and to deliver meeting material covering the issues to be decided that is adequate for shareholders to make informed decisions. The standard generally is observed in the jurisdiction and investors generally acknowledge that notice and information provided by companies is adequate. There are effective means of redress for shareholders where required procedures are not followed*

A written notice of every general shareholders meeting shall be given to all shareholders, directors, and the auditors as the followings:

**Cambodia** requires at least 20 days to 50 days before the meeting for advance notice. The notice of general shareholders meeting shall state the date, agenda, and location of the meeting.

When special business is to be discussed at the meeting:

- Documents stating the nature of that business in sufficient detail to permit the shareholder to form a reasoned judgment; and
- The text of any special resolution to be submitted at the meeting.

Failure to receive a notice does not deprive a shareholder of the right to vote at the meeting.

**Laos** requires 5 working days advance notice before the meeting takes place. The notice shall include the date, opening and closing time, and venue of the meeting together with all the necessary documents relating to the meeting.

**Myanmar** requires 14 days advance notice before the meeting takes place. The notice shall include the date, opening and closing time, and venue of the meeting together with all the necessary documents relating to the meeting

**Vietnam** requires minimum 7 working days for the notice of shareholders meeting in advance.

Included in the invitation are the agenda and documents supporting the resolutions to be decided at the general shareholders meeting. However, the law does not specify the kind of information which must be distributed to shareholders. In most cases, the invitation merely includes instructions on where and when shareholders may require documentations for the meeting. In some companies, copies of documentations and handouts are provided at the meetings.

**Japan** requires that advance notice must be sent to shareholders no later than two weeks prior to the date of the shareholders meeting. The notice shall specify the date, opening time, place and the agenda of the shareholders meeting.

In cases where the number of the shareholders is one thousand or more, the directors shall, when dispatching the notice, give the shareholder the document stating matters of reference for the exercise of votes.

#### **4. Shareholder's right of asking questions, proposing items on the agenda and submitting proposal for shareholders meeting.**

*The corporate governance framework requires or encourages companies to: (a) facilitate shareholders asking questions of the board; and (b) permit shareholders to propose items for discussion on the agenda or to submit proposals/resolutions for consideration at the meeting of shareholders regarding matters viewed as appropriate for shareholder action by applicable law. There is an effective means of appeal on procedural grounds. Where voluntary, the standard is widespread.*

*Thresholds for share ownership establishing the right of individual shareholders, or groups of shareholders, to pose questions, to place items on the agenda or to submit proposals/resolutions for consideration at the meeting of shareholders regarding matters viewed as appropriate for shareholder action by applicable law should not be restrictive and should take into account the concentration of ownership in the jurisdiction and the average size of the company.*

There are some differences in requirement for the right to ask questions, propose items on the agenda and submit proposal of shareholders meeting among

the countries. According to **Cambodian** law, the shareholders can express any opinion or purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

In **Laos** the shareholders have right to ask the appropriate question during the meeting and the only shareholder, who has 1/3 of total shares can propose extra items on the agenda.

**Myanmar** gives the right to all shareholders to propose extra items on the agenda and any other opinion before the meeting takes place and during the meeting.

**Vietnam** allows shareholders to make recommendation that items should be included in the agenda no later than 3 days before the general shareholders meeting takes place. During the meeting, shareholders have no right to raise any matters that not included in the agenda. This system is very similar to the Japanese system in the past.

**Japan** now adopts slightly different approach, such as shareholders having consecutively for the preceding six months or more not less than 1% of total voting rights of all shareholders or not less than 300 votes may demand that the directors propose items on the agenda of the shareholders meeting. That demand shall be submitted no later than eight weeks prior to the date of the shareholders meeting. Any shareholder may submit proposals at the shareholders meeting with respect to the agenda of the shareholders meeting.

#### **5. Shareholder's right to make their views on remuneration policy**

*The corporate governance framework requires or encourages companies to present the opportunity for shareholders to make their views known either at the meeting of shareholders or by equivalent means about the compensation policy for board members and key executives. There are provisions for shareholders to explicitly approve equity-based compensation schemes and this power is not delegated to the board.*

**Cambodia:** Based on Cambodian law, the remuneration of auditor may be set by ordinary resolution of the shareholders meeting. The remuneration of

director is not clearly stipulated.

**Laos:** A director of the limited company has no salary but receives an annual honorarium and remuneration for each meeting at the rate or in the amount agreed upon by the shareholders meeting, except for a director appointed from outside persons or as otherwise agreed.

**Myanmar:** The remuneration of the directors shall be determined by the company at general shareholder meeting.

**Vietnam:** Ordinary (annual) shareholders meetings vote on the total package of remuneration for the board, for both listed and non-listed companies. The board decides on the remuneration of individual board members. Remuneration and other information on the board and management are to be disclosed in the annual report. Under the LOE 2005, payment for managers may consist of three parts: (i) compensation, calculated based on working day rate, (ii) bonus, and (iii) other private benefits. Payments in the form of stock option bonuses also are becoming common in listed companies.

**Japan:** In a company with board of company auditors, the remuneration of directors and company auditors shall be fixed by resolution of a shareholder meeting. The contents of “equity-based remuneration” (a stock option) shall be fixed by resolution of a shareholder meeting.

In a company with committees, remuneration for individual executive officers and directors shall be fixed by resolution of a compensation committee meeting. The majority of compensation committee members shall be outside directors. Moreover, the remuneration policy for executive officers and directors is recorded in the business reports, and directors shall, when giving notice to call annual shareholders meetings, provide shareholders with the business reports.

The remuneration of the other key officer is fixed by resolution of a board of directors meeting, etc.

## 6. Shareholder's right to vote in absentia

*The corporate governance framework permits shareholders to vote in absentia (including postal voting and other procedures) and that this vote can be for or against a resolution, and fully equivalent to the possibilities allowed to those shareholders present. Shareholders have an effective remedy against the company if it does not provide the options prescribed by law. Adoption of one or more of the functionally equivalent range of options by companies is widespread.*

In all countries, proxy voting is allowed. Only Japan allows the shareholder who is absent in the meeting to vote by sending postal mail or e-mail.

**Cambodia:** the shareholders must attend the meeting to be able to cast off their vote, but any shareholder may authorize any other natural person to represent and vote for him or her as a proxy at any meeting. All proxy shall be in writing and shall be signed by the shareholder and shall be dated. A proxy shall not be valid for more than one year after the date of its signature or for such shorter time as the proxy itself may provide.

**Laos:** A shareholder may assign any proxy to attend the meeting on his/her behalf but such assignment shall be made in writing and handed over, before the holding of the meeting, to the board of directors or the director. The proxy has equal votes to the votes of the assigning shareholder, except as provided otherwise in the assignment.

**Myanmar:** The instrument appointing a proxy shall be in writing under the hand of the shareholder or of his attorney duly authorized in writing, or if the shareholder is a corporation, either under the common seal, or under the hand of an officer or attorney so authorized, no person shall be treated as valid. The instrument appointing a proxy shall be deposited at the registered office of the company not less than 72 hours before the time for holding the meeting.

**Vietnam:** The General Meeting of Shareholders shall pass resolutions which fall within its power by way of voting in the meeting or collecting written opinions. Shareholders may authorize other persons to act on their behalf in

attending the meeting. Letters of proxy shall be in writing in the form as prescribed by the company and need not be notarized.

Postal and electronic voting: Voting by mail/post is permitted when the resolution is simple . Voting by mail/post does occur in practice.

**Japan:** Shareholders may exercise their votes by proxy. In cases where the number of the shareholders is one thousand or more, such company shall permit the shareholders who do not attend the shareholders meeting to exercise their votes in writing (or by an electromagnetic method).

#### **7. Protection of minority shareholders against abuse of controlling shareholders.**

*The corporate governance framework provides either ex-ante mechanisms for minority shareholders to protect their rights that have proved effective and/or ex-post sanctions against controlling shareholders for abusive action taken against them. There are effective means of redress for minority shareholders and adequate remedies.*

**Cambodia:** for special resolution, it requires at least 2/3 of the total votes.

**Laos:** for special resolution, it requires at least 2/3 of those in attendance at the meeting being the shares of at least eighty percent of total contributed share. In Lao, minority shareholder has right to gain compensation later for such damage as agreed.

**Myanmar:** Not applicable.

**Vietnam:** A resolution involving type of shares and a number of shares to be issued under each type, amendments and supplements of the company charter, the reorganization and dissolution of the company, or investment, the sale of 50% or more of the total value of assets recorded in the company accounting books shall be passed when is approved by no less than 75% of total votes of participating shareholders.

Under the EL 2005, minority shareholders shall have the right to request the court to void any resolution or decision that violates the company's charter.

According to the Civil Code 2004, shareholders may petition an economic court to overturn a meeting decision. In cases of merger, reorganization, large transactions, and changes in the company's charter, shareholders that voted against or did not participate in the general shareholder meeting have the right to sell their shares back to the company at market price.

**Japan:** In cases where a company changes the articles of incorporation etc., the resolution of shareholders meeting shall be made by 2/3 or more of the votes of the shareholders present at the meeting where the shareholders holding a majority of the votes are present. In the case of merger, reorganization, etc., dissenting shareholders may demand that the company purchase, at a fair price, the shares held by such shareholders. In cases where a resolution of shareholders meeting is significantly inappropriate by reason that a shareholder having special interest concerning such resolution has exercised his voting right, the shareholders may demand, by means of a lawsuit, that such resolution be canceled.

#### **8. Independent directors and independent auditors.**

*i. The corporate governance framework requires or encourages: (a) a proportion of the board to be independent; (b) sets out criteria for independence that address the primary agency conflicts that arise because of ownership and control structures in the jurisdiction and are not easily bypassed; and (c) places the onus on companies to declare who they regard as independent and the reasons. There are effective mechanisms enabling shareholders to hold the board to account for inadequate performance of this responsibility, such as meaningful opportunities to address shareholder concerns at the shareholders meeting, put items on the meeting agenda, vote against board members, and/or an effective market in corporate control. There is widespread adherence to the standard.*

*ii. The corporate governance framework requires or encourages a sufficient number of non-executive board members capable of exercising independent judgment to oversee tasks where there is a potential for conflict of interest including: (a) oversight of the integrity of financial and non-financial reporting including external audit; (b) review and management of related party transactions and self-dealing; (c) nomination of board members and key executives; and (d) board and executive remuneration. Where the standard is*

*mandatory, the requirements are backed by effective enforcement mechanisms and adequate remedies. Where the standard is not mandatory or otherwise enforced, there are effective mechanisms enabling shareholders to hold the board to account for inadequate performance of this responsibility, such as meaningful opportunities to address shareholder concerns at the shareholders meeting, put items on the meeting agenda, vote against board members, and/or an effective market in corporate control. There is widespread adherence to the standard.*

**Cambodia:** In Cambodian law it does not state that the company requires an outside director or outside auditor. Cambodian law prefers to give a freedom to company in operating their business as long as it operates in an appropriate manner. In practice, the company usually appoints an outside auditor such as (Price & Cooper) to audit their company`s financial account.

**Vietnam:** For non listed company, unless otherwise provided in the company charter, the Board of Directors shall consist of at least 3 members and no more than 11 members; no independent director and independent auditor is required. The financial report of shareholding companies must be certified by an public certified accountant.

For listed company, the number of the Board of Directors shall be at least 5 members and at most 11 members, one third of whom shall be non-executive independent members. While non-executive independent directors are required for listed companies, the law does not define clearly who can be a non-executive independent director. The role of non-executive independent directors is not clear.

**Japan:**

In a company with board of company auditors, the half or more of auditors shall be outside company auditors. In a company with committees, the majority of the committee members of a nominating committee, an audit committee and a compensation committee shall be outside directors.

Outside company auditor means an auditor who has neither ever served in the past as a director, accounting advisor or executive officer, nor as an employee, including a manager, of such company or any of its subsidiaries. A company auditor may not concurrently act as a director, employee, including

manager, of that company or its subsidiary, and may not act as an accounting advisor or an executive officer of such subsidiary.

Outside director means a director who is neither an executive director nor an executive officer, nor an employee, including a manager, of such company or any of its subsidiaries, and who has neither ever served in the past as a director, nor executive officer, nor as an employee, including a manager, of such company or its subsidiaries.

When the outside company auditor or outside director is elected, it is necessary to register as such. Moreover, it must be specified in a reference document for shareholders meeting and annual business report that the outside company auditor or outside director is independent or not.

In **Laos** and **Myanmar**, the law does not state clearly about the independent director and auditor. In Laos, director may be an outsider but in Myanmar, a director must be a shareholder.

## **RECOMMENDATIONS**

After number of findings, we have learnt that, every law of each country is stipulated for ensuring those country's benefits and interests. It is very hard to compare which legal system is better than the other. We all believe that the company laws of all countries are working very well based on the country's conditions and situation. We do not yet know what will happen in the future. There will be some changes for improvement and additions to ensure more benefits for those countries in competitive global market. Japan is different from the rest of the countries, because it has been developed in this field for many years, even though, we still feel that some changes could be done for improvement.

### **Cambodia:**

1. The law does not state clearly about the remuneration but in practice usually it is voted by shareholders. The law should specify clearly that the shareholders have right to decide the remuneration for directors.

2. There are no indications of outside director and outside auditor. For example, the director of a company is usually the person who has majority of shares in the company. In this case, he exercises his duties on the interest of

majority shareholders. By learning from the Japanese experiences, Cambodia should introduce independent director who plays the important role in helping the minority shareholder and monitoring other directors of the company.

3. Another point is that Cambodian law states that shareholders having at least 51% of the total shares can call a meeting. This means that they can also propose agenda of the meeting. Under this system the meeting cannot be called in a fair manner because minority shareholders can not propose an agenda. The requirement of 51% should be lowered.

4. Cambodia law should give an extra right to the shareholder to propose items for discussion on the agenda before the meeting takes place.

### **Laos**

In the Lao law, five day period for sending notice is too short and needs to be extended. This will give appropriate time for shareholders including foreign shareholders to attend the meeting. The other point is that 60 day period for shareholder to request the court to cancel the resolution of shareholder's meeting is also too short.

### **Myanmar**

Today, the most important form of business organization in Myanmar is the corporation. The concept of corporation is not new in Myanmar. Some of the commercial laws and corporate laws were kept intact during the period of the past 25 years since 1988. When Myanmar adopted the market oriented economic system, these laws came into practice and became effective once again. The Government of Myanmar not only put practice into these laws but also promulgated new laws to be in line with the changing economic environment; encouraging private sector development under the market oriented economic system. To achieve that goal, the Government has to work in the intelligent way to set up the legal system that appropriate to companies. So there are some recommendations, such as:

1. Myanmar should state clearly the right of shareholder to file petition to the court to cancel the resolution of shareholder meeting.

2. The time limit 14 days for notice of shareholder meeting is too short and needs to be extended.

3. The remuneration policy for directors and auditors should be announced to every shareholder.

4. The law should introduce the system of independent director and auditor to improve the corporate governance in companies.

**Vietnam:**

1. In practice, shareholders redress is limited. The new Enterprise Law 2005 introduced, in principle, the right of shareholders to request the economic court to cancel the resolution of general shareholder meeting. However, in joint stock companies, shareholders can not sue directors based on the rule that the company shall bear the cost of the lawsuit. Shareholders cannot file lawsuit against directors in the form of class action and derivative actions, which have not yet been introduced in Vietnam. Therefore, Vietnam should state clearly the right to file petition to the court under the form of class action and derivative action.

2. The right to nominate candidates to the Board of Management is only for a shareholder or a group of shareholders holding more than 10% of the total ordinary shares for a consecutive period of six months or more. Vietnam should consider lowering the minimum 10% ownership threshold to nominate a member of the board.

3. Notice of shareholder meetings shall be made 7 days in advance. This does not provide adequate time for shareholders, particularly foreign shareholders, to participate. We think the 7-day notice for general shareholder meeting is too short and needs to be increased to one month.

4. In Vietnam, the right to recommend items to be included in the agenda of the general shareholder meeting should be opened to all shareholders, not only for a shareholder or a group of shareholders holding more than 10% of the total ordinary shares for a consecutive period of six months or more.

5. Performance-enhancing mechanisms should be allowed and promoted. Such mechanisms align the interests of senior executives and management of the company with those of their shareholders, and provide incentives for the former to perform. Such schemes should be approved by shareholders. No member of the board or the CEO should be involved in deciding on his/her own remuneration. A remuneration committee comprising non-executive members under the Board of Directors should be set up.

6. Voting by proxy should be encouraged, and shareholders should be allowed to elect proxies through electronic devices. Vietnam should allow the shareholder who is absent in the meeting to have the right to vote by sending postal mail or e-mail.

7. In Vietnam, the law should define the concept of independent directors and provide guidelines with regard to their qualifications and nomination procedures.

**Japan:** As for Japan, the following five points are recommended.

1. The period of filing lawsuit for canceling the resolution of shareholders meeting shall be extended.

We think, in Japan, the means of redress is not enough for the protection of shareholder's rights, because the period for filing the lawsuit for canceling the resolution of shareholder's meeting is counted from the date of such resolution, though there is no system to notify shareholders of the content of the resolution. Therefore, it is necessary to examine what should be the appropriate period for filing the lawsuit for canceling the resolution of shareholder's meeting.

2. The notice for calling shareholders meeting shall be sent earlier. In Japan the notice for calling shareholders meeting shall be sent at least two weeks before the meeting. Therefore it is necessary to examine some improvement for the listed companies with many shareholders so that earlier delivery of notice would be obliged.

3. In company with committees shareholders shall get involved with the procedure to determine compensation of executive officers and directors.

In Japan there is no effective system that shareholders get involved with the procedure to determine compensation of executive officer and directors. Therefore it is necessary to consider some improvements that shareholder's approval is required as to the compensation policy of remuneration committees.

4. It is necessary to improve the system to protect minority shareholders from the abuse of controlling shareholders.

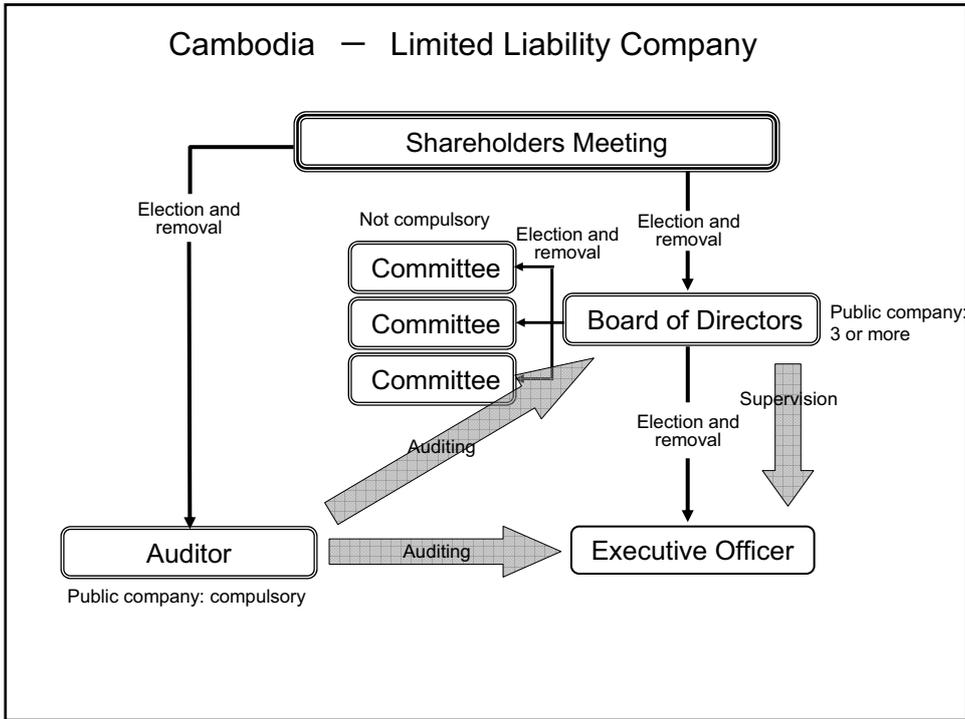
It is difficult to say that Japan has effective systems to protect minority shareholder from the abuse of controlling shareholders. Therefore Japan shall introduce the system like fiduciary duty of controlling shareholders.

5. Full utilization of independent directors and independent auditor shall be considered.

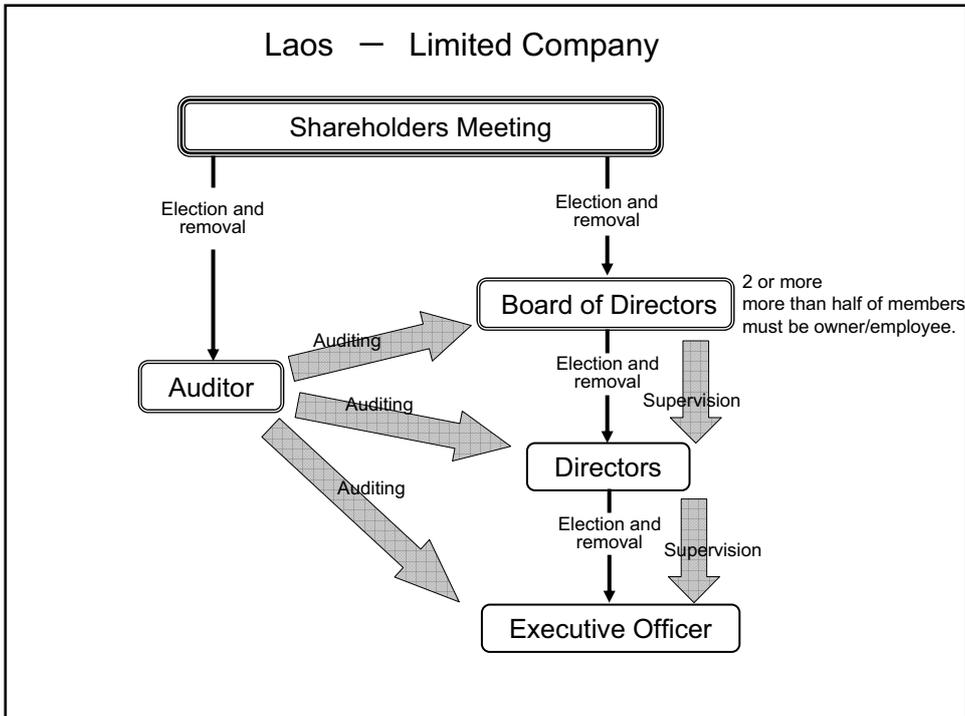
Although Japan has the system of outside director and outside auditor, the independence has some doubt because they can be assumed by major trading partners or relatives. Therefore further utilization of independent director and independent auditor shall be examined by reviewing the requirements of outside directors and outside auditors.

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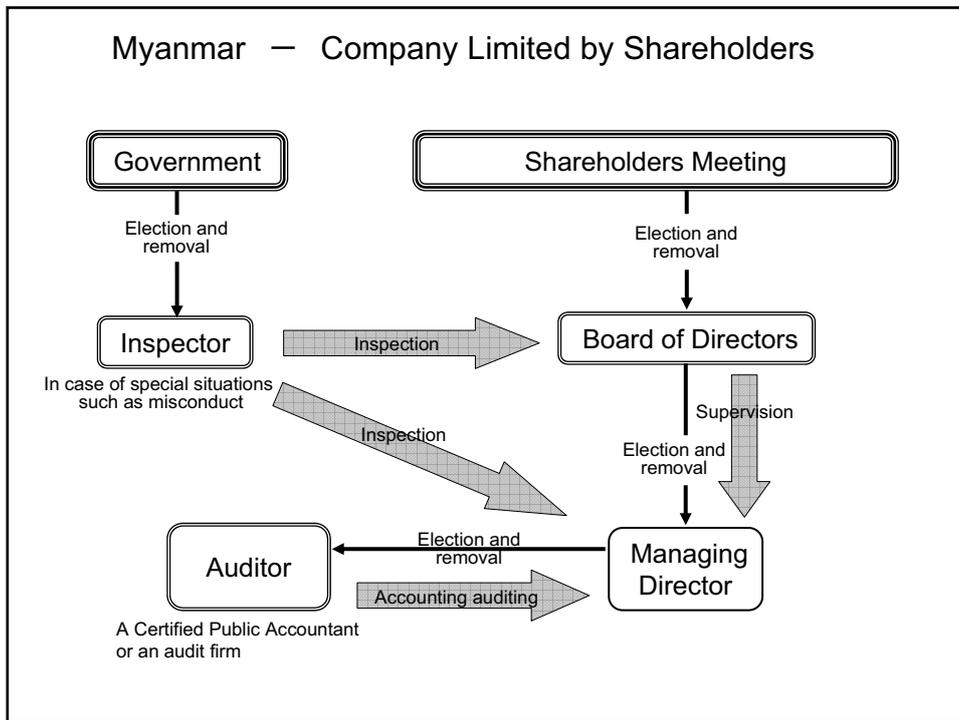
### Cambodia — Limited Liability Company



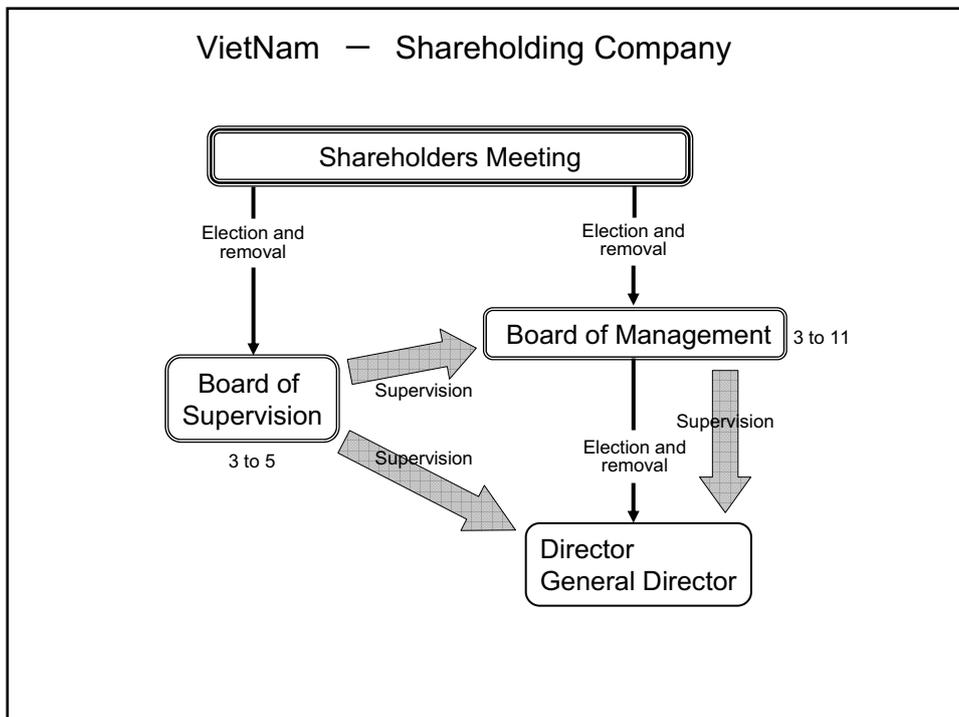
### Laos — Limited Company



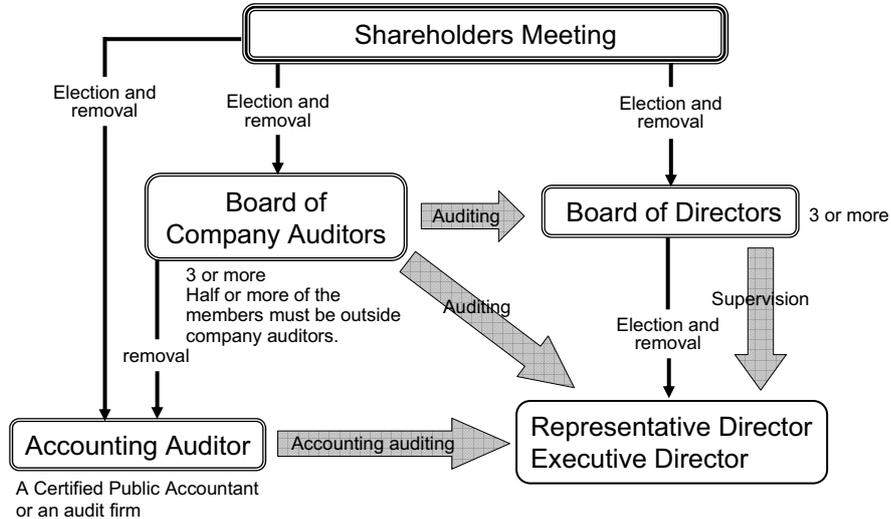
### Myanmar — Company Limited by Shareholders



### VietNam — Shareholding Company

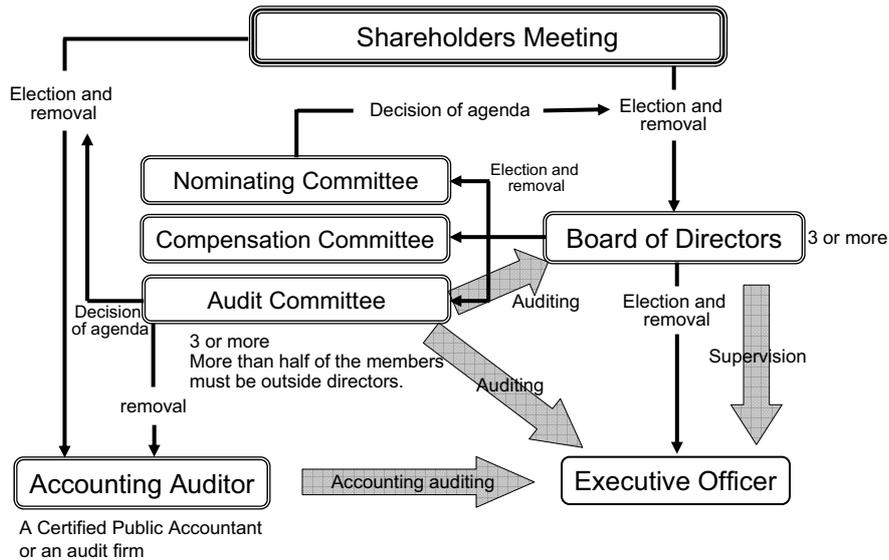


### Japan — Company with Board of Company Auditors



"Outside company auditor" means an auditor of any company who has neither ever served in the past as a director, accounting advisor or executive officer, nor as an employee, including a manager, of such company or any of its subsidiaries. A company auditor of a company may not concurrently act as a director, employee, including manager, of such company or its subsidiary, and may not act as an accounting advisor or an executive officer of such subsidiary.

### Japan — Company with Committees



"Outside director" means a director of any company who is neither an executive director nor an executive officer, nor an employee, including a manager, of such company or any of its subsidiaries, and who has neither ever served in the past as an executive director, nor executive officer, nor as an employee, including a manager, of such company or its subsidiaries.

**COMPLIANCE SYSTEM**  
**FOR LONG-TERM AND SUSTAINABLE DEVELOPMENT**

**OSAKA, MARCH OF 2008**

**PREPARED BY GROUP III (HAPPY GROUP)**

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**I. EXECUTIVE SUMMARY**

Pursuant to the lesson learnt on corporate governance must comply with internal rules, policies, regulations and business ethics and laws system in order to enhance the good practical business operation. Meanwhile, to interact and play together within country and country as well as to prevent the misconduct and violation, especially, the distribution of rights and responsibilities among different participants in a corporation occurred from such as shareholders, directors, top managers and other stakeholders. The corporate governance's introduction system is not only an access system that can handle the best practical issues related to its basic laws and regulations but it is also concerned with world wide environment, social contribution, economies, consumers, and employees as well.

In general, we would do the final report that helps all of us determine, at least, a certain objectives that will approach the business activities and set a general direction of our purposes in the future issues. The report interprets the status and legal system among Cambodia, Laos, Myanmar, Vietnam and Japan with its analysis of conduct and makes proposal that may improve corporate governance in our countries.

In order to enhance the best practical issue on Corporate Governance we should learn know-how Corporate Governance and the role of Internal Control System and the Audit System inside the Corporate Governance in business activities.

However, to make Corporate Governance work sufficiently, we should focus on Compliance System that is a lively introduction of corporate law; we cannot do business by ignoring internal and external laws, rules and regulations as well as its risk management.

Therefore, Compliance System is a system to ensure that everyone in the company, including the board of directors, partners, management, employees and agents understands the standards of conduct applicable to their designated roles, finding out the misconduct at early stage, providing effective mechanisms for the timely correction of non-compliant conduct.

For implementation of Compliance System in a company, we need to train or recruit the legal officer and accounting auditor who can do the activity related to complying with the laws, regulations, etc.

## II. COMPARASION OF FIVE COUNTRIES' ISSUES

Country	Preventive Measures	Monitoring	Finding out Misconduct	Stopping	Compensation
<b>CAMBODIA</b>	<p><b>1. Code of Conduct:</b> Voluntary</p> <p><b>2. Internal Control System and Training:</b> Voluntary and by the Government (training) Article 273 &amp; 284</p>	<p>Each Department reports to Directors and <b>Auditors</b> (operation + accounting record) inspect/double-check and make clarification report (to BOD and Shareholder's meeting) Article 112, 113, 114, 119, 131 &amp; 229</p>	<p><b>Disclosure</b> by Director or Officer + Annual Report + Financial Report Article 134, 135, 136, 137 &amp; 224</p> <p>Examine by shareholders Article 225</p> <p>Approval and Issuance of Financial Statement Article 226</p>	<p><b>1. Hotline:</b> Voluntary</p> <p><b>2. Injunction:</b> Conflict between Shareholder and share holder or Director/Officer should be settled by Arbitration Court. Article 228, 250</p>	<p>Compensation for damage Article 133</p> <p>Derivative action use Arbitration Court Article 287</p> <p>Duty of Care of Directors and Officers Article 289</p>
<b>LAOS</b>	<p><b>1. Code of Conduct, Training, Internal Control System:</b> Voluntary</p>	<p><b>1. Article 153. Audit</b> An audit is a verification of the accuracy of the information and the accounting records as stipulated by the Law on Enterprise Accounting.</p> <p>The shareholders' audit is carried out through the auditor.</p> <p>A limited company may</p>	<p><b>1. Article 158. Shareholders' Right to Inspect Copies of documents</b> Shareholders are entitled to inspect or make copies of documents on the enterprise license of the limited company at any time during office hours, except for documents pertaining to trade secrets and strategic competitiveness.</p>	<p><b>1. Hotline:</b> Voluntary</p> <p><b>2. Injunction:</b> - Article 127 The court orders directors' removal as provided in case of violation of the law and bylaw. - Article 136: When shareholders file complaints and the</p>	<p><b>1. Shareholder have the rights(Article 99 -6 )</b> To file complaints against directors, officers or employees of the limited company causing prejudice to their interests;</p> <p><b>2. Liability of Directors (Article 121 - 122):</b> Shall compensate if have misconduct.</p> <p><b>3. Derivative action</b></p>

		<p>employ an auditor or may employ an auditor on a permanent basis, or [may employ an auditor] for periodic auditing as decided by the shareholders' meeting except in the event that the limited company possesses assets in excess of fifty billion Kip.</p> <p>Article 156:  <b>2. Auditor have rights:</b>  - To audit the accounts of the limited company at any time.  + To make inquiries on any matter relating to their audit.  + To prepare a report to Shareholders' meeting.</p>	<p><b>2. Disclosure: Annual Business Report</b></p>	<p>court orders the meeting to be convened;</p> <p>- Article 147: Resolutions of shareholders' meetings may be nullified by court order only.</p>	<p><b>(Article 123):</b>  In the event that the limited company fails to act or takes improper action against the director in breach, such shareholders may file a claim requesting the court to fine such director or to terminate such act of the director, in the place of the company.</p>
MYANMAR	<p><b>1. Code of Conduct, Internal Control System, Training:</b>  Voluntary</p>	<p><b>1. Auditors have right</b> to inspect, check the documents, make reports to BOD and Shareholder (145 -1)</p> <p><b>2. Two types of reports:</b>  Annual Business Report and annual Financial Report (145-2)</p>	<p><b>1. Auditor has the right</b> to inspect and make report to the Shareholder's Meeting. (145-2)</p> <p>If any Auditors' report is made which does not comply with the requirement of Company Act, every auditor who is knowingly and willfully a party to the default shall be punished with fine. (145-2A-5)</p>	<p><b>1. Hotline:</b> Voluntary.  <b>2. Injunction:</b> No</p>	<p><b>1. Compensation of Damage:</b>  Director has liability in some case: (duty of care)  + They act beyond their authority. (281-1)  + If they make false or misleading statements.  + If they cause any loss to the company,  + If they breach trust</p>

			<b>2. Shareholders can inspect the documents</b> (every shareholder can inspect document in special case relating to misconduct) (32-1-2-3)		... (282A) <b>2. No derivative action</b>
<b>VIETNAM</b>	<p><b>1. Code of Conduct:</b> Voluntary. Depend on the Charter (regulations) of Company. In fact, some foreign invested company has code of conduct.</p> <p><b>2. Training:</b> In Some fields, training for employees is compulsory (Labor Code, Petroleum Law, Chemical Law...)</p> <p><b>3. Internal</b></p>	<p><b>1. Operational Audit:</b> Inspection (Supervision) Committee: (Article 123 - 124, 125) - having the rights to be provided with information (any documents, data...) - The Inspection Committee may consult the Board of Management prior to submission of reports, conclusions and recommendations to the General Meeting of Shareholders;</p> <p><b>2. Accounting Audit:</b> <u>Companies which are required by law to be audited</u> (under Securities Law, Decree on Independent Audit, Insurance Law...) The accounting auditor is</p>	<p><b>1. Inspection Committee</b> will report to Shareholders' Meeting any misconduct of BOM, Directors...</p> <p><b>2. Shareholders rights</b> (Article 79): - To sight, look up and make an extract or copy of the charter, book of minutes, resolution.</p> <p><b>- A shareholder or a group of shareholders holding more than ten (10) per cent</b> of the total ordinary shares for a consecutive period of six months or more, (or holding a smaller percentage as stipulated in the charter of the company, shall have the following rights): + To sight and make an extract of the book of minutes and resolutions of the Board of Management, mid-year and annual financial statements.</p>	<p><b>1. Hotline:</b> Voluntary</p> <p><b>2. Injunction by the Court or Arbitration:</b> Enterprise Law only mentions <b>one case on Article 107</b> (<i>Demand for cancellation of resolutions of General Meeting of Shareholders</i>)</p> <p>- The order and procedures for convening the General Meeting of Shareholders <u>did not comply with this Law and the charter of the company;</u></p> <p>- The order and procedures for issuing a resolution and the content of the resolution breach the</p>	<p><b>1. Derivative action:</b> (The Directors, Inspections, Chairman of Board of Management have responsible of compensation to the related people of company if they have misconduct.)</p> <p><b>The EL does not mention in detail about derivative action (The Plaintiff and Dispute settlement Procedure is not clear).</b> (Only the case of LLC more than two members, the member can give lawsuits to the court against the director. (Article 41 - g))</p> <p><b>- The Shareholder's Meeting have the right:</b></p>

	<p><b>Control System:</b> Credit field and Securities Company are compulsory. Decision 27/2007/QĐ-BCT of Ministry of Finance and Decision 36/2006/QĐ-NHNN of State Bank</p>	<p>from auditing firm.</p>	<p>+ To request the Inspection Committee to inspect each particular issue relating to the management and administration of the operation of the company where it is considered necessary. - <b>Shareholders have other right</b> stated on the Charter of Company. - Shareholder can inspect document if <i>have reason and evidence</i> that misconduct may happen. <b>3. Disclosure:</b> Business report and Financial report (Annual - by law and every quarter - by company's charter).</p>	<p>law or the charter of the company.</p>	<p>To consider and deal with breaches by the Board of Management and the Inspection Committee which cause damage to the company and its shareholders; (Article 96 - h)</p>
JAPAN	<p><b>1. Code of Conduct, Training:</b> Voluntary (Counsel from Federation of Economic Organizations in Japan on September 25, 2007) <b>2. Internal Control</b></p>	<p><b>1. Auditing system:</b> The right of investigation including subsidiary (381, 396, 405) Accounting audit + Operational audit (legitimacy &amp; <u>validity</u>) in principle <b>2. The duty of report:</b> Preparing audit reports (381,390,396, 404) Attending the shareholders meeting, investigating proposals</p>	<p><b>1. The disclosure of the business and the finance by company:</b> - Prior offering the <b>Financial Statements</b> and the <b>Business Reports</b> to shareholders(437), and submitting, reporting, and being approved in the shareholders meeting(438)(It is necessary to preserve Financial Statements for 10 years.(435) - Submitting the <b>Internal Control Reports</b> to the Prime Minister.(Financial Instruments and Exchange Law 24-4-4(what</p>	<p><b>1. Whistle-blowing</b> by an employee etc. (voluntary)← Prohibition of the dismissal or other disadvantageous treatment to the whistle-blower by the Protection of Public Interest Informant Act. <b>2. Injunction</b> The procedure by company auditors or audit committeemen</p>	<p><b>1. Damage suit</b> - When the plaintiff is company → The damage produced with neglect of duty (duty of care or duty of loyalty) is an object.(423) - When the plaintiff is a third party → The damage produced with knowledge or grossly negligence about execution of the duties is an object.</p>

	<p><b>System:</b> Compulsory - Article 362 of Company Act.</p>	<p>submitted, reporting and stating auditor's opinion(384, 398) The duty of attending the board of directors meeting and stating auditor's opinion(383) The duty of report to directors etc. about their misconduct etc.(382, 397, 406)</p>	<p>is called J-SOX Law)) <b>2. The investigation by shareholders:</b> - The right of request for <b>explanation</b> in the shareholders meeting(314) ← At least 1 share is good. - The right of request for inspection and copying - <b>Minutes of the board of directors</b>(371. It is necessary to keep at head office for 10 years.) ← At least 1 share is good. - <b>Account books</b>(433. It is necessary to preserve for 10 years.(432) ← At least 3/100 of the issued shares etc. is good. - The right of request for the election of an <b>inspector</b>(358) ← At least 3/100 of the issued shares etc. is good.</p>	<p>Injunction of the illegal proceeding etc. by directors or executive officers(385, 407) The procedure by shareholders Injunction of the illegal proceeding etc. by directors or executive officers(360, 422) It is necessary to have the shares for at least 6 months or the period set in the memorandum. The request for removal against directors etc.(854) ← At least 3/100 of the issued shares etc. and having the shares for at least 6 months or the period set in the memorandum are needed.</p>	<p>(429). <b>2. Shareholders' representative action(Derivative suit)(847)</b> ← It is necessary to have the shares for at least 6 months or the period set in the memorandum</p>
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(Note: Revision of System in Company of five countries is voluntary)

### III. ANALISYS "FEASIBILITY STUDY"

Looking at the table above, we realize some parts of compliance system is too narrow, so it is reason why these below misconducts may happen and cause the consequence if the company doesn't have enough preventive measures, stopping system and derivative action by law:

Country	The main kind of misconduct
Cambodia	- Fraud in accounting - Unpaid overwork wage (gain workforce) - Unfair punishment of day off - working with no notice from employees
Laos	- Fraud in accounting - Unpaid of social insurance - Violation of environment protection (pollution)
Myanmar	- Fraud in accounting - Director abuse the power
VietNam	- Fraud in accounting - Unpaid of social insurance - Violation of environment protection (pollution)
Japan	- Fraud in accounting - Disguise display of merchandise - Unpaid overwork wage

Through the above table, if the preventive measure, stopping system and derivative action is not adopted the main issues cause by the managerial career, the company will face with its shameful conduct or lose its reputation.

Moreover, company itself faces bankruptcy; lose its competition ability, causing people unemployed, which impact on the shareholders' interest, state's interest, labor's interest; insecure social responsibility, employees' protection as well as healthy hazardous humanity from the lacking environment protection system and lose investment attraction from oversea investors. That is the main factor-leading environment of investment meet a big damage.

### IV. PROPOSAL

As analysis above, we understand that the Compliance system is important for our countries' corporate law system.

To improve the Compliance System on the corporate law, we need adopt these following matters that we lack in corporate law:

Preventive Measures, Stopping System, Compensation and Derivative action:

#### 1. Preventive Measures:

##### 1.1. Setting up independent Compliance division (in form of Compliance Committee or Department) by law:

Setting up independent Compliance division is compulsory by law:

*Any company that has **big charter capital or has large number of employees** or has business in financial, insurance or security fields shall setup an independent Compliance division in company..*

*Other company should establish a compliance system if necessary.*

There are two reasons why setting up compliance system for small company is voluntary:

- The first reason is that small company has simple structure and management, has small number of shareholders, the conflict of interest between shareholders rarely happen.
- The second reason is cost.

The cost of setting up, running and maintaining the compliance system is not small amount of money. So small company cannot bear this cost.

### **1.1.1. The functions, rights and duties of Compliance division:**

For ensuring the independent and effective operation of Compliance division in a company, Compliance divisions shall have at least the functions, duties and the rights below:

1. Operation regarding the board of director's decisions.
2. Preservation of the meeting minutes of the board of directors.
3. The supervision functions of the supervisors.
4. The rules for the conduct of directors in the respect of legal compliance.
5. The standards for evaluating legal compliance.
6. The formulation of annual compliance plan.
7. The creation of legal compliance environment.
8. The audit of legal compliance operations and actions in case of violation.
9. Draw up Code of Conduct.

### **1.1.2 The annual compliance plan shall have the contain at least:**

1. Plan for evaluating compliance by respective units.
2. Review of results of violation cases handled in the previous year.
3. Legal compliance education training and dissemination.
4. Review and improvement of compliance system.

## **1.2. Code of Conduct**

Any company that had set up compliance division shall make Code of Conduct. The Code of Conduct guides every people in company against antisocial element and scandals.

The Code of Conduct states the standards for the purpose of guiding every director, employee how to implement and have good behavior.

Company shall give Code of Conduct book and make Code of Conduct's training to all employees, directors of company and any its subsidiaries.

The Code of conduct should be revised if necessary.

## **2. Stopping measures**

Stopping measures is to ensure that every misconduct shall be stopped dramatically to avoid the damage or reduce the damage to company, employees or to other people.

## **2.1. Hotline**

Any company that had set up compliance division shall set up Hotline system and its protection.

The hotline shall be ensured of good operation any time and shall be separated with other line and easy to make connection to competent person.

Any people who inform or caution the misconduct have to be protected by law.

## **2.2. Making Injunction System**

The corporate law of each country should set up an injunction system to ensure that shareholder, auditor have the right to request the court making order company to stop misconduct or removal the director who implement the misconduct.

## **3. Compensation - Derivative Suit**

The corporate law of each country should set up or improve the compensation and derivative suit and its procedure, cost etc.,

The derivative suit procedure should follow the principles below:

- The shareholders who own share for at least 06 months or the period set in the charter (bylaws) of company may request company to file a lawsuit against directors, etc.

- In case that the company doesn't file a lawsuit within 60 days, the shareholders may file a lawsuit against directors etc.

If there is concern that the company will suffer unrecoverable damages due to the passage of 60 days, the shareholders may immediately file a lawsuit against directors etc.

## **4. Revision of System**

Revision of system should be implemented optionally by counsel from Enterprise Federation of each country for the purpose of improvement of implementation's effect of compliance system.

## **V. COMPREHENSIVE CONCLUSION**

Compliance system is one part of Corporate Governance. Day by day, every people recognize it plays an important role to enhance operational effect of company for the purpose of achieving the target of company and competitive ability of company in the era of globalization.

It helps company implementing the social role, contributing more welfare for society, maintaining long-term and sustainable development.

To achieve that purpose, the government has to do more works in the intelligence way to set up the legal system appropriately and friendly with company.

From our point of view, we understand that Corporate Governance generally and Compliance System particularly in our countries' legal system is not enough.

We need more researches, learn more from other country and share the value, knowledge... to improve our corporate law.

Otherwise, from point of view of company, they have to learn more and apply compliance system as well.

The enterprise Federation should introduce and propagate the experience of Corporate Governance and Compliance System to the company...

**VI. LAST WORD**

We would like to say thank you to all of JICA and ICD staffs, especially Ms Tanaka, Takeuchi, Tsuchiya, Mr. Kuki, Kato ... and other people to help us understanding on Compliance System, having convenient conditions of working... So we can successfully complete this difficult final report.

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