Understanding Foreign Investment law In Laos

KEY POINTS FOR THE LAOS FOREIGN INVESTMENT LAW

- **Profit tax rate of 20% for foreign invested companies**
- **Import duty of 1% on equipment and materials for use in an enterprise;**
- **Project approval set at 60 days;**
- **Foreign investment may be wholly-owned or a joint venture with a minimum 30% investment;**
- **'One-stop shop' for investors at the DDFI.**

Foreign investment law background, Laos

The Foreign Investment Law, passed in 1994, outlines the procedure for foreign investment in the Lao PDR. This law is designed to attract capitalist-style enterprise and contains liberal provisions for repatriation of profits and the involvement of foreign equity in Lao businesses. It outlines the areas in which investment is encouraged and those areas where investment is not allowed. Prohibited areas include activities detrimental to the environment, public health or national culture.

In March 2001, a presidential decree on the implementation of the Foreign Investment Law required special presidential approval for any investments that relate to natural resources, environment, public health and national culture. Although there are no other restrictions on activities permitted to foreign investors, prohibited sectors of business are not well defined, so investors should conduct enquiries before beginning business.

The law states the forms of acceptable foreign investment and the rights, benefits and obligations that come with such investment. It also explains the responsibilities of the Department of Domestic and Foreign Investment (DDFI), the government body that deals with inward investment.
The law excludes indirect investment, such as loans, aid and general buying and selling of commodities.

Some details in the application of the law have been amended by government decrees on a number of occasions. Moreover, specific exemptions to tax rates and other requirements are often set out in business licenses. This license therefore needs to be reviewed by each investor.

Forms of Foreign Investment

The Foreign Investment Law permits two forms of foreign investment: wholly foreign-owned enterprises and joint ventures. Investments in certain industries (e.g. wood production) must be joint ventures.

Foreign investors are given rights to use and transfer real estate in the Lao PDR and are also granted the right to repatriate earnings and capital, without restriction, through a Lao bank established in the Lao PDR. Foreign investors must open a kip bank account in the Lao PDR; if they want to use foreign currencies, they will need additional accounts. Investors may convert kip to other currencies within the Lao PDR; however the process is often complex.

Lao law allows foreign investment contracts to be protected under foreign laws. However, no such protection will override any Lao laws that are in force when the contract is signed, unless this has been accepted by the Lao Government.

Wholly Foreign-owned Enterprises

A wholly foreign-owned enterprise is a foreign investment registered under the law and regulations of the Lao PDR by one or more foreign investors, without the participation of domestic Lao investors. The enterprise established in the Lao PDR may be a new company; alternatively it may be a representative office of a foreign company. Banks have the option of establishing branch offices; they are restricted to Vientiane.

Apart from representative offices, foreign investments must have a minimum registration capital of US$100,000.

The license for a wholly foreign owned enterprise will have a maximum life of fifteen years. This can be extended if approved by the DDFI.

Joint Ventures

Foreign investments involving exploitation of natural resources and energy generation must be joint ventures. This restriction may be extended by government decree.

A joint venture is defined as a foreign investment, established and registered under the laws and regulations of the Lao PDR, which is jointly owned and operated by one or more foreign investors and by one or more domestic Lao investors. The organisation, management and activities of the joint venture are governed by the contract between its parties and by the joint venture's Articles of Association.

Foreign investors must contribute at least 30% of the total equity investment in the venture. The license will have a maximum life of twenty years. This can be extended if approved by the DDFI.
Benefits, Rights and Obligations of Foreign Investors

Taxation issues

Foreign investments subject to this law pay an annual profit tax at a uniform flat rate of 20%. (Other investments are taxed at 35%.)

For foreign investments involving the exploitation of natural resources and/or energy generation, sector-specific taxes and royalties are prescribed in the project agreements entered into between the investors and the Lao Government.

Import duty is imposed on imports of equipment, means of production, spare parts and other materials used in the operation of foreign investors' projects or in their productive enterprises, at a uniform flat rate of 1% of the imported value. Raw materials and intermediate components, imported for the purpose of processing and then exported, are exempt from such import duties. All exported finished products are also exempted from export duties.

Raw materials and intermediate components that are imported in order to achieve import substitution are eligible for special duty reductions in accordance with Government incentive policies.

Special tax reductions

In highly exceptional cases, and by specific decision of the Lao Government, foreign investors may be granted special privileges and benefits. These can include a reduction in or exemption from the 20% profit-tax rate and/or the 1% import-duty rate. Such reductions and exemptions are normally given because of the large size of an investment and the significant positive impact that it is expected to have upon the socio-economic development of the Lao PDR.

Labor and social welfare issues

Foreign investors must give priority to Lao citizens when recruiting and hiring their employees. Investors have an obligation to upgrade the skills of their Lao employees, through training within the Lao PDR or abroad. However, such enterprises have the right to employ skilled and expert foreign personnel when necessary and with the approval of the DDFI.

Foreign investors and their foreign personnel working within the Lao PDR are subject to personal income tax at a flat rate of 10% of their income. Foreign workers, who work and stay in the Lao PDR for more than 180 days in a fiscal year but receive salaries abroad, are liable to this income tax unless otherwise agreed with the Lao Government.

Lao law requires foreign investors to ensure that their investments, factories and activities protect the natural environment and the health and the safety of their workers and the public at large. To date, there has been little guidance on, or enforcement of, this law.

Accounting issues

Foreign investors must use the Lao national system of financial accounting. Accounting records are subject to periodic audit by the Government's financial authorities in conformity with the applicable Lao regulations.

Repatriation of profit

In conformity with the law and regulations governing the management of foreign exchange and precious metals, foreign investors may repatriate earnings and capital from their foreign investments to their own home countries or third countries. They may do this through a Lao bank or a foreign bank established in the Lao PDR, using the exchange rate prevailing on the date of repatriation, as quoted by the Bank of Lao PDR.

Foreign personnel of foreign investments may also repatriate their earnings, after paying Lao personal income taxes and all other taxes due.

Reserves

After paying the annual profit tax, foreign investors have to devote 5% of their profit each year to various reserve funds designed to ensure that enterprises continuously improve their efficiency, in accordance with the enterprise's policy and Articles of Association.

LAW ON THE PROMOTION OF FOREIGN INVESTMENT

Chapter I: General Provisions

Article 1: Objectives of Laos Investment Law, Foreign Investment in Laos

The Law on the Promotion of Foreign Investment determines principles, regulations and measures regarding the promotion, protection and management of foreign investment in the Lao PDR aiming at enhancing relationships, economic cooperation with foreign countries, and utilization of financial resources and knowledge to enhance production capacity for purpose of industrialization and progressive modernization as well as to contribute to gradually improving the people's living conditions, and to strengthen and to develop the country.

Article 2: Definitions

Foreign investment means the importation of capital which includes assets, technology and expertise into the Lao PDR by foreign investors for business purposes.

Foreign investor means a foreign individual or juristic entity investing in the Lao PDR.

Domestic investor means Lao individuals or juristic entities, or aliens or stateless persons residing in the Lao PDR who are shareholders or take part in joint ventures with foreign parties.

Asset means currency, materials and intellectual property.

Foreign enterprise means a 100% foreign owned enterprise, a joint venture and an enterprise established under a business cooperation contract incorporated in the Lao PDR.

Article 3: Promotion of Foreign Investment

Foreign investors may invest in all business sectors in the Lao PDR, except in business activities which are detrimental to national security or cause a negative impact on the environment in the present or long term, or are detrimental to health or national traditions.

The State promotes foreign investors investing in business sectors and areas of investment as provided in Article 16 and 17 of this Law by establishing policies on customs, taxes, regulations, measures and provision of information, services and other facilities to foreign investors.

Article 4: Protection of Foreign Investment

Assets and investment of foreign investors in the Lao PDR shall be fully protected by laws and regulations of the Lao PDR without seizure, confiscation or nationalization, except if necessary for public purpose, in which case the foreign investors shall be compensated in accordance with laws and regulations.

Chapter II: Forms of Foreign Investment

Article 5: Forms of Foreign Investment

Foreign investors may invest in the Lao PDR in the following forms:

1. Business Cooperation by contract;
2. Joint Venture between foreign and domestic investors;
3. 100% foreign owned enterprise

Article 6: Business Cooperation by Contract

A Business Cooperation by contract is business between domestic and foreign juristic entities without establishing a new juristic entity in the Lao PDR.

The objectives, forms, business term, rights and obligations, liabilities and benefits of each party shall be determined by contract.

Article 7: Joint Ventures

A Joint Venture is an enterprise established and registered under the laws of the Lao PDR, operated and jointly owned by foreign and domestic investors. The organization, management, operation and the relationship between the shareholders of the Joint Venture are set out in an agreement made by both parties and in the Articles of Association of such Joint Venture.

Foreign investors investing in a Joint Venture shall contribute at least thirty percent (30%) of the Joint Venture's registered capital. Capital contributed in foreign currency shall be converted into Kip based on the exchange rate of the Bank of the Lao PDR on the day of the capital contribution.

Article 8: 100% Foreign Owned Enterprise

A one hundred percent (100%) foreign owned enterprise is an enterprise in which the investment in the Lao PDR is made by a foreign investor only. Such enterprise may be incorporated as a new juristic entity or as a branch of a foreign enterprise.

Article 9: Registered Capital

The registered capital of a foreign enterprise shall not be less than thirty percent (30%) of its total capital. During the business operation of a foreign enterprise, the assets of the enterprise shall not be less than its registered capital.

Article 10: Representative Offices

A foreign juristic entity incorporated under the law of other countries may establish a representative office in the Lao PDR to collect information, study the feasibility of investment and coordinate for the purpose of applying for investment.

Representative offices or agents which operate for commercial purposes do not come under this Law.

Article 11: Investment Term

The investment term of a foreign enterprise depends on the nature, size and conditions of the business activities or project but will not exceed fifty (50) years and may be extended with the approval of the Government. However, the investment term of a foreign enterprise shall be for a maximum of seventy five (75) years.

Chapter III: Rights, Benefits and Obligations of Foreign Investors

Article 12: Rights and Benefits of Foreign Investors

Foreign investors shall have the following rights and benefits:

1. To receive support from the Government in establishing and operating their business in accordance with the laws and regulations;
2. To obtain protection of rights and legitimate interests related to business operations;
3. To own assets;
4. To receive benefits from the lease of or a concession over land such as the right to use, sell or use assets associated with the leased land or concession as security to any persons or financial institutions or for the purpose of joint venture, to sublease the right to use land, to transfer the land lease or concession agreement in accordance with the lease term, to use the land lease agreement or concession in Joint Ventures or as security with other persons. The details of the rights, benefits and obligations of foreign investors related to the land lease or concession shall be in compliance with the Land Law and other relevant laws;
5. To use foreign laborers, if necessary, but shall not exceed 10% (ten percent) of the enterprise's labor;
6. Foreign investors and their families, foreign professionals and employees of a foreign enterprise will be provided with facilities such as multiple entry visas and long term residence in the Lao PDR with the agreement of the Government; and will have the right to request Lao nationality in accordance with the Nationality Law;
7. To receive protection of their intellectual property which has been registered by the relevant authorities in the Lao PDR;
8. To transfer/repatriate profits, capital and other income after full payment of duties, taxes and other fees in accordance with regulations and laws, to their home countries or a third country through a commercial bank located in the Lao PDR;
9. To open a Kip account and a foreign currency account with commercial banks located in the Lao PDR;

10. To request an equitable decision from or to file a complaint to the relevant authorities when their business operations have been affected;
11. To obtain other rights and benefits as provided in the Laws.

Article 13: Obligations of the Foreign Investors in Laos

The obligations of foreign investors in Laos are:

1. To operate business activities in accordance with their licence, procedures set out in their feasibility study, any contract and laws and regulations;
2. To maintain accounts in accordance with the Enterprise Accounting Law of the Lao PDR. If necessary, an internationally recognised accounting system may be used with approval of the Ministry of Finance. To submit a report on business performance and an annual financial report to the Committee for Promotion and Management of Investment and other relevant authorities;
3. To fully pay duties, taxes and other financial obligations related to the business operations in a timely manner;
4. To facilitate the organisation and activities of the mass organisations in their enterprises;
5. To give priority in recruiting to Lao workers; to train and upgrade professional skills and transfer technology to Lao workers;
6. To address social security matters, health care and safety of employees in their enterprises;
7. To protect the environment, and ensure that business activities do not cause an adverse impact on the public, the national security or social order;
8. To maintain a reserve in accordance with laws and regulations;
9. To maintain insurance and social security policies in accordance with laws and regulations related to insurance and social security;
10. If an enterprise is relocated, the enterprise shall inform the relevant authorities and shall maintain its location in normal working condition;
11. To report on the performance of business operations to the Committee for Promotion and Management of Investment and other relevant authorities;
12. To perform other obligations as set out in the laws and regulations.

Article 14: Personal Income Tax of Foreign Employees

Foreign Employees working in a foreign investment enterprise shall pay personal income tax at the rate of ten percent (10%) of their total income to the Lao Government, except employees of a country with which the Lao Government has signed a Double Taxation Agreement.

Chapter IV: Incentives for Foreign Investment in Laos

Article 15: Incentives for Foreign Investment in Laos

The State will consider granting incentives for foreign investment in accordance with the sectors and zones of investment promotion as provided in Article 16 and 17 of this Law.

Article 16: Promoted Activities

The Government determines promoted activities as follows:

1. Production for export;
2. Agricultural and forestry activities, agro-forestry and handicraft processing activities;
3. Activities relating to industrial processing, industrial activities using modern technology, scientific study and analysis activities and development, activities in relation to protection of environment and biodiversity;
4. Human resources development, skills development and protection of people's health;
5. Construction of infrastructure;
6. Production of raw materials and equipment to be supplied to key industrial activities;
7. Development of tourism and transit services.

Article 17: Promoted Zones for foreign investment in Laos

The Government specifies 3 promoted zones based on geographical location and socio-economic conditions. The zones are as follows:

Zone 1: Mountainous, plain and plateau zones with no economic infrastructure to facilitate investments.

Zone 2: Mountainous, plain and plateau zones with a certain level of economic infrastructure suitable to accommodate investments to some extent.

Zone 3: Mountainous, plain and plateau zones with good infrastructure to support investments.

The details of the promoted zones will be determined by the Government.

Article 18: Incentives Related to Duties and Taxes

Foreign enterprises investing in activities within the promoted sectors and zones determined in Article 16 and 17 of this Law will be entitled to the following duty and tax incentives:

Investments in Zone 1 will be entitled to a profit tax exemption for 7 years and thereafter will be subject to profit tax at the rate of ten percent (10%).

Investments in Zone 2 will be entitled to a profit tax exemption for 5 years, and thereafter will be subject to a reduced profit tax rate of half of fifteen percent (15%) for 3 years and thereafter a profit tax rate of fifteen percent (15%).

Investments in Zone 3 will be entitled to a profit tax exemption for 2 years and thereafter will be subject to a reduced profit tax rate of half of twenty percent for 2 years and thereafter a profit tax rate of twenty percent (20%).

Profit tax exemption starts from the date of the foreign enterprise's commencement of business operations. For some tree plantation activities, profit tax exemption commences from the date the enterprise starts making a profit.

Once the profit tax exemption period is over, the foreign investment enterprise shall pay profit tax in accordance with the laws and regulations.

In addition to the incentives mentioned above, the foreign investment enterprises shall be entitled to the following incentives:

1. During the tax exemption period and during the tax reduction period, the enterprise is entitled to an exemption of minimum tax;
2. The profit used for the expansion of licensed business activities will be exempted from profit tax during the accounting year;
3. Exemption of import duties and taxes on equipment, spare parts, vehicles directly used for production, raw materials which do not exist domestically or exist but are insufficient, semi finished products imported for manufacturing or for processing for the purpose of export; and
4. Exemption of export duty on export products. Raw materials and semi finished products imported for manufacturing or assembly for import substitution will be exempted from import duties and taxes or will be subject to reduced rates of import duties and taxes. Special economic zones, industrial zones, border trade areas and other specific economic zones shall follow the laws and regulations of such specific areas.

Chapter V: Application for a Foreign Investment License

Article 19: Application for Foreign Investment

Application for foreign investment in the Lao PDR shall go through the one stop service of the Committee for Promotion and Management of Investment ("CPMI"). Foreign investors wishing to invest in the Lao PDR shall submit an application to CPMI at the central or provincial levels with attachments such as copies of passport and resume of the foreign investor; feasibility study or business plan; background information on the investor in the case of a juristic entity; and a Joint Venture Agreement in the case of a Joint Venture.

Article 20: Examination of a Foreign Investment Application

Upon receipt of a complete application in accordance with Article 19 of this Law, the CPMI shall coordinate with relevant sectors and local authorities when necessary to examine and to respond in writing to the foreign investor pursuant to the following timeframes:

• Projects which fall in the list of promoted activities – fifteen working days;
• Projects which fall in the list of open activities with conditions – twenty five working days;
• Projects which involve the grant of a concession – forty five working days.

Foreign investors who are qualified under this Law will obtain a foreign investment license, an enterprise registration certificate and a tax registration certificate at the same time from the CPMI at the place where the foreign investors are licensed; thereafter they will be considered as enterprises established in conformity with the laws of the Lao PDR.

Within 90 days from the date of receipt of an investment license, the foreign enterprise shall commence investment activities in accordance with the steps in the feasibility study provided in the foreign investment license application and in conformity with laws and regulations of the Lao PDR. If such timeframe is not followed, the foreign investment license may be withdrawn.

Chapter VI: Management of Foreign Investment in Laos

Article 21: Management Authorities Related to Foreign Investment in Laos

Management authorities related to foreign investment are:

1. The Committee for Promotion and Management of Investment at central and provincial levels;
2. Relevant sectors and sections.

Article 22: Rights and Duties of CPMI at the Central Level

The Committee for Promotion and Management of Investment at the central level is established by the Prime Minister, located at the Committee for Planning and Investment and has the following rights and duties:

1. To develop strategies, incentives to promote and attract foreign investments and propose them to the Government for approval;
2. To issue decisions, orders, instructions and notifications regarding the protection and promotion of foreign investments;
3. To prepare a plan and a list of investment projects that are available for foreign investments;
4. To disseminate policies, laws and regulations; provide information and facilitate foreign investors;
5. To consider issuing or withdrawing a foreign investment license within its scope of rights and duties, particularly within projects involving the grant of a concession,
6. To supervise and coordinate with the sectors and local authorities in implementing the Law on the Promotion of Foreign Investment;
7. To monitor, inspect, assess and report to the Government on the business operation of foreign investment enterprises;
8. To be a focal point in supporting, promoting and solving problems occurring in relation to the business operation of foreign investment enterprises;
9. To organize the annual meeting of CPMI and consultative meetings with foreign investors; and
10. To exercise and perform other rights and duties as prescribed in the laws and regulations.

Article 23: Rights and Duties of CPMI at Provincial Levels

The Committee for Promotion and Management of Foreign Investment at provincial levels is established by the Chairman of the CPMI at the central level. The CPMI at the provincial level acts as a support to the provincial Governors, the capital city Governor, the Special Zone Head and the

CPMI at the central level in promoting and managing foreign investment. The CPMI at the provincial level located at the provincial Planning and Investment Divisions and has the following rights and duties:

1. To implement strategic plans and policies to promote and attract foreign investments at their local levels;
2. To disseminate policies, laws and regulations, provide information and facilitate foreign investors;
3. To consider issuing or withdrawing foreign investment licenses within their scope of rights and duties;
4. To coordinate with various relevant sectors in implementing the incentive policies within the approved projects and in implementing the decisions, orders, instructions and notifications of the higher level authorities;
5. To monitor, inspect, assess and report to the provincial governors, the capital city Governor or the Special Zone Head and CPMI at the central level regarding foreign investment;
6. To act as a focal point in solving problems related to foreign investment;
7. To organize the CPMI annual meetings at provincial levels and consultative meetings with foreign investors;
8. To exercise and perform other rights and duties as prescribed in the laws and regulations.

Article 24: Rights and Duties of other relevant Sectors and Sections

The relevant ministries, organizations equivalent to ministries and other relevant sectors shall assist in the promotion and management of foreign investments in accordance with their rights and duties as follows:

1. To coordinate with the CPMI at the central level in drafting laws, regulations, policies and plans in relation to foreign investment;
2. To prepare a plan and list of foreign investment projects to attract foreign investment to their sectors, to disseminate information to attract and promote investment;
3. To participate in the process of consideration and approval of investment projects;
4. To supervise the sectors both at central and local levels in implementing incentive policies and in revising procedures regarding implementation of investment projects;
5. To inspect and assess business operations of foreign investment enterprises and partners' business cooperation contracts within their scope of rights and duties and then report to the higher authorities;
6. To exercise and perform other rights and duties as prescribed in the laws and regulations. The administrative authorities and sectors at the local level described above shallcoordinate with the CPMI at the local level within the scope of rights and duties described in this Article.

Chapter VII: Dispute Resolution

Article 25: General Principles

If a dispute arises in relation to business operation, the parties shall mediate, arbitrate or file a petition to the court.

Article 26: Mediation of Disputes

Disputes related to business operation which cannot be mediated by the parties amicably shall be submitted for mediation to the CPMI that has issued the license. If the CPMI is not able to mediate such dispute, such dispute shall be submitted to the Economic Dispute Resolution Committee for arbitration.

Article 27: Filing of a case

The parties to a dispute related to business operation which cannot be mediated may bring the case to the Committee for Economic Dispute Resolution or the People's Court for consideration in accordance with court procedures.

Chapter VIII: Policies toward Those Who Have Performed Well and Measures Against Violators

Article 28: Policies toward those who have performed well

Individuals or organizations who have had outstanding achievements in implementing this Law and in contributing to national socio-economic development will receive awards as deemed reasonable.

Article 29: Measures against Investors who violate the Law

Individuals or juristic entities who violate this Law shall be subject to penalties based on the seriousness of the violation in the form of warnings, suspension, withdrawal of their foreign investment license or being sued in a court of law.

Article 30: Measures against other Violators

Individuals who violate investment laws and regulations by abusing their power or position to hinder or obstruct the promotion and approval of investment, falsify documents, mislead investors, receive bribes or commit any acts causing damage to the State or investors shall compensate for such damages and shall be subject to disciplinary and other measures in accordance with the laws of the Lao PDR.

Chapter VIII Final Provisions

Article 31: Implementation

The Government of the Lao People's Democratic Republic shall implement this Law.

Article 32: Effectiveness

This Law will become effective sixty days from the date of the issue of a Promulgating Decree of the President of Lao People's Democratic Republic.

Thereafter, the Law on the Promotion and Management of Foreign Investment No. 01/94/NA, dated 14 March 1994 shall cease to have effect, without prejudice to the rights and privileges granted to, and the obligations imposed upon, foreign investments under the Law No. 01/94/NA. Foreign investors who have been licensed under the Law No. 01/94/NA and wish to obtain incentives provided by this amended Law on Promotion of Foreign Investment shall submit an official written request within 120 days from the date this law become effective to the Committee for Planning and Investment for consideration.