

An Overview of Foreign Investment Laws and Regulations of Lao PDR¹

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Abstract

This paper aims to examine foreign investment laws and regulations of Lao Peoples Democratic Republic (Lao PDR or Laos), which can provide information for better-informed decision-making by potential investors who wish to invest in Laos. The first regulatory reform in Laos aimed at shifting the country's foreign economic relations was the enactment of the foreign investment laws. The laws and regulations have been revised recently to create a more favourable investment climate. The Lao government has provided a wide range of tax and non-tax incentives for investment projects within the Special Economic Zones (SEZs), reduction on import taxes and tax on foreign corporate profit that is lower than for domestic enterprises. Foreign direct investment (FDI) laws are relatively liberal, allowing 100 per cent foreign ownership across a wide range of sectors.

Keywords: Foreign direct investment, laws, regulations, Special Economic Zones, state-owned enterprises, government of Lao PDR.

1. Introduction

The legal system of Laos has been a mixture of Lao tradition and custom, the French style, Chinese style, and the Soviet style. The French ideology and the Soviet style socialist ideology have been adopted following the 1975 communist regime. Since 1986, Laos has gone through a period of changes in foreign investment law. Several new laws and decrees have been amended to make it conducive to do business in Laos. According to Flipse, Doran and Lê (2002), the Legal system of Laos has been influenced by the legal and economic transitions taking place in neighbouring countries such as Vietnam and China. The legal system of Laos still contains the elements of legal systems of those countries.

At present, the Lao government is working towards improving the trade and investment laws to encourage FDI and trade in the country. Laos is exploring the laws of a variety of market-oriented countries around the world. At present, it has over forty laws and hundreds of decrees and regulations. Since 1989, most of the decrees and regulations drafted such as the Decree on liberation of FDI have been added by many Decrees, Regulations and Decisions, the Law on FDI in 1994, the Decree N. 46/pm in 2001 concerning the investment regulation, the decision No.13/pm concerning the improvement of the rules for consideration and approval procedure of FDI (Flipse, Doran and Lê, 2002).

Several foreign law firms including Australian firms have been operating in Laos since 1988. Australian firms operate in Laos on a fly-in-fly-out basis. However, foreign law firms cannot appear in court but are permitted to practice the local law (DFAT, 1997).

2. Investment Promotion Acts

Laos has one of the liberal investment regimes in the region. Since 1994, foreign investment law in Laos has been regulated by the Investment Promotion Acts, which are the laws on the Promotion and Management of Foreign Investment (2004), Law on Domestic investment (1995), the Business law (1994), the Customs law (1994) and the Tax law (1998). Other laws governing foreign investment include mining law, land law and electricity law (Department of Domestic and Foreign Investment of Lao PDR (DDFIL), 2003). Commercial law and land law are being developed. Foreign enterprises or foreign investors cannot own land as stated in Article 25 of the Use of

Land: "...It is prohibited for a Foreign Investor, a foreign investment enterprise or a foreign national to be allowed to own land in the Lao PDR. Foreigners can lease land directly from the Lao PDR or a Lao national under the terms of a land lease agreement made in accordance with the land law. All land belongs to the Lao national community" (DDFIL, 2001, p. 12).

According to the DDFIL (2003), the 1994 FDI law describes the procedure for foreign investment in Laos. This law is also 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 foreign investment is encouraged and those areas where foreign investment is not allowed.

Foreign Investment law in Laos was established under the Investment Promotion Act in 1988 and has created the Department of Domestic and Foreign Investment of Lao PDR (formerly known as the Foreign Investment Management Committee of Lao PDR (FIMCL) to administer investment licensing and promotion and set out investment regulations. The law sets out the terms and conditions of investment in Laos. Within one year of the introduction of the foreign investment law, the country received 124 applications for investment projects, and 60 projects were approved. However, the government was concerned that some projects approved in the early 1990s were not consistent with the government development goals. For instance, many proposed projects involved the Thai investments in forestry, which the Lao government considered as more exploitative than productive, and not for the purpose of exporting. Since then, the Lao government focused on projects, which involve modern technology transfer to Laos (Brahm and Macpherson, 1990, p.23).

3. Recent Changes to the Legal Framework

The government of Laos has taken steps to improve the investment climate in the country in recent years. The government has amended its constitution including incentives for various sectors and investment zones and updated on investment regulations, mainly decentralised investment and approval process at the central and provincial levels (World Bank Group (WBG), 2005). The new decree issued on April 23, 2003, defines the responsibilities of relevant ministers and authorities at central and local levels (DDFIL, 2003). Further, the investment law sets out new policy incentives including the promoted zone areas. The legislation shortens the investment application procedures and processing time. It has reduced the time in the investment license approval from 60 days to less than 50 days for promoted sectors, 25 working days for promoted sectors with some restrictions, and 45 days for large-scale projects/or projects related to natural resources (WBG, 2005).

The 1994 investment promotion law was revised and issued by the Presidential Decree No. 11/NA on 22 October 2004. The New Decree of the Lao People's Democratic Republic Peace Independence Democracy Unity Prosperity National Assembly No. 11/NA Vientiane Capital City, is to replace the law of FDI of 1994. At present, foreign investment law in Laos is based on the new Law on the Promotion of Foreign Investment (2004), the Business law (1994), the Customs Law (1994), and the Tax Law (1995). The revised law on the Promotion of Foreign Investment (2004) came into effect on 14th January 2005 (United Nations, 2005, p.36). The decree details the investment procedures, new duties and incentives. The decree also reduces investment timeframe. It also sets out the revised tax incentives to foreign investors according to promoted activities and promotion (Note 2).

Although the government has taken reasonable steps in making it easier for foreign investors to do business in Laos, the legal environment lacks transparency with informal red tape and practises that increase the cost of doing business in Laos. There is a need to further improve the institutional and legal framework (WBG, 2005).

One of the key features of the revised FDI law is that the Lao government is embarking on structural reform on decentralisation of foreign investment management power; allowing local authorities to attract investment to their regions. In addition, the revised law outlines the forms of acceptable foreign investment and the rights, benefits and obligations of each type of investment. However, the law excludes indirect investment, such as loans, aid and general buying and selling of commodities.

4. Flexibility of the Law

One of the advantages that Laos has over its neighbours is that foreign firms may wholly own and operate a business in any promoted sectors (American Embassy 2005, p.20). However, foreign investors are restricted from engaging in certain commercial activities without permission by the Lao government. The restricted commercial activities include forest exploitation, accounting, tourism, heavy vehicle or machinery operation, and rice cultivation. These restrictions are intended to protect state-owned enterprises (SOEs). Technically, foreigners are engaged in most of these activities. Foreigners are occasionally active in telecommunications (Note 3). In contrast, in Vietnam and China, there are restrictions on the activities in which a wholly foreign owned investment enterprise can engage. Under the People's Republic of China (PRC) law on wholly foreign owned enterprises, enterprises may only be established if they engage in technology transfer and export all or most of their products. In Laos, a wholly foreign

owned enterprise can be established, regardless of whether those enterprises are established with foreign or local investment (Brahm and Macpherson, 1990, p.36).

5. Foreign Ownership

There are certain restrictions concerning investment approval in a joint venture project. The DDFIL considers foreign investments on a case-by-case basis of the proportion of foreign ownership in certain sectors. The foreign investment law of 2004 permitted one hundred per cent foreign ownership in all sectors. Investment projects involving mineral exploration and mining, and wood processing are subject to government agreement and processing. A foreign partner must contribute a minimum of thirty per cent of the amount of capital. Prohibited activities involving foreign investments include activities detrimental to the environment, health or national culture.

For large investment projects involving natural resources exploitation and energy generation, concessions may be granted. According to the DDFIL (2003), foreign companies are granted special privileges, which include a reduction or exemption from import duty rate because of the large size of their investments.

Most of infrastructure and services in Laos such as electricity, water, and domestic air travel are provided by SOEs, though in telecommunications private providers have been delivering these services. The most recent phase of State reform began after the government committed to attracting FDI in Laos. The SOEs manages a number of utility sectors. These include Electricite Du Laos, Enterprise of Telecommunications Lao, Lao Airlines, Lao State Fuel Company and Capital Water Supply State Enterprise, Nam Papa Lao (Nam Papa State-Owned Enterprises (NPSEs) in Bokeo, Bolikhamxay, Champasak, Huaphanh, Luang Phabang, Oudomxay, Savannakhet, Sekong, Vientiane Province, and Xieng Khouang; two NPSEs (Luang Namtha and Nam Papa Lao), Lao Brewery Co. Ltd, Lao Soft. Drink Co. Ltd, Lao Insurance Co. Ltd, Lao Tobacco Co. Ltd and Lane Xang Hotel Enterprise. The government of Laos is also restructuring four SOEs. They are Lane Xang Phatthana, Lat Visahakit Sanong Vatthou Technique, Lat Visahakit Konchak Kasikam and Borisath Phalithaphanh Beton Lao. The Restructuring Unit in the Business Promotion Office has been appointed to oversee the preparation of restructuring plans (WBG, 2006, p.10).

In 2004, the revenue of the eleven largest (SOEs) (including joint ventures and excluding banks) accounted for more than 70 percent of all SOEs revenues. Among these, revenues of five SOEs fully owned by government of Lao PDR accounted for about 42 percent, revenues of six joint venture SOEs for around 31 percent, revenues of others (more than 120 SOEs) comprised less than 30 percent (WBG, 2006, p.9).

The Lao telecommunication sector has been growing fast. Ten years ago, the sector was dominated mainly by one player Lao Telecom Company. Now, there are five companies (state-owned, joint-venture and private) that provide telecommunications services in Lao PDR. A Thai Sky Telecomm Company entry in 2006 is the most recent addition to the sector. The number of internet service providers (ISP) has increased from two firms in 1990s, to about six players in early 2000 and now about ten ISPs, such as STEA, ETL Internet, Lao Telecom, Champalao Internet, Lanexang Internet, Sky Telecom, KPL, Unicom and MLL.com (the last two are developed and will go into operations soon) (WBG, 2006, p.12).

There are four authorised enterprises to provide fixed and mobile telecommunications in Laos, with all four providing mobile phones but only three providing fixed lines. All of them have some government ownership. The enterprises are as follows: Lao Telecommunications Co Ltd (LTC shareholding is government of Lao PDR (GOL) 51%, Shinawatra 49%); Enterprise des Telecommunications Lao (ETL, GOL 100%); Lao Asia Telecom (LAT, Ministry of Defense 100%); Millicom International Cellular SA (GOL 22%, Millicom 78%). The first three provide fixed line, mobile and other services, while the last one provides mobile and other services (WBG, 2006, p.12).

The entry of Millicom, the large shareholding by Shin Corp, the operations of PlaNet and the prevalence of Voice over Internet Protocol (VoIP) operators show that private investors are willing to invest in Laos under the current policy regime. However, such investment is still limited to activities in Vientiane (WBG, 2006, p.12).

The banking sector of Laos is dominated by State Owned Banks (SOBs) which are starting to become market oriented. Private domestic banks play a small role and foreign banks have made little impact in the context of market share. The small size of the private sector and foreign banks is attributed to the role of the Government in many segments of the economy (directly or indirectly). Banque Pour Le Commerce Extérieur Lao retains a dominant position, accounting for about half of total deposits and loans in the system. The Lao Development Bank, resulting from the merger of two smaller SOBs - Lao May Bank and Lane Xang Bank is smaller. Low levels of capital, significant levels of non-performing loans and the accompanying weak profitability are found at the large state owned commercial banks (SOCBs). The State-Owned Policy Bank, the Agricultural Promotion Bank which lends mainly to rural areas, suffers form the same symptoms. Another bank owned by the state are the Bank of Lao PDR (WBG, 2006, p.12).

FDI in the hydropower sector made up more than half of the total foreign investment in Lao PDR. Currently, there are three large projects under construction: Nam Theun 2 (NT2), Nam Ngeum 2 and Se Kaman 3. All three projects together are worth more than US\$2 billion. They are as follows:

(1) Nam Theun 2 is the largest hydropower project in Lao PDR (US\$1.2 billion, 1070 MW, in KM province) in which French EDF has 35 percent of the total share; GOL and EGCO each hold 25 percent and Italian Thai development 15 percent. The electricity produced by NT2 will be mainly for exports to Thailand.

(2) Nam Ngum 2 project (about US\$800 million, 615 MW, in VTE province) is sponsored by South East Asia Energy Limited - a joint venture comprising Karnchang Public Company (28.5%), EDL (25%), Ratchaburi Electricity Generating Public Company (25%), Bangkok Expressway Public Company (12.5%), Shlapak Development Company (4%), PT Construction and Irrigation Company (4%), and TEAM Consulting Engineering and Management Company (1%). The project is mainly for exports to Thailand.

(3) The Xe Kaman 3 project (about US\$360 million, 260 MW, in Attapeu province) is owned by Vietnam-Lao PDR Investment and Development Company (EDL has a 15 percent share) and the electricity is expected to export to Vietnam (WBG, 2006, p.25).

In recent years, many foreign investors have invested in SOEs in Laos and became their strategic partners. These include Lao Brewery Company (LBC, 50/50 share holding for FDI/GOL), Lao Soft Drink Company (70/30), Lao Tobacco Company (53/47), Lao Telecommunication Enterprise (LTE, 49/51), Lao Insurance Company Ltd (51/49), and a few other hotel and tourism businesses. The majority of these joint projects is profitable and have been performing well, especially the biggest two joint ventures: LTE with total investment of about \$180 millions and LBC or Beer Lao – more than \$30 millions in 2004. As the leader of food processing industry, LBC is planning to expand its production capacity by almost 80% in 2006-2007 by building the second brewery factory in Champasack with an estimated cost of about US\$20 millions (WBG, 2006, p.25).

6. Tax and Duty Incentives in Special Promotion Zones

Since Laos implemented its open door policy in 1988, there has been a declining foreign investment levels in areas outside Vientiane. In the past ten years, tax and non-tax incentives were not promoted greatly to attract foreign investment into the SEZs. Thus, there was a lack of transparency in the promotion of foreign investment in Laos, which has resulted in declining foreign investment levels in rural areas. On April 13, 2003, the government of Laos introduced duty incentives to facilitate investors under the country's first establishment of SEZs aimed at attracting FDI and know-how. The importance of the SEZs is to develop the border areas with China, Vietnam, Cambodia, Myanmar and Thailand. The SEZ is approximately 500km south of Vientiane and located in the province of Savannakhet along the East-West Economic Corridor (EWEC) linking Myanmar, Thailand, Laos and Vietnam (Route No.9).

One of the government policies in promoting FDI to the SEZs is to encourage foreign projects in which to develop infrastructures and grant more preferential projects. The government is implementing this policy in recognising the need to attract foreign investments to areas outside Vientiane to improve the socio-economic conditions, thereby improving the standard of living of people in rural provinces. The effects of the new decree should assist in creating job opportunities in the rural provinces, generate foreign exchange earnings and build local infrastructures.

The Lao government has divided investment promotions zones into specific activities and zones. According to the law on the Promotion of Foreign investment, the three promoted zones based on social-economic conditions and geographical locations in the zones are as follows:

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

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

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

According to Article 18 of the revised law (2004), foreign investors investing within the promoted activities and zones are entitled to the following tax incentives:

Zone 1: 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%).

Zone 2: 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%).

Zone 3: 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%).

Under this law, 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 above incentives, foreign investors are 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.
- (4) Exemption of export duty on export products.

Another attractive feature of this law is that 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.

SEZs, Industrial Zones, Border Trade areas and other specific economic zones shall follow the laws and regulations of such specific areas.

6.1 Investment Incentives of the Savan-Seno Special Economic Zones (SSSEZs)

In collaboration with the Asian Development Bank, the Lao government decided to establish a first Savan-Seno Special Economic Zones (SSSEZs) in Savannakhet province of Laos. The objectives of the establishment of the SSSEZs are as follows:

- (1) To develop the SSSEZs as a trade and service hub of the EWEC;
- (2) To develop bases for the industrialisation and modernisation of Laos;
- (3) To make use of the vantage ground and strategic location of this SSSEZs to attract and promote investment; and
- (4) To create jobs for, and upgrade know-how and skills of the Lao servant-labour.

Economic sector zones promoted in the Zone are as follows:

- (1) Export (oriented) processing zone;
- (2) Free trade Zone; and
- (3) Free Service and logistics centre.

Many incentives are available to investors who wish to invest in the SSSEZs. The main incentives are the exemption of taxes such as: Exemption of turnover tax, exemption of utilization (consumption) tax and exemption of minimum tax. Table 1 lists the main special investment incentives of the SSSEZs. Other special investment incentives are shown in Appendix 1.

With regard to the SSSEZs, there is the Prime Minister's Decree No.177/PM on the management regulations and incentive policies, dated 13 November 2003. The SSSEZA authorises licensing of investment in the zone and provides investors and developers with all the necessary facilities and assistance, including processing of their investment request through a One-Stop service. The SSSEZA also has the full responsibility in the management, design and construction of the zone. The approval or rejection of application and granting of investment license would be within 5 working days (United Nations, 2005, p.41).

6.2 Non-Tax Incentives

Under the FDI Law, the government does not offer incentives of import protection (increasing duties or banning imports) for import substituting investments and it does not provide measures to restrict further entry to reduce competition for investors (DDFIL, 2003). Appendix 1 lists all non-tax incentives available in Laos.

7. Intellectual Property Rights Protection

Since 1999, the Science, Technology, and Environment (STEA) Agency has been responsible for the protection of Intellectual Property Rights (IPR) in Laos. It is also responsible for drafting Industrial Property Laws, and is

responsible for the country's ability to adhere to conventions and international protocols. Laos became a member of the World Intellectual Property Organisation (WIPO) in 1995 and the Paris Convention (Industrial Property) in 1998, and has also been accepted international assistance in drafting an IPR law. Laos is planning to join the Association of South-East Asian Nations (ASEAN) trademark and Patent Common Filing system (United Nations, 2005, p.48). Laos' IPR enforcement in protecting trademark and copyright materials is rather weak. It appears that STEA lacks the power to arrest persons for the use of unauthorised patents and trademarks, and appears to have no coordination with the police. Implementation of trademark and copyright regulations are still lacking. However, the IPR law is being developed, and multilateral institutions and private consultants are assisting the Lao government with establishing of an intellectual property system in the country. Laos became a member of the ASEAN Common Filing System on Patents in 2000, but lacks qualified patent examiners. A decree protecting patents, petty patents, and industrial designs was approved in January 2002. At present, no system exists for issuing copyrights. However, a draft copyright law was developed in 2005 (U.S Trade, 2005, p.20).

8. Legal Constraints

Laos's legal system is inadequate in many respects. Existing legislation lacks consistency and implementing regulations. Following are some of the legal barriers to foreign investment in Laos:

8.1 Services Constraints

The Central Bank of Laos (BOL) and two state-owned commercial banks are the major banks of the domestic and foreign banks in Laos. At present, there are six foreign banks in Laos, which offer limited services primarily to foreigners. It appears that the majority of foreign banks are operating in Vientiane, which severely impacts on their competitiveness in providing financial services to the South of Laos where business is concentrated. There is also the lack of regulatory supervision of the SOCBs, where enforcement of prudential guidelines is ineffective and standards for credit worthiness are low. There is also the need for laws and regulations for loan collection and collateral enforcement, in order to improve the financial sector (U.S Trade, 2005, p.20).

Legal: Enforcement in the laws and regulations of Laos remains a significant challenge to the government of Laos. Foreign attorneys are not prohibited to represent clients in Lao courts. Many areas of business and finance are not yet covered by viable statutes. Therefore, Laos requires assistance from international organisations to develop the legal sector, and new laws are gradually updating prevailing in draft form.

Accounting: Generally, foreign accounting firms may not operate in the field of accounting in Laos. However, one international accounting firm does offer auditing (rather than accounting).

Foreign exchange system: There are no restrictions on foreign exchange within Laos, nor are there any legal limits on remitting foreign exchange abroad. There are practical limitations, however, in that the availability of foreign exchange is sometimes limited, which inconveniences large single-sale and large-volume businesses, such as those selling heavy equipment or fuel and petroleum products, both areas in which American businesses currently operate (U.S Trade, 2005, p.20).

8.2 Investment Constraints

Laos is faced with challenging investment environment due to the lack of unclear regulations, mix of Chinese and Vietnamese law styles, inefficient infrastructure and services in the financial services. FDI is not accurately reported by the Lao government (the official figures show approved, not actual investments), and real investment levels are therefore difficult to estimate. The real level of foreign investment is probably higher than the official estimates.

The Law on the Promotion and Management of Foreign Investment of Laos is very basic. Laos's legal system lacks consistency and implementing regulations. For example, import duties and tax exemptions, supposedly guaranteed to foreign investors, are not reflected in either customs or tax law. Multilateral institutions and private consultants are assisting the Lao government implementing regulations, including the FDI law. However, it appears that bureaucracy often obstructs this process. In addition, international donors are helping Laos' accession to the World Trade Organisation (WTO). This also assists commercial law of Laos into conformity with WTO standards, and may promote greater transparency and consistency in the legal and regulatory of FDI law in Laos (American Embassy, 2005, p.17-20).

Dispute arbitration and mediation in Laos are vaguely defined. The United States has recommended Laos to move from a business licensing to a business registration system, through the Industrial Processes Law. For example, the industrial processes law requires manufacturers to apply for permission to make minor changes to their methods of production. There is the lack of clarity in the tax law in Laos, in which foreign investors complain that taxes are

often assessed in an inconsistent manner. The tax code was constructed and simplified in January 1999, and revised in 2002-2003. However, some investors still report significant difficulties in obtaining tax certifications and clearances in a timely manner (U.S Trade, 2005, p.20).

8.3 Electronic Commerce Constraints

There is no law governing e-commerce, nor does the Lao government recognise the need for developing a dispute resolution in Internet/E-commerce transactions. Internet is available in all major towns of Laos, though not widely used in the country.

8.4 Other Constraints

The Prime Minister's Office issued an anti-corruption decree in November 1999, but implementation remains low. The Counter-Corruption Committee in the Prime Minister's Office is the Lao government agency responsible for fighting corruption. Under the Lao law, giving and accepting bribes are criminal acts, punishable by fine and/or imprisonment. Corruption remains an issue in Laos. Some of the issues concerning corruption known to occur in Laos include bribes to Lao officials to speed up FDI investment applications, such as business licenses or importation of perishable items (U.S Trade, 2005, p.20).

8.5 Labour Law

The Labour Law of 1994 covers labour and employment in the Lao PDR. This law applies to both Laos' domestic companies and foreign companies. The legislation covers the rights and obligations of employees and employers. The Labour Law requires a written contract between employer and employee. However, in some cases an employment contract must be verbal, depending on employment conditions and the nature of the work, such as work on a temporary or daily basis, or employment involving only a small amount of work. The contracts can be for a fixed term or indefinite period. Article 13 requires that the form and duration of employment contract must be concluded in writing.

Lao law permits foreign investors to employ foreign workers when necessary, if no appropriately qualified workers are available in the Lao PDR. According to Article 7 '...The employment of foreign workers shall be limited in number and in duration, and a detailed scheme shall be established for the transfer of skills to Lao workers to replace such foreign workers once the duration of their employment contract has been completed. The introduction of short-and long-term foreign workers shall be authorised by the labour administration prior to their entry into the Lao PDR, except in cases where workers are imported by international and foreign aid projects to which special regulations shall apply' (DDFIL, 2003, p.2).

If workers are employed on an indefinite contract, to dismiss a worker, 45 days notice must be given to skilled workers and 15 days for other workers. In the case of dismissal because of misconduct by the worker the employer has the right to terminate the contract within 3 days notice. However, the employer must also notify the trade union or worker's representative in the labour unit and the local labour administration. In the case of dismissal to reduce staff numbers, dismissed workers are entitled to compensation dependent on their length of service (DDFIL, 2003, p.4).

The parties to a fixed-term employment contract shall notify each other respective intentions at least 15 days prior to the expiry of such contract. Where they wish to continue their employment relationship, they shall conclude a new employment contract.

Article 16 states that '...An employment contract may be terminated by dismissal where the worker concerned lacks the required specialised skills, where the worker is not in good health and therefore cannot continue to work, or where the employer considers it necessary to reduce the number of workers in order to improve the organisation of work within the labour unit' (DDFIL, 2003, p.4).

In the event of the termination of an employment contract on any of the above-mentioned grounds, the employer shall pay the workers concerned compensation according to their length of service. Such compensation amounts to 10 per cent of the monthly salary that was paid at the time of termination for each month of service. For workers who have worked for more than three years, the compensation shall be 15 per cent of such salary for each month of service.

For workers who are paid on a piece-rate basis or whose wages are not clearly fixed, the calculation of compensation shall be made on the basis of the average salary or wage that the workers received during the three months prior to termination.

The labour law prohibits foreign firms to employ persons under 18 years of age to perform arduous work or work which is damaging to their health, including all mining and quarrying work; work involving chemicals or explosives and poisonous substances; other work specified under Article 25 of this law; work at night in all branches of

industry from 10 p.m. to 5 a.m. the next morning; this period shall be included in the 11 hours of rest before resuming work on the next day. Furthermore, employment of young workers under 15 years of age in all socio-economic sectors is prohibited (DDFIL, 2003, p.3).

In addition to the above requirements, the Foreign Investment Law and Labour Law require foreign investors to give priority to Lao citizens when hiring staff. In line with the government's commitment to attract inward investment, foreign companies have the right to employ skilled or expert foreign personnel when necessary and with approval from the relevant authority. Investors are required to upgrade the skills of their local employees through training within the Lao PDR or abroad.

9. Proposed Changes to Current Investment Policy

Government officials are considering ways to reduce the bureaucratic impediments that foreign investors face when applying to invest in Laos. The government is examining ways to improve investment laws, focusing on investment incentives such as special privileges, tax waivers and collection and customs procedures, speeding up and simplifying application procedures (Pansivongsay, Vientiane Times, 28/01/2005). It is likely that the government may allow foreign investors to receive the same treatment of tax and tariff incentives as domestic investors. Under this system, investments in "promoted industries" would receive tax and duty reduction incentives, but investments in other sectors would pay the normal corporate profit tax, turnover tax and duty rates (DDFIL, 2003). If and when Laos becomes a member of the WTO it is likely that foreign investors receive the same treatment of tax and tariff as domestic investors.

The deputy director of the Planning and Co-operation Department of Savannakhet, Sython Nantharat, comments "...Laos is at a disadvantage to Thailand and Vietnam if it relies on its existing investment laws. The current laws don't protect the country in such things as tax collection" (Vientiane Times, 10 March 2002). Laos is making investment easier by making procedures faster, accepting documents for processing every Friday. According to Vientiane, Deputy Mayor, Dr. Sinlavong Khoutphaythone, "...If the project needs Government permission, the investor will receive an answer within seven days, faster than the 60 days specified in law. For projects worth up to US\$5 million, Vientiane is empowered to make the decision, and will answer within 14 days. He added that this easing has been in operation since the start of the year" (Pansivongsay, Vientiane Times, 28/01/2005).

10. Conclusion

This paper reviewed the legal and regulatory framework for foreign investment in Laos including Investment Promotion Act, recent changes to FDI law on promotion and provisions of the Investment Promotion Act.

The Lao government promulgated the Law on Foreign investment in April 1988, which sets the procedures governing foreign investment. It has drawn much of the law from China and Vietnam. However, the foreign investment law of Laos is more flexible than the Chinese or Vietnamese laws. One of the unique features concerning wholly foreign owned investment enterprises in Laos is that there is no restriction on the activities in which a wholly foreign owned investment expertise can operate. Investment can be 100 per cent foreign owned and can take the form of a new company or a branch or representative office of a foreign company. The Foreign law requires business to be approved and be issued the appropriate licences by the state in order to operate. The law provides that businesses shall have freedom over their assets and be able to operate freely.

Since 1994, foreign investment law in Laos has been governed by the Investment Promotion, which are the laws on the Promotion and Management of Foreign Investment (1994), Law on Domestic investment (1995), the Business law (2004), the Customs law (1994), and Tax law (1998). Other laws governing foreign investment include mining law, land law, labour law and electricity law. The 1994 investment promotion law was revised and issued by the Prime Minister on 22 October 2004. The 2004 law is based on the law on the promotion and management of Foreign Investment (1994), the Business law (1994), the Customs Law (1994), and the Tax Law (1995). The revised law on the Promotion of Foreign Investment (2004) came into effect on 14 January 2005.

The laws and regulations have been revised recently to create a more favourable investment climate. The Lao government has provided a wide range of tax and non-tax incentives on investment projects within the SEZs, reduction on import taxes and tax on foreign corporate profit that is lower than for domestic enterprises. There are issues concerning unclear rules in the law on investment promotion such as investment barriers, services barriers and electronic commerce barriers.

The first SEZ was established in 2003 in Savannakhet province of Laos. Economic sector zones promoted in the Zone are as follows: Export (oriented) processing zone, Free trade Zone; and Free Service and logistics centre. Duty

incentives were introduced in order to encourage foreign investors into the SEZs. The main incentives offered include exemption of turnover tax, exemption of utilization (consumption tax) and exemption of minimum tax.

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Notes

Note 1. Parts of this paper are derived from Sisombat, (2007).

Note 2. See Section 1.4 for further details of investment incentives in specific zones. An extract of the revised law (2004) is available at <http://www.invest.laopdr.org>. Foreign investors need to regularly check with the DDFIL of the new laws when they change and for clarifications of the law.

Note 3. Source: U.S. Government Trade Department, (2005). http://www.ustr.gov/assets/Document_Library/Reports_Publications/2006/2006_NTE_Report/asset_upload_file204_9256.pdf.

Table 1. Main Special Investment Incentives of the Savan-Seno Special Economic Zones

A) Tax holidays and profit tax

Requirements	Tax holiday period starting only from the first profit making year onwards	Profit tax rate to be collected after the tax holiday period
1. Industry sector.		
- Production business exporting at least 70% of its production.	10 years	8%
- Production business in high technology.	10 years	8%
- Production business exporting at least 30% to 69% of its production.	7 years	8%
- Production business exporting less than 30% of its production.	5 years	8%
- Other production business.	5 years	8%
2. Service and development sectors.		
- <i>Business having an investment capital:</i>		
- of at least US\$2 Million	10 years	8%
- from US\$500,000- 1,999,999	8 years	8%
- from US\$300,000 - 499,999	6 years	8%
- from US\$150,000 -299,999	4 years	10%
- from US\$50,000 - 149,999	2 years	10%
3. Trade sector		
- Trade business dealing with exportation of products made in the Lao PDR or in the SSSEZs.	5 years	10%
- Trade business dealing with re-exportation of imported goods to third countries.	3 years	10%
- Trade business dealing with general trading activities (except the above mentioned).	2 years	10%

Source: Savan-Seno Special Economic Zones Authority (SSSEZA), 2003.

Table 1 Continued...

B) *Tax on dividends:* 5%

C) *Personal income tax:* 5%

D) *Loss carried forward:* 5 years

E) *Import tariff exemption:* for all materials, construction materials, production machineries, vehicles and their spare parts, materials, semi-finished and finished products for use, consumption, processing or assembly in the SSSEZs.

Table 1 Continued...

F) *Quota on importation of administrative cars* * with 1% of import tariff to investors:

Business company registered capital	Authorised number of imported car (or quota)
- from US\$100,000 - 499,999	1
- from US\$500,000 - 999,999	2
- from US\$1,000,000 upwards	3

* Administrative cars referred to sedans, jeeps, pick up and mini bus (with 12 seats at most).

G) *Minimum registered capital required:*

US\$ 10,000 for representative office of companies;

US\$ 50,000 for wholesale business, retail sale business, forwarding company, travel agency;

US\$ 100,000 for other business entities.

H) *Minimum total investment capital required:*

US\$150,000 for tourist and general services enterprises/companies, forwarding companies, wholesale and retail sale business companies;

US\$ 300,000 for industrial activities, hospitals and schools;

US\$ 500,000 for transportation and warehouses;

US\$1,000,000 for hotel, apartment, residential area and tourist site development.

I) *Maximum duration (renewable) of license and land lease:* 75 years

J) *Land leasing payment:*

If the leasing period is more than 30 years, the leasing payment shall be computed on a basis of reduction of 12 years. For example, a leasing period of 40 years shall be considered as 28 years only for the computation of the leasing payment (Savan-Special Economic Zones Authority (SSSEZA), 2003).

Source: Savan-Seno Special Economic Zones Authority (SSSEZA), 2003.

Appendix 1. Non -Tax Incentives

<p style="text-align: center;">Permissions</p>	<ul style="list-style-type: none"> • Permission to bring in foreign nationals to undertake investment feasibility studies. • Permission to bring in foreign technicians, experts, and managers if qualified Lao nationals are not available to work on investment projects. • Permission to lease land for up to 20 years from a Lao national and up to 75 years from the government; • Permission to own all improvements and structures on the leased land, transfer leases to other entities. • Right to employ skilled and expert foreign personnel; • Freedom to remit earnings back home or to third countries; • Permission to sell or remove improvements or structures. • Freedom to repatriate profits and capital; • Facilitation of entry and exit visa facilities and work permits for expatriate personnel.
<p style="text-align: center;">Special Privileges</p>	<ul style="list-style-type: none"> • Exemption from import duties for intermediate components and raw materials imported for processing and re-export; • Exemption from export duties for exported finished products; • Exemption from import duties for imported equipment, means of production, spare parts and other materials directly used in operation of investment projects; • Vehicles directly used in investment operations will be exempted from imported duties. Vehicles indirectly used in investment operations will be taxed 1% of their imported values. Foreign and domestic enterprises that have agreements with the Central Government and provincial authorities are entitled to temporarily imported vehicles. • Quantity of vehicles allowed depends on size of investment capital, zone and activities. • Special privileges, including reduction or exemption from the profit tax rate, are given based on the size of investment and the significant positive impacts that such investments have on socio-economic development of Lao PDR.
<p style="text-align: center;">Investment Guarantees, Rights, Benefits and Obligations of Foreign Investors</p>	<ul style="list-style-type: none"> • Provides legal guarantees to foreign investors as well as foreign investment enterprises established in the Lao PDR under the Lao on the Promotion and Management of Foreign Investment; • Refrain from using administrative power to interfere with the lawful activities of foreign investors; • The Lao PDR facilitates foreign investors as well as foreign investment enterprise equally as it does for domestic investors and domestic enterprises except where specially provided otherwise by this decree. • The Lao PDR recognises and accepts the rights of foreign investors in all respects regarding leasing, land use, intellectual property ownership as well as the lawful assets and rights of foreign investors or the rights related to foreign investment enterprises; • To receive support from the Government in establishing and operating their business in accordance with the laws and regulations; • To obtain protection of rights and legitimate interests related to business operations;

	• To own assets;
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Appendix 1 Continued....

<p style="text-align: center;">Investment Guarantees, Rights, Benefits and Obligations of Foreign Investors</p>	<ul style="list-style-type: none"> • 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; • To use foreign labourers, if necessary, but shall not exceed 10% (ten percent) of the enterprise's labour.
<p style="text-align: center;">Protection Measure</p>	<ul style="list-style-type: none"> • Laos has signed the bilateral treaties for the investment promotion and protection with over 30 countries and trade agreements with 30 countries and currently is in the process of joining the WTO. • Laos has trade relations with more than 50 countries and Laos as a least developed country has been granted GSP from 35 countries; • Authority by the Chairman to for any helpful actions or tax relief measures for the benefits of promoted projects.

Source: DDFIL (2003, 2004) and Department of Promotion and Management of Domestic and Foreign Investment of Lao PDR (2001).