

FDI and M&A Legal Overviews – Laos

1. Foreign Direct Investment (Greenfield Investment)

1.1. What are the principal laws and regulations applicable to FDI in Laos? Are there special rules for certain foreign investors, including state-owned enterprises (SOEs)?

In 2009, the Law on Investment Promotion repealed the Law on the Promotion of Domestic Investment of 2004, and the Law on the Promotion of Foreign Investment of 2004, and accordingly domestic and foreign investment are governed under a common set of rules. Accordingly, the following laws and regulations composing the main investment regulatory framework would apply equally to domestic and foreign investors. The rules are provided mainly under: *the Law on Investment Promotion no.14/NA, dated November 17, 2016 (the “Investment Promotion Law”)*, *the Law on Enterprise no.46/NA, dated December 26, 2013 (the “Enterprise Law”)*, *the Law on Labor no.43/NA, dated December 24, 2013 (“Labor Law”)*, *the Law on Business Competition No. 60/NA, dated 14 July 2015 (the “Law on Business Competition”)*. In addition, there are a number of specific regulations that apply also to investors (domestic and foreign) such as, for example, *the Decree on Special Economic Zone no.188/PMO, dated June 6, 2018*.

However, this harmonization of the rules between domestic and foreign investors does not mean that specific restrictions may apply on foreign investment. Indeed, while the general principle is that foreign investment is not restricted, such restriction is possible if specified in a specific regulation. Below, we will see that specific sectors and activities suffer from some foreign investment restrictions, including SOEs that may be subject to specific restrictions, similar to any private entities.

1.2. Are there any governmental and regulatory approvals required for FDI? If so, please give brief details (such as trigger threshold, relevant authority and timing requirements)?

There are foreign investment restrictions that require a higher minimum investment from foreign investors than that of required for Lao nationals, triggering a threshold requiring foreign

investors to proceed with registration with a higher-level administration. However, other than the level of administration, the procedure to obtain approval remains more or less the same for both locals and foreign investors. There is no foreign investment approval so to speak. Also, depending on the type of activity contemplated, the registration of the legal entity will have to be filed either with the relevant sector of the Ministry of Planning and Investment (**MPI**) or with the relevant sector of the Ministry of Industry and Commerce (**MOIC**).

According to Article 36 of the Investment Promotion Law, foreign and local investors wishing to invest in general businesses included in the controlled business list, which is part of the Decree on the Controlled List Businesses and Concession Businesses no.03 (2019), must submit an application through the Office of the One-Stop Service (OSS) in the relevant sector of the MPI of the central or the provincial level (the OSS has also an office in each province of Laos). The OSS will coordinate with relevant authorities and then submit the request to the Committee for Investment Promotion and Management (CIPM) for approval. Depending on the nature of the project subject to the application submitted to the OSS, or its size (area or monetary importance), it may be requested that the final approval remain under the exclusive portfolio of the central level. However, yet again, this procedure to register activities listed in the controlled business list applies similarly to foreign and local investors.

Investors who intend to apply for investment in general businesses that are not mentioned in the controlled business list should submit an application to the relevant Department of Enterprise Registration in the MOIC in order to register their enterprises in accordance with the Enterprise Law and other relevant regulations. For investments in general businesses that are not included in the controlled business list but belong to promoted sectors benefiting from specific incentives under the Investment Promotion Law, after registering the enterprise, which is complete once the Enterprise Registration Certificate (**ERC**) is received, investors can apply to the OSS for an Investment Promotion Certificate.

1.3. Are there any industry sector controls on foreign investment?

In some industries, foreign investors subject to restrictions in terms of the investment proportion and the total amount of the registered capital. This is the case, for instance, for a foreign investor who endeavors to operate a retail-wholesale business. The minimum capital

for a foreign investor to hold 100% of the share equity is LAK 20 billion (approximately RMB 8,920,000). Below such capital, the foreign investor will be obliged to partner with a Lao national, and in such case, the foreign investor's minimum capital in the retail-wholesale business shall be LAK 4 billion (approx. RMB 1,784,000). There are other sectors that are simply prohibited to foreign investors. This is the case, for instance, for hotels below four stars, which cannot receive foreign investment. In this regard, there is also Notification no.1328/MOIC, dated July 13, 2015, which provides a list of activities reserved for Lao nationals. In addition, a separate notification, Also, Notification no.1327/MOIC, dated July 13, 2015, provides a list of activities where restrictions apply to foreign investors. For example, foreign investment in pharmaceutical production, pharmaceutical chemical industry, and pharmaceutical factories, should not exceed 49% of the investment, with a registered capital of more than LAK 1 billion (approx. RMB 446,000).

Investors who wish to engage in general business activities that are not under the controlled business list must apply to the relevant Enterprise Registration Department in the MOIC to establish a corporate entity and obtain an ERC. In addition to the ERC, some activities require a Business Operating License from the line ministry in charge of the activity. This is the case for import-export or distribution activities, which require a Business Operating License from the MOIC, in addition to the ERC.

Investors in activities that are included in the controlled business list must submit their application to incorporate an entity to the OSS, which will coordinate with the relevant authorities to obtain the necessary license. At a minimum, business activities on the controlled list are subject to two licenses: the ERC (issued by the MOIC upon request of the OSS) and the Investment License issued by the OSS in the MPI. In addition, a Business Operating License may be required, while investment projects in specific sectors such as banking, general trade, and construction need to apply to other relevant authorities. Activities on the controlled business list are not necessarily subject to foreign investment restrictions (e.g., five-star hotels can be wholly owned by a foreign investor). However, further scrutiny applies at the time of the examination by the authorities.

The investment landscape also includes concession activities where an investor may be

granted (by the government) the right to use land under the terms and conditions set out in the concession agreement. Concession activities typically include investment projects in the fields of communications, transportation, mining, energy (e.g., hydro, solar, wind, thermal, etc.) and agriculture. Applying for a concession project can be done via a bidding process as provided under the Decree on Public Private Partnership no.624/GOL, dated December 21, 2020. An application can also be made via a bilateral approach according to direct negotiations with the local government, which will be concluded by the execution of a concession agreement, as provided under the Investment Promotion Law.

1.4. Are there any government free carry interest requirements on special industry sector?

The law is silent on free carry interest requirements that may apply to specific industries.

1.5. Are there any localization requirements (e.g. minimum ratio of local employees, minimum ratio of local procurement) for FDI in your jurisdiction?

(1) Minimum ratio of local employees

According to Article 68 of *the Labour Law*, employers in Laos have the duty to give priority to Lao labor. However, if the demand for labor cannot be supplied by Lao nationals, the employer has the right to request the use of foreign labor.

The maximum permitted proportion of foreign labor within a labor unit is as follows:

A. 15 percent of the total number of Lao laborers within a labor unit for technical experts undertaking physical labor;

B. 25 percent of the total number of Lao laborers within a labor unit for technical experts undertaking mental labor.

For large projects, and priority projects of the government spanning five years or under, the use of foreign labor will be in accordance with the contract between the project owner and the government. For instance, this would typically be the case in a concession agreement, where it is not rare to see clauses related to foreign labor.

(2) Minimum ratio of local procurement

According to Article 9 of *Decree No. 03/PM regarding the Bid [procurement], Purchase of Goods, Construction, Renovation and Service by State Budget, dated 9 January 2004*,

Promotion of Local Enterprises and Products:

A. Local firms that are not affiliated with foreign firms and have the capacity to supply goods, works and services with equal quality will be given preferential rights in competitive bidding.

B. Use of the national budget for procurement of foreign goods will not be authorized if such goods may be produced locally at equal quality.

C. Public procurements of goods, works, and services financed in full with domestic funds will give priority to local firms.

1.6. Are there any exchange control restrictions in terms of remittance of capital, profits and dividends?

According to *The Law on Management of Foreign Exchange no.55/NA, dated December 22, 2014 (FX Law)*, Article 23 External Loans and Trade Credit and Article 25 Export Capital for Investment, as well as *the Guideline on the Management for Registered Company in the Lao Securities Exchange, dated 24 April 2019*, providing or borrowing external loans for residents of Lao PDR must be approved by the Bank of Lao PDR and operated through the banking system. The lender or borrower must report on debt repayment to the Bank of the Lao PDR on a regular basis until the loan or trade credit contract has been fulfilled. Lao residents' exports of capital must be approved by the Bank of the Lao PDR based on agreement of the authority concerned.

Companies are to pay dividends on their net profit (i.e., income minus cost, including debt principal, interest, and tax), after payment of taxes and contribution to the mandatory reserve fund (which is mandatory until the total amount of the reserve reaches 50% of the registered capital). Under the Law on Income Tax, dividends or benefit paid to non-resident shareholders, either individuals or legal entities, are subject to withholding tax at the rate of 10%. The rate may be reduced under double tax treaties that Laos has entered into with other countries. The Bank of Lao PDR requires that dividends to be remitted abroad have been all paid up, and that the company has duly fulfilled its tax obligations towards the State.

In the event that the investor closes a company on a voluntary basis and decide to remit the fund back to the country of origin, a Capital Importation Certificate will be required. This

certificate is issued by the Bank of Lao PDR, upon request of the investor, after the company has completed the importation of the registered capital into a Lao bank account, right after the company has obtained the ERC. This Certificate proves the origin of the fund and the purpose of such fund.

1.7. What are the most common types of corporate legal entities established for FDI? For each type of corporate legal entities, please introduce the internal corporate governance structure. What types of corporate legal entities are recommended for partially or wholly foreign owned corporate legal entities?

The Investment Promotion Law recognizes that investment may be made in various forms, such as a joint venture, wholly foreign-owned legal entity, and others. A joint venture is a contractual arrangement between two or more contracting parties for the purpose of forming a specific business company. A joint venture may be set up between a foreign investor and a local, or another foreign private investor, or with a public entity. In any event, a foreign investor willing to invest in Laos must contribute at least 10% of the registered capital (declared share capital) of the company.

The Enterprise Law recognizes four types of legal structure: ordinary partnership; limited partnership; limited company, including sole limited company; and public company for the companies listed on the Lao Stock Exchange.

The preferred legal structure for foreign investment is the limited company. This type of legal structure is most detailed under the Enterprise Law and is also the most tested. The general internal governance is as follows:

1.7.1. Shareholders' Meeting

A limited company is ultimately governed by meetings of the shareholders. There are two types of shareholder meetings for a limited company: ordinary meetings and extraordinary meetings.

An ordinary meeting must be held at least once a year, at the time for convening the meeting stipulated in the limited company's Articles of Association. An extraordinary meeting may be held whenever necessary, such as when the position of an auditor is vacant.

An extraordinary meeting may be held in the following cases:

- When more than half of the directors agree to hold a shareholders' meeting;
- When shareholders file a complaint with the court and the court orders the meeting to be convened;
- When shareholders representing at least 20% of the total paid shares make a request.

A company's Articles of Association should also make detailed provisions as to quorum and the procedures for managing shareholder meetings. If these matters are not specified in the company's Articles of Association, quorum for a shareholders' meeting consists of at least two shareholders representing more than half of the total paid shares. The company's Articles of Association may stipulate a different quorum, provided that the threshold is not less than two shareholders representing more than half of the total paid shares.

In addition, "special resolutions" may be adopted by a shareholders' meeting. The special resolution is effective only when it is passed by a vote of at least two-thirds of the shareholders (or their proxies) attending the meeting, representing at least 80% of the paid shares. A shareholders' meeting convened to adopt a special resolution may be held on one of several occasions. The following decisions can only be adopted by way of a special resolution:

1. Decisions specified in the Enterprise Law as requiring a special resolution;
2. Amending the Articles of Association or the contract of incorporation of a limited company;
3. Increasing or reducing the capital of the company;
4. The merger or dissolution of the company;
5. The sale or transfer of all or a substantial part of the business of the company to another person;
6. The purchase or acceptance of a transfer of the business of another enterprise;
7. Maintaining the status of the company as a limited company when there are more than thirty shareholders.

Lao law allows the issuance of two types of shares: preference shares and common shares. This creates two potential categories of shareholders.

1.7.2. Board of Directors

Lao law does not impose any nationality requirements on the directors that sit on the board

of directors. Accordingly, there is no restriction on the number of directors who can be foreign nationals. Directors are elected for a term of two years and may be re-elected. Directors can be removed by a vote at a shareholders' meeting. To be appointed, directors must meet the following requirements:

1. Have legal capacity;
2. Is not a "bankrupt person" restricted from conducting business; and
3. Have never been convicted of embezzlement or misappropriation of assets.

There is no restriction as to the total number of directors that can comprise the board of directors. This can be set in the Articles of Association or by a resolution of a shareholders' meeting.

It is important that a managing director be appointed. A picture of the managing director is displayed on the Investment License. Although not clearly specified by law, in practice the managing director will be deemed have the capacity to bind the company by way of contract or other agreement.

1.7.3. Auditor

A limited company with assets exceeding LAK 50 billion (approx. RMB 22,500,000) must appoint an auditor. The appointment is confirmed at the shareholders' meeting. The Law on Independent Audit provides that financial statements must be verified by an independent auditor and must subsequently be approved by a shareholders' meeting.

1.8. What is the procedure of registration and incorporation of foreign-owned companies?

(1) Incorporation of a Company

The procedure for companies whose share equity is held in whole or in part by foreign shareholders is the same as for companies whose share equity is held entirely by Lao nationals. First, the investor must seek and obtain the ERC, which will mark the completion of the incorporation of the company. The application to incorporate a company is submitted to the Enterprise Registration Department in the MOIC for companies that will operate a business activity that is not under the controlled business list. The typical

list of documents requested are as follows:

- Application form (from MOIC's website);
- List of business activities (e.g., LSIC code);
- Power of Attorney, if the incorporation is made by local counsel;
- Shareholders' resolution (if the shareholder is a legal entity);
- Resume of the Director (in a form provided by the MOIC);
- Incorporation contract (in a form provided by the MOIC); and
- Minutes of the meeting where the incorporation of the company was approved (in a form provided by the MOIC).

Following recent reforms, Articles of Association are no longer required at the time of filing; however, the company is supposed to draft its Articles of Association. By law the procedure to review the application does not take more than 10 working days. In practice, this timeframe may differ. Once the application materials are accepted, the applicant will receive the ERC along with a Tax Identification Number.

The company must then request a company seal from the Ministry of Public Security. The timeframe to obtain the company seal along with the approval to use it is of five days. However, in practice the timeframe may differ.

The next step consists of registering the company for the National Social Security Fund scheme with the relevant division of the Ministry of Labor and Social Welfare. The company will receive a certificate of registration within two working days.

For companies that do not require an additional Business Operating License, the ERC alone suffices for conducting the activities identified on the back of the ERC. Otherwise, the company must seek and obtain the relevant Business Operating License for the contemplated activity. The documents and conditions required to obtain a Business Operating License may differ depending on the type of activity.

(2) Incorporation Process for Companies Conducting an Activity on the Controlled Business List

If the incorporation concerns an activity on the controlled business list, the incorporation application must be filed with the OSS in the MPI. The OSS will then liaise with the relevant

authorities involved in the approval process. Ultimately, the Investment Promotion and Investment Management Committee will consider the application. After this committee accepts the application, the OSS will issue an Investment License to the investor and will liaise with the MOIC, which will issue the ERC and the Tax Identification Number. Next, the company will have to register for the National Social Security Fund scheme.

Similar to the process for incorporation of a company conducting an activity that is not on the controlled business list, the company may also be required to obtain a Business Operating License in addition to the Investment License and the ERC.

The timeframe provided by law to complete the procedure is 25 working days; however, in practice this timeframe may differ.

(3) Incorporation of a Company Operating a Concession Business

If a project is developed on land granted by the Lao government via a concession agreement, a project company must be established in Laos. The company will be incorporated as a limited liability company with one shareholder (sole limited company) or more than one shareholder (limited company). The incorporation process for a sole limited company and a limited liability company is the same, and incorporation is required prior to the signing of the concession agreement with the Lao government. By that point, the company will have negotiated and agreed to a Memorandum of Understanding (**MoU**) and Project Development Agreement (**PDA**). Under the MoU and the PDA, the company is provided the possibility to carry out the exploration of the land, feasibility study (e.g., environmental impact assessment, social impact assessment), and other steps that are necessary to prove that the project is viable and that the environmental and social risks are non-existent or mitigated as much as possible. The mandate provided under these agreements would typically have a validity period (renewable). The execution of the concession agreement marks the approval of the Lao government for the development of the project on the concession land.

While a concession project can be granted via a public tender, past practice indicates that these projects are most likely to be negotiated on a bilateral basis between the investor and the local government. While the documents that must be submitted with the OSS depend on the activity developed on the land said documents may differ, usually the following documents are

required:

- Investment Application Form from the OSS
- Executive summary of the project
- Background on the experience of the investor
- ID Card, Criminal Record Certificate, Copy of Passport (of the shareholder, or representative of the shareholder)
- License of the company in the country of origin – if a legal entity
- Shareholder’s Agreement, if any
- Articles of Association of the company to be incorporated
- Map coordinates of the project location/project site
- Preliminary technical data of the project
- Financial documents of the parent company (from a financial institution)
- Business plan

Depending on the activity to be developed on the concession land, different ministries will be involved in the registration process. For instance, for energy project the OSS will pass the application to the Ministry of Energy and Mines and the Ministry of Natural Resources and Environment, which will provide their opinions on the project. The decision to approve the project will be made by the Investment Promotion and Management Committee. If approved, the Investment License, ERC, and other licenses, if necessary, will be issued.

By law, the timeframe between the negotiation of the MoU and the issuance of the relevant licenses is 65 days. In practice, however, negotiations of the MoU, PDA, and concession agreements are likely to take several months, not including the actual incorporation of the project company developing the project on the concession land.

(4) Meet the registered capital requirements

According to the Enterprise Law, the initial registered capital—consisting of all in-kind capital contributions and at least 70% cash capital contribution—must be paid upon establishment of the company. However, for enterprises in different trade sectors, the payment time for initial registered capital contribution has different mandatory provisions according to *the Investment Promotion Law*.

1.9. What are the documents and materials that the foreign investors need to prepare for that purpose? Is notarization or certification required?

Please refer to Section 1.8.

1.10. How long does it normally take to complete the entire registration and incorporation process?

Please refer to Section 1.8.

2. M&A Laws and Regulations & Regulatory Approvals

2.1. What are the principal laws and regulations applicable to M&A transactions in relation to listed and private company in Laos? What are the major issues dealt with in such laws and regulations?

(1) Principal laws and regulations:

Enterprise Law; Law on Investment Promotion; Decree on Controlled Business List and Concession Activities; Law on Business Competition; Law on Securities (No. 21/NA, dated 10 December 2012); Regulation on Management of Foreign Investor regarding the Sale and Purchase of Securities in Laos (No. 005/LSX, dated 8 December 2015); Notification of the Ministry of Industry and Commerce on Reserved Business Category List for Lao People No. 1328 of 2015.

(2) Major issues:

The above laws and regulations are mainly concerned with the following issues: rights and obligations of shareholders, investment requirements, share acquisition and transfer and their restrictions, and changes of shareholders, directors, and senior managers in listed and private companies established by foreign investors in Laos; enterprises' abuse of market advantages to carry out mergers and acquisitions; and the government's examination, supervision, and restriction of foreign investment in specific industries.

2.2. Are there any foreign investment review required for foreign buyers in M&A? If so, please give brief details (such as trigger threshold, relevant authority and timing requirements).

Generally, incorporation of a legal entity in any of the three categories (i.e., general

business, controlled business, and a concession activity) requires a specific application, depending on the investment type and the industry. In any case, the Ministry of Public Security (police) will screen the identity of the shareholders and the directors of the company to ensure that these persons have not been blacklisted by their own internal intelligence or an international organization. Other than that, the authorities may require additional documents as they deem necessary.

According to, for a merger that may trigger merger control rules (i.e., a company holding market share that exceeds the threshold set by the Business Competition Committee), the Law on Business Competition mandates that a filing be made with the Business Competition Committee (BCC). However, the BCC has still not yet provided information on the threshold, and until it does so the Law on Business Competition's rules on merger control and competition clearance are not applicable.

2.3. Are there any merger control required in M&A? If so, please give brief details (such as trigger threshold, relevant authority and timing requirements).

According to the *Law on Business Competition*, the following acts may fall under the supervision of the BCC in regard to merger controls:

- (i) holding shares in the relevant market in an amount that exceeds the threshold defined by the BCC;
- (ii) causing any impact on access to the market or restraints on technological development;
- and
- (iii) causing any impact on consumers, other business operators, or national socio-economic development.

The Law on Business Competition further places a duty of notification specifically on “large enterprises.” This notification must be made to the BCC for consideration. However, a business merger of small and medium-sized enterprises is exempted from this notification requirement.

However, it is difficult to assess correctly the full ambit of *the Law on Business Competition* in practice. While the law provides that the BCC is responsible for providing supervision so that a merger may not result in a holding of market share in excess of the

threshold defined by the BCC, no threshold has yet been determined or made available for public knowledge. Without further guidance from the authorities, it seems that determination of whether a merger may impact consumers, other business operators, or national socioeconomic development may be based on national interest grounds.

2.4. Are there any other governmental and regulatory approvals required for foreign buyers in M&A? If so, please give brief details (such as trigger threshold, relevant authority and timing requirements)?

No. There are no governmental and regulatory approvals that would be required specifically to foreigner buyers in M&A. For instance, the sale of shares in a concessionary project may require the authorization from the local authorities; however, this will apply regardless the nationality of the buyer/seller. The same applies for provisions relating to business competition rules. According to the Law on Business Competition, business combination (including Business combinations may include mergers, acquisitions, and joint ventures) of large enterprises must notify the combination to the BCC for its consideration. This rule, however, applies equally to local or foreign investors. Please be note also that to date the BCC has not issued any implementing guidance to define the thresholds, market shares, or turnover figures to define a “large enterprise”. Accordingly such provision of the Law on Business Competition is to date hardly enforceable.

The above answers are prepared by August 25, 2022.

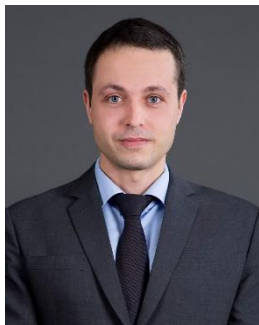
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