

Laos Introduces Major Amendments to Law on Investment Promotion

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The Law on Investment Promotion No. 14/NA (LIP) became effective in Laos on April 19, 2017, and replaces the Law on Investment Promotion No. 02/NA, dated July 8, 2009, and its Decree on the Implementation of the Investment Law (2009) No. 119/PM, dated April 20, 2011. The new LIP aims to facilitate investments in Laos for both domestic and international private investors by providing a more seamless process for business applications, license issuance, and government approval. Greater clarity is expected for eligible rights and incentives for business operators, as well as the timeframe for processing business applications.

Changes in the LIP are applicable to all investors, regardless of nationality. However, the new LIP is not intended to have retroactive effects on businesses that are currently operating in the country. Indeed, the new LIP explicitly stipulates that every benefit granted, and every contract entered into, under the old law will not be affected until the end of the existing contractual terms. The same provision further elaborates that legitimate investors are now permitted to request benefits granted under the new LIP, by submitting proposals to relevant authorities within 120 days of its enactment.

Promoted Sectors

While the Law on Investment Promotion of 2009 referred to a list of promoted sectors in the form of an annex, the new LIP provides a clear and exhaustive list of sectors prioritized by the government due to their important roles in national development. A brief overview of promoted sectors is provided below:

- Advanced technology, scientific research, and research and development;
- Agricultural and environmental protection;
- Environmentally-friendly industrial processing of agricultural products;
- Ecotourism;
- Education and training centers;
- Construction of modern hospitals and medical equipment;
- Investment, services, and development of public infrastructure in city centers;
- Microfinance; and

- Modern department stores that will promote domestic products and famous foreign brands.

Each sector will be afforded benefits and incentives in accordance with the location in which they set up their activities. The government has set out three different types of promoted zones:

- **Zone 1:** Zones that are especially poor, situated in remote areas, and not possessing adequate infrastructure to support and facilitate investments;
- **Zone 2:** Zones that have good socioeconomic infrastructure development, which can support and facilitate investments; and
- **Zone 3:** Special Economic Zones (SEZ).

Except for activities operating within SEZs that conform to other specific regulations, the government will grant a profit tax exemption ranging from 4 to 15 years in accordance with the zone in which the promoted sectors elect to set up their company.

Foreign Business Activities in Laos

By and large, the types of activities to be operated by foreign business operators in Laos remain categorized as follows:

- General business activities;
- Concession activities; and
- Activities to be operated within an SEZ.

There are two types of general business activities: (1) activities that are included in the List of Controlled Activities; and (2) activities that are not included in the list. The List of Controlled Activities includes those which may have an effect on the stability of the country, or its order and organization, and the social environment and nature; the list may also be considered as a means to maintain the competitiveness of Lao operators in certain business activities. As such, requests to conduct such activities in Laos must be thoroughly appraised, and authorization will require assessment and approval by every authority and government agency related to the contemplated activity. On the contrary, activities that are not deemed to be controlled activities are more open and incur less scrutiny in business registration.

A concession is an agreement granted by the government for investors to conduct certain activities in a specified area, such as managing an electricity-generating facility (e.g., a hydropower plant), an SEZ, an airline, or a telecommunications operation. The list of concession activities is not exhaustive, and the government may change it from time to time. Concessions are usually granted for a maximum of 50 years, although extensions are permitted with approval from the government, the National Assembly, or the Provincial Assembly, depending on the type of investment.

The new LIP contains a framework for registration of general business activities and concession activities. Activities to be operated within an SEZ are briefly mentioned but are currently governed by their own specific regulations and will be subject to a separate bill that is currently under debate.

Types of Legal Structures

The previous LIP set out three types of legal structures: (1) wholly domestic or foreign-owned investments; (2) joint ventures between domestic and foreign investors; and (3) business cooperation by contract. The new LIP formalizes and updates two additional legal structures:

1. **Joint ventures between state-owned enterprises and the private sector.** The LIP formalizes the establishment of these joint ventures. Additional rules for this structure will be framed under the shareholder's agreement and the articles of association of the company.
2. **Public-Private Partnerships (PPPs).** The formalization of PPPs is important, as it reflects the current practice of utilizing PPPs to implement large projects, such as hydropower plants, in Laos as part of the nation's goal of becoming the "battery of Southeast Asia." The formalized PPP structure may also pave the way for the enactment of the Decree on PPP, which is expected to set out a definite framework with a dedicated authority, and clear bidding and tendering processes, in order to provide a means for the government to attract private investors to infrastructure and industrial projects, and provide better services within the country, without straining the government's budget. Although authorities have not communicated on a date for such a decree, it is hopeful that further developments will occur in the near future.

Responsible Authorities

The new LIP establishes the Investment Promotion and Management Committee, which is tasked with considering the granting of approval or authorization to conduct controlled activities, concession activities, and SEZ activities. The Committee is also in charge of correctly implementing contracts for such activities, considering suspensions and cancellations of granted investment licenses, and considering changes to approved concessions (e.g., pledges, transfer of rights).

The Committee is presided over by the Deputy Prime Minister and comprises members from various ministries. It is divided into two levels, national and provincial, depending on specific conditions and the size and importance of investments to be made. The committee will hold meetings at least twice per month. The National Assembly and the Provincial Assembly will also be involved in considering the activities that foreign investors are contemplating in Laos.

The National Assembly is responsible for approving:

- Any investment in a PPP that will have national impact and represents an investment of more than LAK 20 billion (approximately USD 2,442,000);

- Any project to build a nuclear power plant;
- Any casinos and games involving gambling activities;
- Renewal of concessions for development of SEZs;
- Activities relating to the conversion of a reserve forest, or a protected national forest, into an investment zone; and
- Activities that have an adverse impact on nature, the environment, or society.

Approval from the Provincial Assembly will be required mainly for smaller-scale business activities that involve the transformation of forest areas, or activities that may impact nature or the environment at the provincial level.

Incentives for General Business Activities and Concession Activities

In addition to the incentives granted to promoted sectors, the LIP reiterates the possibility of zero percent VAT rates and tariff exemptions for the importation of vehicles or raw materials that are not available in Laos, which will be directly used for project constructions; or product manufacturing in Laos. Likewise, the importation of materials to manufacture products for export may be exempt of tariffs at the time of the import and export, and will be granted a zero percent VAT rate. The use of internal materials, which are not natural resources, to manufacture finished goods and semi-finished goods for export, may also be applied with a zero percent VAT rate.

The new LIP highlights a provision contained in the Decree on the Implementation of the Investment Law (2009) No. 119/PM related to net profits that are used for reinvestments or extending business activities, and also restates the possibility of carrying forward losses within three consecutive accounting years. Moreover, the new LIP formalizes exemptions on state land leases and concession rental fees, and it sets clear exemption periods for investments, along with specific tax holidays that will be granted if they invest in a promoted sector in an eligible zone.

Minimum Capital Requirements

The new LIP has simply deleted figures related to minimum capital requirements for general business activities, and it only mentions that these activities must follow the related minimum requirements prescribed in the Law on Enterprises. However, the Law on Enterprises does not actually make any reference to such minimum requirement with respect to registered capital. Moreover, a notification issued by the Ministry of Industry and Commerce refers instead to the Law on Investment Promotion of 2009 for minimum capital requirements, which had set a minimum registered capital for foreign investors of USD 125,000. This inconsistency will certainly require additional clarification at a later date.

For concession activities, the minimum registered capital should not be lower than 30 percent of the total investment that will be brought into the country, with said investment requiring approval from the Bank of Laos upon importation into Laos. Furthermore, the LIP elaborates

that a certain percentage of the capital, which differs based on the type of concession activity that will be conducted, must be imported 90 days from the date on which the investment is approved and the remaining capital must be imported after two years.

Remittance of Funds Abroad

With respect to funds to be remitted out of the country, the new LIP explicitly provides rights for the transfer of funds and income generated in the country to foreign investors, subject to fulfillment of tax obligations under different regulations, principally the Law on Tax. The new LIP also states that foreign investors have rights in relation to the transfer of assets or funds out of Laos as follows:

- Capital that has been approved by the Bank of Laos at the time of investment in the country;
- Income generated from intellectual properties, technical services, interest, and other types of investment;
- Income generated from the sale of a business, activities, or the termination of all or part of these activities;
- Income generated from a loan agreement contract or compensation accorded by a dispute resolution body or a court of justice, which may or may not be related to business activities;
- Compensation or other funds for clearing debts received before the confiscation or transfer of assets to become state property; and
- Income and compensation granted to foreign employees who have been employed for the purpose of the activity in Laos.

Certificate for Outbound Investments

One novelty of the new LIP is the creation of a license to approve outbound investments by a domestic legal entity. Literally, this requirement is applicable towards every company that has been registered in Laos, regardless of the nationality of the shareholders. Whenever a domestic company wishes to expand and create subsidiaries for instance, such investors would have to submit their request to the One-Stop-Service Unit of the Ministry of Planning and Investment for consideration and approval. However, the scope of said requirements would require further clarification from the authorities.

The Law on Investment Promotion No. 14/NA signifies a positive development in Laos' regulatory landscape, and is likely to provide a strong boost to investments in the nation.

This summary is designed to provide general information only and is not offered as specific advice on any particular matter.

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