

Doing business in Laos: overview

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OVERVIEW

1. What are the key recent developments affecting doing business in your jurisdiction?

In the last two years, Laos has enacted a series of laws on anti-corruption, money laundering and financing, all as part of the Terrorism Act. These efforts were rewarded in June 2017 when the G7 Summit's Financial Action Task Force removed Laos from the Grey List.

In addition, intellectual property has also received some attention with the government ratifying the Madrid Agreement Concerning the International Registration of a Mark (Madrid Protocol), which entered into force in Laos in March 2016. It also developed a geographical indication framework in October 2016 to promote local products for export abroad. The current law on intellectual property is currently under revision and may contain some significantly new provisions. Implementation and enforcement of the revised law is scheduled for early 2018.

The most important recent development is the revision of the Investment Promotion Law 2009, with new amendments entering into force in April 2017. The new law provides a clearer business registration process and a wide range of incentives for businesses involved in government-promoted sectors.

LEGAL SYSTEM

2. What is the legal system based on (for example, civil law, common law or a mixture of both)?

Laos inherited a civil law system from its former French colonial administration. Although the country is not a federal system, the governors (who are the heads of each province in the country) have certain powers to make decisions on a number of matters.

Before 1975, laws were the primary source of rules. After 1975 and with the ascension of the Revolutionary Party as head of the country, all previous laws were repealed, which marks a difference from other former colonies such as Myanmar where some colonial-era regulations/laws remain in use. In 1986, the country decided to change from a planned economy to a market economy, resulting in the implementation of new laws to provide a better regulatory framework to drive a market economy. In 1990, several laws were enacted covering the courts, criminal law, civil procedure, criminal procedure and property.

FOREIGN INVESTMENT

3. Are there any restrictions on foreign investment (including authorisations required by central or local government)?

Laos has taken steps to liberalise its economy and open it to foreign direct investment. However, a number of restrictions remain in relation to foreign investors in certain areas, meaning that a foreign investor may have to share equity with a local partner, or simply be prohibited from engaging in particular activities.

There are four lists that specifically apply to foreign investors seeking to register and operate a business in Laos:

- Notification of the Ministry of Industry and Commerce on Conditioned Business Category List for Foreign Investor No. 1327 of 2015.
- Notification of the Ministry of Industry and Commerce on Controlled Activities No. 107 of 2012.
- Notification of the Ministry of Industry and Commerce on Reserved Business Category List for Lao People No. 1328 of 2015.
- Notification of the Ministry of Industry and Commerce on Prohibited Activities No. 1592 of 2013.

Broadly speaking, business activities in Laos are categorised as follows:

- General business activities (including controlled and non-controlled activities).
- Concession activities.
- Activities operated within a special economic zone.

The list of controlled activities includes those that may impact the stability of the country, or its order and organisation, social environment or nature. The list can also be used to maintain the competitiveness of Lao operators in certain business areas. Requests to conduct controlled activities in Laos are thoroughly appraised and require assessment and approval from every relevant government agency. This list is broad and subject to interpretation by local authorities. Requirements that foreign investors must fulfil to receive a business licence can be unclear but the list is due for revision and will provide better visibility for the businesses deemed to be controlled activities.

All business activities in Laos are governed by the Enterprise Law 2013 and the Investment Promotion Law, as amended in 2016. These laws apply to both foreign and local business operators. Other relevant specific requirements are set out in dedicated regulations.

4. Are there any restrictions on doing business with certain countries or jurisdictions?

There are no restrictions on doing business with certain jurisdictions or countries.

5. Are there any exchange control or currency regulations?

There are a number of laws regulating foreign currency in Laos. The main legislation is the Management of Foreign Currency Law No.55/NA of 22 December 2014. Under this, the use of foreign currencies in Laos is not prohibited as such, and the practice is tolerated for a number of activities including:

- Importing products from abroad.
- Paying for services relating to the export-import of products.
- Paying a foreign-based loan.
- Paying interest or dividends abroad.
- Paying to invest in a foreign country.

The Decision on Foreign Currency No.1083/BOL of 9 December 2016 reiterates a number of restrictions, for example, the prohibition on paying persons/legal entities in a foreign currency within the Lao territory. Laos' US currency reserves are relatively scarce and authorities strive to avoid any outflow of the currency from the country.

6. What grants or incentives are available to investors?

The Investment Promotion Law sets out a list of industries for which the government provides specific incentives, including:

- Technology.
- Agriculture.
- Education and activities to improve people's skills.
- Hospitals.
- Pharmaceutical and medical equipment factories.

Investments must fulfil requirements relating to the total amount of investment and the number of Lao people employed for the business activities to be granted incentives. Incentive amounts will vary depending on the location of each business. The Investment Promotion Law sets out three different types of areas:

- Remote and poor areas, which allow for profit tax exemption of ten to 15 years.
- Areas possessing adequate infrastructure to support economic activities, which allow for profit tax exemption of four to seven years.
- Activities within special economic zones, which have their own tax exemption rules. For concession activities, incentives can be negotiated by investors with the local government and these will be set out in their memorandum of understanding and/or the concession agreement.

In addition to the industry and location-specific incentives mentioned above, the Investment Promotion Law allows for 0% VAT and tariff exemptions on the following activities:

- Import of vehicles or raw materials that are not available in Laos for use directly in domestic project construction or product manufacturing.

- Import of materials that will be used for manufacturing products for export.
- Use of domestic materials that are not natural resources to manufacture finished goods and semi-finished goods for export.

The Investment Promotion Law also:

- Provides for net profits to be used for reinvestment.
- Extends the business activities that are exempt from tax.
- Sets out losses that can be carried forward for three consecutive accounting years.
- Formalises exemptions on state land leases and concession rental fees.

BUSINESS VEHICLES

7. What are the most common forms of business vehicle used in your jurisdiction?

The Investment Promotion Law sets out five types of business vehicles in Laos:

- Wholly foreign-owned or local investment.
- A joint venture investment between domestic and/or foreign investors.
- A business contract by co-operation.
- A joint venture between state-owned enterprises and the private sector.
- Public-private partnerships (PPP).

The Enterprise Law provides for different types of legal structures that can be used to operate a business in Laos, including a:

- Representative office.
- Branch.
- Partnership.
- Limited company.
- Sole limited company.
- Public company.
- State-owned company.

The legal structures most favoured by foreign investors are:

- **Representative office.** This structure is attractive because it offers a low requirement for the amount of registered capital a company must invest to be granted a business licence (US\$50,000) and a straightforward registration process. A representative office will typically serve as an entity for collecting market information or performing surveys before an investor proceeds with heavier investment and establishing a revenue-generating entity. This structure is limited in the types of activities it can engage in and is prohibited from conducting business activities or generating income. The term of a representative office is one year, which can be extended twice. The total term for a representative branch cannot be extended more than three years, however, exemptions can be granted on a case-by-case basis.
- **Limited company.** Limited companies are typically favoured by investors, particularly foreign investors. The requirements and framework for a limited company are well-known and clearly defined by law. A limited company must have at least two shareholders and one director. The liability of the shareholders is limited to the capital invested by them. There are many restrictions on foreign investors about share equity with a local

partner, so they opt for the limited company structure because their liability is clearly limited. The Ministry of Industry and Commerce recently abolished the minimum registered capital for companies with foreign investors. However, this does not include activities that are governed by specific regulations that set out a minimum registered capital requirement.

- **Sole limited company.** Sole limited companies follow the same rules as those imposed on a limited company but the major difference is that the shareholding structure includes only a single shareholder. If a regular limited company has a single shareholder during the course of its activities, it will be required to change its legal structure to a sole limited company.

8. In relation to the most common form of corporate business vehicle used by foreign companies in your jurisdiction, what are the main registration and reporting requirements?

Registration and formation

The most common form of corporate business vehicle used by foreign investors in Laos is a limited company. The registration process/requirements depend on the type of activity undertaken by the foreign investor. Registration for general business activities will be considered by the Ministry of Planning and Investment and its related departments, while registration of activities on the list of controlled activities will be considered by the Ministry of Industry and Commerce and its related departments.

The documents required for general business registration are listed below (but authorities can require further documents if deemed necessary):

- Specific form to be completed from the relevant registration authority (either the Ministry of Industry and Commerce or its related department, or the Ministry of Planning and Investment or its related department).
- Contract of incorporation.
- Articles of association.
- Minutes on the establishment of the company.
- Power of attorney.
- Copy of the identity card/passport and photos of the director(s) of the company, along with their curriculum vitae.
- Office location certificate.
- Business plan.

The documents required to register businesses on the list of controlled activities are determined at the discretion of the relevant authorities.

The Enterprise Law states that the time frame for general business registration is ten working days. The Investment Promotion Law sets a time frame of 25 days to register controlled activity businesses. However, in practice, foreign investment registration typically takes about three months or longer. The time frame set by the Investment Promotion Law for registering concession activity businesses is 65 working days.

Reporting requirements

The Enterprise Law requires an annual report to be produced and to contain the following:

- Total capital, registered capital, and number of issued shares that remain unpaid.
- Types and number of shares issued and paid.

- Name, location and type of business in respect to other companies or subsidiaries in which the limited company holds shares, and the types and number of those shares.
- Information described in section 9 of Article 129 of the Enterprise Law.
- The amount and value of remuneration paid to each director by the limited company.
- Other matters set out in the limited company's articles of association.

Any time a company amends its articles of association, or changes director(s), increases/decreases its registered capital, or modifies information contained in its enterprise registration certificate, it must report it and have the changes confirmed by the registration authority.

Share capital

On 7 November 2017, the Ministry of Industry and Commerce issued Notification No. 2633/Cabinet/MOIC abolishing the minimum registered capital requirement for foreign investors in Laos. This notification does not concern business activities regulated by particular regulations that have already set out the minimum registered capital. Before this notification, the minimum registered capital for foreign investors was US\$120,000.

Non-cash consideration

Under the Enterprise Law, investment in shares can be contributed in cash or in kind. When the contribution is made in kind, it must be assessed in LAK and approved by at least two-thirds of the shareholders.

Rights attaching to shares

Restrictions on rights attaching to shares. In limited companies, a transfer of shares to a third party will be effective when a prior offering has been made to the other shareholders of the limited company.

Similarly, founders of a public company cannot transfer their shares for two years from the date of the enterprise registration of the company. A public company must have at least nine founders. The concept of a founder does not relate only to a public company. Founders are persons who are designated to trigger the establishment process of the company and they must hold at least one share in the company.

Automatic rights attaching to shares. The Enterprise Law sets out the rights that automatically attach to shares, including to:

- Present opinions on the limited company's activities.
- Participate in the limited company's activities.
- Pay for shares on the due date.
- Fully protect their interests.
- Receive information and examine the records of the limited company, as provided in the limited company's articles of association.
- File complaints against directors, officers or employees of the limited company who have prejudiced their interests.
- Be liable for the unpaid portion of their shares.
- Have pre-emptive rights with respect to the transfer or sale of shares by shareholders of the limited company to third parties.
- Elect or remove directors of the limited company.
- Receive part of the assets remaining from a liquidation, in the event of dissolution.
- Receive dividends in proportion to their shareholdings.

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- Exercise other rights and perform other duties, as specified under laws and regulations.

9. In relation to the most common form of corporate business vehicle used by foreign companies in your jurisdiction, outline the management structure and key liability issues.

Management structure

A limited company in Laos must have at least two shareholders and one director. A limited company with two or more directors can establish a board of directors unless otherwise stated in the company's articles of association. Details of management roles must be laid out in the articles.

Companies with more than LAK50 million in assets must have a board of directors with a president and the option of a vice president. The president chairs meetings of the board of directors and the shareholders.

Management restrictions

There are no specific restrictions on foreign managers/directors. However, the Enterprise Law sets out a number of restrictions that apply to every director, regardless of their nationality. Directors are prohibited from:

- Conducting a similar activity to that of the limited company that they are working for.
- Being a partner in a general partnership with a similar activity as the one undertaken by the limited company that they are working for.
- Performing transactions with their own limited company for their own interests, or the interests of another person, except as otherwise agreed.
- Borrowing money from the limited company, except where expressly permitted within the articles of association.

These restrictions apply to family members of the directors, and every officer and employee of the company.

Directors' and officers' liability

Directors and officers will be liable if they violate the articles of association and do not act in accordance with the purposes of the company.

Parent company liability

The liability of a parent company is limited to the shares it holds in its subsidiary.

EMPLOYMENT

Laws, contracts and permits

10. What are the main laws regulating employment relationships?

The main piece of legislation governing employment relationships is the Labour Law No.43/NA of 24 December 2013. Other regulations and decrees are attached to this law and include more details or frame specific rights, such as minimum wages and contributions to the social security fund by employees and employers. The Labour Law applies to every legal entity established in Laos and to employers and employees working in Laos.

11. Is a written contract of employment required? If so, what main terms must be included in it? Do any implied terms

and/or collective agreements apply to the employment relationship?

An employment contract is required, but the form of the contract may differ. Employment contracts can be verbal when the employer is an individual. However, employment contracts entered into between an employee and a legal entity must be in writing and include the following:

- Details of the employer and full name of the employee and their addresses.
- Work to be performed (that is, rights, obligations, responsibilities and duties of the employee).
- Duration of the contract and the probationary period.
- Wages, including method/form of payment.
- Welfare and benefits to which the employee is entitled.
- Working hours, rest days, and holidays.
- Any benefits that the employee will receive at the end of the contract.
- Any other matters agreed between the parties in accordance with the law.

12. Do foreign employees require work permits and/or residency permits?

The Labour Law prioritises hiring Lao nationals. However, foreign employees can be hired if the requirements for doing so are fulfilled and after approval has been granted from the Ministry of Labour and Social Welfare.

A foreign employee working in Laos must have a work permit, requiring an employer to submit an application seeking quota approval from the Ministry of Labour and Social Welfare to bring in the foreign employee. When the quota is approved, the employer must request a work permit within one month. A work permit will then be issued to the foreign employee at the same time as their business visa. In addition to their work permit, a foreign employee requires a stay permit card to be issued by the Ministry of Public Security.

Termination and redundancy

13. Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as redundancies and disposals)?

There is no general mandatory management representation for employees in relation to corporate transactions. However, the Labour Law provides that if an employer wants to reduce the number of its employees to improve work within a labour unit, or for economic reasons, the employer must first consult with the employees' representative or the majority of the employees, and then report the reduction to the Labour Administration Authority before proceeding with it.

14. How is the termination of individual employment contracts regulated?

There is no defined notification period for a fixed-term contract and terms are typically agreed on in the employment contract. For indefinite term contracts, each party can terminate at any time provided notice is provided to the other party:

- At least 30 days in advance for contracts involving physical labour.
- At least 45 days in advance for contracts involving employees using intellectual/special skills.

Alternatively, the employer can choose to make payment in lieu of notice to the terminated employee.

The employment contract can be terminated by the employer if:

- An employee cannot correctly perform their duties, even after being placed in another position.
- An employee has been moved to another position due to health issues, but remains unable to perform the required tasks.
- An employer considers that reducing the number of workers will help improve the work within its labour unit. In this case, the employer must consult with the trade union or the employees' representative, or the majority of the workers before reporting the reduction to the Labour Administration Authority. An employer has the right to terminate the employment contract, but severance payments will be due.

Employees can be dismissed if they are at fault (without the requirement to pay severance pay) if they:

- Deliberately cause damage to the employer.
- Violate internal regulations.
- Violate their employment contract several times and have been warned about it (for example, being absent from the workplace for four consecutive days without explanation, or being sentenced to imprisonment for an offence perpetrated deliberately against the employer).

In cases of serious misconduct, notice before termination is not necessary.

When the employment contract is terminated unjustly, the employee can request reinstatement. Unjustified termination can include:

- No sufficient cause for dismissal.
- Abuse of power by the employer.
- Infringement of the employee's rights.
- The employer receiving complaints from the employee but taking no action, resulting in the employee's resignation.

15. Are redundancies and mass layoffs regulated?

If an employer wishes to reduce the number of its employees for economic reasons, the representative of the majority of the employees must be consulted in advance. The employer must then inform the Labour Administration Authority in writing.

TAX

Taxes on employment

16. In what circumstances is an employee taxed in your jurisdiction and what criteria are used?

Employee tax is based on place of residence as follows:

- All Lao citizens who earn income must pay income tax. Any persons with residence in Laos who work and earn income abroad must declare and pay income tax in Laos if they are exempt from paying income tax abroad.

- Lao employees working in embassies, consular or international organisations abroad and earning income in Laos must declare and pay income tax in Laos.
- Foreign nationals working or having residence in Laos, generating income in Laos or in a foreign country, must declare and pay income tax in Laos, unless otherwise specified in a double taxation agreement or in an investment project agreement approved by the national assembly or signed directly with the Laos Government.

17. What income tax and social security contributions must be paid by the employee and the employer during the employment relationship?

Tax resident employees

Income tax must be paid based on income level as follows:

- 1 million and below: 0%.
- 1,000,001 to 3 million: 5%.
- 3,000,001 to 6 million: 10%.
- 6,000,001 to 12 million: 12%.
- 12,000,001 to 24 million: 15%.
- 24,000,001 to 40 million: 20%.
- 40,000,001 and above: 24%.

All legal entities established in Laos must contribute to the social security fund. Employees must pay 5.5% of their salary per month towards social security.

Non-tax resident employees

See *Question 16*.

Employers

Employers must contribute 6% of the rate of the employee's salary to the national social security fund. The contribution is capped at a maximum of LAK4.5 million per month. Likewise, employers must withhold income tax for their employees and then remit it to the tax authorities.

Business vehicles

18. When is a business vehicle subject to tax in your jurisdiction?

Tax resident business

The terms of tax residence for business vehicles is not defined in the Lao regulatory framework. However, local and foreign legal entities established in Laos must pay taxes (such as profit tax or VAT) to the tax authority. Legal entities are also taxable on their worldwide income.

Non-tax resident business

Non-tax resident business is not defined under Lao regulations. However, non-tax resident business will be regarded as generating income from activities in Laos while based offshore. Offshore entities not registered in Laos that provide goods or services in Laos are subject to a foreign withholding tax that will vary from 0.72% to 6%, depending on the type of goods/services delivered. VAT will also be applied for services provided in Laos by offshore-based companies.

19. What are the main taxes that potentially apply to a business vehicle subject to tax in your jurisdiction (including tax rates)?

Profit tax

Profit tax is collected on a company's profit, regardless of whether it is a domestic or a foreign entity. The rate of profit tax is 24% for both domestic and foreign legal entities. There are some exceptions to this rule, such as companies listed on the Lao Stock Exchange, which are granted a reduced profit tax rate of 5% for a period of four years. A few other rates apply to specific industries, such as tobacco.

Profit tax must be paid every quarter no later than:

- 10 April of the current year.
- 10 July of the current year.
- 10 October of the current year.
- 10 March of the following year.

Environmental tax

This direct tax is levied on entities that cause pollution and more broadly endanger the environment. There are no set rates and no regulation lays out a mechanism for calculating this tax. Therefore, this tax is currently not applicable.

Stamp duty

There is no fixed rate for stamp duty. Document registration is governed under a special decree and the rates differ depending on the type of document.

VAT

VAT is levied on goods for consumption and services at the rate of 10% as set by the VAT Law.

Excise tax

Excise tax is levied on specific products designated by the Tax Law, such as alcohol, tobacco, cars and certain types of food. The rate will vary depending on the type of goods.

Dividends, interest and IP royalties

20. How are the following taxed:

- **Dividends paid to foreign corporate shareholders?**
 - **Dividends received from foreign companies?**
 - **Interest paid to foreign corporate shareholders?**
 - **Intellectual property (IP) royalties paid to foreign corporate shareholders?**
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Dividends paid

Lao regulations provide a withholding tax of 10%, which is applied to profits paid to foreign corporate shareholders. This percentage can vary if the country where the shareholder is located has signed a double tax treaty with Laos.

Dividends received

Income from dividends, profit sharing, or other benefits to partners or shareholders is taxed at 10%.

Interest paid

Income from loan interest, broker or representative commission of individuals or legal entities, or guarantee fees received under contracts or other binding obligations is taxed at 10%.

IP royalties paid

Income from intellectual property such as patents, copyright, trade marks, or other rights of individuals or legal entities, is taxed at 5%.

Tax rates can be subject to double taxation agreements signed between Laos and other jurisdictions and may differ for companies based in the jurisdiction with which Laos has signed a double taxation agreement.

Groups, affiliates and related parties

21. Are there any thin capitalisation rules (restrictions on loans from foreign affiliates)?

There are no thin capitalisation rules in Laos.

22. Must the profits of a foreign subsidiary be imputed to a parent company that is tax resident in your jurisdiction (controlled foreign company rules)?

There are no controlled foreign company rules in Laos.

23. Are there any transfer pricing rules?

There are no transfer pricing rules in Laos.

Customs duties

24. How are imports and exports taxed?

The Tax Law sets out which goods entering the country will be subject to import tax, VAT, and excise tax.

Goods coming from member states of the Association of Southeast Asian Nations (ASEAN) will most likely benefit from preferred tariffs as part of efforts for single market integration of ASEAN members.

Laos is also a contracting member of certain free trade agreements that directly affect tariffs, such as the:

- World Trade Organization Most Favoured Nation (MFN).
- ASEAN Trade In Goods Agreement (ATIGA).
- ASEAN-China Free Trade Agreement (ACFTA).
- ASEAN-Korea Free Trade Agreement (AKFTA).
- ASEAN-India Free Trade Agreement (AIFTA).
- ASEAN-Australia New Zealand Free Trade Agreement (AANZFTA).

In addition, goods, materials or machinery imported for a specific project in Laos may also be exempt from import tax.

Double tax treaties

25. Is there a wide network of double tax treaties?

Laos has entered into double tax agreements, which are actually in force, with the following countries:

- Brunei.
- China.
- Luxembourg.

- Malaysia.
- Myanmar.
- North Korea.
- Russia.
- Singapore.
- South Korea.
- Thailand.
- Vietnam.

COMPETITION

26. Are restrictive agreements and practices regulated by competition law? Is unilateral (or single-firm) conduct regulated by competition law?

Competition authority

The Business Competition Commission is the committee responsible for implementing the Business Competition Law No. 60/NA of 14 January 2015, or examining any cases that relate to unfair, regulated or prohibited business competition practices. However, the Commission is still in the process of being established and members who will hold tenure are currently undergoing training. Therefore, although the law has been enacted and is in theory enforceable, the enforcement authority is not yet functional, making the law unenforceable in practice.

Restrictive agreements and practices

Lao authorities enacted the Business Competition Law, setting out provisions to promote fair competition and encourage business activities in Laos. The law prohibits practices such as:

- Restricting the production/distribution of goods into the market.
- Price fixing.
- Putting up obstacles to prevent new competitors from entering the market.

Unilateral conduct

The Business Competition Law provides a definition of a company, or a group of companies, with a dominant market position or a monopoly.

A dominant market position is defined as the conducting of an activity by one, two, or a group of companies with a market share exceeding that authorised by the Business Competition Commission. However, the commission has yet to be established.

A monopoly is defined as a company (or a group of companies) that sells/supplies goods/services for a mark, and no other companies are doing so.

Companies with a dominant market share, or a monopoly, are prohibited from carrying out certain acts including:

- Setting buy/sell prices for goods and/or services which takes advantage of consumers.
- Selling goods or services at prices that are lower than aggregate costs.
- Refusing to sell or provide services to a customer.
- Imposing conditions on other enterprises in respect to concluding purchase or sales contracts, or imposing on contractors obligations that are not set out in the contract.
- Imposing different prices or conditions to purchase/sell similar goods and services.

- Any other market behaviour that is prohibited under other laws/regulations of Laos.

However, some actions can be tolerated under certain conditions including where it can be proved that it is beneficial to the socio-economic development of the country.

Since the Business Competition Committee has not yet been established, unilateral conduct will most likely not be sanctioned in Laos at the present time.

27. Are mergers and acquisitions subject to merger control?

As the Business Commission Committee has not yet been established, there is no control over mergers and acquisitions in Laos.

INTELLECTUAL PROPERTY

28. Outline the main IP rights in your jurisdiction.

Patents

Definition and legal requirements. The Lao regulatory framework provides two different types of protection for technical inventions: patents and petty patents.

The Intellectual Property Law No. 01/NA of 12 December 2011 (IP Law) protects patents and defines an invention as a "technical solution to create a new product or a process of production to resolve a specific problem".

A petty patent is defined in the IP Law as a "utility innovation" that is a "new innovative work derived through technical improvements" and "involves simpler steps than inventions".

An invention can be granted a patent or petty patent certificate if it fulfils the following requirements:

- **It is new.** The invention or innovation must not have been disclosed to the public in any way or used through any means anywhere else in the world prior to filing the application in Laos or before the publication date of the first-filed application.
- **It has an inventive step.** The inventive step must not be obvious to a person with ordinary skills in the relevant field. The degree of inventiveness can be less for a petty patent than for a patent.
- **There is industrial application.** The invention must eventually be applicable in some sort of industry.

Registration. The Department of Intellectual Property (DIP), Ministry of Science and Technology, is the authority in charge of registration applications for patents. The registration process from the filing date until a certificate is granted usually takes around 50 months for a patent and around 12 months for a petty patent.

Enforcement and remedies. On discovery of evidence that proves infringement of a patent right, the IP owner or legal representative can file civil or criminal charges against the infringers with the Lao People's Court.

However, the Lao regulatory framework encourages mediation and filing proceedings with the court will only be accepted as a last resort. In addition, judges still lack experience in IP cases.

No patent claims have yet been settled before the court in Laos, so patent owners may prefer to pursue resolution by way of administrative remedy with the DIP. The DIP will lead negotiations to achieve an amicable resolution, but if the dispute persists, the DIP has the power to sanction infringers.

Length of protection. The term of protection is 20 years from the date of filing a patent and ten years from the date of filing a petty patent.

Trade marks

Definition and legal requirements. Under the IP Law, a trade mark is a sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings. To be able to register a trade mark with the DIP, the following requirements must be met:

- The mark must be sufficiently distinctive. The mark can be a sign, or a combination of signs. The sign can include words, such as personal names, letters, numerals, figurative elements, and combinations of colours, as well as any combination of signs.
- The mark must not be identical to a previously registered trade mark, or a well-known mark, or contain any geographical indication for the same goods and services.
- The mark must not instil confusion in the consumer's mind or create a false impression that the mark is connected or associated with another party.
- The mark must not be contrary to national security, social order, culture or the fine traditions of Laos.

Protection. Trade mark registration is not mandatory. However, registration with the DIP is required to secure the exclusive right to use/exploit a trade mark and to prevent competitors or infringers from using it. Trade mark registration takes around ten to 12 months from the filing date until the trade mark certificate is issued.

Unregistered trade marks, such as well-known marks, can also be protected in Laos. To benefit from protection, well-known trade marks must be widely recognised by the relevant sectors within Laos. The IP owner of a well-known trade mark can prevent any third party from using the mark within Laos. Therefore, unregistered trade marks have the same scope of protection as a registered trade mark in Laos.

Enforcement and remedies. Similar to enforcement and remedies for patents, on the discovery of evidence that proves infringement of trade mark rights, a trade mark owner, their legal representative, or a licensee can file civil or criminal charges against the infringers with the Lao People's Court. However, the Lao regulatory framework encourages mediation, and filing proceedings with the court will most likely be accepted as a last resort. In addition, judges still lack experience in IP cases.

Trade mark owners may favour resolution by administrative remedy with the DIP, which will first try to solve the issue through amicable resolution and mediation. However, if the dispute persists, the DIP can sanction the infringers or seize counterfeit goods in Laos.

Length of protection and renewability. Trade mark registration is valid for a period of ten years from the date of registration (or from the priority date, if any). The registered mark can be renewed every ten years with the DIP, and there is no limit to the number of renewals.

Registered designs

Definition. Under the IP law, an industrial design is the form or shape of the product that is created and includes patterns, lines and colours.

To qualify for protection, an industrial design must satisfy two key criteria:

- **It must be new.** The design must never have been disclosed to the public, through publication, use, or display, whether in Laos or elsewhere in the world, prior to the date of the application in Laos.

- **It must be ornamental.** The ornamental qualities of the industrial design must display a "special appearance of the object to which the design is applied or in which it is embodied."

Registration. The DIP is the relevant authority in charge of industrial design registration. The registration process for an industrial design usually takes six to 12 months from the date of filing until the certificate is issued.

Enforcement and remedies. Enforcement and remedies are similar to those already outlined above for patents and trade marks.

Length of protection and renewability. Once the certificate is delivered, the industrial design is protected for 15 years from the application filing date.

Unregistered designs

There is no definition of unregistered design in the IP Law. There is no protection for designs that are not currently registered with the DIP.

Copyright

Definition and legal requirements. Copyright is the exclusive right of an author or a copyright holder to publish or reproduce creative works. Copyright in Laos covers works in artistic, literary and scientific works, including computer programs. Lao regulations also cover related rights, which include works of performers, producers, phonograms and broadcasting organisations.

Copyright and related rights grant protection over the creative works; ideas by themselves cannot be protected.

Derivative works, based on pre-existing works and meeting the legal qualifications, are protected as original works without infringing copyright. Derivative works include those works based on an already existing work and cover translation, adaptation, arrangement of music, modification, transformation, interpretation and other adjustments or transformations of a work under the copyright regime.

Under the IP Law, the following works are excluded from copyright protection:

- News of the day or miscellaneous facts.
- Ideas or procedures, methods of operation, or mathematical concepts.
- Official text emanating from an official body and translations of the text.

Protection. The DIP is the only authority to handle copyright registration in Laos.

Enforcement and remedies. Enforcement and remedies are the same as those for patent, trade mark, and industrial designs.

Length of protection and renewability. Copyright and related-rights protection last for 50 years after the death of the owner

Other than the above, the IP Law provides the possibility to register the layout/design of integrated circuits and geographical indications.

Additionally, trade secrets are also offered protection under the IP Law. A trade secret is defined as information that is known only by a very limited number of people and which is not easily accessible by other persons. The IP Law provides a few examples, such as formulas, production processes or any information that has commercial value. To be considered a trade secret the information must:

- Be secret and restricted to a limited circle of people.
- Have commercial value.

- Be subject to specific actions from the proprietor of the information to keep the information secret.

MARKETING AGREEMENTS

29. Are marketing agreements regulated?

Agency

There are no laws or regulations that specifically regulate agreements relating to agencies, distribution or franchising in Laos. In general, all types of agreements must follow the rules and principles as set out in the Contract and Tort Law No. 01/NA of 8 December 2008. Parties have leeway to elaborate and define the contract's rights and obligations.

Although not addressed in any regulations, non-compete clauses are permissible in Laos, as long as they are carefully drafted and limited in scope. Trade secrets are also expressly protected under the IP Law and provisions on confidentiality can be included in an agreement. Although agency, franchising and distribution agreements cannot be registered with the DIP, a shorter form of the agreement setting out the rights granted to a person over any IP asset can be filed and registered with the DIP to ensure enforceability over any third party.

Distribution

See above, *Agency*.

Franchising

See above, *Agency*.

E-COMMERCE

30. Are there any laws regulating e-commerce (such as electronic signatures and distance selling)?

The Electronic Transactions Law No. 20/NA of 7 December 2012, which was promulgated in January 2013, is destined to frame agreements/contracts sent or received electronically. This law provides a definition for the term "electronic commerce" as "the purchase, sale and other exchange of goods or services between individuals, legal entities or organisations using electronic means". The law excludes a number of acts, such as the creation of wills, documents of title, petitions, or certificates related to births, marriages, divorce or death.

The law recognises three types of electronic signature:

- Basic electronic signature.
- Basic digital signature.
- Secure digital signature.

An electronic signature, associated with a data message or electronic document, is considered to be valid and can be relied on if:

- The signatory and the date and time of the signature can be identified.
- It is managed by the person/owner of the signature only.
- It is stored/maintained by the owner of the signature only.
- The electronic signature system can access any information system that can identify whether there have been changes in the data message or electronic document.

ADVERTISING

31. Outline the regulation of advertising in your jurisdiction.

An individual, legal entity or organisation intending to advertise their goods and services must seek approval from the Information and Culture Sector which operates under the Ministry of Information Culture and Tourism and the laws of any relevant sectors.

Some of the laws and regulations covering advertising include the:

- Mass Media Law of 2016.
- Customer Protection Law of 2010.

While advertisements in Laos can cover all forms including billboards and media, it must ensure that:

- The context of the advertisement is not deceptive and honestly depicts the products being advertised.
- Sufficient information is provided about the goods and services.
- The advertisement does not satirise or look down on the goods and services of others.

Where it is deemed that any advertising is untrue or is not to the benefit of consumers, the relevant consumer protection authority will notify the supplier to stop the advertisement and modify the contents to be appropriate prior to continuing.

DATA PROTECTION

32. Are there specific statutory data protection laws? If not, are there laws providing equivalent protection?

The Cybercrime Law was enacted in July 2015 and contains various provisions on data privacy and storage, and prohibits the use of personal information that may cause any harm to the information holder by tarnishing their reputation. In addition, the Penal Law and the Contract and Tort Law also briefly address privacy issues.

The Cybercrime Law defines the principles and measures for managing, monitoring and protecting database systems, servers, computer data and information. It addresses issues relating to the management of information collected from users on the internet. In addition, the law sets out a series of obligations on service providers. In general, consent from the person who owns the data is necessary before it can be used.

Lao authorities also recently enacted the Electronic Data Protection Law of 12 May 2017, which divides electronic data into two types:

- General data that can be circulated and used by anybody, as long as the source is indicated.
- Specific information that is not to be circulated without authorisation from the owner, and which may include state information and personal/sensitive information.

The law also touches on standards relating to the protection of personal information.

PRODUCT LIABILITY

33. How is product liability and product safety regulated?

The Consumer Protection Law is the main law protecting consumers from faulty goods and services. However, it is very broad and only sets out a series of principles for suppliers of goods and services to follow, including:

- Ensuring the quality and standard of goods and services is in accordance with laws and regulations.
- Ensuring that the manufacturing, import and distribution of goods and services will not have an effect on the environment beyond defined standards.
- Providing precise and accurate information on the production, import and distribution of goods and services to consumers.
- Responsibility for damages caused by providing products, goods and services that fall under required quality standards.

- Rigorously performing contracts with consumers and labelling goods according to regulations.
- Co-operating and providing information about goods and services to relevant officials.

If damage occurs due to a fault in a product delivered by a professional, consumers can hold the professional liable for the damage.

MAIN BUSINESS ORGANISATIONS

Ministry of Planning and Investment

W www.investlaos.gov.la/

Main activities. Responsible for business registration in specific sectors, and providing guidance on investment in Laos.

Ministry of Industry and Commerce, Enterprise Registration and Management Department

W www.moic.gov.la

Main activities. Responsible for business registration in sectors different to those overseen by the Ministry of Planning and Investment, and providing guidance on investment in Laos.

Ministry of Finance

W www.mof.gov.la/

Main activities. Responsible for setting tax rates in the Lao regulatory framework, and other fiscal matters, including those in the insurance sector.

Ministry of Labour and Social Welfare, Department of Immigration

W www.immigration.gov.la/

Main activities. Responsible for regulating labour framework, and immigration issues.

ONLINE RESOURCES

Lao Official Gazette

W www.laofficialgazette.com

Description. Electronic database containing Lao laws and regulations.

Ministry of Planning and Investment

W www.investlaos.gov.la

Description. The authority in charge of business registration in some sectors.

Practical Law Contributor profiles



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