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New Legislation Clarifies the Landscape for Representative Offices in Laos

Although Laos is generally acknowledged as a small nation with notable potential, it is also viewed as a niche market for specific industries, such as energy (especially hydropower) or mining, due to its preponderance of natural resources. While it is true that these industries do well here, there are myriad other investment opportunities in this emerging economy that potential investors have the opportunity to capitalize and benefit from. However, other sectors are often hampered by a lack of clear intelligence on them for prospective investors to base investment decisions on.

Representative Offices (ROs) provide the gateway to such opportunities, and are an unmatched resource for prospective investors who are considering Laos as an investment destination. Establishing an RO gives investors the ability to effectively gather, analyze, and assess business opportunities, which is unusually beneficial in Laos due to the scarcity of other reliable statistics and information outside of the country.

However, the 2016 Law on Investment Promotion, which permitted ROs, contained few procedural provisions on how they could actually be registered, leaving a problematic regulatory gap. Indeed, that law even expressly required further legislation to be implemented in future. In its absence, the relevant authorities have adopted informal policies and procedures for registration. This has left establishing and registering an RO in Laos an uncertain business. Investors in Laos therefore welcomed the recent Decision No. 1825/MPI on the Establishment and Management of a Representative Office for Foreign Legal Entities Based in Laos (the Decision), which was published on August 6, 2018. Effective since August 13, the decision formalizes and clarifies the procedures for setting up an RO in Laos.

Types of RO and Operational Restrictions

The Decision provides distinct classifications for two types of RO: those that are established to carry out concession activities under the framework of a Memorandum of Understanding or agreement with local government; and those that are established outside of such a framework.

A third classification for multinational and transnational corporations was considered, but ultimately abandoned during the consultation period. During public and private sector consultations, concerns were raised about how such corporations would be defined, as there is no single, clear, pre-existing definition of them under Lao law. While such a class would certainly have had its benefits if properly executed, limiting the Decision to two classes is generally seen as the more beneficial option for the time being, as it will add to the assuredness and efficiency of the registration process.

It should be noted that ROs licensed under either category are restricted from carrying out business activities or generating income; advertising goods, services, or other products in any manner; allowing others to use their RO license; and issuing receipts or invoices for revenue or other types of income. In addition, no more than two foreign employees are allowed to work at any given RO, and Lao citizens must be given preference. Any and all foreign workers remain subject to work and residency permit requirements.

Conditions and Timeline for Registration

The Decision lays out a set of conditions that must be met in order to establish an RO in Laos, many of which are relatively standard requirements carried over from the preexisting legal regime (for example, entities must be registered in another jurisdiction and be able to produce their various corporate secretarial documents, etc.). In this way, the legislation formalizes many of the informal policies that have been used to register ROs so far under the 2016 Law on Investment Promotion.

Most notable among the conditions under the Decision is the retained requirement for ROs to have minimum registered capital of USD 50,000 in order to be registrable. During preliminary discussions (before the implementation of the Decision) individuals from the private and public sector alike expressed their concerns about this requirement, citing a previous move by the Lao government to abolish minimum registered capital for legal entities in order to facilitate the creation of companies in Laos. However, the government's legislative agenda has been steadily moving away from that policy, and after discussions ended and all concerns had been considered, the Lao authorities moved forward with the minimum registered capital requirement of USD 50,000.

If all conditions are met, a legal entity can file a registration to establish an RO in Laos through the Ministry of Planning and Investment's One Stop Service. The Decision states that registration should take 15 working days from the date of filing until approval is granted. However, in practice, this timeframe may slightly differ.

Conclusion

Although the 2016 Law on Investment Promotion permitted setting up ROs in Laos, it has taken a long time for the procedural regulations that support that set-up to come into being. Registration of an RO since then has been fraught with uncertainty, and the Decision, by fixing the regulatory framework, is therefore a great step toward a sturdy RO landscape in Laos. This is another example of recent efforts by local authorities to provide clearer and more thorough rules and regulations, superseding the more casual practices that have shaped the regulatory framework in Laos today.

The Decision has been openly welcomed by foreign entities that are contemplating potentially lucrative investment opportunities in Laos. Foreign investors are able to establish a local RO in Laos in order to test the waters and collect necessary data and information on business potential, before fully committing to a long-term investment in the country.

Ultimately, the Decision provides increased incentives for foreign investors to consider Laos as a market for expansion, and in turn is likely to propel the country's growing economy.