

# Legal Measures to Promote and Administer Foreign Direct Investment in Lao PDR: The Case of Business in General

KEOKHUNSY KHAM OUANE (OUANE)

Professor of Law, People Police Academy of Ministry of Public Security, Laos  
PhD. Candidate, Southwest University of Political Science and Law, School of International Law, Chongqing, China  
Ouanekeokhunsy@gmail.com

## Abstract

This paper is mainly focusing on the legal measures to promote and administer foreign direct investment in Lao People's Democratic Republic (Lao PDR or Laos). The case of investment in business in general, it bases on the compulsory laws and regulations to implement the states for promotion and administer the foreign investors to invest in Laos.

The main goal of the Lao PDR as expected to improve economic position to taking necessary steps to graduate from Least Developed Country status by 2026 and become a industrialized and earn moderately country by 2030. This study is to examine and appraise the measure of foreign investment promotion and administration in Laos, the principle of foreign investment in Laos. There are domestic laws, international laws that relevant to the foreign investment which is a reason of study and defining of measure of promotion and administration of foreign investment in Laos. There are very important factors to achieve the goal, also achieve the aim of the Lao laws on the investment promotion to promote foreign investment flows to Laos's socio-economic development.

The promotion and administer foreign investment in business in general specified the provision implements and enforced by the Law on Investment Promotion Law 2016, Besides that, Laos has the decree on the implementation of the investment promotion law in order to make investors invest in the country. Moreover, Lao PDR has the economic cooperation by signing the bilateral and multilateral with many countries all around the world. These laws and regulation are the principles and measure to protect the investment of the government and investors.

The results of this journal would provide a greater understanding of the factors that influence foreign investment and the factors that may determine the future trends in such investment. The study also assesses the effects of investment laws and regulations on foreign investment flows in Laos.

**Keywords:** Lao Foreign investment, international investment law, investment regulation, investment treaties, investment protection

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## 1. Introduction

In the case of foreign investment, there are both state exporters foreign invested states and state-owned enterprises. Therefore, there is a lot of rule and regulations related to laws, whether it is a domestic law of host country and international law.

Measure to promote and protect investment under international law can be enforced in accordance with international law and international customary law such as, promotion and management of investment in accordance with international law, in accordance with international customary rules and in accordance with common law rules. The foreign investment promotion and management measures in Laos have been in place since 1986, the legal principles of mutual reconciliation and foreign investment are fully and completely compliant with international law and international practice, which is the latest revised 17<sup>th</sup> November 2016 Investment Promotion Act.

Currently, the promotion and management of foreign investment is current the most important because the developed countries have the potential to invest in financial capital and technology but are dire straits, lacking nature resources, raw material and high wage labor. They have to relocate their production to a place where natural resources and low-wage employment are in the developing countries. In contrast, developing countries are losing money, capital, technology, but have a lot of natural resources, raw materials and low wages.

Developing countries have the need to develop the social and economic life of the crippled, wealthy and robust people so that they need foreign investment. Therefore, it is a matter of how to attract foreign investment as much as possible, while foreigners will come up with what principles to manage investment. So to express the highest sentence to foreign investors, from the above we see that the promotion and management of foreign investment in Laos is an importance issue, with the educator going to research and analyze detail issues to raise awareness of foreign investors.

The foreign investment play very important role in many developing countries in generating capital, job employment and technology transferring. As a trend of foreign investment moves forward to country which rich in natural resources and have advantage in cheap labor, in the case of Lao PDR also no exception. The Lao People's Democratic Republic is a landlocked country, which is located in Southeast Asia and bordered with five countries namely: Cambodia, China, Myanmar, Thailand and Vietnam. Its land area is approximately 236,800 square kilometers. Lao PDR, however, is only lightly populated with 7.7 million people with an average growth of 2.8 percent annually, which has been thinly spread across the country. Roughly 80 percent of population is involved in agriculture, forestry and fishing, producing half of the country's GDP (52 percent of GDP), while industry and service sectors have been positively expanded with a share of 22 and 23 percent of GDP, respectively. Recently, Lao PDR is on the process of transferring its economy from centrally planned economy to market-oriented economy. "Its GDP growth is around 6,8 percent annually.<sup>1</sup> However, Lao PDR is classified as a least-developed country" by the United Nations.

Lao PDR has tried to accelerate the economic development for many years to eradicate poverty and improve its people's living conditions. Since 1986, the government of Lao PDR has thus decided to launch its economic reform, namely "New Economic Mechanism". Basically, new reform is based on the transformation from the centrally planned economy to the market-oriented economy. In 1989, Lao PDR has completely opened up its country to the world. Its reform is comprised of five principles: 1) price determination and resource allocation are based on the market; 2) domestic and foreign trade is liberalized as well as the distribution of goods and capital; 3) public enterprises are privatized and local authorities are given more autonomy in decision making; 4) command-based economic planning is replaced by guidance-based planning; and 5) foreign investment is actively introduced.

With the Investment Law in 1994 onward the government of Laos PDR has paid attention in attracting Foreign Direct Investment by improving business environment, political stability and macroeconomic policy, its commitment to be member of" WTO"<sup>2</sup> and "AFTA"<sup>3</sup> which giving foreign investors in flavor of investment incentive especially in tax policy and land policy. However with the implementation of Investment Law in 2004 and latest revised 2016 which given huge investment incentive to foreign investors especially mining sectors and hydropower sectors.

## **2. Promotion and management investment under international investment agreement**

International investment agreements (IIAs) are an important element of the investment policy framework which complement the domestic framework. IIAs, entered into between two or more countries, can offer covered foreign investors substantive and procedural protection for their investments in host states, help to liberalize restrictions on investment flows and provide mechanisms for resolving disputes.

Lao PDR has a broad network of international investment agreements, both stand-alone treaties and investment chapters in broader free trade agreements. Investment treaties typically protect existing covered investments against expropriation without compensation and against discrimination, and give covered investors access to ISDS mechanisms to enforce those provisions. Increasingly, treaties also facilitate the establishment of new investments by extending their application to foreign investors seeking to make an investment. The International Investment Cooperation Division of the Investment Promotion Department, within MPI, has taken over the mandate previously attributed to the Ministry of Foreign Affairs and since 2011 has been in charge of negotiating and concluding BITs. In addition to over 20 BITs in force, Lao PDR is also a party to an increasing number of regional and multilateral trade and investment agreements (Table 1).

<sup>1</sup>Lao PDR Economic/ Asian Development bank Available at <https://www.adb.org/countries/lao-pdr/economy> 2023-9

<sup>2</sup> Lao People's Democratic Republic's participation in the WTO. Available at [https://www.wto.org/english/thewto\\_e/countries\\_e/lao\\_e.htm](https://www.wto.org/english/thewto_e/countries_e/lao_e.htm)2023-9

<sup>3</sup> Lao People's Democratic Republic's participation in the AFTA Available at [https://en.wikipedia.org/wiki/ASEAN\\_Free\\_Trade\\_Area](https://en.wikipedia.org/wiki/ASEAN_Free_Trade_Area) 2023-2-14

Like its ASEAN peers, Lao PDR's recent investment treaty policy has in many cases been driven by a new regional dynamic: since the conclusion of ACIA in 2009, the group of ASEAN Member States has signed agreements with Australia and New Zealand (2009), Korea (2009), China (2009), and India (2014).<sup>1</sup> ASEAN is currently also negotiating on the inclusion of an investment chapter for the existing Economic Partnership Agreement with Japan and Regional Comprehensive Economic Partnership (RCEP)<sup>1</sup>

The section below gives an overview of selected provisions in Lao PDR's IIAs on the basis of a sample of publicly available treaties. The elements discussed can inform the ongoing preparation of a new model BIT, to build a more consistent and informed approach to negotiating investment treaties. In parallel with the drafting of a new model treaty, the authorities are adopting an increasingly informed and cautious approach to negotiating IIAs. The review of the substantive and procedural provisions in the country's investment treaties shows that the language of key treaty provisions has evolved, particularly since the advent of the new regional ASEAN treaty policy in 2009. Some of these treaties reflect more specific language on key treaty provisions to clarify government intent. Regional and multilateral approaches offer an opportunity to create an integrated investment region in ASEAN and to establish common rules on investment protection and liberalization. At the same time, additional commitments in agreements covering investment relations already subject to bilateral or other multilateral treaties may jeopardize the consistent implementation of Lao PDR's treaty policy.

<b>Table 1. International Investment Agreements signed by Lao PDR</b>		
<b>Bilateral investment agreements</b>		
<b>Countries Status Date of signature</b>		
<b>Countries</b>	<b>Status</b>	<b>Date of signature</b>
Australia	In force	1994
Cambodia	In Signed	2008
China	In force	1993
Cuba	In force	1997
Denmark	In force	1998
Germany	In force	1989
India	In force	1996
Indonesia	In force	2000
Japan	In force	2008
Kuwait	In force	1992
Malaysia	Signed	1994
Mongolia	In force	1997
North Korea	Signed	2003
Netherland	Signed	2004
Pakistan	Signed	2007
Philippines	Signed	1996
South Korea	In force	1996
Russia	In force	1997
Singapore	In force	1996
Sweden	In force	1996
Switzerland	In force	1990
Thailand	In force	1995
Viet Nam	In force	1996
Myanmar	Signed	2003
Belarus	Signed	2013
<b>Multilateral investment agreements</b>		
<b>Contracting parties</b>	<b>Date of signature</b>	
ACIA	26-02-2009	
ASEAN – China	15-08-2009	
ASEAN – India	12-11-2014	
ASEAN – Korea	02-06-2009	
ASEAN - Australia/New Zealand	27-02-2009	
<b>Source:</b> <a href="http://investmentpolicyhub.unctad.org/IIA/CountryBits/114">http://investmentpolicyhub.unctad.org/IIA/CountryBits/114</a> .		

<sup>1</sup> The agreement is negotiated between the ASEAN Member States, and the countries of the ASEAN Plus agreements (Australia, China, India, Japan, Korea, and New Zealand).

### 3. Promotion and management of investment by national legislations

After Lao People's Democratic Republic was independence on 2<sup>nd</sup> December 1975, Laos was proclaimed and declared an official Marxist-Leninist government. In the year 1986 the Lao PDR was a country without a constitution and with hardly any legislation. The social and economic were centrally planned and private ownership limited. In the year 1986 Lao government launched the New Economic Mechanism (NEM) policy, which constructing the basis of a legal framework from scratch and allowing private ownership to the ultimate aim of turning the Lao PDR into an open-market economy. Since the year of 1994 the Lao Government has gradually set up a legal system, investment policy system. At that time, Lao government has been the enactment of a number of laws. It related to domestic investment defines the principles, regulations and measures for the promotion, protection and management of domestic investment in order to encourage all economic sectors and make efficient use of investment resources and labor. So that, the Lao government has been revised to create a more business-friendly investment by legislation the law on the promotion of domestic investment in 2004, have been replaced or revised two times by the Law on Investment Promotion No. 02/NA of 2009 and the latest revised 17<sup>th</sup> November, 2016. In according with the law on domestic investment to mention that “ Investment promotion is the policy implementation, creation of enabling environment and various conditions for domestic and foreign investments in order to facilitate investors doing business with convenience; speediness; and compliance with laws and regulations in the Lao People's Democratic Republic (Lao PDR)<sup>1</sup>

However, the investment in Laos, there are many provisions to relate such as the constitution of Laos, it has just adopted in 2015, it focused on the socio-economic regime in chapter 2, the law on Enterprise, amending a former 2005 law, new amending of this law in 2013. It regulates the incorporation, operation and management of businesses in Laos. Permitted business forms and corporate governance issues are addressed under the Law. All investment projects in the Lao PDR, whatever their form, must be registered. The Law applies equally to both domestic and foreign business enterprises, and provides legal protection for the capital, property and rights of those enterprises. The law is supplemented by a number of implementing regulations, notably: “the Order on implementation of the enterprise law; regulation on the reservation and approval of the enterprise name; and the instruction on the implementation of declaration for enterprise registration<sup>2</sup> In additional, the law of contract and tort. It adopted in 2016 to regulate the formation, performance, and enforcement of contracts, and sets out rules pertaining to certain types of contracts. Moreover, the law of labor in 2014. The aim of this law is to regulate employment relationships. it is not only domestic but also enforces foreign labors. Furthermore, the law of tax in 2014. It Determines principles, rules, methods and measures relating to taxation in Lao PDR, and also delineates taxes applicable to both domestic and foreign businesses, and modifies rates. Following this furthermore, the law of customs in 2014. It regulates the import and export, transit and circulation of goods within Laos with the aims of promoting and protecting domestic production of goods and domestic business operations, investments, cooperation with foreign countries and export, expanding production power efficiently, ensuring the remittance of revenues to the state budget and contributing to national socio-economic development. In the same way, the law of land in 2003. It makes provision for the management and use of various types of land, including forestry and agricultural land. Land of Lao PDR shall be under the ownership of the national community, and all organizations and individuals shall have the obligation to protect land to ensure that there is no soil erosion, land subsidence and soil degradation. Pursuing this further, the law on resolution of economic disputes 2016. It regulates Economic disputes are conflicts which takes place in relation to production and business operations between organizations and other organizations, organizations and individuals, and individuals and other individuals, both domestic and foreign.

#### 3.1 General Knowledge of Law on Investment Promotion 2016.

This Law defines principles, regulations and measures regarding the domestic and foreign investment promotion and administration in order to enable convenient, expeditious, transparent and proper investments, as protected by the Government, aiming to ensure the rights and benefits of investors, the state, collective and people, enabling the regional and international integration, contributing to the continuous growth of national socio-economic development in line with green direction and sustainability<sup>3</sup>

<sup>1</sup> Lao Law on Investment Promotion, Nov. 2016, Article 2,

<sup>2</sup> FOA Investment Policy Support (2011) foreign agricultural profile Lao PDR Available at [http://www.fao.org/fileadmin/user\\_upload/tcsp/docs/LAOS\\_Country\\_Profile\\_Final.pdf](http://www.fao.org/fileadmin/user_upload/tcsp/docs/LAOS_Country_Profile_Final.pdf)

<sup>3</sup> Lao Law on investment Promotion, Nov. 2016, Article 1

State policies on promoting state state-promote investment of all economic sectors both inside and outside the country, with the setting up of policies to provide facilities, navigation, brainstorming, tax evasion, taxes, labor and rights. Single-way investment services and recognizing, guaranteeing protecting right and other legal requirements of state investors.

The state encourages to invest in all sectors businesses and all over the country. Unless the areas and activities affect the stability and peace of the nation. There are serious consequences for current and long-lasting environment, for the well being of the people and the culture of the nation<sup>1</sup> Investment protection must follow these steps:

It is line with the policy guideline of the party, the diet plan, Socio-Economic Development Plan, the Development Plan for the Dental Area and the Extension of the Socio-Economic Extension Period which aims to improve the living condition of the people and is regally required.

It is strongly associated with the increase and consolidation of the state as a whole as a unified nationwide.

Guaranteed investment crystal clear services, convenient, fast, transparent, fair and equal to the one-way investment service law.

Putting the policies that can attract the investors to investment.

Recognize, protect the rights and interests of other investors who are legally by the state.

Ensure the protection and development of environment security and social safety in the environment area.

### **3.2The Investment in General Business**

Foreign investment promotion and management measures are very important measures for host country and foreign investors. The Law on Investment Promotion which revised 2016 stipulates measures to promote and management foreign investment in general business:

Investment in general business operations including, those in the control and operation business accounts are not concessional activities so investing in general business activities is strictly prohibited:

Investors who are willing to invest in a general business need to submit proposals through a one-stop investment service of the industry and trade sectors to register their enterprise as required by the Enterprise Law.

Investment proposals for general investors classified as non-controlling business accounts and not in a non binding business transaction list as defined in Artices41 and43 of the Investment Promotion Act, can be applied with in a case of a one-stop investment office a central and local industry and trade sector.<sup>2</sup> Procedure for the time table for the considering the registration of the investment in general business not investment in non-controlling business types. “The relevant departments are considering a business registration within 10 working days from the date of receiving enterprise registration.<sup>3</sup> For the controlling business, it is advisable to issue a business registration certificate for a minimum of 25 working days<sup>4</sup> from the date of receipt of the application as required by the Enterprise Law. For always expanding the business of entrepreneurial firms, the documentation is compulsory as required in a specific model and considered rather lucid than new investment requests.

Consideration of the registration of enterprises filed under Articles 37and 39 of the Law on Investment Promotion ,as provided for in Article 14 and 16 of the Enterprise Law, without the participation of the business unless there is a disagreement, incomplete or without any business registration.

The business registration certificate is a certificate of registration to carry out the business is legally required.

The business registration certificate includes investment licenses, promotion policy, tax registration and authorization of related business registration certificates and investors can carry out their business.

<sup>1</sup> Lao Law on Investment Promotion, Nov. 2016, Article 4

<sup>2</sup> Decree on the implementation of the law on Investment promotion No. 199/Pm April 20, 2011 Article 5

<sup>3</sup> The Law on Promotion and Investment , NOV.2016, Article 39

<sup>4</sup> The Law on Promotion and Investment, Nov.2016, Article 37

The term of investment in general business is not limited to the investment period unless the investment activities determine the duration of the investment in the specific model of the related structure<sup>1</sup>

### **3.3 The Department responsible for promoting foreign investment in general business**

Actually, there are two ministries responsible for promoting foreign investment in general business: Ministry of Planning and Investment, Ministry of Industry and Commerce.

- In the Investment Management of the Ministry of Planning and Investment, Ministry of Industry and Commerce has the following right and obligations:
- Research, formulate strategies, policies on investment promotion of investment projects to call for the a state budget review.
- Advertising, dissemination of strategies, policies, laws on investment promotion and brain, information, including investment projects will require investment to attract investment.
- Introduce, follow up and coordinate with other sectors and localities involved in the implementation of the Law on Investment Promotion.
- Encouraging, promoting and solving problems arising in projects investment activities across the country.
- Create a convenient way to invest in single door.
- Research to consider, suspend, revoke, cancel, a registration certificate based on its role with the consent of the government.
- Upgrade education smother the staff on the uproar investment.
- Foreign relations and investment cooperation.
- Summarize and report on investment activities to the government regularly<sup>2</sup>

In the provinces the sections of investment management of the Department of Planning and Investment and Industry and Commerce of the Provinces, Capital city has the following rights and privileges.

- To carry out implementation of the strategy, policies and Lawson investment promotion and create a project on its investment activities in its localities.
- Advertising, dissemination of the policies, rules, investment law and lodging for the investors in accordance with their responsibilities.
- Introduce, monitor and coordinate other relevant localities in the implementation of the Law on Investment Promotion.
- Research to consider, suspend, revoke, cancel the contract under its contract with the consent of the local authorities.
- Foreign relation and foreign investment in investment projects as assigned by board.
- It is normal to report on investment activities to higher levels.
- Perform other rights and obligations as provided in the laws. <sup>3</sup>

### **4. Legal measures for promoting and administer FDI in general business**

Legal measures to promote and administer foreign investment in business in general are an importance measures for host countries and home countries. Because the host countries will use measures to promote and manage the investment, it is importance to have investment activities and receive benefits in the territory of the investors. In addition, foreign investors will be encouraged governed by their respective interests with state measures. The Law on Investment Promotion 2016 sets out the measures to promote and administer foreign investment in general business as follows:

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<sup>1</sup> Law on Investment and Promotion, Nov. 2016, Article 40

<sup>2</sup> The Law on Investment Promotion, Nov, 2016, Article 77

<sup>3</sup> The Law on Investment Promotion, Nov, 2016, Article 78



#### 4.1 Promoting investment on taxation

The customs is a “financial obligations of individuals, legal entities and organizations that export-import, transit and traffic the goods access transit through borders must be paid according to the rates specified in the Custom law”<sup>1</sup> The customs and other obligations must be determined on the basis in kip, according to the bank’s foreign exchange rate, using the date of recording the custom date in detail and the rates set out in the tariff. Taxes: refers to “financial obligations of individuals, legal entities and organizations including foreign persons which carry out business or make a living on a permanent or temporary basis in the Lao PDR, as well as those which reside or have a place of business located in Laos but carry out activities in a foreign country which generate income and which must be paid according to the rates specified in the Tax Law.”<sup>2</sup> Tax measures are measures of tax on the host country, except for reducing the amount of foreign investors investing in the territory of Lao PDR. It has a duty to play taxes to the Laos, such as income taxes, customs duties import taxes and fees. The tax measures are measures determined by internal laws of each state and are an important measures that the Laos PDR uses to promote foreign investment such as tax exemption, reduction of tax rates and fees for foreign investors to attract and motivate foreign investors.

#### 4.2 Promoting on profit tax

The level of tax incentives provided to promoted sectors also depends on the location of the relevant investment. Zone 1: “poor zone, remote zone with socio-economic infrastructure unfavorable to investment”<sup>3</sup> “Profit tax incentives by business sector and by zone Investors investing in sectors and zones defined in Articles 9 and 10 of Law on Investment Promotion shall receive the following profit tax exemption: Zone 1: exemption for ten years, additional five years for investment in “Clean, toxic-free agriculture, planting seed production, animal breeding, industrial plantation, forestry development, protection of environment and bio-diversity, activities promoting rural development and poverty reduction, Environmental-friendly agricultural processing industry, national, Education, sports, human resource development and labor skill development, vocational training institutions or centers, production of educational and sports equipment, Construction of modern hospitals, pharmaceutical and medical equipment factory, production of and treatment by traditional medicine”<sup>4</sup> Zone 2: with socio-economic infrastructure favorable to investment. Zone 2: exemption for four years, additional three years for investment sectors as mention in the zone one. The above exemption periods shall be counted from the year the investing enterprise generates business revenues. Upon expiration of above exemption periods, the enterprise shall follow to the Tax Law. Zone 3: Special economic zone, zone 3: shall comply with the specific regulation. Concession business shall comply with relevant laws or according to the agreement. The government issue regulations and detailed procedures for implementation of profit tax exemption incentives as set out by law”<sup>5</sup> The tax exemption period is from the beginning of the business. For the new production of goods, research activities and new technology, the tax exemption is lenient from the date of profit. After the end of the exemption period as mention above the business must pay tax according to the tax law.

Exemption of profit tax for new products, exploration and development of new technologies processing of domestic raw materials into finished products with new trademarks, using technologies as well as those produced are supported and maintained in accordance with international standards by relevant agencies. Exemption tax exemption for new businesses new production is from year to year. In the event that activity is not guaranteed within three-year period, except for the profit tax deduction, from the commencement of such proceedings.<sup>6</sup> The foreign investors who are invest their net profit for their additional operation or investment activities will receive the following incentives profit tax exemption for the next accounting year for one year based on the portion of profit re-invested for their additional operation or investment activities. Investors suffering losses from business operation may carry such losses in the year to be deducted against the following fiscal year profit for three years subject to proper certification by the tax authority. Upon such period the remaining losses will not be allowed for deduction from the profit. Expansion of investment and operation by investing additional capital will also receive incentives under this Law.<sup>7</sup>

<sup>1</sup> Lao Law on Customs 2014, article 2 and Article 22

<sup>2</sup> Lao law on Tax 2015, Article 2

<sup>3</sup> Lao Law on Investment promotion, Nov. 2016, Article 10

<sup>4</sup> Lao Law on Investment promotion, , Nov. 2016, Article 9

<sup>5</sup> The law On Investment Promotion, , Nov. 2016, Article 11

<sup>6</sup> Decree on the Implementation of the law on investment Promotion, No 119/PM 20/4/2011, Article 34

<sup>7</sup> The Law on Investment Promotion, , Nov. 2016, Article 14

### 4.3 Promoting on Value-Added Tax

The standard rate of Value Added Tax (VAT) is 10% in the Lao PDR. The Lao PDR VAT system follows the conventional VAT system, where the VAT charged (output VAT) can be deducted from the VAT paid (input VAT). Under the Law on Value Added Tax (No. 52/NA 23 July 2014)<sup>1</sup> The “ VAT and profit tax incentive to promote investors investing in the Lao PDR will receive incentives of value-added tax and duty include: 1. Import of materials, equipment which may not be supplied or produced in the Lao PDR, to form the fixed assets, and of machinery and vehicles directly used for production will receive duty exemption and paying value-added tax at the rate of zero percent (0%); import of fuel, gas, lubricant, administrative vehicles and other materials shall comply with relevant laws; Temporary import of machinery/vehicle shall comply with Tax Law. 2. Import of raw materials, equipment and parts to be used in the production for export shall be exempted from duty payment at the time of import and granted duty exemption at the time of export and pay value-added tax at the rate of zero percent (0%); 3. Use of domestic raw materials which are not natural resources for producing finished and semi-finished products for export shall pay value-added tax at the rate of zero percent (0%); 4. The Government shall issue the list of semi-finished products for export”<sup>2</sup>

### 4.4 Promoting on Access to-Finance

The foreign investors shall receive access-to-finance incentives by being allowed to borrow from commercial banks and other financial institutions in the Lao PDR as well as overseas according to relevant laws.<sup>3</sup> For enterprises that are required to recover from domestic funds, they shall have to write down the initial registration of their enterprises as provided in Article 4 of this Decree, enterprises can recover the state bank and the institute of finance in Lao PDR in accordance with relevant regulations of the relevant banking and foreign banks, as required by laws and regulations of the bank of Lao PDR.<sup>4</sup>

### 4.5 Non-tax investment promotion

The non-tax investment promotion measures are a privilege and a special benefit to foreign investors who engage in business activities in the Lao PDR. Non-tax investment promotion measures include policy investment promotion and legal investment promotion.

### 4.6 Policy investment promotion

Promoting policy investment is the strategy in which the state is involved in encouraging foreigner to invest in their own country. The state’s policies are an integral part of promoting foreign investment in order to improve the structure of the country, which is suitable and attractive foreign investors to invest, such as: National economic development planning, long-term projects, short-term projects and the important structures to facilitate foreign investment are essential, such as: improvements roads, water supply, electricity, communication, telecommunication etc. In addition to this plan, following the policy guideline for promoting foreign investment the government has setup committees in charge of foreign investment promotion from the central to local. These committees are responsible for monitoring and facilitating foreigner investing. In Lao PDR the committee responsible for promote and administer foreign investment as investment promotion and one-stop service committees.<sup>5</sup> The investment one-stop service office abbreviated as “OSO” is the permanent office for the Investment Promotion and Supervision Committee to provide its investment one-stop service to investors, to exercise its rights and perform its duties set out in Article 84 of this Law. The investment one-stop service office consists of two levels being: central investment one-stop service office abbreviated as “COSO”; and provincial investment one-stop service office abbreviated as “POSO”<sup>6</sup> The Central investment one-stop service office is located at the Ministry of Planning and Investment having a working team in charge which is composed of representatives from: Ministry of Planning and Investment, Ministry of industry and Commerce, Ministry of Finance, Ministry of Natural Resources and Environment, Ministry of Energy and Mines, Ministry of Agriculture and Forestry, Ministry of Labor and Social Welfare, Ministry of Public Works and Transport, Ministry of Information, Culture and Tourism Ministry of Public Security. Each ministry, ministry-equivalent body has duty to establish its coordination unit for one-stop service under the supervision of the minister or

<sup>1</sup>Lao Property Investment Guide Available at [www.joneslanglasallesites.com/investment/guide/uploads/attachments](http://www.joneslanglasallesites.com/investment/guide/uploads/attachments)

<sup>2</sup> Lao law On Investment Promotion, , Nov. 2016, Article 12

<sup>3</sup> Lao law on Investment Promotion, Article 13

<sup>4</sup> Decree on the Implementation of the law on investment Promotion, No 119/PM 20/4/2011, Article 45

<sup>5</sup> Decree on the Implementation of the law on investment Promotion, No 119/PM 20/4/2011, Article 22

<sup>6</sup> The Law on investment promotion, Nov, 2016. Article 80



deputy minister of relevant ministry being part of the Investment Promotion and Supervision Committee. The Government shall determine rules on the organization and operation of such one-stop-service units at the central and local levels.<sup>1</sup>

A Provincial, Capital investment one-stop service office is located at the provincial, capital Department of Planning and Investment having a working team in charge which is composed of representatives from: Department of Planning and Investment, Department of Industry and Commerce, Department of Finance, Department of Natural Resources and Environment, Department of Energy and Mines, Department of Agriculture and Forestry, Department of Labor and Social Welfare, Department of Public Works and Transport; Department of Information, Culture and Tourism; Department of Public Security. Each department has duty to establish its coordination unit for one-stop service under the supervision of director general of relevant department being part of the Investment Promotion and Supervision Committee of provincial level.<sup>2</sup>

In order to ensure that the investors can quickly and timely receive accurate information on investment for investment decision making, it is required to establish investment information centers in all concerned one stop-service offices. The investment information centers collect and compile data on investment in order to build information networks, information provision and exchange, especially through websites, investment guide books, newsletters, brochures and other formats to interested people, embassies, Lao consular offices or Lao trade representative offices based in foreign countries.<sup>3</sup>

The foreign investors investing in a \$ 500.000 registered capital program have the right to used land from the state allocated according to the timetable of the investment to build the office and residential purposes by the local authorities' agreement in accordance with the regulation. The government regulates rules governing the promotion of land-use rights of foreign investors<sup>4</sup>. The land use right means the permission of foreign investors to buy the land from state not exceeding 800 square meters to build house and offices, apart the land that foreign investors have leased with government to run on the business according to the regulation and laws.<sup>5</sup>

#### **4.7 Other supporting**

The foreign investors, besides receiving the above mention investment promotion policies will also be encouraged the other supporting incentives as follows:

be considered for Government's commendation in different forms as appropriate for investor that has fulfilled its tax obligations in a full and timely manner, contributing to the development of community, society, and has paid its attention to solve environmental issues, development of Lao labor skills as certified by relevant sector and local authorities;

Receive facilitation for obtaining a stay permit and multi-entry business visa for investors according to the relevant term of investment. Foreign investors and their family, foreign technical staff, experts will be facilitated for their entry-exit of Lao PDR and their request for multiple-entry visa for maximum of five year per time.

If any additional special incentive is needed in certain sectors or zones, the Government shall propose to the Standing Committee of National Assembly or to National Assembly for consideration and approval.<sup>6</sup>

#### **5.Administer foreign direct investment in business in general**

The management of foreign business and assets often has a problem and has been talking for decades, though it is stated in the internal and international laws, but some countries have taken over confiscated, transferred assets and exiting foreign property into the host country. Because of the changes in state policy or the conflict of interest between the home countries and host countries if so the home countries will be affected by conflict with the host countries.

Duo to the above mentioned issues it is a big obstacle to foreign investment, as it will make foreign investors unaffiliated with foreign investment in investment management. Therefore, if any country wishes to

<sup>1</sup> The Law on investment promotion, Nov, 2016, Article 81

<sup>2</sup> The Law on investment promotion, Article 82

<sup>3</sup> The law on Investment Promotion, Article 18

<sup>4</sup> Decree on the Implementation of the law on investment Promotion, No 119/PM 20/4/2011, Article 51

<sup>5</sup> Decree on the Implementation of the law on investment Promotion, No 119/PM 20/4/2011, Article 48

<sup>6</sup> The law on Investment Promotion, Nov 2016, Article 19

attract foreign investment must there is a guarantee of foreign investors' business and assets in the domestic and international laws. The Lao PDR is a country that needs the foreign investment, so that the law on investment promotion 2016 has been determined the measures to administer foreign investment as follow:

The State protects legitimate rights, interests and equality of foreign investors of economy who invest under Lao PDR laws, treaties, agreements to which Lao PDR is a party.<sup>1</sup> In addition, the government fully acknowledges and protects the lawful investment of investors against government seizure, confiscation or nationalization by administrative means. In the case that the government has the needs to utilize the facilities for public interests, the investors shall be compensated with actual invested value at the prevailing market price at the time of transfer using payment methods as agreed by both sides.<sup>2</sup> And furthermore, government acknowledges and protects the intellectual property of investors registered under the Law on Intellectual Property Rights of the Lao PDR, international treaties and agreements to which the Lao PDR is a party.<sup>3</sup>

The Lao PDR protects the right to invest in foreign investors as follow: <sup>4</sup>

- To invest in all investment sectors and areas, which are not prohibited by the laws of the Lao PDR;
- To invest according to the types and forms of investments in accordance with laws and regulations;
- To propose for a concession to development of a particular project to the Government or local authorities on the case-by-case basis;
- To propose for a concession to establish a special economic zone from the Government;
- To establish a representative office or a branch in the Lao PDR;
- To propose for a change in investment objectives or activities in the case that the business operations have been affected by change in Government policies, and regulations and laws;
- To be protected of the rights and legitimate interests of their investment by the government;
- To receive support from the Government in various aspects of their investment;
- To receive benefits from land lease or concession in accordance with laws and regulations of Lao PDR;
- A land leaseholder or concessionaire has the rights to use the land according to the period of leasing contract or concession agreement,
- Own their assets including buildings, facilities and other structures on the concession land and transfer such ownership to nationals or foreigners in accordance with laws and regulations;
- To open the accounts in Kip or foreign currencies at the banks located in the Lao PDR;
- To submit the complaints to the concerned organization in case they have found themselves in disadvantage condition in their investments;
- To receive other rights as provided in the laws and regulation

The Lao government also protects the right on administration and management of Investment Businesses are as follows<sup>5</sup>:

- To formulate investment plan;
- To procure and use materials, equipment, vehicles, machineries and technologies for investment operations;
- To access to domestic and overseas markets;
- To manage labor force ensuring order, safety and facilitation of business activities;

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<sup>1</sup> The law on Investment Promotion, , Nov 2016 Article 22

<sup>2</sup> The law on Investment Promotion, Nov, 2016. Article 23

<sup>3</sup> The law on Investment Promotion, Nov,2016. Article 24

<sup>4</sup> The law on Investment Promotion, Nov, 2016. Article 68

<sup>5</sup> The law on Investment Promotion, Article 68

- To convene meetings discussing investment related matters;
- To assign or transfer shares to others;
- Reduce or increase capital of investment;
- To request concerned authorities to consider the merger, suspension, dissolution or transformation of the enterprise into other forms of enterprise; regulations.
- To perform other rights as set forth in the laws and regulation.

In addition, the state protects the rights of foreign investors on Hiring Labor are as follows:

- To sign employment contracts with technicians and experts who will work for the enterprise. In case the enterprise requires to import numbers of physical laborers and technical personnel exceeding the allowed quota as described in the Labor Law, the investor has the rights to request the investment one-stop service office for consideration and recommendation to the IPSC for approval as it deems appropriate;
- To allocate and assign workers for various job positions as required by the enterprise;
- To provide lawful treatment policies and measures to all workers;
- To exercise other rights as set forth in relevant laws and regulations of Lao PDR.

In the other hand, the state protects the right of foreign investors on residence in the Lao PDR. The foreign investors and their families have the rights to reside within the territory of the Lao P.D.R. according to the terms of investment. Foreign technicians and experts have rights to reside in the territory of the Lao P.D.R. according to their employment contracts.<sup>1</sup> And at the same time, the government protects the rights of Foreign Investors to Repatriate Capital, Assets and Income. The foreign investors have the rights to repatriate capital, assets and income, such as profits from investment, personal cash and assets, or assets of the enterprise through banks located in the Lao P.D.R. after full payment of duties, taxes and other fees in accordance with laws and regulations. Transfer of assets being capital and/or money includes.<sup>2</sup>

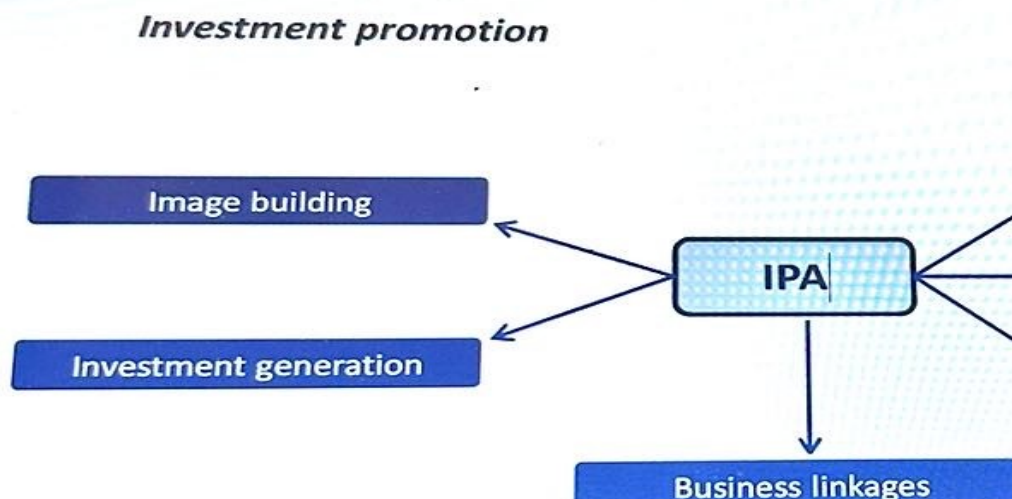
- 1). Certified capital of the Bank of the Lao PDR;
- 2). Profit, dividend, royalty fee for copyright or other intellectual property, technical service fee, interest and other income generated by the investment;
- 3). Proceed from the sale of business, operation, dissolution in whole or in part,
- 4). Amount received from a contractual payment including loan agreement, amount received from the result of decision made on any dispute resolution or decision made by court that may or may not be related to investment;
- 5). Compensation amount or other amounts received prior to confiscation or expropriation;
- 6). Income and remuneration of foreign staff legally hired

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<sup>1</sup> The law on Investment Promotion, Nov, 2016. Article 70

<sup>2</sup> The law on Investment Promotion, Article 71

Figure: 1. Core investment promotion and facilitation measure



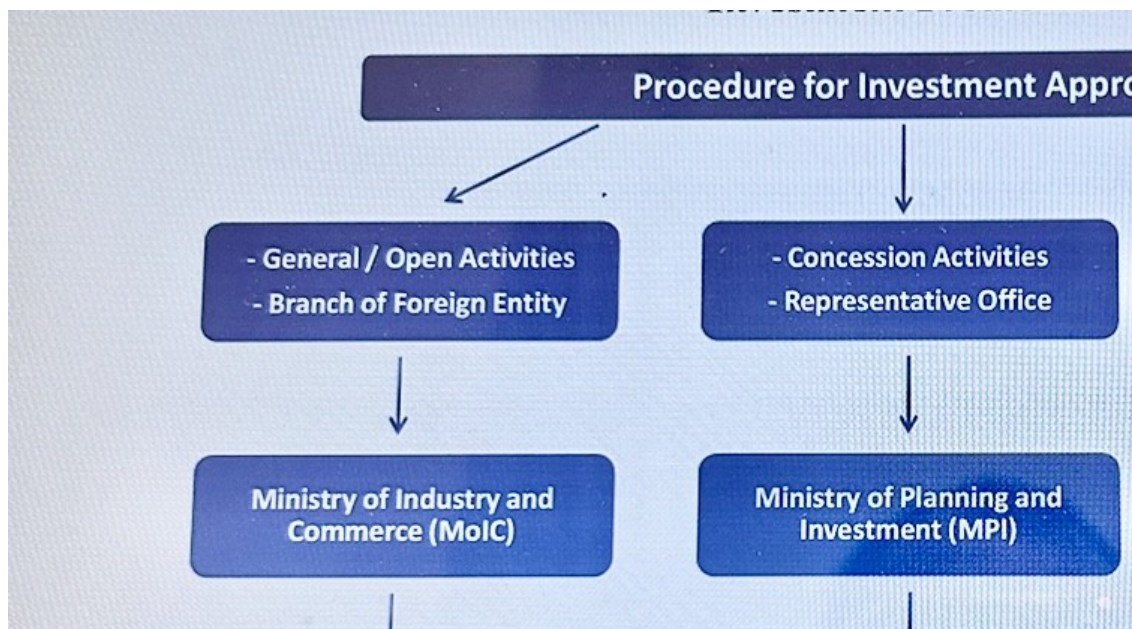
Source: The investment promotion Department: IPD

## 6. Starting a business

Under the previous *Law on Investment Promotion*, in force until early 2024, there were three types of investments in Lao PDR, each having a different process for investment approval procedures (Figure 2). Licenses for general business activities were delivered by the MOIC while concession licenses could be obtained at the IPD (MPI). Licenses for SEZ activities were either issued by the zone's one-stop shop unit (OSU) for an investment in a SEZ or by the NSCEZ for the development of new SEZs.

Figure: 2. Investment approval procedures in Lao PDR under the 2009 Law on

### Investment Promotion



## **7. Conclusion and succession**

### **7.1 Conclusion**

This paper focuses on the legal provisions of promotion and administration foreign investment for performance of the policies and promotions of foreign investment in business in general in Laos, it bases on the establishment of foreign investment under the laws and regulations in Laos. Besides that, it is an implementation of the Lao governments to administration the foreign investors come to invest in Lao PDR.

The first result of this study to provide the laws and regulations for promotion and administration of the foreign investment in Laos. Regarding to the Lao government has adopted the laws to serve the foreign investors to invest in Lao PDR such as the law on investment promotion 2016, it regulates to foreign an investment by following the form of foreign investment; especially the investment in business in general, the investment incentives, the protection, right and obligation of investor. In addition, it describes the administrations and application for registration by following investment administration authorities and one stop service for investment and application and approval procedures for licensing, the most of all, it is significant rules of the legal measure to promote and administer foreign investment in general in business in Lao PDR . On the other hand, according to Chinese government has adopted many laws to relate with foreign investment namely foreign wholly owned enterprise which owned by one or more foreign investors; foreign equity joint venture enterprises which are limited liability company by joining or are also called as share company with foreign investment; foreign contractual joint ventures which are enterprise jointly established by foreign companies or Chinese companies. it indicates the establish procedural for approval in each economic term and the whole processes to build the business in China.

### **7.2 Succession**

According to the legal provisions of measure to promote and administer foreign investment in Laos, the research has found some problems need to solve by Lao governments to promote and administer the foreign investment Lao PDR.

Firstly, the government should improve the measures and the management of investment, which is not yet well-suited to presently demonstrated in real practice, suggests that the gap of the revised Investment Promotion Law 2016 is still very much like: Investors in non-compliance and non-performing projects should not be implemented. Investment in the investment sector of the state licensed to invest. Secondly, the investment management authority should create more emphasis on cryogenic services for more investors. To illustrate: To strictly implement strictly the law and encourage foreign investment to ensure the convenience, promptness, and protection of the right of investors, ensure the rights and benefits of the investors to be firmly committed to investors in accordance with the laws. And lastly, the request for the investment promotion policy is very difficult and long-term, as long as the investment request is delayed, it is not possible to respond to the objectives of the investor, so it is impossible to attract foreign investors to solve the problem the relevant authorities need to consider the principle of investment promotion which must be fair, not inexcusable.

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