



# Investment Promotion Law

14 January 2011

CAMBODIA

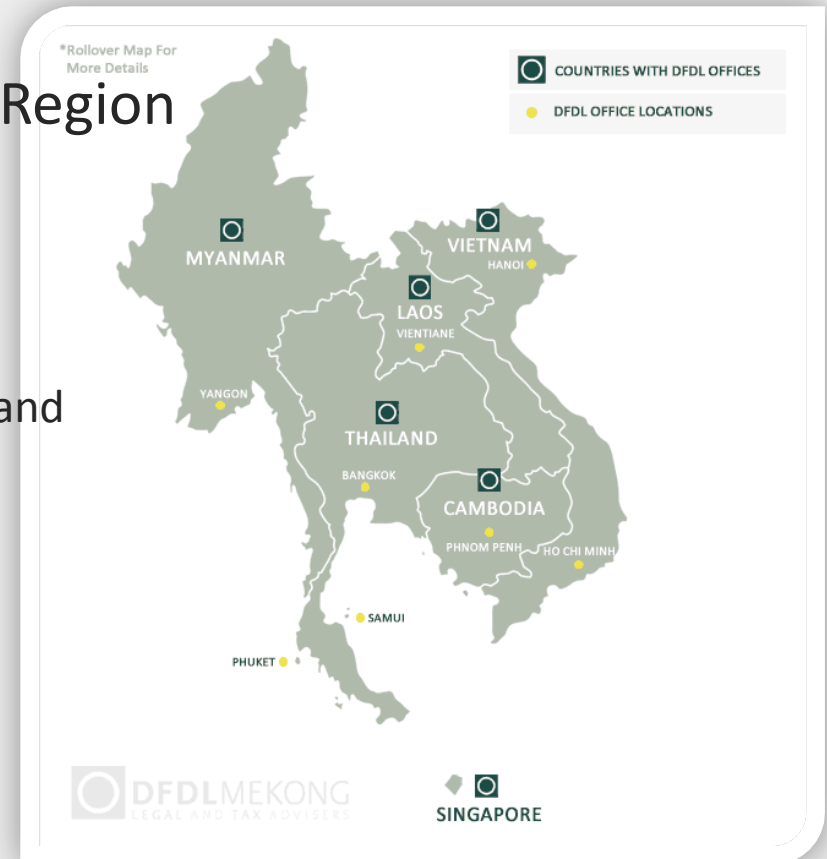
LAOS

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- Established in Cambodia in 1995
- Offices in 9 cities in the Mekong Region
  - Phnom Penh, Cambodia
  - Vientiane, Laos
  - Hanoi and Ho Chi Minh City, Vietnam
  - Bangkok, Phuket and Koh Samui, Thailand
  - Yangon, Myanmar
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## About us

- 80-90 Legal Professionals
- 140-150 Total Staff
- 8 Full Offices
- 1 Regional Head Office

## Specialty Practice Groups

- Real Estate
- Tax, Customs & International Trade
- Corporate & Commercial
- Projects: Energy & Infrastructure

## Country Managing Director, the Lao PDR

*Senior Legal Adviser*

[William.Greenlee@dfdlmekong.com](mailto:William.Greenlee@dfdlmekong.com)

- William has a distinguished record of negotiating, structuring, documenting and managing large private equity and opportunity-fund companies and transactions. He recognizes business opportunities, advising global executives as to business development issues and key investment strategies, detailing legal and transactional risk.
- He has an extensive background in international transactions, finance, corporate, securities, international regulatory compliance for industries that include banking, mining, electric power, manufacturing, property development and tourism.
- Education & Memberships:
  - B.A. degree (University of Oregon in Asian Studies) with a minor in East Asian Literature and Juris Doctor (University of San Francisco, California).
  - Member of the State Bar of California, State Bar of Nevada, State Bar of California International Law Section, State Bar of California Business Law Section and a member of The Inter-Pacific Bar Association.



## Daniel Noonan

### *Legal Adviser*

Daniel's practice area covers foreign direct investment and corporate/commercial law. He earned his Juris Doctor from The John Marshall Law School in Chicago, Illinois and studied Japanese and international commercial law at Temple University in Tokyo, Japan. Prior to joining DFDL, Daniel worked for the Ho Chi Minh City office of Baker & McKenzie and for a private equity real estate fund in Tokyo. He speaks English and Japanese.



## Senesakoune Sihanouvong

### *Legal Adviser*

Senesakoune is experienced in the field of taxation, finance and accounting with a sound knowledge of Lao legal issues. He graduated from the National University of Laos with a Bachelor in Law in the field of Administrative Law and holds an MBA with a major in International Public Management from the Asian Institute of Technology, Thailand. He also holds a Master of Science in International Finance degree from CERAM Sophia Antipolis, France. He speaks Lao, French, English and Thai.



# Investment Promotion Law

The new Investment Promotion Law (IPL) unifies the Lao PDR investment regimes, addressing both domestic investment and foreign investment.



- Although the IPL has been promulgated and is current law, the GOL has not implemented it yet. The GOL plans to issue an implementing decree later this year.
- In the meantime, procedures under the current investment licensing regime should be followed until the implementing decree provides further detail on procedures under the IPL.

## Three forms of investment:

- Wholly-owned domestic or foreign company;
- Joint-Venture between domestic and foreign investors (required for certain business sectors);
- Business Cooperation Contract (BCC) (no new entity is formed).

## Registered Capital (RC) = equity.

- Under the Enterprise Law, the RC must be paid in as follows: 70% of cash and 100% in-kind capital BEFORE enterprise registration (filing for an ERC).
- The remaining Registered Capital amount should be paid in as soon as possible to comply with the IPL requirement that the value of company assets are not less than the Registered Capital during business operations.
- Contribution of RC can be certified by providing financial accounts or balance statement of the company.

Total Capital = Equity (Registered Capital) + Long-Term Debt + Other Equity (retained earnings/additional paid-in capital).

- The debt portion of the Total Capital amount is not required to be paid-in (only the registered capital portion).

- A foreign investor seeking to invest in an existing Lao PDR company or establish a new limited company with a Lao partner must contribute at 10% of the equity (Registered Capital) (prior Foreign Investment Law required 30%.)
- Multiple foreign investors in the limited company can join together to meet the 10% Registered Capital requirement.
- The IPL actually states “10% of the Total Capital” but we interpret this to be 10% of the Registered Capital (equity of the company).

## Three categories:

- General Business;
- Concession Activities;
- Development Activities for Special Economic Zones and Specific Economic Zones

## WHAT IS A “GENERAL BUSINESS ACTIVITY”?

Generally, investment in activities that does not require a concession under Lao PDR law.

Investment Activity that uses property and other rights of the State to develop and conduct business:

- Land, Minerals, Electric Power, Airlines, Telecommunications, Insurance, and Financial Institutions (a more detailed list of concession activities will be issued by GoL).



- Prior law required that Registered Capital be at least 30% of Total Capital.
- Under IPL, Foreign-invested companies engaging in general business activities must have Registered Capital of 1 billion Kip (~US\$120K) but 30% Registered Capital rule is eliminated.
- Under IPL For concession activities, the Registered Capital must be at least 30% of its Total Capital.

- Former law also provided for this “One-Stop Shop”, yet it was not implemented in practice.
- Not clear if it will actually be implemented this time under the new IPL.
- One Stop Shop via:
  - Ministry of Planning and Investment for Concession Activities
  - Ministry of Industry and Commerce for General Activities

- For General Activities, the company can begin business operations upon issuance of its Enterprise Registration Certificate (ERC).
- For Concession Activities, the company can begin operations upon issuance of its Concession Registration Certificate (CRC).

Under the IPL, the following will be phased-out with their contents being incorporated into the ERC/CRC:

- Investment License (foreign or domestic);
- Tax Registration Certificate (TRC);
- Business Operating License.

Under the prior investment regime, the following required annual renewal:

- TRC
- Business operating license.

Now that these are incorporated into the ERC, will there be any annual renewal required?

- Not clear at this stage.

Under the IPL, the Enterprise Registration Certificate (ERC)/ Concession Registration Certificate (CRC) covers:

- Investment approval;
- Incentives;
- Tax registration; and
- Business authorization from relevant sectors

- Previously, the investment license named the shareholders and required amendment for a change of shareholder.
- Under the IPL, the investment license will be incorporated into the ERC (which did not list shareholders).
- If names of shareholders are not required to be included in the ERC, then this will be one less GoL approval for share transfers.

- Currently, the company must name the shareholders in its AoA.
- If the AoA can be approved without naming shareholders (and without naming shareholders in the ERC), then no GoL approval of share transfers would be required.
- This is not yet clear under the IPL.



## General Activities

- No term limit under IPL but subject to applicable term limits in other sector-specific laws.

## Concession Activities, Development Activities for Special Economic Zones and Specific Economic Zones

- Up to 99 years, renewable.

- **Rep Office:**
  - Under the IPL, only a Rep Office Establishment Certificate is required.
  - The requirement for a separate TRC is phased-out.
- **Branch Office:**
  - Under IPL, companies from all sectors are eligible to establish a branch office.
  - Branch Establishment Registration Certificate (BRC) will be the sole license/certificate.
- **Modified process for establishment meant to speed-up the procedures.**

The IPL provides that ERC will be issued within:

- 5 business days for Rep Office;
- 15 business days for branch;
- 10 business days for a limited company engaging in general activities.

No Timeframe provided for concession activities.

Under Enterprise Law a limited company must reserve at least 10% of its annual net profits for every year until the reserve reaches half of registered capital.

This reserve fund requirement is not altered by the IPL.

Existing quota limit under Labor Law remains:

- 10% of total staff can be foreign for unskilled work;
- 20% of staff can be foreign for skilled work.

- Prior foreign investment law stated that foreign employees were subject to flat income tax of 10%.
- The new IPL does not contain this provision.

- The State fully acknowledges and protects the investment of investors against seizure, confiscation or nationalization.
- In the event that the Government has the need for a public utility, the investors shall be compensated with the market value at the time of transfer by using payment methods agreed by both parties.

- Foreign investors who invest US\$500,000 or more are entitled to land use rights for a duration consistent with the term of the investment and based on the consent of local authorities **to build facilities** for residential or business purpose. (Article 58).
- Although not entirely clear without the implementing Decree, we interpret this article as meaning that foreign investors can only acquire land use rights to develop vacant land but cannot acquire land use rights to already developed land.



- The final article of the new IPL provides that all benefits that an enterprise obtained under previous laws or agreement signed with the Government remain unchanged.
- Enterprises established under previous laws may opt-in to the IPL in order to obtain investment incentives offered under the new IPL.

- **Personal Income Tax (PIT):**

A flat rate of 10% PIT for foreign employees of a foreign invested enterprise is not mentioned.

- **Corporate Income Tax (CIT):**

- Tax holiday: depends on the level of promoted activities and location of investment. The 1<sup>st</sup> level promoted activities in zone 1: entitled to 10 years tax holiday
- Other tax incentives:
  - Reinvested profits are exempt from profit tax
  - Exemption from import duties on raw materials, equipment, and vehicles directly used for production. Note that the importation of all kind of fuel is not entitled to customs duties and taxes exemptions.
  - Exemption from export duty on general products for export. Note that the export of natural resources, natural resources products must follow the relevant regulations.
  - Prior period tax losses can be carried forward for a maximum of 3 years.

- IPL has been issued and is current law but not yet implemented.
- We expect the implementing decree to provide greater clarity and detail.