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The International Comparative Legal Guide to:

Project Finance 2014

3rd Edition

A practical cross-border insight into project finance

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Lao PDR

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1 Overview

1.1 What are the main trends/significant developments in the project finance market in Lao PDR?

The Government of the Lao PDR (“**GOL**”) has sought to limit its exposure to termination payments under Concession Agreements, and the prior practice of the granting of GOL guarantees of financial obligations to Electricité du Laos (“**EdL**”), a State company, under Power Purchase Agreements. The GOL has further sought to require new Lao power projects to sell their output to EdL rather than to the Electricity Generating Authority of Thailand (“**EGAT**”) via direct export. It remains unclear whether projects relying solely on power sales to EdL without a GOL guarantee can be successfully financed on a limited recourse basis.

Multiple tier secured financing (senior debt, mezzanine debt, junior debt) has been used in several recent mining project financings. Subordinated equity and construction contractor financing has been used in a number of hydro-electric projects. The now functioning Lao Securities Exchange has also become another potential financing vehicle. Equipment leasing has been used or is planned in certain mining and hydro-electric projects to finance both construction and operating phase heavy equipment for the project.

1.2 What are the most significant project financings that have taken place in Lao PDR in recent years?

The following are worthy of note:

- Xe-Pian Xe-Namnoy 410 MW hydro-electric project financing (Financial Close 2014).
- Phu Bia Mining copper gold mine expansion and refinancing (Financial Close 2013).
- Nam Ou 540 MW hydro-electric project financing (Financial Close 2013).
- Nam Ngiep 2 180 MW hydro-electric project financing (Financial Close 2013).
- Kaiyuan Mining (potash) secured subordinated bond financing (Financial Close 2012).
- Xayaburi 1,285 MW hydro-electric project financing (Financial Close 2012).
- Hongsa 1,878 MW mine-mouth coal-fired electric power project financing (Financial Close 2010).
- Nam Ngum 5 120 MW hydro-electric project financing (Financial Close 2010).
- Nam Lik 1-2 100 MW hydro-electric project financing (Financial Close 2009).
- Theun-Hinboun 270 MW hydro-electric project expansion and refinancing (Financial Close 2008).

2 Security

2.1 Is it possible to give asset security by means of a general security agreement or is an agreement required in relation to each type of asset? Briefly, what is the procedure?

In Lao PDR, the types of collateral available for secured transactions, including those used in a project finance setting, are set out in the Secured Transactions Law and the Secured Transactions Decree. Three forms of security are available pursuant to contract: security over moveable assets; security over immoveable assets; and security by another person or legal entity (namely, a guarantee).

The following types of moveable assets are available as collateral: material and tangible items; documents certifying a right of ownership such as share certificates and bonds; goods in a warehouse; intangible assets such as shares in a company; intellectual property; bank savings accounts; contractual rights; receivables; benefits under an approval; permission to conduct business operations; and future assets or gains. Land and buildings are the types of immoveable assets that are available as collateral. Security by a third party guarantor is also provided for under the Secured Transactions Law.

The Contract and Tort Law also contains provisions affecting contracts generally, including secured transactions. The leasing of equipment and other assets is also contemplated by the Contract and Tort Law with specific requirements set out in the Decree on Financial Leasing.

2.2 Can security be taken over real property (land), plant, machinery and equipment (e.g. pipeline, whether underground or o verground)? Briefly, what is the procedure?

Yes. Please see 2.1.

A written agreement is required for a security agreement related to immoveable assets. The security agreement must be signed by both parties in the presence of the Notary Officer or the village chief together with three witnesses, or in the presence of three witnesses.

2.3 Can security be taken over receivables where the chargor is free to collect the receivables in the absence of a default and the debtors are not notified of the security? Briefly, what is the procedure?

Receivables are treated as "moveable assets" and may be encumbered by a security interest.

The Secured Transactions Decree requires advance written enforcement notice to be provided. In connection with a security interest in receivables (a category of moveable assets), an enforcement notice of 10 days must be provided to the debtor, any third party with rights in the secured assets (such as junior or senior lienholders) and to the public via mass media publication.

Self-help remedies are permitted, provided that no law is violated in the exercise of the self-help remedy. Enforcement by public auction, sale by the creditor or foreclosure (purchase of the secured assets by the creditor) are remedies authorised by the Secured Transactions Law but are not stated to be exclusive remedies. No judicial sale is required.

2.4 Can security be taken over cash deposited in bank accounts? Briefly, what is the procedure?

Yes. Please see 2.1 above regarding pledges of moveable assets. Note that although written notice and acknowledgment of the pledge is not required by Lao law, in the case of pledges of bank accounts, Lao commercial banks will generally not cooperate with pledgees unless the bank has been provided with notice of the pledge and has duly acknowledged such pledge.

2.5 Can security be taken over shares in companies incorporated in Lao PDR? Are the shares in certificated form? Briefly, what is the procedure?

Yes. The Enterprise Law requires all Lao companies to issue share certificates. Please refer to 2.1 above regarding pledges of moveable assets. Note that multiple pledges of the "share certificates" are not permitted under the Secured Transactions Law. However, a junior pledge of the interest in the company represented by the shares is permitted.

2.6 What are the notarisation, registration, stamp duty and other fees (whether related to property value or otherwise) in relation to security over different types of assets (in particular, shares, real estate, receivables and chattels)?

A security interest over any type of moveable asset is perfected when it is registered at the State Assets Management Department ("**SAMD**"), or, in the case of immoveable assets, at the Ministry of Natural Resources and Environment ("**MoNRE**"), provided that the following conditions are met: the debtor and creditor have entered into a security agreement in which the characteristics and value of the secured assets is precisely defined; and, in the case of immoveable assets, the security agreement is signed in the presence of three witnesses and is notarised at the Notary Office. The stipulated fees for the notarisation and registration of a security agreement must be paid and the required stamp duties must be affixed.

2.7 Do the filing, notification or registration requirements in relation to security over different types of assets involve a significant amount of time or expense?

The notarisation process requires a full Lao language translation. The registration process requires either a Lao language summary or full translation. Both the notarisation and registration processes take a few days to complete.

Under the current Decree on Fees, the notarisation fee is fixed at Kip 20,000. The SAMD registration fees for security agreements are nominal.

2.8 Are any regulatory or similar consents required with respect to the creation of security over real property (land), plant, machinery and equipment (e.g. pipeline, whether underground or overground), etc.?

Under the Land Law, foreign invested entities may hold land only via lease or concession. The use of fixed assets on land held via a State land lease or concession will require prior approval of the GOL. The negotiated concession agreement or land lease will generally attempt to deal with this requirement upfront.

3 Security Trustee

3.1 Regardless of whether Lao PDR recognises the concept of a "trust", will it recognise the role of a security trustee or agent and allow the security trustee or agent (rather than each lender acting separately) to enforce the security and to apply the proceeds from the security to the claims of all the lenders?

Lao law does not recognise the concept of "trust". However, a security trustee or agent can hold security on behalf of the lenders and enforce the security and apply the proceeds from the security to the claims of all the lenders and hedge providers.

3.2 If a security trust is not recognised in Lao PDR, is an alternative mechanism available (such as a parallel debt or joint and several creditor status) to achieve the effect referred to above which would allow one party (either the security trustee or the facility agent) to enforce claims on behalf of all the lenders so that individual lenders do not need to enforce their security separately?

Use of an onshore collateral agent representing the project lenders and hedge providers is standard procedure in Lao project financings.

4 Enforcement of Security

4.1 Are there any significant restrictions which may impact the timing and value of enforcement, such as (a) a requirement for a public auction or the availability of court blocking procedures to other creditors/the company (or its trustee in bankruptcy/liquidator), or (b) (in respect of regulated assets) regulatory consents?

The Secured Transactions Decree requires advance written enforcement notice to be provided. In connection with a security interest in moveable assets an enforcement notice of 10 days must be provided to the debtor, any third party with rights in the secured assets (such as junior or senior lienholders) and to the public via mass media publication. In the case of immoveable assets an enforcement notice period of 60 days is imposed; notice must be provided to the debtor, the lessor, the GOL and other creditors with security interests in the same immoveable assets.

Self-help remedies are permitted, provided that no law is violated in the exercise of the self-help remedy. Enforcement by public auction, sale by the creditor or foreclosure (purchase of the secured assets by the creditor) are remedies authorised by the Secured Transactions Law but are not stated to be exclusive remedies. No judicial sale is required.

Upon commencement of rehabilitation proceedings under the Bankruptcy Law, no assets of the debtor (including secured assets) may be sold or transferred without court approval and only if the court determines that the assets are not necessary for the continued business operations of the debtor. If the debtor is in bankruptcy liquidation proceedings under the Bankruptcy Law, all assets of the debtor (including secured assets) are to be marshalled by the Liquidation Committee and disposed of with the proceeds (net of liquidation costs) to be distributed according to the priorities stated in the Bankruptcy Law.

4.2 Do restrictions apply to foreign investors or creditors in the event of foreclosure on the project and related companies?

Foreclosure upon immoveable assets by foreign investors is restricted in that the foreclosing investor or creditors may be required to find a qualified Lao purchaser. The Land Law prohibits foreign ownership of land (whether in the form of 'land use rights' or usufruct) in Lao PDR. Foreigners and foreign-invested companies are limited to leasing land (from the State or private Lao parties) or receiving concessions of land from the State. The Investment Promotion Law authorises foreigners that make equity investments of not less than US$500,000 in Lao PDR to hold 'land use rights' for residential or unspecified commercial purposes; however, these provisions have not yet been implemented.

5 Bankruptcy and Restructuring Proceedings

5.1 How does a bankruptcy proceeding in respect of the project company affect the ability of a project lender to enforce its rights as a secured party over the security?

Upon commencement of rehabilitation proceedings under the Bankruptcy Law, no assets of the debtor (including secured assets) may be sold or transferred without court approval and only if the court determines that the assets are not necessary for the continued business operations of the debtor. If the debtor is in bankruptcy liquidation proceedings under the Bankruptcy Law, all assets of the debtor (including secured assets) are to be marshalled by the Liquidation Committee and disposed of with the proceeds (net of liquidation costs) to be distributed according to the priorities stated in the Bankruptcy Law.

Secured creditors enjoy no special voting or other rights over unsecured creditors during the bankruptcy proceedings and a rehabilitation plan may be approved by the vote of creditors representing at least two-thirds of the total debt and proposed to the court over the objections of the secured creditors. If no rehabilitation plan is approved by the court, the bankrupt company will be liquidated under the supervision of a liquidation committee appointed by the court.

The shareholders of a company may also elect to dissolve and liquidate the company outside of bankruptcy proceedings under procedures set out in the Enterprise Law. In this case, the liquidator would be appointed by either the shareholders or the court – not by the creditors.

In liquidation under either the Law on Bankruptcy or the Enterprise Law, secured debts (in order of seniority) take priority over unsecured debts and distributions to preferred and common shareholders. However, tax claims, wage claims and 'lien rights' of suppliers of goods and services (akin to a "mechanic's lien") claims take precedence over the claims of secured creditors.

No special rights, remedies or priorities are available to the claims of foreigner investors or creditors under Lao insolvency procedures.

5.2 Are there any preference periods, clawback rights or other preferential creditors' rights (e.g. tax debts, employees' claims) with respect to the security?

The Liquidation Committee has the authority to claw-back pre-filing transfers resulting from 'illegal contracts' including the discounted sale of assets, security granted for antecedent debts and the transfer of assets to relatives, friends and insiders. There is no cut-off date limiting such claw-back rights.

Security interests granted by law (e.g., tax claims, wage claims and 'lien rights' of suppliers of goods and services (akin to a "mechanic's lien") have priority over security interests pursuant to contract.

5.3 Are there any entities that are excluded from bankruptcy proceedings and, if so, what is the applicable legislation?

The Law on Bankruptcy applies to all insolvent enterprises located or conducting business in Lao PDR, including "State companies".

5.4 Are there any processes other than court proceedings that are available to a creditor to seize the assets of the project company in an enforcement?

No, no such processes are available.

5.5 Are there any processes other than formal insolvency proceedings that are available to a project company to achieve a restructuring of its debts and/or cramdown of dissenting creditors?

Other than a voluntary restructuring between the project company and its creditors, no. Cramdown is not a remedy outside of the context of an approved rehabilitation plan under the Bankruptcy Law.

5.6 Please briefly describe the liabilities of directors (if any) for continuing to trade whilst a company is in financial difficulties in Lao PDR.

Under the Enterprise Law, directors are liable for acting outside the scope of the company's business purpose, breaching the Articles of Association, exercising rights and duties beyond their assigned scope of power, and failure to exercise assigned rights or perform assigned duties. Under the Contract and Tort Law, third parties as well as the company may seek recovery for damages that are direct and certain to occur resulting from such breaches.

6 Foreign Investment and Ownership Restrictions

6.1 Are there any restrictions, controls, fees and/or taxes on foreign ownership of a project company?

Regulations issued by the Ministry of Industry and Commerce restrict the participation of foreign investors in certain industry sectors – in particular, the retail, wholesale and tourism sectors.

In the mining sector, as per the Mineral Law, an option to participate in the project company equity must be offered to the GOL. While the Electricity Law does not mandate GOL participation in the project company equity, in practice, the GOL will insist on indirect equity participation during the concession agreement negotiations. The GOL equity participation percentage is negotiable.

The Land Law prohibits foreign ownership of land (whether in the form of 'land use rights' or usufruct) in Lao PDR. Foreigners and foreign-invested companies are limited to leasing land (from the State or private Lao parties) or receiving concessions of land from the state. The maximum lease term from a private Lao party may not exceed 30 years; the maximum lease term from the government may not exceed 50 years (in each case subject to possible later extension upon government approval). Concession periods are limited to 50 years, but can be extended on a case-by-case basis by the government. In the case of a lease or concession of land exceeding 10,000 hectares, National Assembly approval is required. Longer lease terms are available in Special Economic Zones. The Investment Promotion Law authorises foreigners that make equity investments of not less than US$500,000 in Lao PDR to hold 'land use rights' for residential or unspecified commercial purposes; however, these provisions have not yet been implemented.

6.2 Are there any bilateral investment treaties (or other international treaties) that would provide protection from such restrictions?

Lao PDR has entered into a number of investment treaties with various countries but these treaties do not afford relief from the industry sector or land ownership restrictions described in 6.1.

6.3 What laws exist regarding the nationalisation or expropriation of project companies and assets? Are any forms of investment specially protected?

The Constitution of the Lao PDR protects the legal capital and property of investors from expropriation and nationalisation by the State. However, a number of Lao laws authorise expropriation, nationalisation or seizure of private assets in specified cases. The Investment Promotion Law protects the assets and investments of foreign investors against seizure, confiscation or nationalisation, subject to the exception of necessity for a public purpose, in which case compensation is to be provided. The Land Law provides that land-use rights may be requisitioned by the State for public purposes, upon payment of appropriate compensation. The Property Law allows expropriation for state purposes upon payment of unspecified compensation and provides for seizure of assets from defaulting debtors.

7 Government Approvals/Restrictions

7.1 What are the relevant government agencies or departments with authority over projects in the typical project sectors?

The government agencies with authority over projects include: the Government Office; the Ministry of Planning and Investment; the Ministry of Energy and Mines; the Ministry of Agriculture and Forestry; the Ministry of Industry and Commerce; the Ministry of Public Works and Transport; the Ministry of Finance; the Bank of the Lao PDR; the Ministry of Natural Resources and Environment; and the Ministry of Posts and Telecommunications.

The Ministry of Finance is the designated representative of the GOL in projects with full or partial State ownership, however, there are several State companies that commonly hold shares on behalf of the government in project companies: Electricité du Laos (power generation and transmission); Lao Holding State Enterprise (power generation and transmission); Enterprise of Telecommunications Lao (telecommunications); and Lao-Asia Telecom (telecommunications).

7.2 Must any of the financing or project documents be registered or filed with any government authority or otherwise comply with legal formalities to be valid or enforceable?

The Document Registration Decree requires the registration of all contracts for legal effectivity. The registry is the SAMD for non-land related documents and MoNRE for land-related documents. Land-related documents (including immoveable asset security agreements) and equipment leases are required to be notarised by the Notary Office. Contracts may be registered in any language; however a Lao language summary or translation is required. Notarisation requires a full Lao language translation.

7.3 Does ownership of land, natural resources or a pipeline, or undertaking the business of ownership or operation of such assets, require a licence (and if so, can such a licence be held by a foreign entity)?

Direct foreign investment is generally not permitted in Lao PDR. A Lao entity will need to be established and licensed to engage in business activities in Lao PDR.

Please refer to 6.1 regarding restrictions on foreign land holdings.

Concessionary activities will require negotiation of a concession agreement with the relevant Ministry and issuance of a Concession Registration Certificate by the Investment Promotion Department of the Ministry of Planning and Investment.

7.4 Are there any royalties, restrictions, fees and/or taxes payable on the extraction or export of natural resources?

The specific royalties and taxes payable in connection with the extraction of natural resources are not specified in Lao law, but are generally provided for in the Concession Agreement negotiated with the government. Such royalties and taxes are typically revenue-based rather than profit-based. Taxes payable in connection with the extraction of natural resources are set out in the Tax Law and the VAT Law, subject to tax holidays and incentives granted in the Investment Promotion Law or in the relevant concession agreement. The Decision on Natural Resources Fees imposes fees are assessed on the extraction of gravel, rock and limestone. The Decree on Protected Forests imposes an annual fee equal to 1% of gross revenues on all electric power projects; however, such fee is generally agreed by the GOL to be waived in exchange for the negotiated Concession Agreement royalty. A Decision of the Prime Minister imposes a 15% export duty on the export of timber and stumps.

7.5 Are there any restrictions, controls, fees and/or taxes on foreign currency exchange?

Foreign exchange transactions are governed by the Decree regarding the Management of Exchange Control and Precious Metal (the "**FX Decree**") and its related Guideline (the "**FX Guideline**"). The FX Decree prohibits the acquisition of foreign exchange for domestic transactions, without approval from the Bank of the Lao PDR ("**BOL**"). Loans, derivatives transactions, instalment sales contracts and equipment leases that are effectively instalment sales involving foreign parties require BOL approval under the FX Guideline.

The FX Decree further provides that foreign exchange can be used for specified purposes only, including payment for import-export related services, repayment of foreign source loans under a BOL-approved loan agreement, and repatriation or transfer of profits, dividends, capital, interest, or salaries by foreign investors to a third country, provided that such use is compliant with regulations issued by the BOL. Special fees or taxes are not imposed on foreign exchange transactions. In practice, in the case of funds transfers that fall within one of the permitted categories, the 'approval' is handled by the local commercial banks.

7.6 Are there any restrictions, controls, fees and/or taxes on the remittance and repatriation of investment returns or loan payments to parties in other jurisdictions?

Dividends may be paid to foreign investors provided that tax and wage obligations have been paid and the registered capital (stated share capital) of the foreign shareholders has been fully paid in. Pursuant to the Enterprise Law, dividends are payable only out of 'net profit' and no dividends may be distributed if accumulated losses exist. In addition, the Enterprise Law requires an annual reserve of 10% of net profit until such reserve equals 50% of the registered capital. While this is an 'accounting reserve' rather than a 'cash reserve', the requirement will limit cash dividends to 90% of annual net profit until the reserve has been filled. De-capitalisation and liquidating dividends are restricted as any reduction in the registered capital requires a special resolution of shareholders, government approval and notice to all creditors as well as repayment of any objecting creditor in full. However, preferred shares may be redeemed provided that the company has net profits.

The FX Decree permits the use of foreign currency for the repayment of BOL-approved foreign-source loans. However, capital to be repatriated may not exceed the capital brought into Lao PDR as evidenced by a capital importation certificate issued by the BOL. Expatriate employees are also free to remit funds provided that taxes and debts are not in arrears. Payments of dividends, interest on loans and bonds and profit from the sale of shares are subject to a withholding tax of 10%. In practice, for relatively small cash transfers that fall within one of the permitted categories, the 'approval' is handled by the local commercial banks.

7.7 Can project companies establish and maintain onshore foreign currency accounts and/or offshore accounts in other jurisdictions?

Project companies may open a foreign currency account in Lao PDR. Offshore bank accounts are permitted, provided that BOL approval is obtained.

7.8 Is there any restriction (under corporate law, exchange control, other law or binding governmental practice or binding contract) on the payment of dividends from a project company to its parent company where the parent is incorporated in Lao PDR or abroad?

Please see 7.6.

7.9 Are there any material environmental, health and safety laws or regulations that would impact upon a project financing and which governmental authorities administer those laws or regulations?

The Environmental Protection Law establishes the framework for the preservation and sustainable management of environmental resources in Lao PDR. The Regulation on Environmental Impact Assessment and its corresponding guidelines detail mandatory requirements regarding the environmental impact assessment (EIA) to be conducted, and the environmental management plans to be adopted, by project companies. The EIA must comply with criteria specified by the relevant sector. Environmental laws and regulations are administered by the Ministry of Natural Resources and Environment.

The Labour Law sets out health and safety obligations applicable to all project companies. The Labour Law is administered by the Labour Management Authority within the Ministry of Labour and Social Welfare.

7.10 Is there any specific legal/statutory framework for procurement by project companies?

No. However, the GOL often imposes Lao contractor and supply preferences in the negotiated Concession Agreement.

8 Foreign Insurance

8.1 Are there any restrictions, controls, fees and/or taxes on insurance policies over project assets provided or guaranteed by foreign insurance companies?

The Insurance Law requires the use of Lao-licensed insurers. However, foreign reinsurance is permitted.

8.2 Are insurance policies over project assets payable to foreign (secured) creditors?

Yes. This is handled via a pledge of moveable assets and an assignment of reinsurance.

9 Foreign Employee Restrictions

9.1 Are there any restrictions on foreign workers, technicians, engineers or executives being employed by a project company?

The Labour Law places restrictions on the number of foreign employees that companies can employ. The general rule is that foreign employees who engage in unskilled labour may not exceed 10% of the total workforce, while employees engaged in skilled labour may not exceed 20% of the total workforce. Temporary exemption from these restrictions may be granted by the Ministry of Labour and Social Welfare. Foreign investors and foreign employees of project companies established in Lao PDR are entitled to multiple-entry business visas.

10 Equipment Import Restrictions

10.1 Are there any restrictions, controls, fees and/or taxes on importing project equipment or equipment used by construction contractors?

Foreign invested entities wishing to import raw materials, equipment, machinery, and vehicles must file an annual importation plan for approval by the Customs Department. Duties and import restrictions are imposed on certain products, and import permits are required in some cases.

10.2 If so, what import duties are payable and are exceptions available?

The Investment Promotion Law provides for exemption from import duties on raw materials, equipment, spare parts and vehicles directly used in production. Broader exemptions, including exemption from excise tax and VAT on imported goods and services, require special provision in the negotiated Concession Agreement and approval by the National Assembly or National Assembly Standing Committee.

11 *Force Majeure*

11.1 Are *force majeure* exclusions available and enforceable?

The Contract and Tort Law provides for the non-liability of a contract party in case of breach of contract due to a *force majeure* event. The provision does not define or limit the allowable scope of *force majeure*. Contracting parties will often seek to expand or limit such *force majeure* rights in the contract. It is unclear whether contractual limits on the statutory *force majeure* rights will be enforceable.

12 Corrupt Practices

12.1 Are there any rules prohibiting corrupt business practices and bribery (particularly any rules targeting the projects sector)? What are the applicable civil or criminal penalties?

The Anti-Corruption Law specifies that an act of "bribery" occurs when a government official takes a payment from a person that wishes the official to use his position, power and duty to provide direct or indirect benefit to the person giving the payment. The Criminal Law prohibits any person from bribing or agreeing to bribe a government official. The Contract and Tort Law prohibits the giving and receiving of bribes to and by government officials.

The Lao Criminal Law provides that any person bribing or agreeing to bribe a civil servant shall be punished by six months to two years of imprisonment and a fine equal to the amount or value of the bribe. In the event of a substantial bribe, the briber and the person who agrees to give the bribe shall be punished by three to five years of imprisonment and fines equal to twice the amount or value of the bribe. Bribe intermediaries shall be punished by six months to two years of imprisonment and fines equal to the amount or value of the bribe. The applicable penalties for giving or receiving bribes under the Contract and Tort Law are left vague and are to be determined by the "severity of the case".

13 Applicable Law

13.1 What law typically governs project agreements?

Certain project documents, such as concession agreements, land lease agreements and domestic power purchase agreements and the articles of association of the project company are required to be governed by Lao law.

13.2 What law typically governs financing agreements?

Security documents involving assets located in Lao PDR may not be enforceable if governed by a foreign law. All other documents, including shareholders' or joint venture agreements, financing documents, offshore security agreements and other project documents, such as power purchase agreements for export, engineering procurement construction contracts, operation and maintenance agreements and consulting agreements are often governed by foreign law. The laws of England are the most commonly chosen governing foreign law. Thai off-takers of electric power generally insist on the use of Thai law.

13.3 What matters are typically governed by domestic law?

Land related documents, concession agreements, security documents (including pledges of immoveable and moveable assets and guarantees) and articles of association are generally governed by Lao law.

14 Jurisdiction and Waiver of Immunity

14.1 Is a party's submission to a foreign jurisdiction and waiver of immunity legally binding and enforceable?

The Lao courts and administrative bodies with enforcement capacity are not required by law or any treaty to honour, enforce or implement a foreign court judgment order. Lao PDR is not a party to the Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters (The Hague, 1971).

The Lao Court may decide not to recognise the foreign court judgment in the following cases:

a) Such judgment is subject to continuing proceedings or appeals and is not a final decision.

b) The losing party in the foreign judgment did not participate in the proceedings and the judgment was made in default.

c) The matter considered by the foreign court was properly under the jurisdiction of the Lao courts.

d) Such judgment conflicts with the Constitution or Lao laws.

e) Other non-specified issues relating to the foreign judgment are brought to the attention of the Lao Court.

In addition, the Judgment Enforcement Law states that foreign court judgments shall be endorsed by a Lao court and enforcement shall only be by proper order of such Lao court. Under the circumstances, it seems highly unlikely that a judgment of a foreign court would be enforced in Lao PDR without complete retrial or retrial of the major issues, in the absence of a treaty to the contrary.

A waiver of sovereign immunity by the GOL should be effective and enforceable provided that the contract in question is commercial in nature.

15 International Arbitration

15.1 Are contractual provisions requiring submission of disputes to international arbitration and arbitral awards recognised by local courts?

Lao law does not prohibit the choice of foreign arbitration as a dispute resolution mechanism, and the GOL has generally accepted the use of the UNCITRAL Arbitration Rules in its contracts with foreign-invested parties, with Singapore regarded as an acceptable 'neutral' venue. In order to be enforceable in Lao PDR, international arbitral awards must be certified by the People's Court. The conditions for certification are as follows: the relevant parties must hold nationalities of countries who are State parties to the Convention on Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958); the arbitral award must not conflict with the constitution, laws and regulations of Lao PDR on issues relating to national security, social order and the environment; and the party against whom the award is enforced must operate a business, hold shares, have savings or hold assets in Lao PDR.

The Economic Dispute Resolution Law confirms that parties to a contract involving international trade or foreign investment may resort to international arbitration as the dispute resolution mechanism.

15.2 Is Lao PDR a contracting state to the New York Convention or other prominent dispute resolution conventions?

Yes. Please see 15.1.

15.3 Are any types of disputes not arbitrable under local law?

Yes. Please see 15.1.

15.4 Are any types of disputes subject to mandatory domestic arbitration proceedings?

No, they are not.

16 Change of Law / Political Risk

16.1 Has there been any call for political risk protections such as direct agreements with central government or political risk guarantees?

The negotiated Concession Agreement will generally contain change in law protective provisions subject to negotiated monetary thresholds. The Concession Agreement will also generally provide for payment of termination compensation if default and termination results from Lao political *force majeure*. As part of the project financing process, the GOL will generally enter into a Direct Agreement with the project lenders providing for step-in rights and other protections with respect to the Concession Agreement.

17 Tax

17.1 Are there any requirements to deduct or withhold tax from (a) interest payable on loans made to domestic or foreign lenders, or (b) the proceeds of a claim under a guarantee or the proceeds of enforcing security?

Interest on foreign loans, bank fees and other income payable to foreign lenders is subject to income tax and is taxed by way of withholding. The withholding tax is 10%.

17.2 What tax incentives or other incentives are provided preferentially to foreign investors or creditors? What taxes apply to foreign investments, loans, mortgages or other security documents, either for the purposes of effectiveness or registration?

Foreign-invested companies may be eligible for tax incentives under the Investment Promotion Law. Such incentives include limited profit tax holidays, exemptions from import duties on raw materials, equipment, spare parts and vehicles used indirectly in production, and exemptions from export duties on export products. Additional tax incentives are available for companies located in a Special Economic Zone.

Further tax incentives may be granted by the GOL in the Concession Agreement for the infrastructure project but these will require ratification by the National Assembly or National Assembly Standing Committee.

Double taxation agreements have been entered into with Thailand, China, Vietnam, Russia, North Korea, South Korea, Brunei, Kuwait, Malaysia and Myanmar.

18 Other Matters

18.1 Are there any other material considerations which should be taken into account by either equity investors or lenders when participating in project financings in Lao PDR?

Guarantees of the GOL and contractual protections contained in a Concession Agreement (such as indemnities, change in law protections and termination compensation) will be of limited value if the GOL due to financial, political or foreign exchange constraints is unable or unwilling to make good on its contractual obligations. Lao PDR is a developing country with significant public sector debt and limited foreign exchange reserves. Equity investors and lenders should therefore ensure that the project: (i) makes economic sense absent government guarantees and protections; (ii) has reasonable market-based tariffs; (iii) carries adequate insurance (including natural *force majeure* and political risk cover); (iv) has adequate performance bonds, letters of credit and other guarantees in place by all principal contractors; and (v) is not over-leveraged.

Project funds and revenues should – to the extent possible and subject to required BOL approvals – be held in offshore accounts. Shareholder Agreements and off-take agreements (such as Power Purchase Agreements with EdL) should provide for set-off rights and lock-box arrangements.

18.2 Are there any legal impositions to project companies issuing bonds or similar capital market instruments? Please briefly describe the local legal and regulatory requirements for the issuance of capital market instruments.

The Securities Law sets rules and restrictions for the issuance of securities (including bonds and similar capital market instruments) to the public and listing on the Lao Securities Exchange. The proposed listing must be reviewed and approved by the Lao Securities Commission. At present, there are no restrictions on Lao companies that seek to issue bonds or similar capital market instruments on foreign exchanges or via foreign private placement.

19 Islamic Finance

19.1 Explain how *Istina'a*, *Ijarah*, *Wakala* and *Murabaha* instruments might be used in the structuring of an Islamic project financing in Lao PDR.

The use of such Islamic financing structures does not appear to be expressly prohibited by Lao law. However, we are unaware of any Islamic financing transaction having been undertaken/completed in the Lao market and, as such, such structures remain untested.

19.2 In what circumstances may *Shari'ah* law become the governing law of a contract or a dispute? Have there been any recent notable cases on jurisdictional issues, the applicability of *Shari'ah* or the conflict of *Shari'ah* and local law relevant to the finance sector?

Land-related documents, concession agreements, security documents (including pledges of immoveable and moveable assets and guarantees) and articles of association are to be governed by Lao law. With respect to other types of contracts, the use of foreign law (including *Shari'ah* law) as the governing law is not prohibited. However, given the developing state of the Lao judiciary, a Lao court may have no knowledge of foreign laws (including *Shari'ah* law) and, accordingly, may rely solely on its understanding of Lao law in dealing with a contractual dispute.

We are unaware of any Lao litigation that considered or applied *Shari'ah* law.

19.3 Could the inclusion of an interest payment obligation in a loan agreement affect its validity and/or enforceability in Lao PDR? If so, what steps could be taken to mitigate this risk?

Generally not. However, the Contract and Tort Law forbids the compounding of interest (or the addition of interest to principal) in relation to a loan provided by a domestic entity. The calculation of interest on offshore loans is specified to be subject to the agreement between the parties but offshore loans are not explicitly excluded from the application of the prohibition on compounding (adding interest to principal).

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