

Laos Property Investment Guide

2015





Property tenure/ownership

Property legislation and the Constitution of the Lao People's Democratic Republic (Lao PDR) provide that land is owned by the "national community"—it is impossible for any individual or entity, Lao or foreign, to "own" land. Rather, individuals and entities can be granted land use rights that are akin to freehold ownership or usufruct, a civil law concept granting long-term rights to use land for productive activities. Within this framework, individuals and organisations can acquire land use rights in one of three ways:

- Allocation by the state
- Transfer
- Inheritance

Major property legislation

- The Land Law No. 04/NA dated October 21, 2003 (Land Law)
- Law No. 01/90/PSA Property (Ownership), dated June 27, 1990
- Law No. 14/NA on State Assets (Amended), dated July 5, 2012
- Law No.02/NA on Investment Promotion, dated July 8, 2009 ("Investment Law")
- Regulation No.500/PMO, NLMA regarding Registration of Land Legal Documents, dated May 9, 2008

Note that the above are supplemented by various regulations, notifications and decrees governing state land ownership, zoning and other land-related matters.

Requirements for foreign corporations

The main legislation governing foreign investment in the Lao PDR is the Investment Law.

The Investment Law governs:

- The sectors that are open to investment
- The forms of investment available
- The incentives available to investors
- The rights and duties of investors
- The investment-licencing process

The objective of this legal framework is to create an enabling environment for investment in the Lao PDR, to improve economic cooperation with foreign countries and to contribute to national socioeconomic growth.

Under the Investment Law, foreign investors may invest in the following forms:

- Business cooperation by contract
- Joint venture between foreign and domestic investors
- 100 percent foreign-owned enterprise

The requirements for establishing a joint venture between foreign and domestic investors and a 100 percent foreign-owned enterprise are similar—they also share similar rules with respect to taxation, foreign exchange and labour issues.

The most common form of enterprise is a limited liability company. Other available forms of investment are branches and representative offices.

For a branch office, the Enterprise Law No. 46/NA ("Enterprise Law"), dated 26 December 2013, and the Guideline No.1619/ MOICERM for the Establishment of Foreign Enterprise Branch (Legal Entity) in the Lao PDR, dated August 28, 2013 (the "Branch Guideline") specify that a branch of a company is an integrated part of that company (whether foreign or domestic), meaning it does not have a separate legal personality. The Enterprise Law further specifies that the parent company shall be liable for all acts and deeds of the branch office.

For foreign enterprises, the Branch Guideline also limits the establishment of a branch to banks and other financial institutions, insurance companies, international consulting companies and foreign airline companies.

A representative office is usually used by investors who require only a minimal presence for their activities in the Lao PDR to "test the waters" through feasibility studies and preliminary negotiations before making any investment. A representative office is not permitted to conduct revenue-generating activities in the Lao PDR, and the term of registration is limited to three years (subject to limited number of renewals).

Representative offices are appropriate for investors wishing to:

- Supervise distributors and agents
- Collect local information for the offshore parent
- Promote and market goods and services of the parent

Foreign investment incentives

To encourage investment in the country, the Investment Law provides investors with certain rights, protections and incentives.

The protections include:

- A legal regime that protects the assets and investments of foreign investors from seizure, confiscation or nationalisation
- Allowing investors to lease land, transfer leasehold interests and build on or make improvements to a leased land
- Allowing investors to remit foreign currencies abroad (in accordance with other laws and regulations)

In addition, investors have obligations to:

- Protect the environment
- Protect the health of their employees
- Ensure that their activities do not negatively affect the public or national security

Certain tax incentives are provided to promoted sectors. Depending on the economic sector in which an investor operates, varying rates of tax incentive apply.

The level of tax incentives provided to promoted sectors also depends on the location of the relevant investment.

To facilitate investment, the greatest tax incentives are provided to promote sector investments in remote areas with no economic infrastructure, classified as Zone 1. Zones with a moderate level of economic infrastructure are classified as Zone 2. Zones with established infrastructure to support investments are classified as Zone 3.

The sector in which an investor operates will determine whether they fall into Level 1, 2 or 3.

In Zone 1

- Level 1 investments are entitled to a profit tax exemption for ten years.
- Level 2 investments are entitled to a profit tax exemption for six years.
- Level 3 investments are entitled to a profit tax exemption for four years.

In Zone 2

- Level 1 investments are entitled to a profit tax exemption for eight years.
- Level 2 investments are entitled to a profit tax exemption for four years.
- Level 3 investments are entitled to a profit tax exemption for two years.

In Zone 3

- Level 1 investments are entitled to a profit tax exemption for six years.
- Level 2 investments are entitled to a profit tax exemption for two years.
- Level 3 investments are entitled to a profit tax exemption for one year.

Profit tax exemption commences on the date on which the foreign investment enterprise commences operations. For new production of goods and for research and creation of new technology activities, profit tax exemption commences from the date on which the enterprise starts making a profit. Once the profit tax exemption period is over, the enterprise must pay profit tax in accordance with Tax Law No.05/NA, dated December 20, 2011 (the Tax Law). Further, tax exemptions granted to concessionary investments may be provided for in the relevant

concession agreement and must comply with the relevant laws that apply to those sectors.

Additionally, enterprises may be entitled to:

- An exemption from profit tax in the following accounting year when net profit is spent to expand business operations
- Exemptions from import duties and taxes on equipment, spare parts, vehicles and raw materials not available in the Lao PDR, that are used directly for production
- Exemptions from export duties on exported products
- Deduction of annual losses from profit in the following year, within a period of three years

Foreign investment is permitted in sectors falling outside the promoted activities; however, such investments are not eligible for the tax incentives that are available to promoted activities. In addition, various restrictions may apply to investments in non-promoted sectors, based on applicable government policy and the laws and regulations governing the sector concerned.

The Investment Law also provides for favourable investment incentives through the creation of special economic zones as highlighted under the specific regulations established for each zone.

Concession Rights

A concession involves authorisation from the government, allowing a legal entity to use the government's property according to the terms and conditions of a concession agreement. Concession-related activities include investments in the areas of telecommunications, communications, transportation, mining, electricity and plantation agriculture. To engage in a concession-related activity, an investor must enter into a special agreement or multiple agreements—depending on the sector concerned—with the government, which will govern the activities to be conducted. In the mining and electricity sectors, the investor will generally be required to offer the government a negotiated equity stake in the project company.

Restrictions on foreign property ownership

Foreign individuals and foreign-invested companies, including minority foreign-owned companies, are restricted to:

- Leasing land
- Receiving land concessions from the state (generally granted to large investments)

A land concession granted by the state to foreign-invested enterprises is limited to 50 years. The lease of land by a Lao citizen to a foreign-invested company registered in the Lao PDR is limited to 30 years. In both cases, leases are usually renewable. Leases of land in SEZs are limited to 75 years.

Under the Investment Law, foreigners and foreign-invested entities that invest at least USD500,000 (approx. LAK 4.05 billion) in equity in the Lao PDR are permitted to hold land use rights for residential, office or unspecified business purposes. However, this aspect of the Investment Law has not been implemented in practice.

Foreigners who lease land or receive land concessions from the state must fulfil certain obligations, including:

- Using the land in accordance with relevant zoning objectives
- Taking steps to protect the environment
- Respecting the land use rights of neighbouring persons
- Paying land lease or concession fees on time
- Complying with the Lao PDR laws generally

Under the Investment Law, the property of investors is protected from nationalisation or expropriation, except for public purposes and upon payment of compensation.

Foreign investors are entitled to own structures and developments that they build or purchase on leased land. This right is protected under the Land Law and the Investment Law. However, upon expiration of the lease or concession term, all fixtures will revert to the lessor or the state without compensation.

Subject to obtaining prior approval from the state, foreign investors are permitted to:

- Use fixed assets on land leased as security
- Sublease their land use rights
- Use a lease or concession right as capital contribution in a Lao PDR entity

The land title system in the Lao PDR has a direct impact on the operations of foreign investors in the country.

While foreign investors cannot own land use rights, their security in any leased land will depend on the validity of the lessor's land rights. To be able to lease land to a foreign investor, a Lao citizen must have obtained formal title, as this is the main document evidencing permanent land use rights and the right to lease land. All legal transactions relating to land must be registered with the Department of Natural Resources and Environment (DONRE). This process involves having the land transaction recorded in the book for registration of legal transactions at the DONRE office where the land is located.

Foreign exchange control

The Lao PDR has enacted a strict regime of foreign exchange and capital controls. The list of permissible transactions in foreign currency is relatively limited.

Presidential Decree Law No. 01/P ("Foreign Exchange Decree"), dated March 17, 2008 and governing the management of foreign exchange and precious metals, prohibits individuals and legal entities operating in the Lao PDR from paying or receiving

foreign exchange for the goods and services rendered to them or by them, or from settling debts in foreign exchange within the Lao PDR, without approval from the Bank of Lao PDR (BoL). The decree further provides that foreign exchange can be used to achieve certain objectives, including paying for imported goods, paying for import-related and export-related services, repaying foreign debts in accordance with a loan agreement that has been approved by the BoL and repatriating or transferring 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.

Derivative transactions such as foreign exchange, interest rate and commodities hedging transactions fall into a general catch-all requirement of BoL approval. Foreign investors are required to use the Lao PDR banking system and domestic bank accounts for all transactions, unless BoL approval has been obtained for the use of offshore bank accounts.

Taxation

Sale or transfer of property through a company in the Lao PDR

Profit tax

A company must report profit tax on the sale of properties or leasehold rights. In general, a company's income from the sale of properties or leasehold rights less the deductible expenses will be subject to profit tax at the rate of 24 percent.

Value added tax (VAT)

The standard rate of VAT is 10 percent in the Lao PDR. The Lao PDR VAT system follows the conventional VAT system, where the VAT paid ("input VAT") can be deducted from the VAT charged ("output VAT"). Under the Lao VAT Law, the supply of immovable property or parts thereof is subject to VAT if:

- The immovable property is located in the Lao PDR
- The supply is made for a consideration by a registered VAT taxpayer whose business consists of, at least in part, the purchase and supply of immovable property, acting as such
- The immovable property is used or intended to be used by a registered VAT taxpayer, at least in part, as a business asset

Registered VAT taxpayers carrying out a business of land development, construction or purchase for re-selling or leasing are required to pay VAT according to the selling or leasing value, excluding the VAT of the sold or leased property to another registered VAT taxpayer.

Rental payments are subject to VAT of 10%. The company can deduct input VAT with respect to renovation, construction and maintenance of the property.

Transfer fees

In addition to profit tax and VAT, the sale of land usage rights will be subject to a transfer fee of 1 percent. The transfer fee is calculated on the basis of the value of the property that can vary depending on the zone and type of land.

Stamp tax

Stamp tax applies to international organisations, individuals, legal entities, Lao citizens, aliens and foreigners operating activities or earning their livelihood in the Lao PDR.

The stamp tax of LAK 10,000 (USD 1.27) must be paid when the land sale and purchase agreement is submitted for registration with the government authorities.

Notarisation fees

There are notarisation fees applicable to a sale and purchase agreement. Notarisation fees include charges of LAK 20,000 (USD 2.54) per page and service fees of LAK 35,000 (USD 4.45) per page.

Individuals selling or transferring property in the Lao PDR

Income tax

Under the Tax Law, an income tax of 5 percent is applied to the following types of income:

- Sale and purchase of land
- Transfer of land use rights
- Sale and purchase/transfer of structures or land with the existence of structures (excluding a sale and purchase/transfer between direct relatives, such as father, mother, husband, wife and children).

Companies with rental income

Profit tax

Rental income is included in a company's taxable income and is subject to a profit tax of 24 percent. The basis of the taxable income is the gross rental income, less the deductible expenses for rental income, including maintenance costs, interest on loan, property tax, insurance premium and depreciation on the buildings.

Individuals with rental income

Income tax

Under the Tax Law, income from the lease of houses, land or other assets is subject to income tax at 10 percent.

The lessor is required to file a tax declaration with the Tax Department within 10 days of receipt of the rental income. The Tax Department will assess the declaration and issue a payment order. In cases where the lessor receives an advance payment, the tax will be calculated on the full amount of the advance payment.

The Tax Department has the authority to reassess the value of the rent in the event that the rental is deemed to be below the market value, or the lessee makes capital improvements to the property.

Tax treaties: Avoidance of double taxation

The Lao PDR has double tax agreements in force with the following countries:

People's Republic of China	Vietnam
Thailand	Malaysia
North Korea	Myanmar
South Korea	Luxembourg
Brunei	Singapore



LAOS

JLL

26/F Saigon Trade Center
37 Ton Duc Thang Street

District 1

Ho Chi Minh City

tel +84 8 3910 3968

www.joneslanglasalle.com.vn

DFDL Legal & Tax

Rupert Haw – Managing Director

DFDL Legal & Tax Lao PDR

rupert.haw@dfd.com

Oliver Ting – Senior Adviser

DFDL Legal & Tax Lao PDR

oliver.ting@dfd.com

Phai Nam Road, House 004

Xieng Yeun Village (PO Box 2920)

Vientiane, Lao PDR

tel +856 21 242 068

fax +856 21 218 422

Laos@dfd.com

www.DFDL.com

JLL offices

AUSTRALIA

Adelaide
tel +61 8 8233 8888

Brisbane
tel +61 7 3231 1311

Canberra
tel +61 2 6274 9888

Glen Waverley
tel +61 3 9565 6666

Mascot
tel +61 2 9693 9800

Melbourne
tel +61 3 9672 6666

North Sydney
tel +61 2 9936 5888

Parramatta
tel +61 2 9806 2800

Perth
tel +61 8 9322 5111

Sydney
tel +61 2 9220 8500

GREATER CHINA
Beijing
tel +86 10 5922 1300

Chengdu
tel +86 28 6680 5000

Chongqing
tel +86 23 6370 8588

Guangzhou
tel +86 20 2338 8088

Hong Kong
tel +852 2846 5000

Macau
tel +853 2871 8822

Qingdao
tel +86 532 8579 5800

Shanghai
tel +86 21 6393 3333

Shenyang
tel +86 24 3109 1300

Shenzhen

tel +86 755 2399 6138

Taiwan
tel +886 2 8758 9898

Tianjin
tel +86 22 8319 2233

Wuhan
+86 27 5959 2100

Xi'an
+86 29 8932 9800

INDIA

Ahmedabad
tel +91 79 3955 5501

Bangalore
tel +91 80 4118 2900

Chandigarh
tel +91 172 3047 651

Chennai
tel +91 44 4299 3000

Coimbatore
tel +91 422 2544 433

Delhi
tel +91 11 4331 7070

Gurgaon
tel +91 124 460 5000

Hyderabad
tel +91 40 4040 9100

Kochi
tel +91 484 3018 652

Kolkata
tel +91 33 2227 3294

Mumbai
tel +91 22 6620 7575

Pune
tel +91 20 4019 6100

Sri Lanka
tel +94 117444 555

INDONESIA

Bali
tel +62 361 747 2882

Jakarta
tel +62 21 2922 3888

Surabaya
tel +62 31 546 3777

Japan
Fukuoka
tel +81 92 471 6831

Osaka
tel +81 6 6282 3777

Tokyo
tel +81 3 5501 9200

KOREA
Seoul
tel +82 2 3704 8888

New Zealand
Auckland
tel +64 9 366 1666

Christchurch
tel +64 3 341 8210

Wellington
tel +64 4 499 1666

PHILIPPINES
Makati City
tel +63 2 902 0888

SINGAPORE
Singapore
tel +65 6220 3888

Thailand
Bangkok
tel +66 2 624 6400

Phuket
tel +66 7 623 8299

Pattaya
tel +66 3 825 2588

VIETNAM
Hanoi
tel +844 3944 0133

Ho Chi Minh City
tel +848 3910 3968

Ashurst offices

AUSTRALIA

Adelaide
tel +61 8 8112 1000

Brisbane
tel +61 7 3259 7000

Canberra
tel +61 2 6234 4000

Melbourne
tel +61 3 9679 3000

Perth
tel +61 8 9366 8000

Sydney
tel +61 2 9258 6000

GREATER CHINA
Beijing
tel +86 10 5936 2800

Hong Kong
tel +852 2846 8989

Shanghai
tel +86 21 6263 1888

JAPAN
Tokyo
tel +81 3 5405 6200

PAPUA NEW GUINEA
Port Moresby
tel +675 309 2000

SINGAPORE
Singapore
tel +65 6221 2214

Associated Office
INDONESIA
Jakarta
tel +62 21 2996 9200