DFDL LEGAL & TAX

Laos Property Investment Guide

2016

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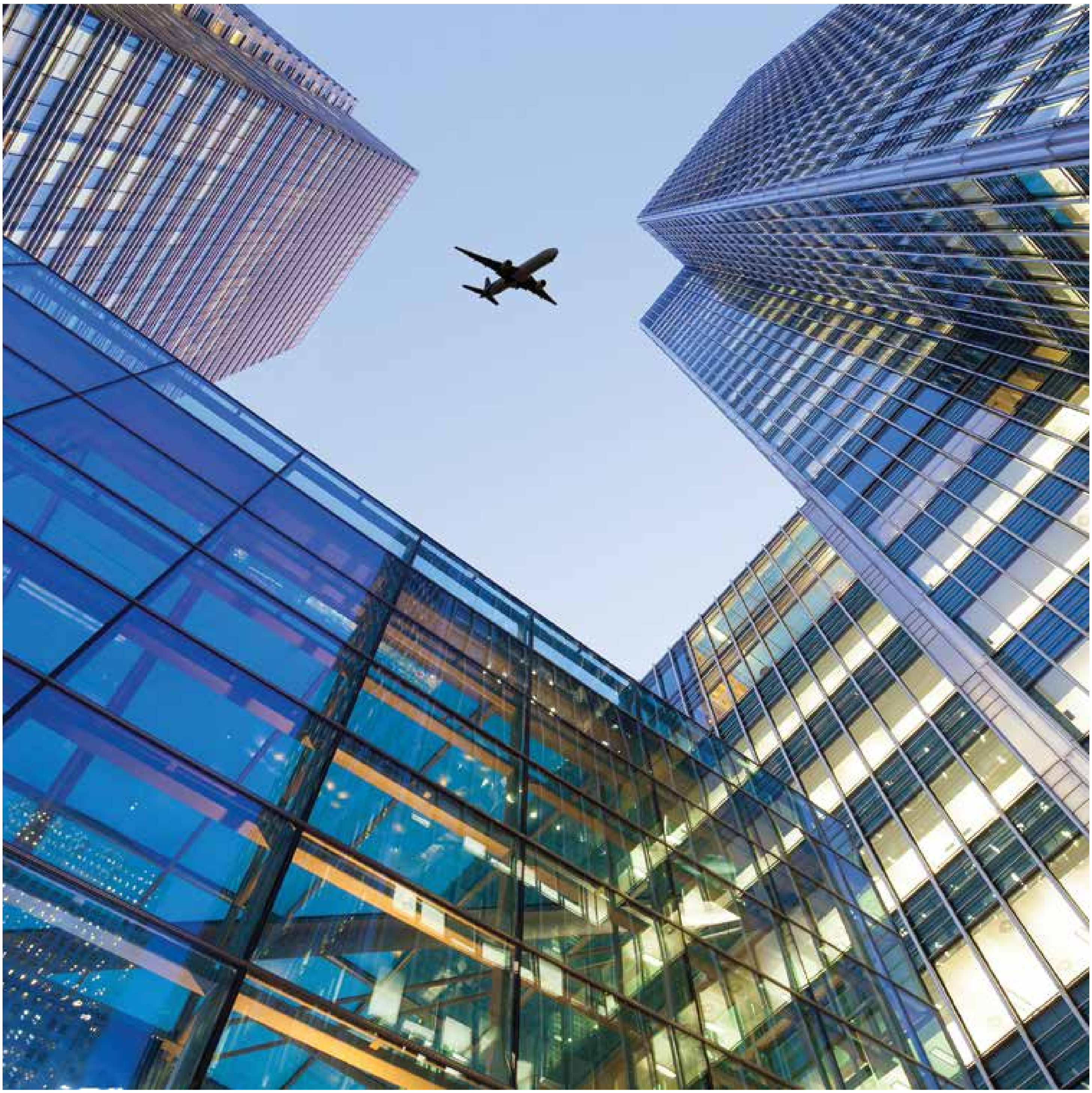

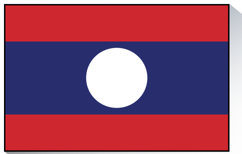

Property Tenure/Ownership

Property legislation and the Constitution of the Lao People's Democratic Republic (Lao PDR) provide that land is owned by the "national community." 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 organizations can acquire land use rights in one of three ways:

- Allocation by the State;
- Transfer; or
- Inheritance.

Major Property Legislation

- Land Law No. 04/NA, dated October, 21 2003 (the Land Law)
- Decree regarding Implementation of Land Law No. 88/PM, dated 3 June 2008 (the Land Decree)
- Law on State Assets No. 14/NA, dated July 5, 2012
- Guideline on implementation of the Law on State Assets No. 699/MOF, dated 19 March 2015 and posted on 4 December 2015
- Decree on State Land Lease or Concession No.135-PM, dated 25 May 2009
- Law on Investment Promotion No. 02/NA, dated 8 July 8 2009 (the Investment Law)
- Decree on Implementation of Investment Promotion Law No. 119/PM, dated 20 April 2011 (the Investment Decree)
- Forestry Law No. 06/NA, dated 24 December 2007
- Tax Law No. 05/NA, dated 20 December 2011 (the Tax Law)

Note that the above are supplemented by various regulations, notifications and decrees in the fields of state land ownership, zoning and construction.

Requirements for Foreign Corporations

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

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

The stated 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 of investment:

- business cooperation by contract;
- joint venture between foreign and domestic investors; or
- one hundred percent foreign-owned enterprise.

The requirements for establishing a joint venture between foreign and domestic investors and a 100% foreign-owned enterprise are similar — they also share similar rules with respect to taxation, foreign exchange and labor 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, dated 26 December 2013 (the "Enterprise Law"), and the Guideline for the Establishment of Foreign Enterprise Branch (Legal Entity) in the Lao PDR No. 1619/MOIC.ERM, dated 28 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 airlines.

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 substantial investment. A representative office is not permitted to conduct revenue-generating activities in the Lao PDR, and the term of registration is limited to one year and may be renewed for two additional one year periods. Renewal beyond a total term of three years is rarely granted.

As stated in Article 29 of the Investment Decree, representative offices are appropriate for investors wishing to:

- To collect information and study the possibility of investment;
- To contact domestic and foreign parties to support its parent company;
- To monitor the performance of the memorandum of understanding and agreement; and

- In case that the representative office of foreign legal entity which has signed the memorandum of understanding or agreement with the government, it has the rights to obtain the custom duties incentives in the importation of equipment such as heavy machineries to serve the specific activities as provided in memorandum of understanding or agreement.

Restrictions on Foreign Property Ownership

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

- Leasing land; and
- Receiving land concessions from the state (as discussed below).

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 LAK 3.94 billion (USD 500,000) 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; and
- 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, unless otherwise agreed by the parties.

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; and
- Use a lease agreement or concession agreement 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. 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. 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.

Concession Rights

A concession involves authorization from the government, allowing a legal entity to use the State owned assets in accordance with the terms and conditions of a concession agreement between the investor and the Government of Lao PDR. The majority of Concession-related investments are in the telecommunications, mining, hydropower and agriculture sectors.

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. Foreign Investment Incentives

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

The Investment Law provides investors with investment protection, including:

- A legal regime that protects the assets and investments of foreign investors from seizure, confiscation or nationalisation;
- The right to lease land, transfer leasehold interests and build on or make improvements to leased land; and
- The right to remit foreign currencies abroad, in accordance with the restrictions on foreign exchange, as discussed below.

In addition, investors have obligations to:

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

Certain tax incentives, at varying rates, are provided to the promoted sectors and business activities. Under the Investment Law, the promoted sectors are:

- agriculture
- industrial;
- handicrafts; and
- services.

Detailed information on specifically promoted business activities is provided in the Investment Decree.

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.

Zone	Level	Duration of profit tax exemption
Zone 1	Level 1	10
	Level 2	6
	Level 3	4
Zone 2	Level 1	8
	Level 2	4
	Level 3	2
Zone 3	Level 1	6
	Level 2	2
	Level 3	1

The 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 the Tax Law. Further, tax exemptions granted to concessionary investments may be provided 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 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; and/or
- 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 the 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.

Foreign Exchange Controls

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.

Law on Management of Foreign Exchange No. 55/NA, dated 22 December 2014 (Foreign Exchange Law) and the Guideline regarding Implementation of the Foreign Exchange Decree No. 01/BOL, dated April, 2 2010 (Foreign Exchange Guideline), prohibit 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 Foreign Exchange Guideline further provides that foreign exchange may 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 the BoL approval has been obtained for the use of offshore bank accounts.

Taxation

Taxes on the transfer of property in Lao PDR

Corporate tax obligations for the sale of property

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%.

Value added tax (VAT)

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) ("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; and
- The immovable property is used or destined 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.

Individual tax obligations for the sale of property

Income tax

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

- Sale and purchase of land;
- Transfer of land use rights; and
- 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).

Other taxes on the sale of 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%. The transfer fee is calculated on the basis of the value of the property as determined by the DONRE, in accordance to the zone and type of land.

Stamp tax

A 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. The stamp tax also applies to the submission or certification of documents at all levels of the government.

International organizations, individuals, legal entities, Lao citizensn, aliens and foreigners operating activities or earning their livelihood in the Lao PDR are subject to the stamp tax.

Notarisation fees

A land sale and purchase agreement must be notarized and this process is subject to a notarization fee. These fees consist of a charge of LAK 20,000 (approximately USD 2.54) per page and a service fee of LAK 35,000 (approximately USD 4.45) per page.

Taxes on rental income

Corporate tax obligations on rental income

Profit tax

Rental income is included in a company's taxable income and is subject to a profit tax of 24%. The basis of the taxable income is the gross rental income, less the deductible expenses for rental income.

Value added tax (VAT)

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

Individual tax obligations on 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%.

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.

Notarisation fees

A land lease agreement must be notarized and this process is subject to a notarization fee. These fees consist of a charge of LAK 20,000 (approximately USD 2.54) per page and a service fee of LAK 35,000 (approximately USD 4.45) per page.

Registration fees

The land lease agreement must also be registered with the relevant DONRE. The registration fee is 0.2% of the lease value.

Tax treaties: Avoidance of double taxation

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

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

Double taxation agreements with Russia, Kuwait, Indonesia, and Singapore have been agreed but are not yet in force.

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