

GETTING THE
DEAL THROUGH 

Project Finance 2017

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Laos

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Creating collateral security packages

1 What types of collateral and security interests are available?

In Laos (the 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. These provide for three forms of security pursuant to contract: security over moveable assets; security over immoveable assets; and guarantees by a person or legal entity.

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 How is a security interest in each type of collateral perfected and how is its priority established? Are any fees, taxes or other charges payable to perfect a security interest and, if so, are there lawful techniques to minimise them? May a corporate entity, in the capacity of agent or trustee, hold collateral on behalf of the project lenders as the secured party? Is it necessary for the security agent and trustee to hold any licences to hold or enforce such security?

A security interest over any type of collateral is perfected when it is registered at the State Assets Management Department (SAMD) of the Ministry of Finance, or, in the case of immoveable assets, at the appropriate office or department of 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 are precisely defined; in the case of immoveable assets, the security agreement is signed in the presence of three witnesses and notarised at the Notary Office or Department of Notary. The stipulated fees for the notarisation and registration of a security agreement must be paid and the required stamp duties must be affixed. The notarisation process requires a full Lao language translation. The registration process requires either a Lao language summary or full translation.

Pursuant to the Secured Transactions Decree, security documents involving moveable assets are valid for five years only and must be re-registered every four years and nine months. This re-registration requirement applies also to existing registered security documents. For such existing security documents, the five-year validity period commenced on 20 June 2012.

Perfection grants the secured party a first priority security interest over the collateral set out in the security agreement with priority over all unsecured claims, unregistered security interests and subsequent registered security interests. Multiple liens may be granted over the same assets with the exception of liens provided via a pledge of 'documents'. Subject to any subordination agreement, seniority of liens is determined by the date

of registration as evidenced by the date stamp of the registry on the document. Security interests granted by law (eg, tax claims, wage claims and 'lien rights' akin to a 'mechanic's lien') have priority over security interests pursuant to contract.

It is standard practice in large infrastructure financings in the Lao PDR for an onshore security agent or trustee to hold collateral as the secured party on behalf of the project lenders. The onshore security agent or trustee is not required to hold any licence to hold or enforce the security.

3 How can a creditor assure itself as to the absence of liens with priority to the creditor's lien?

Security interests over immoveable assets (namely, land) are often indicated on the back of the land title certificate for such assets, provided that security interests have been properly registered with the MoNRE. A review of the land title certificate relating to the asset in question should provide some assurance to a creditor as to the absence of competing liens.

Security interests over all other types of assets must be registered with the SAMD. A creditor can attempt to determine the absence of liens with priority to that creditor's lien by consulting the records at the SAMD. However, in practice, the SAMD has limited capacity to ensure accurate records. The SAMD security registry is not well maintained or centralised, and it is not indexed in a readily accessible manner, such as by the debtor's name. Note that a limited electronic registration system was implemented in 2013.

Multiple liens over the same asset are permitted with the exception of liens provided via a pledge of 'documents'. Subject to any subordination agreement, seniority of liens is determined by the date of registration as evidenced by the date stamp of the registry on the document. In addition, security interests granted by law (eg, tax claims, wage claims and 'lien rights' of providers of goods and services) have priority over security interests pursuant to contract.

4 Outside the context of a bankruptcy proceeding, what steps should a project lender take to enforce its rights as a secured party over the collateral?

The Secured Transaction Decree requires that advance written enforcement notice be provided. In the case of immoveable assets, the secured creditor is required to send a notice of default to the debtor requiring either vacation of the premises or other stated remedies to be completed within 60 days from the date of receipt of such notice. A copy of such notice must be provided to other creditors with security in the same asset, the government and the owner of the immoveable asset (if not the debtor), such as a lessor. The debtor must respond to the creditor within 15 days from the date of receipt of such notice of default. In the case of moveable assets, a 10-day enforcement notice must be provided to the debtor, other creditors with security in the same asset and via a mass media notice. As per the Secured Transactions Law, in the case of guarantees, the creditor must make prior demand to the debtor before enforcing the guarantee.

Self-help remedies are not prohibited, provided that no law is violated in the exercise of the self-help remedy. Foreclosure by public auction, sale by the creditor or purchase by the creditor (upon paying the debtor any excess in value over the outstanding principal and interest) are remedies authorised by the Secured Transactions Law but are not stated to be the exclusive remedies. No judicial sale is required. While Lao law technically requires the use of the Lao kip in transactions (as discussed in

question 6), in practice many transactions are denominated or valued in foreign currency.

5 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 collateral? Are there any preference periods, clawback rights or other preferential creditors' rights (eg, tax debts, employees' claims) with respect to the collateral? What entities are excluded from bankruptcy proceedings and what legislation applies to them? What processes other than court proceedings are available to seize the assets of the project company in an enforcement?

The Law on Bankruptcy applies to all insolvent enterprises located or conducting business in the Lao PDR. General bankruptcy rules apply to both state and private companies. There are no extrajudicial processes authorised for the seizure of business assets. Upon commencement of bankruptcy proceedings, no assets of the company (including secured assets) may be sold or transferred without approval of the court and the Asset Supervision Committee.

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. In the event that the court determines the debtor to be 'bankrupt', the security interests of the secured creditors will be converted into liquidated claims for money only, which will be paid out of the liquidation proceeds in accordance with the distribution priorities set out in the Law on Bankruptcy.

The Liquidation Committee has the authority to clawback 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 clawback rights.

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.

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' claims of contractors and suppliers (akin to a mechanic's lien) take precedence over the claims of secured creditors.

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

Foreign exchange and withholding tax issues

6 What are the restrictions, controls, fees, taxes or other charges on foreign currency exchange?

Foreign exchange transactions are governed by the Law on the Management of Foreign Currency (FX Law), the Decree regarding the Management of Exchange Control and Precious Metal (FX Decree) and the Guideline on Implementation of the FX Decree (FX Guideline). The FX Law, FX Decree and FX Guideline prohibit individuals and legal entities operating in the Lao PDR from directly 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 FX Law, FX Decree and FX Guideline further provide 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, for relatively small cash transfers that fall within one of the permitted categories, the 'approval' is handled by the local commercial banks.

There is withholding tax on dividends (10 per cent), interest on loans (10 per cent), royalties (5 per cent), capital gains (10 per cent of proven gain or 2 per cent of sales price) and service fees (2.4 per cent) applicable

to foreign investors, lenders and service providers. These rates may be reduced under a double taxation agreement between the Lao PDR and the relevant country.

7 What are the restrictions, controls, fees and taxes on remittances of investment returns or payments of principal, interest or premiums on loans or bonds 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. As per 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 per cent of net profit until such reserve equals 50 per cent of the registered capital. While this is an 'accounting reserve' rather than a 'cash reserve', the requirement will limit cash dividends to 90 per cent 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 Law, FX Decree and FX Guideline permit 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 the 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 and interest on loans and bonds are subject to a withholding tax of 10 per cent. In practice, for relatively small cash transfers that fall within one of the permitted categories, the 'approval' is handled by the local commercial banks. The profit on sale of shares in a Lao PDR company is subject to a withholding tax of 10 per cent of the gain (if properly documented) or 2 per cent of the sale price (if the gain or loss is not properly documented).

8 Must project companies repatriate foreign earnings? If so, must they be converted to local currency and what further restrictions exist over their use?

Lao project companies may use offshore bank accounts only upon prior BOL approval. Without BOL approval of use of an offshore bank account to hold foreign revenue, such revenue would need to be repatriated. If foreign revenue is repatriated, there is no requirement to convert such revenue into kip. The establishment of foreign currency accounts in domestic commercial banks is permitted. The use of foreign currency to pay foreign suppliers and lenders (with respect to BOL-approved foreign-sourced loans) and to pay dividends to foreign shareholders is permitted without special BOL approval. Per the FX Law, FX Decree and FX Guideline, domestic transactions must be conducted in kip; however, in practice, the BOL allows domestic transfers of foreign exchange through the Lao banking system provided that the conversion of kip into foreign currency was not required for the transaction.

9 May project companies establish and maintain foreign currency accounts in other jurisdictions and locally?

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

Foreign investment issues

10 What restrictions, fees and taxes exist on foreign investment in or ownership of a project and related companies? Do the restrictions also apply to foreign investors or creditors in the event of foreclosure on the project and related companies? Are there any bilateral investment treaties with key nation states or other international treaties that may afford relief from such restrictions? Would such activities require registration with any government authority?

There are several restrictions that apply to foreign investment in or ownership of a project and related companies. The Investment Promotion Law requires enterprises carrying out a project that requires a concession to maintain registered capital (stated share capital) equal to not less than

30 per cent of total capital (registered capital plus long-term debt and retained earnings where 'long-term debt' is debt not payable within the present 12-month reporting period). This restriction sets a maximum debt-to-equity ratio of 70:30 for companies that engage in a concession activity. All types of companies must maintain assets equal to or exceeding the registered capital. The Investment Promotion Law requires that the minimum registered capital of the foreign investors investing in general business activities total not less than 1 billion kip.

The Land Law prohibits foreign ownership of land (whether in the form of 'land use rights' or usufruct) in the Lao PDR. Foreign nationals 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. The Investment Promotion Law authorises foreign nationals that make equity investments of not less than US\$500,000 in the Lao PDR to hold 'land use rights' for residential or unspecified commercial purposes; however, these provisions have not yet been implemented.

All security interests in immovable assets relating to a lease of land or a concession of land from the state must be notarised by the Notary Office or Department of Notary and registered with the MoNRE. In the event of foreclosure, a transfer of ownership in immovable assets relating to a lease of land or a concession of land from the state must also be registered with the MoNRE.

Government equity participation is required in the mining sector (at the option of the government) and is required in practice, although not by law, in most electric power and telecommunications projects. The government equity percentage will be the subject of negotiation.

The Lao PDR has entered into a number of investment treaties or agreements with various countries (Thailand, for example) but these treaties do not afford relief from the particular restrictions described above. An overview of taxes applicable to foreign investors operating in the Lao PDR is set out in question 15.

11 What restrictions, fees and taxes exist on insurance policies over project assets provided or guaranteed by foreign insurance companies? May such policies be payable to foreign secured creditors?

Companies seeking insurance coverage for individuals residing in, assets located in or risks occurring in the Lao PDR must contract with Lao PDR-licensed insurance companies. The Insurance Law allows Lao insurance entities to utilise foreign reinsurance for all or part of the insured risk. An assignment of reinsurance proceeds is generally required by secured creditors.

12 What restrictions exist on bringing in foreign workers, technicians or executives to work on a project?

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 15 per cent of the total workforce involved in physical labour, while employees engaged in skilled labour may not exceed 25 per cent of the total workforce involved in non-physical labour. 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 the Lao PDR are entitled to multiple-entry business or labour visas, depending on their status. The Labour Law allows a foreign national to stay in the Lao PDR for no more than 12 months; the term is renewable for a maximum period of five years. However, exceptions to this limit will be considered for management level employees and specialists.

13 What restrictions exist on the importation of project equipment?

Foreign investment enterprises conducting promoted activities or concession activities and wishing to import raw materials, equipment, machinery, and vehicles must submit an annual importation plan (or master list) for approval by the Ministry of Finance. Duties and import restrictions

are imposed on certain products, and import permits are required in some cases.

14 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 PDR laws authorise expropriation, nationalisation or seizure of private assets in specified cases. For example, 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 Contract Law provides that breach of a contract may result in confiscation by the government of the contracting party's assets. 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. The Electricity Law authorises the state to nationalise property of an owner or operator of an electricity enterprise for violations of the law.

Fiscal treatment of foreign investment

15 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 are eligible for tax incentives if they invest in a promoted activity in a promoted zone, as specified in the Investment Promotion Decree. Such incentives include limited profit tax holidays, exemptions from import duties and taxes on equipment and vehicles used in production, exemptions from import duties on raw materials that do not exist domestically, exemptions on semi-finished products imported for processing or assembly for the purpose of export and exemptions from export duties on export products. Enterprises engaging in certain promoted activities or investment projects located in certain geographic areas may be eligible for incentives under the Investment Promotion Law. The relevant government authorities will review the investment activity and must grant approval before an enterprise can receive any incentives. With the exception of the exemption on import duties, these tax incentives do not apply to mining, hydropower or plantation projects. Tax incentives for such projects must be negotiated as part of the concession agreement and approved by the National Assembly Standing Committee.

Additional tax incentives may be granted by the government in the concession agreement for an infrastructure project, but these will require ratification by the National Assembly or National Assembly Standing Committee.

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

Government authorities

16 What are the relevant government agencies or departments with authority over projects in the typical project sectors? What is the nature and extent of their authority? What is the history of state ownership in these sectors?

The government entities with authority over projects include the prime minister, 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 BOL and the Ministry of Natural Resources and Environment.

The Ministry of Finance is the designated representative of the government 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: Électricité du Laos (power generation and transmission); Lao Holding State Enterprise (power generation and transmission); Electrical Construction and Installation State Enterprise (power generation and transmission); Enterprise of Telecommunications

Lao (telecommunications); and Lao-Asia Telecom (telecommunications). The government represented by the Ministry of Finance may also hold shares directly in project companies in certain sectors, such as in the mining sector.

Regulation of natural resources

17 Who has title to natural resources? What rights may private parties acquire to these resources and what obligations does the holder have? May foreign parties acquire such rights?

The Constitution of the Lao PDR provides that all land is under the ownership of the national community (namely, the state). Natural resources on or under such land are also state property. Physical sources of electrical energy, mineral resources (whether surface, underground or underwater), natural forests and forest land are likewise state property. The rights and obligations of foreign investors of such natural resources must be set out in an agreement with the government – generally termed a concession agreement, exploitation agreement, licence agreement or project development agreement, depending upon the sector.

18 What royalties and taxes are payable on the extraction of natural resources, and are they revenue- or profit-based?

The royalties on the extraction of natural resources are provided under a new Executive Decree on Natural Resources Rates. For extraction of mineral resources, the rates range between 2 per cent and 10 per cent of the sale of mineral products. The royalties for extraction of sand, black soil, red soil and industrial gravel stone range between 3,000 kip and 7,000 kip per cubic metre. For hydropower projects, the minimum royalty is 5 per cent of the total revenue. The taxes applicable to the extraction of natural resources include VAT on the revenue and profit tax on the profit. Note that the concession agreement may provide different royalties and taxes payable on the extraction of natural resources, but these must be approved by the National Assembly or National Assembly Standing Committee.

19 What restrictions, fees or taxes exist on the export of natural resources?

The export of natural resources is subject to controls, which vary by sector. For example, electric power must be transmitted through the national electricity transmission grid, limiting the ability of a project company to engage in direct power sales to industry. In the mining sector, minerals must be processed to be semi-finished or finished products before being exported. The export of unprocessed raw minerals is not allowed. A deposit of 10 per cent of the estimated value of exported mineral products must be remitted to the Ministry of Finance. The export of mineral products is subject to approval from the Department of Mines of Ministry of Energy and Mines. The government recently prohibited the exportation of timber.

There are export duties on the export of natural sands, natural garnet, slate, marble, granite, pebbles, gravel and crushed stone. The export of mineral products that are finished products is subject to 10 per cent VAT. Exemption from export duties and taxes may be granted under the concession agreement subject to approval of the National Assembly Standing Committee or as permitted by the Investment Promotion Law.

Legal issues of general application

20 What government approvals are required for typical project finance transactions? What fees and other charges apply?

The government approvals required for a project finance transaction will vary depending on the sector concerned. Generally, project companies must obtain approval for the following activities:

- use of international financial reporting standards;
- use of offshore bank accounts, foreign-source loans and foreign exchange activities;
- water source development activities;
- project feasibility study;
- construction works;
- forestry activities; import, possession and use of wood processing and wood exploitation machinery;
- environmental, social and health impact assessments and mitigation plans, including resettlement and compensation of project affected persons;
- displacement of aquatic animals and wildlife;

- use of land for industrial purposes;
- factory establishment; and
- mineral prospecting, exploration and exploitation activities.

If the relevant statute does not provide the relevant ministry with exemption authority, any exemption from the statutory provision must be obtained via a resolution of the National Assembly or National Assembly Standing Committee. Exemptions from requirements of ordinary decrees may be issued by the prime minister.

With the limited exception of a form of non-incorporated joint venture (a business cooperation by contract) allowed under the Investment Promotion Law, a Lao project company must be established for any project located in the Lao PDR. The following approvals are required:

- for 'concessionary activity' companies: approval of the enterprise name and a Concession Registration Certificate (CRC) from the Investment Promotion Department, Ministry of Planning and Investment (IPD);
- for general activity companies: approval of the enterprise name and issuance of an Enterprise Registration Certificate (ERC) from the Ministry of Industry and Commerce (MOIC);
- approval of the company's articles of association by the MOIC in the case of general activity companies or by the IPD in the case of concessionary activity companies;
- a tax identification number from the tax department of the Ministry of Finance;
- an approved company seal from the Ministry of Public Security; and
- a business operating licence from the relevant ministry (required in certain sectors).

A number of other post-company formation licences and approvals are also required. Administrative fees are imposed by government departments for the issuance of licences and approvals.

21 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?

All contracts must be registered with the SAMD (or in the case of land-related contracts including land leases and pledges of immoveable assets, with MoNRE) to be enforceable in the Lao PDR. Security agreements relating to immoveable assets must be signed in the presence of three witnesses. Leases (including equipment leases) and security agreements related to immoveable assets must be notarised at the Notary Office or Department of Notary. Notarisation of other contracts (including guarantees) is recommended to facilitate enforcement by the Lao PDR courts as a 'true and correct' document but is not mandatory. The notarisation process requires a full Lao language translation. The registration process requires either a Lao language summary or full translation.

22 How are international arbitration contractual provisions and awards recognised by local courts? Is the jurisdiction a member of the ICSID Convention or other prominent dispute resolution conventions? Are any types of disputes not arbitrable? Are any types of disputes subject to automatic domestic arbitration?

Lao PDR law does not prohibit the choice of foreign arbitration as a dispute resolution mechanism and the government 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 the Lao PDR, international arbitral awards must be certified by the People's Court. The conditions for certification are as follows: the relevant parties must be nationals of a party 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 the 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 the 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.

Update and trends

The registration of securities in the Lao PDR has seen several developments recent years. The Ministry of Finance launched a new online registration system for pledges of moveable assets in 2013. Since then, individuals and private entities have been authorised to record security interests over moveable assets via the website: www.mof.gov.la/str/en_index.html. To register a security interest over moveable assets, the applicant must log in into a user account that requires prior application to, and approval by, the SAMD. As this electronic registry is quite recent, it is still not widely used.

The requirement of re-registration of security interests in moveable assets (including share pledges) every four years and 12 months imposed by the Secured Transactions Decree is now becoming a live issue. For security interests in moveable assets registered prior to the effective date of 20 June 2012, the deadline for re-registration is 20 March 2017. If not re-registered, such existing security interests will be automatically terminated on 20 June 2017. The SAMD has yet to fully elaborate on the exact process for such re-registration of security interests in moveable assets.

In addition, larger project financings have been facing issues with the registration fees applicable to immovable assets security agreements and land lease agreements. Under an Executive Decree on Fees and Charges first implemented in 2013, the applicable MoNRE registration fee for an immovable assets security agreement is 0.2 per cent of the principal amount of the secured loan. For a land lease agreement, the MoNRE registration fee is 0.2 per cent of the total rentals. These registration fee rates can be very material. To avoid discouraging investors, the Department of Energy Business of the Ministry of Energy and Mines has been trying to negotiate lump-sum registration fees with the MoNRE land document registration unit. While some projects have been granted lump-sum MoNRE registration fees, the MoNRE has been reluctant to agree to formalisation of the process. National Assembly Standing Committee approval is required for the lower lump sum MoNRE registration fee.

23 Which jurisdiction's law typically governs project agreements? Which jurisdiction's law typically governs financing agreements? Which matters are governed by domestic law?

Certain project documents, such as concession agreements, land lease agreements, domestic power purchase agreements and the articles of association of the project company are required to be governed by Lao PDR law. Security documents (including pledges of immovable and moveable assets) that are to be enforced in the Lao PDR courts must also be governed by Lao PDR law. 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 oftakers of electric power generally insist on the use of Thai law. Note, however, that if a contract contains provisions that are inconsistent with state or public interest, such contract will, under the Contract and Tort Law, be automatically null regardless of the chosen governing law.

24 Is a submission to a foreign jurisdiction and a waiver of immunity effective and enforceable?

The Lao PDR 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. The 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 Law on Civil Procedure provides for the recognition of foreign court judgments subject to certain conditions. In order to be recognised by the Lao PDR courts, a foreign judgment must:

- be translated into the Lao language (and this translation certified by a Lao PDR court);
- be from a country that is a signatory to treaties to which the Lao PDR is also a signatory or party (the law does not specify which treaties);
- not contradict Lao PDR laws, civil procedure rules, or rules and regulations regarding security and social order; and
- not adversely affect the sovereignty of the Lao PDR.

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

- such judgment is subject to continuing proceedings or appeals and is not a final decision;
- the losing party in the foreign judgment did not participate in the proceedings and the judgment was made in default;
- the matter considered by the foreign court was properly under the jurisdiction of the Lao PDR courts;
- such judgment conflicts with the Constitution or Lao PDR law; or
- other non-specified issues relating to the foreign judgment brought to the attention of the Lao PDR court.

Given the foregoing constraints, it is likely that a judgment from a foreign court could be enforced in the Lao PDR only following complete retrial, or retrial of the major issues, absent a treaty to the contrary.

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

Environmental, health and safety laws

25 What laws or regulations apply to typical project sectors? What regulatory bodies administer those laws?

The Environmental Protection Law establishes the framework for the preservation and sustainable management of environmental resources in the Lao PDR. The Decree 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.

Project companies

26 What are the principal business structures of project companies? What are the principal sources of financing available to project companies?

Under Lao PDR law, a licensed Lao single-purpose company must be established to engage in the development, construction, financing and operation of a project. Project companies are most commonly organised as limited companies, with foreign, local, and state companies being shareholders. If the company has a single shareholder, it is designated a 'sole limited company'. The shareholders are liable for their subscribed registered capital (stated capital) but not for the general liabilities of the limited company. Debt capital is available to project companies operating in the Lao PDR in the form of non-recourse project loans, conventional bank loans, non-bank loans from private capital sources and sovereign wealth funds as well as loans from international financial institutions.

Public-private partnership legislation

27 Has PPP-enabling legislation been enacted and, if so, at what level of government and is the legislation industry-specific?

There is no general PPP legislation in the Lao PDR, although such a law is under consideration by the government. The Electricity Law provides for various forms of public-private partnership. Government equity participation is required to be offered to the government in the mining sector (as per the Mineral Law) and is generally demanded by the government in the concession agreement negotiation process in the electricity and telecommunications sectors. The government equity percentage will be the subject of

negotiation. Although the Law on Telecommunications states that the government encourages local and foreign investors to compete and to cooperate in investment in the construction, development, and expansion of the telecommunications network and services in accordance with the systems prescribed by the government; to date, the government has been protective of those telecommunications companies holding existing licences.

The Ministry of Finance is the designated representative of the government in such public-private ownership projects but there are several state enterprises that commonly hold shares on behalf of the Ministry of Finance in project companies in the Lao PDR:

- Électricité du Laos (power generation and transmission);
- Lao Holding State Enterprise (power generation and transmission);
- Enterprise of Telecommunications Lao (telecommunications); and
- Lao-Asia Telecom (telecommunications).

The Ministry of Finance may also hold shares directly in project companies in certain sectors, such as in the mining sector.

PPP – limitations

28 What, if any, are the practical and legal limitations on PPP transactions?

While the Secured Transactions Law permits state companies (initial 100 per cent direct government ownership with sell-down to 50.1 per cent permitted) and mixed companies (formed with 50 per cent direct government ownership) to use their assets as collateral for a foreign loan, approval from the government is required for the term or length of the security interest over land owned by the relevant state enterprise. Such approval is delegated to the Minister of Finance as per the Law on State Assets. In addition, where an asset to be assigned or pledged is directly held by the government or a company having any percentage of direct government

ownership, the Decree on the Management of State-Invested Enterprises requires the approval of the Minister of Finance (or National Assembly approval in the case of assets of high value or large extent). The ability of the government to pledge its directly held assets (including shares in project companies with partial government ownership or accounts payable by such project companies (eg, taxes and royalties) may also be limited by existing government commitments in connection with outstanding government or project debt.

PPP – transactions

29 What have been the most significant PPP transactions completed to date in your jurisdiction?

The most significant transactions are:

- Nam Ngiep 1 Hydropower (US\$916 million);
- Xe-Pian Xe-Namnoy Hydropower (US\$1.02 billion);
- Nam Tha 1 Hydropower (US\$ 223.3 million);
- Nam Lik 1 Hydropower (US\$86.8 million);
- Nam Ou Hydropower (US\$770 million);
- Nam Ngiep 2 Hydropower (US\$242 million);
- Theun-Hinboun Hydropower (US\$660 million);
- Hongsa Lignite-Fired Power Project (US\$2.9 billion);
- Xayaburi Hydropower (US\$3 billion);
- Houay Ho Hydropower (US\$275 million)
- Nam Theun 2 Hydropower (US\$1.2 billion);
- Nam Ngum 5 Hydropower (US\$140 million);
- Nam Theun 1 Hydropower (US\$750 million);
- Nam Ngum 2 Hydropower (US\$750 million);
- Nam Lik 1-2 Hydropower (US\$150 million); and
- Lao telecommunications joint ventures (Vimpelcom and Lao Telecom).



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