

Laos Property Investment Guide

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Property Tenure/Ownership

Property legislation and the Constitution of the Lao People's Democratic Republic (Lao PDR) provides 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 'usufructs', 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 and usufructs in one of three ways:

- allocation by the State;
- transfer; and
- inheritance.

Major Property Legislation

- Law No. 01/97/NA on Land, dated 12 April 1997
- The Land Law No. 04/NA dated 21 October 2003 (Land Law)
- Law No. 01/90/PSA Property (Ownership), dated 27 June 1990
- Law No. 09/NA on State Property (State Assets), dated 12 October 2002
- Law on Investment Promotion No. 02/NA, dated 8 July 2009 (Investment Law)

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

Operational Requirements for Foreign Corporations

The main legislation governing foreign investment in the Lao PDR is the Investment Law, which recently superseded the Foreign Investment and Domestic Investment Laws.

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 socio-economic growth.

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

- business cooperation by contract;
- joint venture between a foreign and domestic investor; or
- 100% foreign-owned enterprise.

The requirements for establishing a joint venture between a foreign and domestic investor 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 a representative office.

For a branch office, the Enterprise Law No. 11/NA, dated 9 November 2005 (Enterprise Law), and the recently issued Branch Office Notification specify that a branch of a company is an integrated part of that company (whether foreign or domestic), meaning that it does not have separate legal status. The Branch Office Notification further specifies that the parent company shall be liable for all acts and deeds of the branch office.

The Branch Office Notification restricts establishment of a branch by banks and other financial institutions, insurance companies, international consulting companies and foreign airline companies.

A representative office is usually used by investors who only require 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 generally limited to three years (subject to limited review). Representative offices are appropriate for investors wishing to:

- supervise distributors and agents;
- collect local information for the offshore parent; and
- 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 Investment Law provides investors with investment protection, including:

- a legal regime that protects the assets and investments of foreign investors from seizure, confiscation or nationalization;
- allowing investors to lease land, transfer leasehold interests and build on or make improvements to a leased land; and
- 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; and
- ensure that their activities do not negatively affect public or national security.

Certain tax incentives are provided to promoted sectors. Under the Investment Law, the promoted sectors are:

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

A detailed list of these activities, as well as their level of promotion (i.e., level 1 for high promotion, level 2 for moderate promotion, and level 3 for low promotion) are separately issued by the government.

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 suitable to accommodate investment are classified as Zone 2. Zones with established infrastructure to support investments are classified as Zone 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.

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, the profit tax exemption commences from the date on which the enterprise starts making a profit. Once the profit tax exemption period is over, the foreign investment enterprise must pay profit tax in accordance with the Tax Law. Tax exemptions provided to mining, hydropower and plantation agriculture investments must 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, used directly for protection;
- exemptions from export duties on export products; and
- 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 government policy and the laws and regulations governing the sector concerned.

There are certain sectors in which foreign investment is strictly prohibited, including weapons and drug manufacturing, investigation and security activities, central banking activities, and activities relating to foreign affairs, national defense and political organizations.

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

Concession Rights

A concession involves authorization 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 generally involve 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 with the government, depending on the sector concerned, which will govern the activities to be conducted. In the mining and electricity sectors, the investor will generally be required

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to offer the government a negotiated equity stake in the project company.

Restrictions on Foreign Property Ownership

One of the most important principles underlying the legal framework governing land in the Lao PDR is that of land ownership. The Land Law provides that land is owned by the 'national community', echoing similar provisions in the Constitution. This principle makes it 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 'usufructs', 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 and usufructs in one of three ways: allocation by the State; transfer; or inheritance.

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

- leasing land; and
- receiving land concessions from the State (generally granted to large investments).

The lease or concession of land by the State to foreign-invested enterprises registered in the Lao PDR 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. Special economic zones' leases/concessions are limited to 75 years.

Under the Investment Law, foreigners and foreign-invested entities that invest at least USD 500,000 in equity in the Lao PDR are permitted to hold land use rights for residential, office or unspecified business purposes. However, implementation of this aspect of the Investment Law is still unclear.

Foreigners who lease land or receive land concessions from the State must fulfill certain obligations, including:

- using the land in accordance with relevant zoning objectives;
- taking steps to protect the environment;
- respecting the land use rights of neighboring persons;
- paying land lease or concession fees on time; and
- complying with the Lao PDR law generally.

Under the Investment Law, the property of investors is protected from nationalization 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; 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. 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.

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.

The Presidential Decree regarding Management of Foreign Exchange and Precious Metals (No. 01/P, 17 March 2008) (Foreign Exchange Decree) 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-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

Company's sale/transfer of properties

Profit tax

The company must report its own profit tax on the sale of properties or leasehold rights. In general, the company's income from the

sale of properties or leasehold rights will be subject to profit tax at the rate of 28% (pursuant to the Presidential Decree on the Amendment of the Rates of Business Turnover Tax, Profit Tax and Salary Income Tax No. 001/P, dated 01 March 2011 and effective on 1 January 2012). The profit tax rate will be reduced to 24% with the implementation of the Amended Tax Law, which is expected to take effect on 1 October 2012.

Value Added Tax (VAT)

The standard rate of VAT is 10% in the Lao PDR. The Lao PDR VAT system follows the conventional VAT system, where VAT charged (output VAT) can be deducted with the VAT paid (input 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; 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 VAT of the sold or leased property to another registered VAT taxpayer.

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 that can vary depending on the zone and type of land. Additional fees include service fees and stamp tax.

Stamp tax

Stamp tax applies to international organizations, individuals, legal entities, Lao population, aliens and foreigners operating the activities or earning their livelihood in the Lao PDR, with complete documents to submit or certify to all levels of the government.

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

Notarization fees

There are notarization fees for the sale and purchase agreement. Notarization fees include charges of LAK 20,000 per page and service fees of LAK 35,000 per page.

Individuals' sale/transfer of property

Income tax

The sale or transfer of property by individuals will be subject to a transfer fee of 1%, plus notarization fees, service fees and stamp tax.

Upon the implementation of the Amended Tax Law (1 October 2012), income from the following will be subject to an income tax of 5%:

- 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).

Companies renting out the property to individuals and other companies

Profit tax

The company's income that is derived from rent will be treated as taxable income and subject to 28% profit tax (24% with the implementation of the Amended Tax Law). The basis of the taxable income is the gross rental income, less deductible expenses for rental income, including the maintenance cost, interest on loan, property tax, insurance premium and depreciation on the buildings.

Value Added Tax (VAT)

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

Individuals' renting out property

Income tax

Under the current Tax Law, income from the lease of houses, land or other assets is subject to income tax at 15%. Under the Amended Tax Law, which will be effective on 1 October 2012, the income tax rate on lease income will be reduced to 10%.

The lessor is required to file a tax declaration with the Tax Department within ten 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 market value, or the lessee makes capital improvements to the property.

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Tax Treaties: Avoidance of Double Taxation

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

- P.R. China
- Thailand
- R.O. Korea
- Vietnam
- Malaysia
- Myanmar

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