



December 12, 2012 Grand Opening ceremony for Chevrolet's first dealership in Lao PDR

# Retail and Wholesale Trading Laws in Lao PDR

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On 18 May 2012, the Ministry of Industry and Commerce ("MOIC") of the Lao PDR published Decision 0977/MOIC.DTD on "Wholesale and Retail Business" (the "Decision"). The Decision serves to introduce new restrictions on the rights of foreign investors (individuals or entities) from engaging in the retail and wholesale sector.

The term "foreign investor" should be interpreted broadly. Typically, in Lao PDR this includes any locally registered entity where a proportion of the equity (even 1%) is held by a foreign person or entity.

The Decision defines wholesale business as, "the business of the distribution of goods to individuals or legal entities for further production, wholesale or retail." Retail business is defined as, "the final stage of the business of goods distribution to individuals or households for consumption."

## WHAT ARE THE RESTRICTIONS?

Article 10 of the Decision provides that any person engaging in the business of retail or wholesale must form a Lao PDR enterprise in accordance with the Investment Promotion Law and the Enterprise Law. Only fam-

ily based businesses and small traders are exempt from this requirement.

Article 5 provides that foreign investors may participate in a wholesale business; however, they may only do so through a joint venture with a Lao investor. The extent of foreign equity participation in such an enterprise is limited, "as provided under relevant laws or international trade conventions". The Decision stipulates that further regulations will be published in this regard. For now and until such time as the proportion of foreign ownership is determined under new regulations, the authorities are not inclined to approve the incorporation of joint venture firms with foreign shareholders if they intend to engage in wholesaling. In practice, therefore, joint ventures with Lao nationals for the purposes of wholesaling are not permitted.

Article 6 clearly provides that retail businesses are reserved for Lao citizens only. Foreigners may distribute their goods to retail outlets through distributors or franchisees which are 100% owned by Lao citizens.

Article 7 permits those enterprises which hold a license to own and operate a factory under the Investment Promotion Law to

distribute their manufactured products by way of wholesale or retail. Article 7 does not distinguish between foreign and domestic investors. Such enterprises need not undertake any further registration in order to wholesale or retail their products. However, such enterprises are strictly prohibited from wholesaling or retailing products which are not manufactured by them.

## TO SUMMARIZE THESE RESTRICTIONS:

- Foreign investors may engage in the wholesale trade in the Lao PDR only by way of a joint venture with a Lao partner. The shareholding percentages are yet to be determined. At present and in practice, joint ventures with Lao partners for the purpose of the wholesale trade will not be approved by the authorities.
- Foreign investors may not engage in the retail trade in the Lao PDR. Only Lao citizens or enterprises 100% owned by Lao citizens may do so.
- Foreign investors who are permitted to own and operate factories in the Lao PDR may wholesale and retail their manufactured products but may not wholesale or retail the products of any other person or entity.

## A NOTE ON UNFAIR TRADE PRACTICES

The Lao PDR has set limitations on the use of pricing controls and exclusivity provisions that are often included in distribution or franchising agreements. Various provisions of the Trade Competition Decree No. 15/PMO of 2004 (the "Trade Competition Decree") prohibit "unfair trade practices." The Trade Competition Decree establishes a Trade Competition Commission; however this body is not yet operational. Accordingly and for the time being, the Trade Competition Decree is not strictly enforced. Nonetheless, the Trade Competition Decree does have the force of law and it provides far-reaching restrictions, which include prohibitions against "unfair trade practices" that are broadly defined.

Even though the Trade Competition Decree is not strictly enforced, it is possible that unfair trade practices could be referred to a court of law in civil proceedings. Therefore, when considering the various options below, care should be taken against adopting any contractual provisions which might be construed as a violation of the Trade Competition Decree.

## OPTIONS AVAILABLE TO FOREIGNERS IN THE LAO WHOLESALE AND RETAIL SECTOR

In light of the restrictions stipulated in the Decision, the scope for foreign firms or individuals to engage in wholesale or retail in the Lao PDR is limited. Options include:

**Lao Distributor:** The Decision permits a foreigner to appoint a 100% Lao owned distributor through a distribution agreement who will distribute products to wholesalers and retailers in the country.

A distribution agreement may contain a wide variety of provisions which may enhance the efficiency of the supply chain in the country. The agreement may stipulate the manner in which products are to be stored, transported, promoted and sold. It may also be appropriate to incorporate certain performance standards or service levels in a distribution agreement. Such standards may be enforced through contractual mechanisms such as service level debits and credits which influence the amounts payable to the distributor. Care should be taken to protect the foreign party's intellectual property.

**Lao Franchisee:** A franchise is effectively a license that entitles the franchisee to

conduct the business of the franchisor in a particular market and according to certain specified conditions. Franchise agreements typically grant a broader range of licensed rights than distribution agreements. Business processes and methodologies, pricing calculations, approved suppliers, quality controls, and technology platforms are often specified in franchising agreements. In return for the use of these rights (and possibly for ongoing support provided by the franchisor), the franchisee pays a franchise fee to the franchisor.

In light of the specific recognition given to franchising arrangements in the Decision, a foreign entity wishing to distribute products to the Lao wholesale and retail markets might consider appointing a Lao person or 100% Lao-owned firm as a franchisee.

**Joint Venture with Lao Wholesaler:** While the Decision specifically permits foreigners to form a joint venture with a Lao partner to engage in the wholesale trade, the extent of required foreign participation in such an enterprise is not specified and in practice, at present, the authorities will not approve this structure. However, once further regulations are published, this may become a further option for foreign participation in the wholesale trade.

**Processing or Re-Processing Imported Goods:** The Decision specifically allows manufacturers to wholesale and retail goods manufactured by them. The question that arises is how broadly manufacturing is defined.

An investment in manufacturing in the Lao PDR must be approved by the MOIC or, if it is a project involving concessionary activities, the Investment Promotion Department ("IPD") of the Ministry of Planning and Investment. Foreign investors intending to invest in the manufacturing sector would need to submit a wide variety of documentation and meet the minimum capital requirements. It remains to be seen whether an entity which processes imported products by way of packaging, repackaging, labeling or relabeling would fall within the category of a manufacturer. However, if this were so approved, foreign entities that wish to distribute their products in the Lao PDR without the use of a local distributor might consider setting up an approved manufacturing enterprise, importing raw materials (processed or semi-processed goods), processing (or reprocessing) the same and distributing the finished products to the end consumer.

## Sale of Goods Ancillary to Services:

While it is common for firms that are engaged in the supply of services to sell certain ancillary products (e.g. the sale of spare parts in connection with maintenance contracts, the sale of hardware components or software in connection with IT consulting), it is not clear whether such practices would violate the Decision.

A foreign investor may be deemed to be engaging in the "retail" trade even if the sale of the ancillary goods is a relatively minor part of its main business. There is no provision in the Decision for exemptions to be granted in these cases. Given the widespread international practice of services enterprises providing certain limited sales of components and spare parts, it remains to be seen whether the Lao PDR authorities may tolerate such "retail" activities by foreign investors.

**Supply Chain Support Services:** Foreign firms that wish to maintain control over the supply chain up to the point of sale may consider providing supply chain management services (technical, logistical, warehousing, promotional and other support) to the distributor on a fee paying basis. Depending on the nature and scope of the support services, a Lao PDR entity (branch office or subsidiary company) may need to be established in the country.

**Direct Sale or Lease to End User:** The direct sale or lease by a foreign vendor to the Lao end user (project, consumer or wholesaler) is another option. The Lao importer would need to obtain all necessary import licenses and obtain the necessary foreign exchange in accordance with Bank of Lao PDR ("BOL") (central bank) capital control regulations to pay the purchase price in foreign currency.

This model may not be suited to foreign firms that intend to distribute large volumes of goods to a broad consumer market as it would mean engaging in a large number of day-to-day cross border transactions. It may, however, be suited to vendors of high value items where the anticipated volume of transactions is relatively low. ■

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