

BUSINESS ISSUES BULLETIN

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THE BUSINESS INFORMATION CENTER AT THE LAO NATIONAL CHAMBER OF COMMERCE AND INDUSTRY

The New Enterprise Law :

A Major Step Towards Improving Business Environment in Lao PDR

The new Enterprise Law (EL), which was approved by the National Assembly in October 2005 and officially promulgated by the President in April 2006, is considered an important step towards improving the business and investment climate of Lao PDR. This bulletin summarizes the law's major features and presents some relevant comments from key stakeholders.

An overview of the Enterprise Law

The EL will be the primary law governing all enterprises that operate in Lao PDR, including domestic, foreign-owned and state-owned enterprises. It makes substantial adjustments to the previous Business Law, including, but not limited to: changes in the enterprise incorporation system, the requirements for minimum registered capital, the availability of business registration information to the public, and the creation of single access points for businesses.

Foreign investors looking to incorporate in Lao PDR should note that although they are required to comply with laws and regulations that specifically apply to foreign-invested companies, to the extent that such rules are unclear, they will also be subject to the Enterprise Law.

Key Provisions and Changes

➤ Enterprise incorporation

The current "system" of company registration and licensing in Lao PDR is governed by several measures: the Business Law, Manufacturing Processing Law, Tax Law, Domestic and Foreign Investment Promotion Laws, and approximately 50 line ministry regulations. A recent study conducted jointly by IFC-MPDF and the Ministry of Commerce found that the average time required to formally incorporate a new business venture in Lao is excessively and unnecessarily long. For example, the study estimates that, based on the maximum number of days stated in the relevant regulations, it can take up to 219 working days to

formally establish just a small guest-house, and around 186 working days to incorporate a food manufacturing company.

The new EL radically changes these complicated, time-consuming procedures, as it is based on the principle that setting up a company should involve notifying the state of its operations (through registration) rather than getting the state's permission to operate (through a license). Under the EL, investors interested in areas other than those on the "negative list" of closed or conditional sectors may register their businesses with the commercial agencies and obtain the necessary enterprise registration and tax certificates within ten days of submitting the application documents. After these certificates have been issued, a newly incorporated business is entitled to pursue its operations freely without having to seek further permission or verification from the relevant sectoral agencies.

For those investors seeking to operate business activities that are specified in the negative list, the process is slightly more detailed. First, they must apply to the commercial agencies for an enterprise registration certificate. The commercial agencies then request the relevant sectoral agencies to consider the application. These line ministries have ten working days within which to send a written response. If approved by the relevant sectoral agencies, the investors will receive both the enterprise registration certificate and the tax registration certificate within three days of



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The "Business Issues Bulletin" provides those interested in business issues with a short summary and analysis of a particular topic affecting the business environment in Lao PDR, and exposure to different opinions held by various stakeholders on the topic.

The statements and opinions presented here are only meant to provide additional reference material and do not reflect official opinion of the Lao National Chamber of Commerce and Industry (LNCCI) or IFC-MPDF.

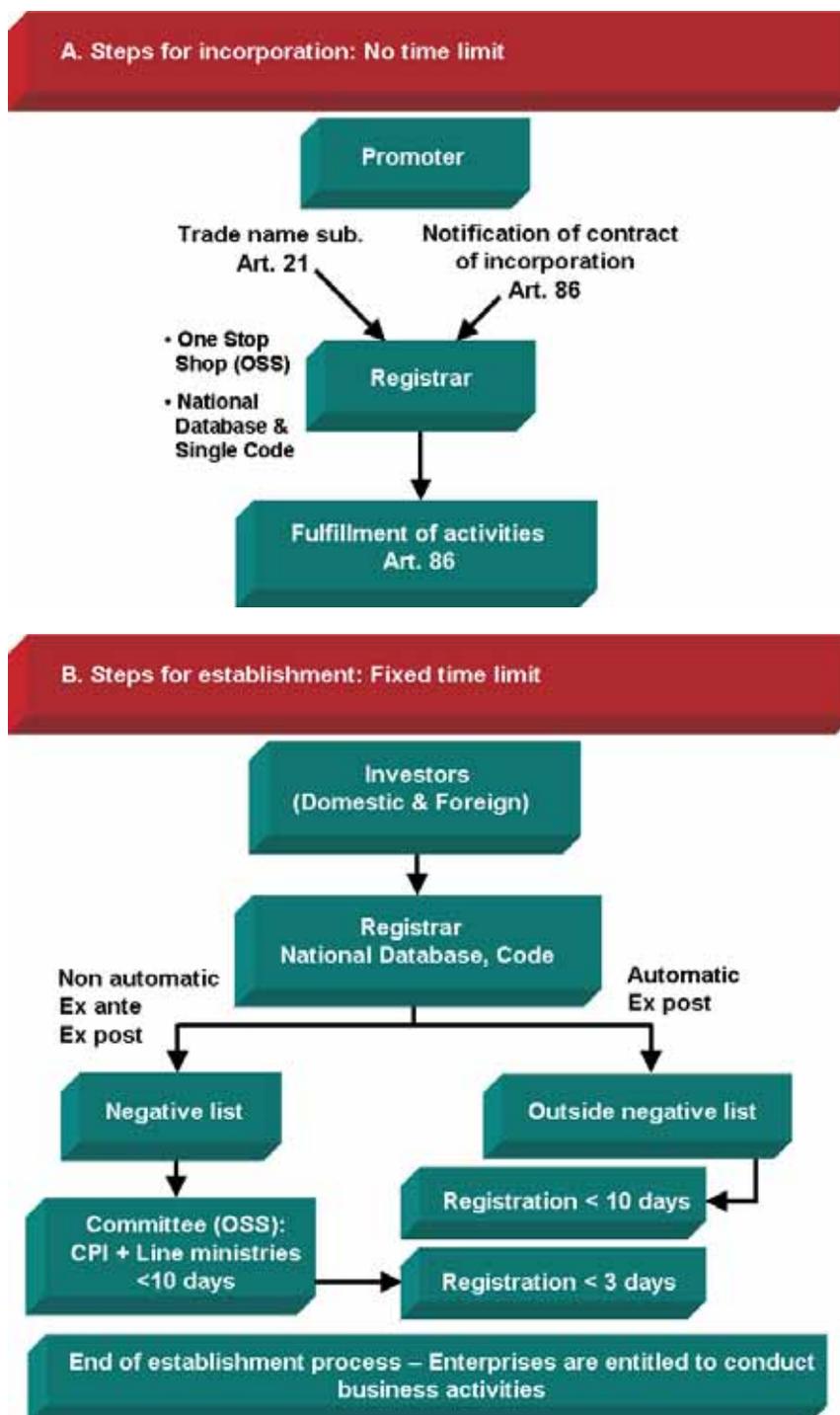
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approval (see detailed process in the diagram below).

➤ Elimination of minimum capital requirements

The existing Business Law requires different levels of minimum registered capital for different forms of businesses:

Diagram for enterprise registration



For a Sole Trader Enterprise, the minimum registered capital is 1,000,000 Kip (approx. USD100)

For a Limited Liability Company the minimum registered capital is 5,000,000 Kip (approx. USD500)

For a Public Company, the minimum capital requirement is 50,000,000 Kip (approx. USD5,000)

Minimum capital requirements were originally established to protect potential claims by creditors and society against failing or untrustworthy businesses, but there is little evidence that they actually achieve this purpose. Under the old law, the minimum capital can include in-kind contributions, such as management time, which is hardly of value in cases of insolvency; furthermore, the minimum capital can be withdrawn immediately after registration. In fact, although the minimum capital requirements in Lao PDR are not high by international standards, they may actually discourage enterprise formation.

Therefore, to further encourage private investment, the new EL proposes eliminating minimum capital requirements. However, the registered capital requirement for various forms of businesses will still be subject to other specific laws and regulations that may set different thresholds, especially in highly regulated industries such as banking or insurance.

➤ **Making business registration information available to the public**

Under the new law, anyone who pays the appropriate fees may access an enterprise's registration documents. In addition, the law will enable different government offices, including those of tax administration, customs, statistics, and the municipalities and provinces in which an enterprise operates, to obtain company data from the business registry. Not only will this save entrepreneurs from having to file the same information more than once with multiple agencies, but it will also enable them to tap into the registry to identify potential business partners, new markets and products. Policy makers, on the other hand, will be able to use the registration data to monitor the way the private sector develops over time.

➤ **Creation of single access points for businesses**

In the past, reforms to simplify the business startup process in many countries, including Lao PDR, focused on a “one-stop” shop for entrepreneurs that would then deliver application documents to all the other regulatory agencies. However, international experience shows that in practice, this often meant a “one-more-stop” shop that often increased delays rather than reducing them.

The new law incorporates an alternative model in which an existing agency the company registry is nominated as a single access point that brings together representatives from other agencies. It is envisaged that only minimal information about each company and its activities, including data on its startup capital and ownership structure, will be collected. The founders or authorized representative of the company must submit this information and will be held accountable for its accuracy. This new model avoids ex ante verification, including inspections, before the registration takes place and will significantly simplify the business startup procedure in Lao PDR.

Viewpoint of the Enterprise Law Drafting Committee

“The Enterprise Law is the key piece of legislation governing the establishment, operations and closure of businesses in Lao PDR. The law is based on the following four key principles:

The government should move away from the concept of previous control towards that of facilitation;

Doing business is a legitimate right of the people, according to the Constitution and the Party and State's policies on socio-economic development;

Business registration is the process of giving notice of establishment rather than of getting permission for establishment;

There should be a level playing for all economic actors, including domestic, foreign, private and state-owned enterprises.

After implementation of the new EL, business entry will be simplified; the time required to start a business will be reduced from approximately 200 days currently to only about 10 -13 days. The procedures for enterprise incorporation, as described in the diagram above, will be uniform for

both domestic and foreign enterprises. The law forbids the imposition of new requirements related to business registration renewal, which means that an enterprise must only go through registration once during its entire duration. In order to facilitate business creation and expansion, the EL also abolishes minimum capital requirements, which is in line with international best practices.

The government has the ambitious goal of drastically improving the business operating environment in our country. However, it cannot achieve this alone – it requires all of its partners, both in the private and public sectors, to work together. That said, to be effective, all parts of the government need to understand what they can do to maximize the support they provide to businesses and minimize the burdens that they impose on enterprises.”

Dr. Somphuang Phienphinit, Director General of the Economic Research Institute for Trade and Vice Chairman of the Enterprise Law Implementing Committee

Viewpoints from the donor community

“The new Enterprise Law creates a level playing field for private businesses, significantly simplifies regulations and procedures to start up a business, moves from discretionary licensing to more automatic registration as the main principle by having a “negative list” of sectors where entry of private business is conditional, and by creating a one-stop-shop for business registration.

Both the Enterprise Law and Domestic and Foreign Investment Laws (implementing decrees for which were issued at the end of 2005) include positive features. However, it should be noted that there are also some shortcomings and inconsistencies. For example, while Enterprise Law reduces the number of licenses and substitutes them with post-establishment registration, the Investment Laws require an investment license for domestic investors and keep a discretionary licensing regime for awarding them. While both sets of legislation envisage a one-stop-shop, the Enterprise Law and Investment Laws place them in different government agencies. The Investment Laws envisage a “positive list” of industries with restricted entry, instead of “negative list”. These

inconsistencies are unfortunate and Government recognizes that they will need to be resolved through further review of the Investment Laws.”

The World Bank, Lao PDR Economic Monitor, April 2006

“The new Enterprise Law is an unprecedented step made by the Lao Government to facilitate enterprise establishment and activity. It makes a clear conceptual differentiation between company registration and licensing requirements by introducing the “negative list” for prior approval. With the implementation of the new law, the ex-post approach to company registration will apply to all business sectors other than those on the negative list. Scrapping the minimum capital requirement should also encourage the establishment of new companies.

Another important component of the law is its introduction of a company registration database. An effective business registry that provides data on enterprises will not only provide policymakers with a deeper understanding of the business sector and help them prepare appropriate measures, but also supply entrepreneurs with useful information.

To ensure that the new Enterprise Law is implemented efficiently, the Government should take the lead in:

- (i) preparing the negative list, which should be as short as possible;
- (ii) coordinating and harmonizing the new Enterprise Law with existing regulations, such as the Domestic and Foreign Investment Promotion Laws and the Tax Law; and
- (iii) simplifying documentation requirements and standardizing registration procedures.

Coordination efforts should not be limited to the central government. Streamlining of registration procedures will also be necessary at local levels.

The smooth and efficient implementation of the new Enterprise Law is eagerly awaited by businesspeople. Donors are willing to assist the Government's efforts to promote a more active business sector in Lao PDR.”

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