



## **Improving the Business Environment Through Constructive Dialogue**

### **Lao Business Forum-13<sup>th</sup>**

#### **Position Paper on Starting a Business and Investment Incentives**

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- With respect to His Excellency, Mr. Prime Minister and Chair of the Meeting
- and to all participants

I, on behalf of the Private Sector Working Group, have the honor to present to His Excellency a position paper regarding the issues that is related to starting a business and investment incentives which consist of:

1. Procedure for issuing investment license.
2. Procedure for issuing business operating licenses.
3. Access to customs duty and VAT incentives under Investment Promotion Law.

Details are as follows:

#### **1. Investment License Procedure:**

Attracting more domestic and foreign private investments is one of the major goals of the Government of Laos, in order for ensuring that the national economy will continue to grow sustainably and in balanced. It is part of the workplan in the National Socio-Economic Development Plan. Recognizing the importance of private investment, the government issued Order No. 03/PM dated 21 January 2020 on the improvement of the process of acquiring investment and business operating licenses. However, in practice, in applying for an investment license in Lao PDR, investors still face many obstacles, such as:

- Legal restrictions make it difficult to apply for investment licenses in Lao PDR, especially with regards to foreign investment. According to the OECD FDI Regulatory Restrictiveness Index (IECD) of 2020, legal barriers for foreign investors Lao PDR still has the highest is still high compared to other countries. These include restrictions on foreign investors' shareholding capacity, inspection procedures on investors and their investment areas, restrictions on the number of foreign employees, and restrictions on operations such as opening branches, and so on.
- Unnecessary duplication of steps makes applying for an investment license time-consuming. At present, in accordance with the Decree on the Approval of the List of Controlled Activities and Concession Activities of the Lao PDR No. 03/ PM dated 10 January 2019, for

operating business activities, under the control list, the investors must first submit all required documents at the One-Stop Service office to apply for an investment license. In applying for an investment license, the One-Stop Service also ask the relevant authorities to provide thorough technical comments and consideration on the application before deciding whether or not investment license can be granted. Once the investment license has been obtained, the investor must apply for business registration with the Ministry of Industry and Commerce/PICO, then apply for business operating license with the relevant authorities, which again, would require the same process of submitting documents and requesting for in-depth technical comments and consideration from the relevant authorities on the application. Thus, the former process was seen as a duplication.

- The current List of Controlled Activities consist of many low-risk activities. According to the definition specified in the Investment Promotion Law and the Decree on the accreditation of List of Controlled Activities No. 03/ PM dated 10 January 2019, the Controlled Activities refers to “the types of businesses that affect national security, social order, good traditions of the nation and the environment, society and nature”. However, the current list of Controlled Activities shows that there are many activities that have low or no risk to national security, social order, good national traditions and the environment, society, and nature.
- The specific legislation of some government sectors involved in the issuance of investment licenses is not in line with the Investment Promotion Law. Pursuant to the Law on Investment Promotion and the Decree on the accreditation of Controlled Activities and Concession Activities of the Lao PDR No. 03 / PM dated 10 January 2019, the issuance of investment licenses is limited to 25 working days. However, in practice this could not be achieved because some of the relevant departments have specific legislation, stipulating a longer timeframe for granting comments on the issuance of investment license, which exceeded the timeframe specified in the Investment Promotion Law (in which comments must be provided by 8 working days).
- The internal process of documents of some authorities involved in the issuance of investment licenses is delayed due to unnecessary consideration procedures. For instance, the application has to be submitted to the Ministry Office first, implies that the application is sent to the Ministry Office for consideration before sending to the relevant department for examining and consideration. The documents can then be submitted to the Minister for approval and are then again sent back again to the Ministry Office.
- Investors have limited access to information on specific procedures, terms and conditions related to setting up a business from the relevant sectors. Thereby, making it a difficult decision to invest in Lao PDR.

## **Proposed Recommendations**

1. Propose the Ministry of Planning and Investment to consider to:
  - 1) Coordinate with the relevant authorities to reconsider the activities in the Controlled Activities list, while aiming to reduce the activities in the current list, and periodically adjust the list to improve the investment attraction, and gradually consider removing the process of applying for Investment License, since investors still must go through the

- processes of applying for business registration and the business operating license, where validity and appropriateness of the investment can be examined by relevant authorities.
- 2) Specify clear conditions (such as risk rating according to each specified criteria) and apply uniformly across all sectors in determining which activities should be kept in the Controlled Activities list.
  - 3) Specify clear conditions for consideration in issuing investment licenses, and the conditions should be shown on MPI's website.
  - 4) Coordinate with relevant ministries, involving with issuing investment license, with the aim of streamlining the procedure.
  - 5) Gather and provide information on all procedures including specific conditions and requirements of the relevant sectors that is related to starting business in Lao PDR. Make this information easily access to and available online to investors.
  - 6) Improve the One-Stop-Service to be the single point to coordinate with the relevant authorities for the issuance of investment license in accordance with the purpose of the establishment of the One-Stop-Service. This simply means that investors can apply, receive information, and obtain a business license in one place without having to further coordinate with other related departments themselves.
2. Propose to the Government to periodically re-evaluate the implementation of Order No. 03/PM on the improvement of the procedures for issuing investment and business operating license.

## **2. Procedures for issuing business licenses of the relevant departments**

Following the consultations on starting business issue in the process of Lao Business Forum, the business sector acknowledged that the relevant government sectors have took efforts to improve the procedures, especially the business registration process, which is seen as more convenient and faster now. Nevertheless, after the business registration process is the process of applying for a business license, which is still seen as challenging. Most investors find that the process of applying for a business operating license with the relevant departments is still complicated, such as:

- Several line agencies have not provided specific guidelines or clear steps and predictable timeframes for issuing business-operating licenses. As a result, the issuance of business operating licenses has often been delayed. In addition, the application form accepting system and the reporting system within some ministries, in charge of issuing business operating license, is too complicated (i.e.: an application form is submitted to the ministry's Office for study before further submits to the relevant department)
- The procedure of obtaining business operating license at provincial level has not improved as the central level had specified.
- Foreign investors interested in establishing a business in Lao PDR still find it difficult to access the information of sector specific conditions for issuing business operating license, such as new regulations and legislation, the minimum registered capital requirement for each sector and so on.

## **Proposed Recommendations**

1. Propose to MoIC to continue take the lead and work together with line ministries to streamline the procedure for applying for business licenses, especially consider applying risk-based method for granting permission (i.e. allowing low-risk activities to be operated after obtaining business registration certificate without having to apply for a business operating license).
2. Propose to each business licensing authority to consider the followings:
  - 1) Improve its business licensing procedure, making it faster and having clear and precise requirements for investors.
  - 2) Strictly implement same procedure throughout the country.
  - 3) Create better information dissemination platforms on the requirements and procedures for starting a business, especially through an online system.

### **3. Access to incentives on Customs duties and VAT under the Investment Promotion Law**

The current investment promotion policy allows investment projects to apply for exemption of customs duties and VAT on raw materials and equipment that are imported. However, in the case that such investment projects purchase raw materials and equipment from local producers to serve the project, it does not exempt from VAT as in the case of import. Local producers feel that such policy implementation is unfair and is putting them at a disadvantage when competing with international producers who are supplying these materials to the projects. This is because local producers must levy a 10% value-added tax on the value of goods, which increases the price of their products by at least 10% compared to imported goods.

The results of past discussions in Lao Business Forum show that the relevant authorities, especially Ministry of Planning and Investment and The Ministry of Finance, have also agreed with the business sector's proposals. However, it will not be possible to implement any changes without the official agreement of the two parties and until the relevant legislation is amended to accommodate this policy.

#### **Proposed Recommendation:**

propose to the Ministry of Planning and Investment to coordinate with the Ministry of Finance to discuss and consider exempting VAT for investment projects that are under the Investment Promotion Law on the purchase of goods and raw materials that were domestically produced.

Thank you