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TVS CONSULTING CO., LTD.

INVEST IN LAOS

A TOOLKIT FOR FOREIGN INVESTORS

AUGUST 2006

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Invest in Laos

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I. EXECUTIVE SUMMARY

1) Country Information

The Lao People's Democratic Republic (Lao PDR), commonly referred to as "Laos" abroad, and is a land-linked country in the heart of Southeast Asia. Encompassing 236,800 square kilometres and sharing borders with China in the north, Cambodia in the south, Vietnam in the east, Myanmar in the northwest and Thailand in the west it provides a land link to all of the countries in the region. It connects its five neighbours to each other and has the potential to be a valuable transportation link. Laos is characterized by two main geographical zones: the central plains along the Mekong River and the mountainous regions to the north, east and south. The climate is governed by two monsoons, bringing rain from May to September and a dry season from November to February.

Laos has a population of approximately 6 million people with a growth rate of 2.8% per year. The Lao population comprises three main ethnic groups: the Lao Loum (lowland), 68%, the Lao Theung (low mountains), 22%, and Lao Sung (high mountains), 10%. The population density of Laos is 23 persons per square kilometer and roughly 85% of the population lives in rural areas. The major cities are Vientiane, the capital, Savannakhet, Pakse and Luang Prabang. Buddhism is the dominant religion with more than 85% of the population as believers.

The official language of the Lao PDR is Lao. Millions of people in the region speak the language; in fact, there are more speakers of the Lao language living in Thailand than there are in Laos. Thai is commonly spoken in the country, as the Lao and Thai languages share much of their vocabulary and grammar. French is spoken, but English is emerging as the readily used language in business.

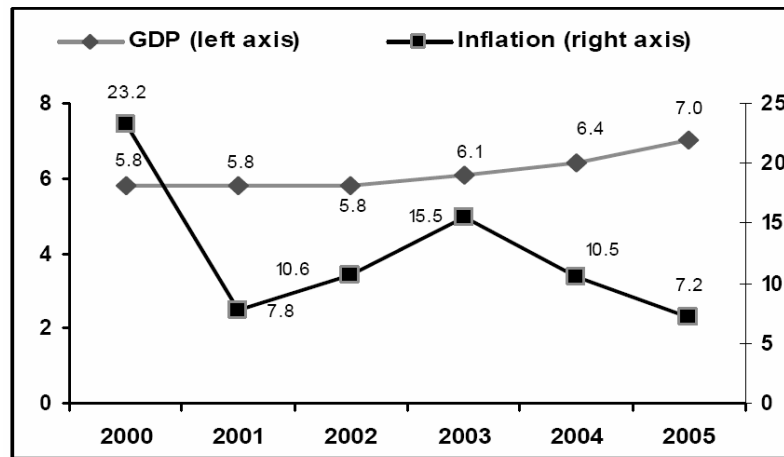
Education is compulsory through age 12 in Laos. The education system is organized with six years of primary education starting at age six, three years of middle and three years of high school. University enrolments have been expanding rapidly over the past decade.

2) Economics Overview

In the 1990s, Lao PDR grew at an annual average rate of 6.3 percent, and the incidence of poverty fell from 45 percent to 39 percent of the population in 1997-98 and to 33.5 percent in 2002-03. The crisis years of 1998 and 1999 saw inflation climb to an annual average of 110 percent and growth fall to 4 percent, but the resolution of the regional crisis and Lao's own policies stabilized the economy and resumed growth of around 6 percent. The adoption of a stabilization program since 2000 and the implementation of a phased program of reforms since 2001 – in public expenditure management, banking, state-owned enterprises, forestry, trade and private sector – has contributed to this improvement. During 2000-03, inflation has averaged 15 percent and real GDP growth averaged around 5.6 percent annually. The approval of Nam Theun 2 hydro-power project by the World Bank Board on March 31, 2005 and by the Asian Development Bank Board on April 4, 2005 means that various financing partners have committed a total of US\$ 1,450 million to Lao PDR to finance US\$1,250 million of project cost and US\$200 million of contingency. This investment is expected to occur between now and 2009. The resulting annual inflow is very large relative to the

size of the Lao PDR economy, and will have significant growth effects during that period, even though most of this will comprise of imports.

Figure 1. GDP Growth (%) and CPI (%)



Source: Lao PDR Economic Monitor, the World Bank.

Real GDP growth in Lao PDR rose to 7 percent in 2005, from 6.4 percent in 2004 (figure 1). All sectors grew rapidly – with industry growing the fastest even if from a relatively low base. The share of industry in GDP now exceeds 25%. The stimulus of large projects in mining and power sectors has more than offset the dampening effects of the expiry of the Multi-Fiber Agreement (MFA) quota system in end-2004, the high international oil prices in 2005 and 2006, and the slowdown in Thailand’s growth in 2005.

The Lao PDR economy is projected to grow at 7.1 percent this year; and is expected to grow steadily at 6-7 percent in the near future. A large part of this growth will come from increased foreign investment flows in hydropower and mining; without large projects and increased investment and exports in these sectors real growth would have been about one third lower. Therefore, promoting growth in sectors other than mining and hydropower is increasingly important for ensuring stable and strong GDP growth in the long-run. The government’s continued efforts in liberalizing trade and improving the investment climate are thus steps in the right direction.

Macroeconomic conditions have remained broadly stable. Inflation has been brought down to single digits, with the period average inflation rate falling from 15.5 percent in 2003 to 10.5 percent in 2004 and 7.2 percent in 2005. Inflation did pick up in third quarter of 2005 as domestic oil prices rose due to jump in world prices and as rice prices rose due to floods. The cash budget deficit has been kept within the 4 percent (of GDP) target, despite slow revenue growth and salary increases. The kip exchange rate stayed within a very narrow band, and reserves were kept at level equivalent to three months of imports. The Bank of Lao PDR (BOL) maintained monetary stability. The balance of payments held up well in 2005, despite some adverse external shocks. A surge in mining exports offset the impact of higher oil prices. But the imports associated with NT2 and mining projects caused the external current account deficit to rise to 15 percent of GDP.



3) **Politics**

The official motto of Lao PDR is "Peace, Independence, Democracy, Unity, and Prosperity." Laos is led by the Lao People's Revolutionary Party (LPRP) and directed by a Party Congress which meets every four or five years to elect Party leaders. Some important administrative organizations are the Prime Minister's Office, the Bank of Lao PDR, the State Planning Committee, and the Nationalities Committee and others. The National Assembly, the government's legislative body with between 40 and 45 members, meets once a year to approve the laws and legislation of the country. The President of Laos is the Head of the State and is elected by a two-thirds majority of the National Assembly. Laos is divided into seventeen provinces and one special region. The country is further divided into 139 districts and 11,047 villages.

From 1975 to 1990, Laos did not have a constitution. A constitution was drafted and approved by the National Assembly in June 1990. The Constitution explicitly permits private enterprise and foreign investment. The first national legal Code was not passed until 1988: the Code on Foreign Investment. In 1994, the Law on the Promotion and Regulation of Foreign Investment superseded the Code. Over the 1988-2000 periods, the government passed a host of laws to govern the economy: laws on tax, customs, business, banking, secured transactions, land, mining, domestic investment, labour, electricity, transportation, and so on.

The Constitution is the supreme law of the country. All other legislation issued must be consistent with the Constitution. The People's Court is the ultimate legal authority. It consists of the Supreme Court, Provincial Courts, the Municipality Court, the District Courts and Military Courts. The judiciary consists of members of the Supreme Court and the State Public Prosecutors Office. The National Assembly appoints all judges of the Supreme Court and the State Public Prosecutor.

II. WHY INVEST IN LAOS?

Tax and Duty Incentives

The DDFI automatically awards all approved foreign investors an incentive tax rate of 20 percent, compared to the general tax rate of 35%. Unlike most other countries, this 20 percent rate applies to foreign investment in all sectors of the economy and does not depend on company or performance. Foreign investors must pay a 10 % dividend withholding tax. Foreign investors and expatriate personnel pay a flat 10 % personal income tax.

There is a minimum tax on all companies (unless tax holidays are granted) of 1% of turnover, i.e., foreign-owned companies pay either 20 % tax on profits or 1 % tax on turnover, whichever is greater. In special cases, primarily for hydroelectric projects or resource-based development projects, tax holidays can be negotiated.

As an incentive to all foreign investors, a duty of only 1 % is charged for imports of capital equipment, spare parts, and other means of production. No duties or import turnover taxes are payable on any imported inputs for export production. Foreign investors whose products substitute for imports can negotiate incentive duties and turnover taxes on imported inputs on case by case basis.

At present, an administrative ruling of the Minister of Finance allows all imports subject to incentive duty rates to be free of turnover tax and excise tax. Producers, whose output is sold on both the domestic and export markets, pay no duty on the inputs for export production and a negotiated rate on inputs for import substituting production. This simple system obviates the necessity of instituting cumbersome duty drawback systems or creating free trade or export processing zones.

In the future, however, the government may move to a system in which foreign investors face the same tax and tariff incentives as do domestic investors. Under this system, investment in "promoted industries" would receive tax and duty reduction incentives, but investment in other sectors would pay the normal corporate profit tax, turnover tax and duty rates.

Non-tax incentives

The government provides the following incentives to all foreign investors:

- Permission to bring in foreign nationals to undertake investment feasibility studies.
- Permission to bring in foreign technicians, experts, and managers if qualified Lao nationals are not available to work on investment projects.
- Permission to lease land for up to 20 years from a Lao national and up to 50 years from the government.
- Permission to own all improvements and structures on the leased land, transfer leases to other entities, and permission to sell or remove improvements or structures.
- Facilitation of entry and exit visa facilities and work permits for expatriate personnel.

The government also offers guarantees against nationalization, expropriation, or requisition without compensation.

Under the FI Law, the government does not offer incentives of import protection (in the form of increasing duties or banning imports) for import substituting investments and it does not provide measures to restrict further entry to reduce competition for current investors. The policy of not reducing market competition as an incentive for investors is not a feature of the foreign investment systems of most other countries, such as Thailand and Vietnam, in the region.

III. FORMS OF BUSINESS AND ORGANIZATION

Under the Business Law (1994), the Ministry of Trade and Tourism (MTT), Department of Enterprise Registration is responsible for registering all businesses in a Company Register. The Business Law makes no distinction between foreign and domestic companies. There are several types of business forms in Laos from which an investor may choose:

- Representative office
- Branch office
- Sole Trader



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- Partnership
- Limited Company
- Public Company
- Private-State Mixed Enterprise

The Business Law regulates the formation, conduct of affairs, and liquidation of all companies. (The Bankruptcy Law of 1994 also deals with liquidations.) In order for a company to be considered as a lawfully established juristic entity, it must be properly registered with the MTT and obtain an Enterprise Registration Certificate. If no errors or omissions are made in the application form or in the documentation submitted, the application will be processed within 10 to 30 days.

Most importantly, a foreign investor must first obtain a Foreign Investment License (FI License) before applying for a Business License. The Articles of Association of a foreign investor will already have been vetted and approved by the Department of Domestic and Foreign Investment (DDFI) as part of the approval process to obtain a FI License.

1. Representative and Branch Offices

The Business Law does not mention either representative offices or branch offices. Many branch and representative offices have been established in Laos. The FI Law permits the establishment of both representative offices and branch offices in Laos. The DDFI has standard descriptions for both these forms of business operations. Under the DDFI interpretation of a representative office, such an office cannot conduct business on its own, but must refer all business operations to units outside the country.

A foreign enterprise established in Lao PDR may be either a new company or a branch office of a foreign company. A branch office of a foreign company may have the Articles of Association of the parent company or separate Articles of Association providing they are consistent with the laws and regulations of the Lao PDR. The procedures for registering a branch office are the same as for any other type of company. A branch office is regarded as the same legal entity as its parent company. The parent company, therefore, can be held responsible for all liabilities of the branch in Laos.

2. Partnership

A partnership can be formed between two or more partners to carry out business. There is no capital requirement for a partnership. The partners each may contribute funds, capital equipment, land, patents and trademarks, and technological know-how based on a formula to which they have agreed. The partnership can be managed by either or all of the partners or by a designated manager. All partners are jointly and severally liable for the liabilities of the partnership.

3. Limited Liability Company

A limited liability company is comprised of from one to twenty shareholders. It must have a registered capital of at least kip 5,000,000 (\$US470 as of April 2003) with at least half of the registered capital paid up upon registration of the company and the remaining capital paid up within two years of such registration. A limited liability company must establish reserve funds appropriated at 5 to 10% from its net profit. The shares of a limited liability company must all have the same value and are transferable only upon approval of two-thirds of the shareholders. A limited liability company must hold a general shareholder meeting at least once a year. One or more managers,

chosen at a general shareholder meeting, may manage the company. The manager may bind the company and may be liable to the company and third parties for his or her wrongful acts.

A one-person limited liability company is a business unit created by a single person. It must have capital of at least 5,000,000 kip. This person is responsible for the company's liabilities only up to the extent of the company's registered capital.

A limited liability company is the most common structure for conducting business in Laos. By law, a company is regarded as a juristic person that has the right to own property and carry out business under its name. Its liabilities to others are separate from those of its shareholders.

4. Sole Trader Enterprise

A sole trader enterprise is a business entity with a minimum registered capital of 1,000,000 kip created by one person who is fully liable for the activities of the entity. The owner of such a business acts on behalf of the entity and may assign a manager to run the business.

5. Public Company

A public company can be created by a minimum of seven shareholders. All shares in the company must have equal value. Shareholders in public companies are liable up to the limit of their unpaid capital contribution. Shares in public companies may be paid in cash or in kind. The maximum value of each share is 10,000 kip. A public company's registered capital must be 50,000,000 kip or greater.

The management of a public company is conducted by the Executive Council, which includes 5 to 17 members, including one or two workers' representatives. A public company must hold an ordinary general meeting of shareholders at least once each year. Shareholders and proxies representing two-thirds of the shares can call an extraordinary general meeting upon first notification or half of the shareholders on second notification.

Shares of public companies may be sold to outsiders as well as inside shareholders. Shares in a public company are transferable. At present, however, there is no stock market in Laos. A public company is incorporated in a similar manner to a private company. A limited company may be transformed into a public company. Unlike a private company, a public company may issue debentures and shares to the public.

6. Mixed Enterprise

A Joint-Venture enterprise is a joint enterprise between the state on one side, and other forms of private business entities on the other side. In mixed enterprises, the state must hold at least 51% of the shares. Mixed enterprises are regulated by the same rules as public companies with the following exceptions:

- a. The government has the decision over the transfer of shares owned by the state;
- b. The private shares are managed as shares of public companies;
- c. The share certificates are transferable;
- d. The Chairman of the Board of Director is appointed by the Minister of Finance and the Vice-Chairman is selected by the private party and approved by the Minister of Finance;
- e. The President of the Board of Directors has a casting vote.

VI. THE PROCEDURES

Investment License

To receive a foreign investment license (FI License) in all sectors, except the mining, hydropower and forestry sectors, a foreign investor must submit the following to the DDFI:

- Fully and correctly completed application form (available from the DDFI)
- Projected assets and liabilities, pro forma income statement for five years
- Bio data of the investor
- Support of financial capacity of the investor to undertake the proposed investment
- Application fee (US\$100 for projects with invested capital less than US\$1 million; and US\$200 for projects with capital exceed US\$1 million)
- Four copies of all of the above

The Screening Division of the DDFI reviews the application form for completeness and accuracy. The investor is contacted to supply necessary additional information or to clarify issues arising from the application. The application is then forwarded to the relevant line ministries.

When the ministries have formulated a position on the application, the application is brought before the Board Meeting for decision. Under the FI Law, this process is required to take a maximum of 60 days.

Business License

The business licenses are issued by Ministry of Commerce and Industry. According to additional announcement No.0530/MOC, dated 10/May/2002 & o.0538/MOC, dated 13/May/2002. The procedures for business registration and documents required for enterprises take place at 3 Levels

I. Ministry (centre) Level.

The following are required registered at the Ministry:

1. foreign investment whose registered capital is more than \$ 200.000.
2. Enterprises engaged in import of Vehicles, Gas and export of wood products.
3. State enterprises and state-owned joint venture enterprises who obtained licenses from the Ministry.

II. Provinces, Capital and special zone level.

1. Foreign investors whose registered capital is less than \$199,999.
2. Enterprises regulated by or have dealings with other main sectors such as:
 - Agriculture, Industry and Services.
3. Commercial: Enterprises engaged in export--import trade out side administered by the Ministry will be transferred to provinces.
4. All enterprises that have license from provincial governments.

III. Districts level.

Small business enterprises who operate outside the Ministry and Provincial jurisdiction should register with the district office these are:

1. Branches.
2. Small shops.
3. Others

Documents to be completed by foreign investors:

- License from Foreign Investment Management Committee (FIMC)
- Registration form.
- Copy of passport.
- 3 photos of size 3x4 inches.
- Letter of authority from the manager of company.

Documents to be completed by domestic investors and enterprises other than commerce.

- License from the concerned sector.
- Registration form.
- Curriculum Vitae (CV)
- Certificate of Assets
- Criminal noted No 3, copy of ID card, 3 photos of size 3x4 inches.

Documents to be completed by domestic investors and controlled by commerce sectors:

- Registration form from commerce
- Curriculum Vitae (CV)
- Certificate of finance
- Criminal noted No 3, copy ID card, 3 photos of size 3x4 inches .
- Regulation confirmed by commerce sector.
- Economic evaluation.

Fees: See Minister of Finance's additional announcement No. 0341/MF, dated 21/02/2002.

Notes 1: If all documents are complete as required, registration will be completed in 24 hours.

Notes 2: This notification translated from additional announcement No.0530/MOC, dated 10/May/2002 & No.0538/MOC, dated 13/May/2002.

Tax License

Tax licenses are issued by Tax Department, Ministry of finance. It takes about one week to obtain the tax license.

Documents to be completed by foreign investors:

- License from Foreign Investment Management Committee (FIMC)
- Business license from Ministry of Commerce and Industry.
- Registration form
- 3 photos of size 3x4 inches.
- Letter of authority from the manager of company.

In the case of factory and plant construction, the following permits are necessary:

Building Permits

Individuals or organizations that wish to construct or to do major repair work must apply for a permit to the Provincial Department of Communications, Transportation, Post and Construction (DCTPC). The application documents to be submitted in 4 copies are the following:



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- A standard application form available from the DCTPC
- A certificate of residence from administrative authorities
- A certified land title document, land use permit, and site permit attached to a plan for the structure
- A situation plan
- A construction plan
- A septic tank plan

Before they can be submitted to the DCTPC, a legally recognized design company must approve these documents. The Provincial DCTPC (where appropriate) will notify the applicants within 45 days of the results of the examination of the application. The examination of the application form is made in conjunction with other relevant government agencies such as:

- The Land Department
- The Ministry of Interior
- The Institute of Urbanism

Once a building permit has been assigned, it is be valid for 3 months. During the construction, the DCTPC will carry out inspections of the construction site to ensure construction activities are in accordance with the building permits and plans.

Environment Assessments

According to the Regulations on the Monitoring and Control of Wastewater Discharge, the buildings and factory facilities sites must be inspected twice per year to ensure that they are in conformity with the standards of wastewater discharge. After each inspection, a certificate is issued to the owners of buildings and sites. In cases of non-compliance, appropriate measures are imposed.

The draft environmental law requires an Environmental Impact Assessment to be made for large projects using natural resources. What constitutes a "large project" has not been specified.

Operating Permits

In case of construction of a plant, once the plant is finished, it requires a license from the Ministry of Industry and Handicraft to commence operations. The Ministry of Industry and Handicraft will make an inspection of the plant before it issues the license. At this time, all documentation is once again reviewed to check if it is complete.

V. INFORMATION SOURCES

- Department of Domestic and Foreign Investment
- Ministry of Commerce and Industry
- Tax Department, Ministry of Finance
- Lao Economic Outlook 2006 , ADB
- Lao PDR Economic Monitor April 2006, The World Bank