



# REGULATORY ASSESSMENT OF SERVICES TRADE AND INVESTMENT



IMPROVING SERVICES REGULATION  
IN THE LAO PEOPLE'S DEMOCRATIC REPUBLIC



## **ACKNOWLEDGEMENTS**

The author wishes to express her sincere gratitude to the many stakeholders in the public sector and the private sector who willingly shared their time and invaluable knowledge about the regulatory conditions in the Lao People's Democratic Republic.

Many thanks are also due to the Foreign Trade Policy Department for the support provided in the execution of Horizontal Assessment. Deserving special mention are Dr. Laohoua Cheuching, Nongchit Khambounheang and Onida Vinavong of that Department. A debt of gratitude is expressed to the national consultant on this project, Vinata Sayavong. Special thanks also to Martín Molinuevo of the World Bank for his guidance in the use of the RASTI methodology.

Any errors or omissions are the sole responsibility of the author.

# **REGULATORY ASSESSMENT OF SERVICES TRADE AND INVESTMENT:**

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January 22, 2015

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## Executive Summary

Despite the challenging global economic environment, the Lao People's Democratic Republic (Lao PDR) has successfully sustained annual growth rates in excess of 7 per cent over the past decade. Key drivers of this growth are services, hydropower, construction and the food processing sectors. Services have been growing slightly faster than the economy itself with the former expanding by 9.0 per cent in 2013. The economic structure of Lao PDR has significantly evolved from a heavy concentration on agricultural activities in 2000 to an increasing focus on industrial production by 2012. Lao PDR is a net exporter of services with exports exceeding imports by US \$236.05 million in 2012. Services exports were dominated by travel services which accounted for a little over 78 per cent of total services exports.

Lao PDR achieved a significant level of success in improving its foreign trade regime prior to its access to the World Trade Organization (WTO) in 2013. At the regional level, Lao PDR is fully committed to negotiations taking place to improve the legal framework for trade in services through the ASEAN trade in services agreement (ATISA). Despite efforts to reform its services regime, Lao PDR continues to face a number of challenges to create an efficient regulatory framework. While the governance regime in Lao PDR is still in the nascent stages of development, it is improving. However, regulatory agencies in Lao PDR struggle to achieve their mandates in the face of insufficient institutional capacity.

Restrictive administrative practices which affect regulatory quality include unclear/ ambiguous laws or requirements, missing or dated legislation in a few instances and the slow development of regulations to complement broadly formulated laws. Further, deficiencies in monitoring the implementation of rules and ensuring effective enforcement stand to undermine gains from regulatory reform.

Horizontal measures are most frequently imposed on the supply of services through the establishment of a commercial presence followed by the supply of services through the temporary movement of natural persons. Service providers tend to be faced with issues related to the business registration process and the payment of taxes as well as limited access to land and difficulties in obtaining legislation.

Sector-specific regulation and governance differ greatly in terms of openness and regulatory capacity. Some sectors, like banking, are substantially liberalised and comparatively well regulated. Others, like professional services feature strong restrictions while the lack of an independent regulator is a reality for a few others such as telecommunications and insurance.

Professional services are relatively underdeveloped in the face of a shortage of qualified persons and weak institutional capacity in the professional regulatory agencies. Legal services stand at the more restrictive end of the spectrum with significant barriers to foreign participation while the accounting and engineering sectors are relatively less constrained by trade limitations. Although a concerted effort has been made to modernise the legal framework in which these services operate, the formulation of supporting regulations would be a boon to the sector.

Distribution services are primarily informal and underdeveloped. The sector is subject to strong nationality restrictions. Some aspects of the legislative framework governing the sector are dated and the more recent regulatory instruments lack clarity.

While telecommunications services are provided in a relatively contestable market and are regulated by modern legislation, urgent attention needs to be paid to the creation of an independent regulator to protect consumers and to preserve competition. Moreover, the absence of implementing regulations implies that there will be some areas of uncertainty for service providers.

Financial services do not feature major restrictions to trade and investment, but few key challenges for the sector are the need to modernise the legislative framework in the case of banking services and create an independent regulator for insurance services.

Participation in transport and logistics services is subject to a number of minimum capital restrictions and equity limitations. At the regional level service providers find themselves unable to compete and industry capacity is low.

Tourism holds significant potential for Lao PDR. The sector does not face many trade restrictions, but the resolution of challenges related to unclear laws and regulations and stronger enforcement of standards would assist the development of the industry.

The priority task ahead for Lao PDR will be to implement the parallel services regimes under the General Agreement on Trade in Services (GATS) and the ASEAN Framework Agreement on Services (AFAS). To support this effort, significant resources will need to be devoted to translating trade commitments into the legislative framework and strengthening regulatory and institutional capacity.

The two main measures that Lao PDR should consider to improve governance of the services sector are moving ahead with initiatives to improve public access to business regulations and improving on mechanisms for coherence in trade policy formulation.

In assessing the challenges ahead, Lao PDR should bear in mind the benefits of an efficiently functioning services sector as an input to other production processes and an avenue for economic diversification. Services like tourism and computer-related services have become major components of the export basket of many countries, including developing countries and LDCs. Lao PDR has registered significant progress on its broad regulatory reform agenda; however, it is now important to improve upon its performance on the main determinants of services exports, namely, skills and the governance and regulatory framework.



## Abbreviations

AFAS	ASEAN Framework Agreement on Services
AMNP	ASEAN Agreement on the Movement of Natural Persons
AoA	Articles of Association
APEC	Asia Pacific Economic Co-operation
ATIGA	ASEAN Trade in Goods Agreement
ATISA	ASEAN Trade in Services Agreement
ASEAN	Association of Southeast Asian Nations
BASA	Bilateral Air Services Agreement
BoL	Bank of the Lao People's Democratic Republic
BPO	Business Processing Outsourcing
CPA	Certified Professional Accountant
CPC	Central Product Classification
CPMI	Committee for the Promotion and Management of Investment
FTPD	Foreign Trade Policy Department
ERD	Enterprise Registration Department
GATS	General Agreement on Trade in Services
GDP	Gross Domestic Product
GoL	Government of the Lao People's Democratic Republic
HDI	Human Development Index
IDP	Investment Promotion Department
IFC	International Finance Corporation
IFRS	International Financial Reporting Standards
IT	Information Technology
ICT	Information and Communications Technology
KEI	Knowledge Economy Indicators
LAK	Lao Kip
LBF	Lao Business Forum
LEC	Lao Exchange Commission
LICPA	Lao Institute of Certified Professional Accountants
LNCCI	Lao National Chamber of Commerce and Industry
LPI	Logistics Performance Index

LSE	Lao Securities Exchange
MFI	Micro-Finance Institutions
MICT	Ministry of Information, Culture and Tourism
MoE	Ministry of Education
MoF	Ministry of Finance
MoIC	Ministry of Industry and Commerce
MoJ	Ministry of Justice
MoNRE	Ministry of Natural Resources and the Environment
MPI	Ministry of Planning and Investment
MPT	Ministry of Post and Telecommunications
MPWT	Ministry of Public Works and Transport
MRA	Mutual Recognition Agreement
NSEP	National Social Economic Plan
OECD	Organisation for Economic Co-operation and Development
OEDR	Offices for Economic Dispute Resolution
OSU	One Stop Service Unit
PIA	Preliminary Impact Assessment
PRA	Professional Regulatory Agency
PSWG	Private Sector Working Group
RASTI	Regulatory Assessment of Services Trade and Investment
RIA	Regulatory Impact Assessment
SOE	State-owned Enterprise
TDF-2	Second Trade Development Fund
VAT	Value-added Tax
WG	Working Group
WGI	Worldwide Governance Indicators
WTO	World Trade Organization
WTTC	World Travel and Tourism Council
UNCTAD	United Nations Conference on Trade and Development

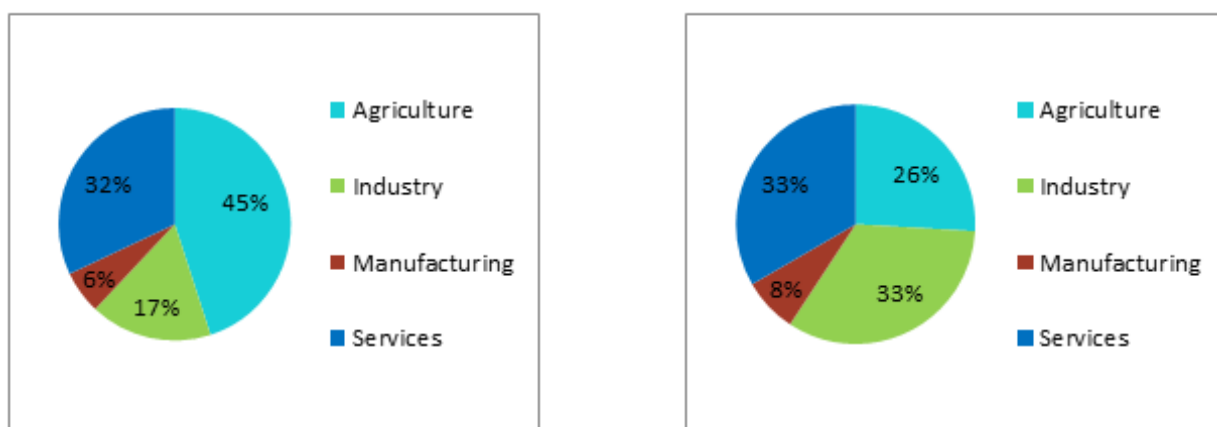
## 1. Introduction

### Country Context

Despite the challenging global economic environment, the Lao People's Democratic Republic (Lao PDR) has successfully sustained annual growth rates in excess of 7 per cent over the past decade. Key drivers of this growth are services, hydropower, construction and the food processing sectors. (World Bank 2014: 4) Services have been growing slightly faster than the economy itself with the former expanding by 9.0 per cent last year. (Asian Development Bank (ADB) 2014: 205) By contrast, growth in industry as a whole slowed to 7.2 per cent in 2013. Agriculture was hit by floods in the third quarter, but production still grew by 2.7 per cent for the year.

The structure of output in Lao PDR has significantly evolved from a heavy concentration on agricultural activities in 2000 to an increasing focus on industrial production by 2012. (See **Figure 1**) Nevertheless, the size of other sectors has remained roughly the same.

**Figure 1 Structure of Output in Lao PDR, 2000 and 2012**



Source: World Development Indicators 2013

Lao PDR achieved a significant level of success in improving its foreign trade regime prior to its accession to the World Trade Organization (WTO) in 2013. As compared with similar recently acceded WTO members such as Cambodia, Vietnam and Nepal, the terms of Lao PDR's accession package, including the extent of commitments made, are roughly in line with the others. (World Bank 2013d: 13) On the trade in goods side, the average tariff has been bound at 18.8 per cent while on the trade in services side market access commitments have been made in 10 sectors. At the regional level, Lao PDR is fully committed to integration with the conclusion of the ASEAN trade in goods agreement (ATIGA) and negotiations taking place to improve the legal framework for trade in services through the ASEAN trade in services agreement (ATISA). Moreover, the country is involved in the ASEAN plus negotiations between ASEAN and a number of partners such as Japan and Australia.

The country's commitment to these multilateral and regional processes bodes well for improving Lao PDR's business climate and promoting growth in non-resource areas of economic activity. It is anticipated that greater trade openness will help Lao PDR to transition away from reliance on few trading partners, notably Thailand, China and Vietnam. (Deutsche Research Bank 2013:1) However, for Laos to exploit the benefits of a more open trading regime, commitments will need to be fully implemented and supporting structures and policies need to put in place to support effective implementation.

### Challenges to Expansion of the Services Sector

Lao PDR faces a number of challenges as it seeks to capitalise on the gains from the unilateral, regional and multilateral reform of its services regime. This assessment of Lao PDR's regulatory framework shows that while unwarranted restrictions to trade in services are still in place, the main restrictions to the development of the services economy lay in the application of a number of measures which affect market access and the operation of enterprises as well as a few restrictive administrative practices which hinder operations.

Measures which appear to negatively impact on market access are discriminatory equity limitations and minimum capital requirements as well as nationality requirements for some sub-sectors. Measures which impinge on operations are for the most part limitations on pricing. These measures are likely to have a dampening effect on investment in Lao PDR in the long-run. This would be regrettable as Lao PDR offers a significant number of advantages over neighbouring competing investment destinations. Political stability ranks high as one of those advantages.

Beyond these formal limitations, restrictive administrative practices which relate to missing or outdated regulation, discriminatory taxes, inconsistent regulation and deficient monitoring/enforcement procedures are also a challenge to the expansion of the sector. Investors, both domestic and foreign, operate at a disadvantage due to difficulties in obtaining sub-regulations and instruments which fall below this level; and the inconsistent application of rules by different officials on the same issues. A centralised depository for laws and information related to services and the production of user friendly guidelines on the main horizontal laws are likely to go a long way in diffusing this problem. Additional rules requiring the drafting of clarifying sub-regulations are also likely to be helpful.

Besides transparency, the operation of the tax regime presents a challenge to private sector stakeholders. The operation of two distinct tax regimes can be interpreted as a method of incorporating the informal sector into the tax system. On the face of it, while the tax regime appears to be non-discriminatory, in reality the difficulties in effectively monitoring and enforcing the rules that relate to SMEs has resulted in 10 per cent of enterprises carrying the burden of the entire system. Again, this is likely to detract from the attractiveness of Lao PDR as an investment destination. The functioning of the corporate tax regime has prompted officials to take a closer look at the system and reforms are likely. However, difficulties appear to go

beyond corporate taxes issues to include personal income tax, the administration of value added tax and the provision of tax exemption certificates.

Institutional capacity of the Government of Lao PDR can be considered limited in terms of staff and budget and this limits its capacity to effectively respond to regulatory challenges. However, serious efforts to strengthen regulatory quality have been noted by the assessment. These include the recent Law on Legislation which provides clear guidance on making laws and rules below the level of laws and mandates stakeholder consultations prior to regulatory change. The application of the rules and procedures as set forth in this Law is likely to improve transparency and the legitimacy of regulations.

To overcome these challenges, Lao PDR will need to concentrate its efforts on creating effective regulatory regimes to drive trade and investment in its service industries. Key to the creation of such a regime is the systematic implementation of trade commitments while seeking to ensure that legislation is coherent and unambiguous. Improvements in the governance framework are likely to strongly complement the establishment of an efficient services regime. In particular, ease of access to business legislation and intra-government co-ordination on trade policy formulation and implementation promise to deliver significant dividends in terms of stimulating trade and attracting additional investment.

### Trade in Services and its determinants

Given that services capture a wide range of disparate activities which defy the application of an all-encompassing definition, reference is typically made to the characteristics of services. As such many service activities are considered to be intangible, invisible and perishable and usually require simultaneous production and consumption. (Mattoo and Stern 2008: 5) Because many service transactions require face-to-face contact between the consumer and the provider (despite the increased scope for electronic delivery), defining trade in services more broadly than trade in goods to include the following four modes of supply as presented in **Box 1** is now standard:

#### Box 1 Modes of Service Supply

- Mode 1: Cross-border trade in services. Such trade is analogous to goods trade that involves shipping services such as software from one country to another.
- Mode 2: Consumption abroad. Such trade occurs when consumers (for example, tourists or students) travel across borders.
- Mode 3: Commercial presence. The producer of a service establishes a commercial presence (for example, a subsidiary or branch of a bank) in the country of the consumer.
- Mode 4: Movement of natural persons. In this case, the producer (for example, a mining engineer) travels across borders.

These modes of supply are not mutually exclusive and trade can take place through a combination of the modes. The utility of this classification lies in its ability to target the restrictions which affect particular ways of providing services and also as a tool to address these restrictions through reduction or elimination. Unlike goods where tariffs are one of the most dominant barriers to trade, barriers to services trade tend to be located behind the border in regulations. It is important to recognise that these regulations and measures may not in fact be related to foreign trade.

A good number of resource rich developing countries have erroneously paid scant attention to the reform of their services regime as services do not feature significantly in their export profile. However, the regulatory regime for services does matter. Broadly, the benefits of any country engaging in services trade liberalisation and reform are threefold. Services are important inputs into all other areas of economic activity. As such an inefficient and expensive service sector escalates the cost of doing business for all producers and exporters. Clearly then exposing domestic service providers to competition exerts pressure to improve on the quality, variety and price of services being supplied. Consequently, there is a strong case for instituting regulatory reforms to improve efficiency within the national economy. In addition, as services are inputs into exports, there are also opportunities to reduce this aspect of the cost of production for operations which produce goods and services for export. Moreover, the reform of some service sectors may stimulate dynamism in those particular industries which could drive the export of such services.

On the latter point, the pertinent question becomes what determines developing country participation in services exports? The main determinants of comparative advantage in services are identified as skills, institutions and regulatory and governance frameworks. (Van der Marel 2012) Moreover, it has been suggested that developing country participation in service exports is determined by a combination of the following elements:

- The “fundamentals,” which are given in the short run, but can be influenced by policy in the longer term. (Goswami et al. 2012: 4) These fundamentals include a country’s factor endowments, especially of human capital, including skills and entrepreneurial ability; natural resources and cultural endowments, such as those that attract tourism; infrastructure, especially telecommunication networks that facilitate the delivery of services; and institutional quality, particularly the regulatory environment for services.
- Policies affecting trade, investment and labour mobility in services. A broad range of policies affect cross-border trade, such as transport and financial services; consumption abroad in health and education services; foreign investment and the participation of multinational companies in banking, telecommunications and business process outsourcing (BPO); and the movement of individual service providers in construction and information technology (IT) services.
- Proactive policies in services. Such policies include those designed to promote exports, investment, or both, for example, by creating special economic zones or allowing privileged access to land, infrastructure, or imported inputs; by providing fiscal incentives for exporters and investors in the form of subsidies or tax exemptions; and by establishing other trade promotion activities, such as trade fairs and information dissemination.

## Structure of Report

Starting with a brief introduction to Lao PDR, Section 1 sheds light on the main challenges to services expansion as identified by the present RASTI. This is followed by a cursory overview of the ways in which services trade takes place and a discussion of the main determinants of this trade. Section 2 firmly places Lao PDR's services sector in context by providing an overview of its composition, growth patterns and level of openness. This is complemented by a review of the country's WTO and ASEAN commitments in Section 3.

Sections 4 and 5 constitute the core elements of the RASTI. Section 4 zeroes in on the broad laws and measures which affect operations in every services sector in order to assess Lao PDR's horizontal regulatory framework and institutional setting. These laws and measures include those governing investment, business registration, taxation, land acquisition, labour and the movement of capital. It should be noted already that the focus is not only on laws and sub-regulations, but in line with the General Agreement on Trade in Services' (GATS) definition of a measure,<sup>1</sup> the RASTI examines other available instruments such as ministerial agreements and instructions, guidelines and notifications.

Section 5 delves into the issues of regulation and governance at the sectoral level with a specific focus on professional, distribution, telecommunications, financial services, transport and tourism services. For each sector, the analysis gives a description of the industry drawing comparisons with neighbouring countries where possible; presents the RASTI results; identifies the relevant legislation and other measures; determines whether there are any restrictions and describes the regulatory framework and administrative practices.

The concluding section draws together the main strands of the RASTI by presenting a comprehensive assessment of the insights emerging from the analysis. On this basis, proposals on alternative regulation or improvements in the institutional framework are proffered. Annexed to the RASTI are tables which offer a highly summarised view of the restrictions encountered; a definition of the commercial services sector; a broad plan of action; a list of legislation reviewed and the list of persons interviewed in the execution of the RASTI.

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<sup>1</sup> GATS Article XXVIII provides a non-exhaustive list of measures which affect trade in services and articulates that a measure may take the form of a law, regulation, rule, procedure, decision, administrative action or any other form.

## 2. Openness, Growth, and the Composition of Services Sector

### Services in the Lao PDR Context

Services feature prominently in Lao PDR's 7<sup>th</sup> National Five Year Socio-Economic Plan (2011 – 2015). The 7<sup>th</sup> NSEP devotes a fair amount of attention to tourism, transport, telecommunications and health care services and sets ambitious goals for the wider services sector – growth of 6.5 per cent and a contribution to GDP of 38 per cent for the five year period. (Ministry of Planning and Investment (MPI) 2011: 81) The data suggest that Lao PDR has come close to achieving its targets so far with the services sector accounting for 36 per cent of GDP in 2012. This is just slightly below the sector's contribution of almost 37 per cent in 2007. (World Bank 2013b) While services value added as a percentage of GDP has fluctuated slightly over the years, it has remained between 35 and 38 per cent. (See **Table 1**)

Over the five year period, the rate of growth of services value-added peaked at 8.65 per cent in 2008 and since then has fluctuated between almost 6 per cent and almost 8 per cent. Factors driving this expansion include robust consumer spending which provided a fillip for wholesale and retail distribution; strong growth in credit which boosted financial services; a 12 per cent increase in tourist arrivals to 3.7 million in 2013 which benefited hotels, restaurants, and transportation; and double-digit growth in telecommunications which has been facilitated by the extension of mobile phone and internet services. (ADB 2014: 205)

**Table 1 Performance Indicators for Lao PDR's Services Sector, 2007 – 2012**

Indicator	2007	2008	2009	2010	2011	2012
Services value added as a percentage of GDP	37.03	36.58	38.30	35.45	35.72	35.81
Annual growth rate of services value added	7.66	8.65	6.87	5.62	7.39	7.89
Trade in services as a percentage of GDP	7.62	9.36	9.14	10.78	10.67	9.75

Source: World Bank, World Development Indicators 2013

Lao PDR is a net exporter of services with exports exceeding imports by US \$236.05 million in 2012. (See **Table 2**) Services exports were dominated by travel services which accounted for a little over 78 per cent of total services exports. (See **Figure 2**) Similarly, imports were dominated by travel services.

**Table 2 Lao PDR – Balance of Services 2012, US\$ millions**

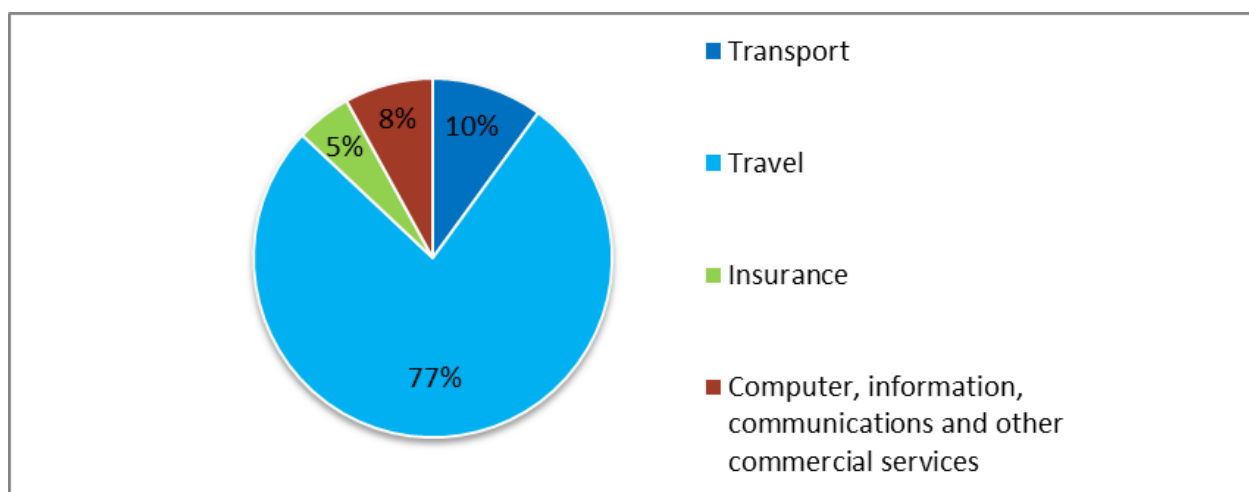
Item	Value
<b>Exports</b>	<b>577.22</b>
Transport	54.31
<i>Freight</i>	9.71
<i>Passenger</i>	4.57
<i>Other (including Postal and Courier)</i>	35.57
Travel	451.05
<i>Services, Travel, Personal</i>	451.05
Other Services:	71.86
<i>Construction Services</i>	11.55
<i>Insurance and Pension Services</i>	3.82
<i>Financial Services</i>	1.39



<i>Telecommunication, Computer and Information Services</i>	30.82
<b>Imports</b>	<b>341.17</b>
Transport	22.13
<i>Freight</i>	9.02
<i>Passenger</i>	...
<i>Other (including Postal and Courier)</i>	8.12
Travel	232.04
<i>Services, Travel, Personal</i>	232.04
Other Services:	87.00
<i>Construction Services</i>	30.14
<i>Insurance and Pension Services</i>	42.27
<i>Financial Services</i>	0.24
<i>Telecommunication, Computer and Information Services</i>	8.17
<b>Balance</b>	<b>236.05</b>

Source: International Monetary Fund, Balance of Payments Statistics, 2014

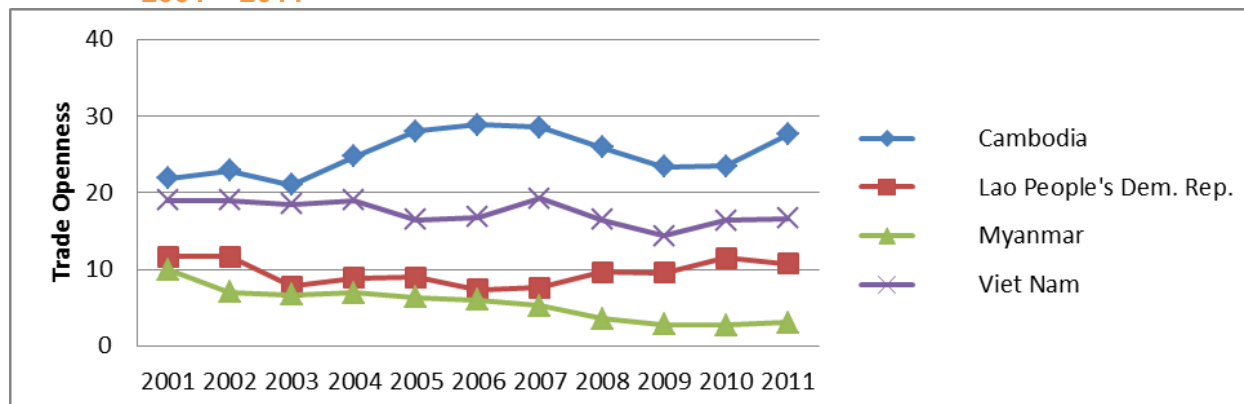
**Figure 2 Structure of Services Exports, 2012**



Source: World Bank, World Development Indicators 2013

In 2012, trade in services as a percentage of GDP in Lao PDR stood at 9.75 per cent declining slightly from its 2010 and 2011 levels. In comparison with its neighbours, Lao PDR's level of openness is relatively low. Cambodia stands out as being the most open of the four economies under comparison while Myanmar is the least open. (See **Figure 3**)

**Figure 3 Trade in Services as a Percentage of GDP in Select ASEAN Economies, 2001 – 2011**



Source: UNCTADstat, 2014

### Main Services Determinants

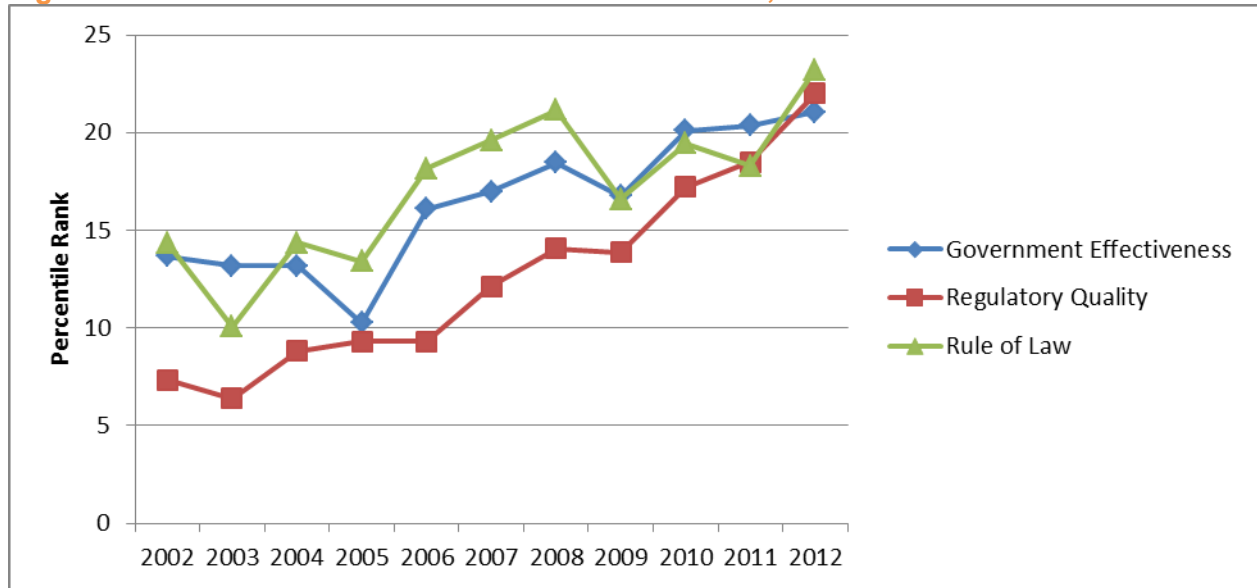
Mention was made earlier of the main determinants of developing country participation in services exports. This section takes a closer look at how Lao PDR fares on indices which measure governance, skills and IT infrastructure and how it stacks up against other similar countries in the region. Hallmarks of an efficient regulatory environment include predictability, stability and transparency. Such an environment is like to spur entrepreneurial activities, innovation and investment. Additionally, access to a knowledgeable and skilled workforce is a vital factor in investment decisions. A work force that is able to effectively apply knowledge to problems and processes represents a strong advantage in driving economic development. Finally, the ability to leverage ICTs to boost innovation and online participation depends heavily on the availability of a reliable and cost-effective IT infrastructure. Countries are unlikely to gain a competitive advantage where businesses and investors do not have ready access to global sources of knowledge and other resources and are relatively isolated from global markets.

#### Governance

The Worldwide Governance Index (WGI) provides a useful tool to draw some broad conclusions on the quality of Lao PDR's institutions. The WGI captures aggregate and individual governance indicators for six dimensions of governance; however, the following three are of concern to the analysis – government effectiveness, regulatory quality and rule of law.

The data as presented in **Figure 4** suggest that the quality of governance in Lao PDR has significantly improved between 2002 and 2012. This is particularly noticeable in relation to the perception of regulatory quality. Despite these improvements, Lao PDR's rank in the 20<sup>th</sup> percentile suggests there is room for improvement.

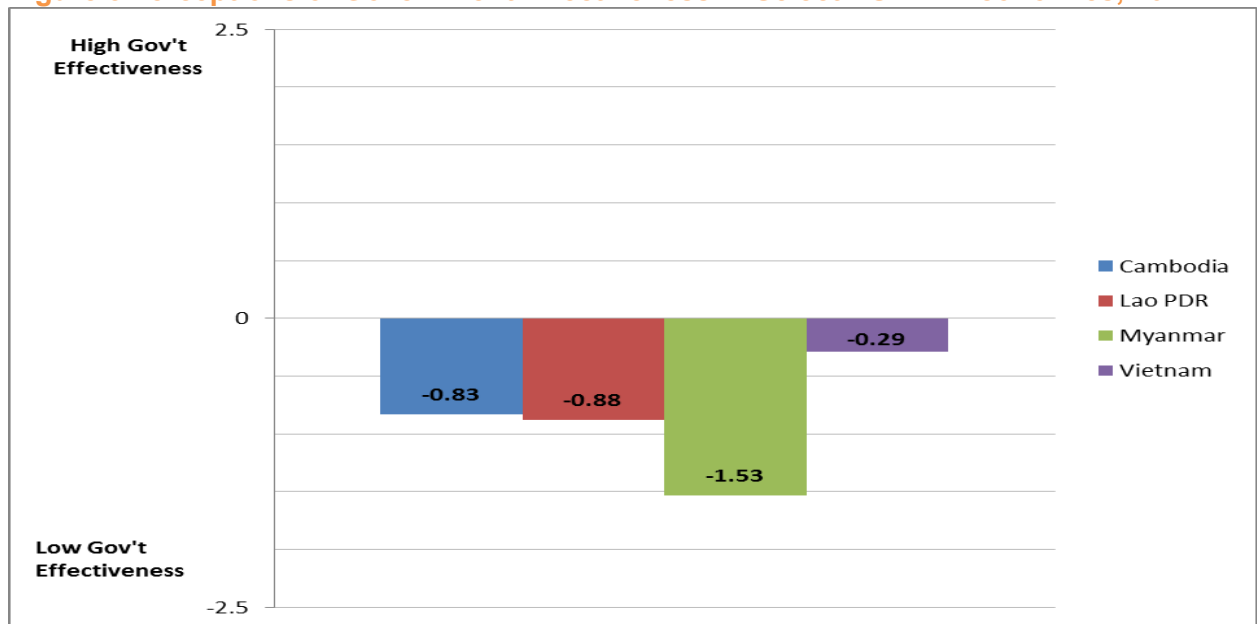
**Figure 4 Lao PDR on the Worldwide Governance Index, 2000 – 2012**



Source: World Bank, World Governance Index, 2013

The WGI highlights the relatively negative perception of respondents on all three of these dimensions in Cambodia, Lao PDR, Myanmar and Vietnam. The perception of the effectiveness of government is somewhat less of a problem for Vietnam while Cambodia and Lao PDR are similarly regarded and Myanmar is perceived as having the lowest level of government effectiveness of the four countries. (Figure 5)

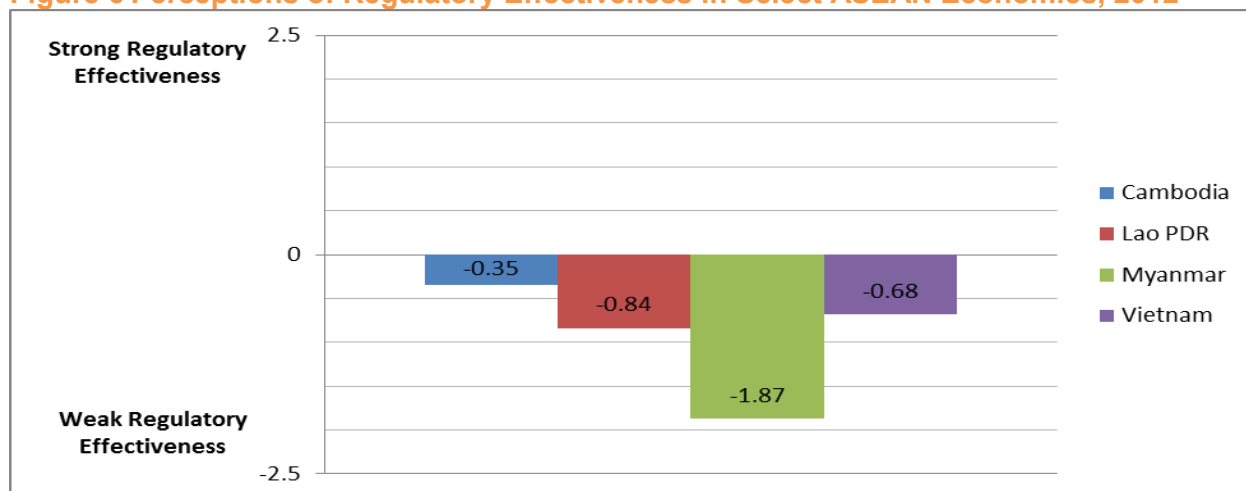
**Figure 5 Perceptions of Government Effectiveness in Select ASEAN Economies, 2012**



Source: World Bank, Worldwide Governance Index 2013

With respect to regulatory effectiveness, again a similar conclusion can be reached that Cambodia, Lao PDR, Myanmar and Vietnam have a significant task ahead in increasing confidence in their ability to formulate and implement sound policies and regulations that redound to the benefit of the private sector. On this dimension, the perception of Cambodia is more favourable than the other four countries with Vietnam and Lao PDR respectively trailing behind. (Figure 6)

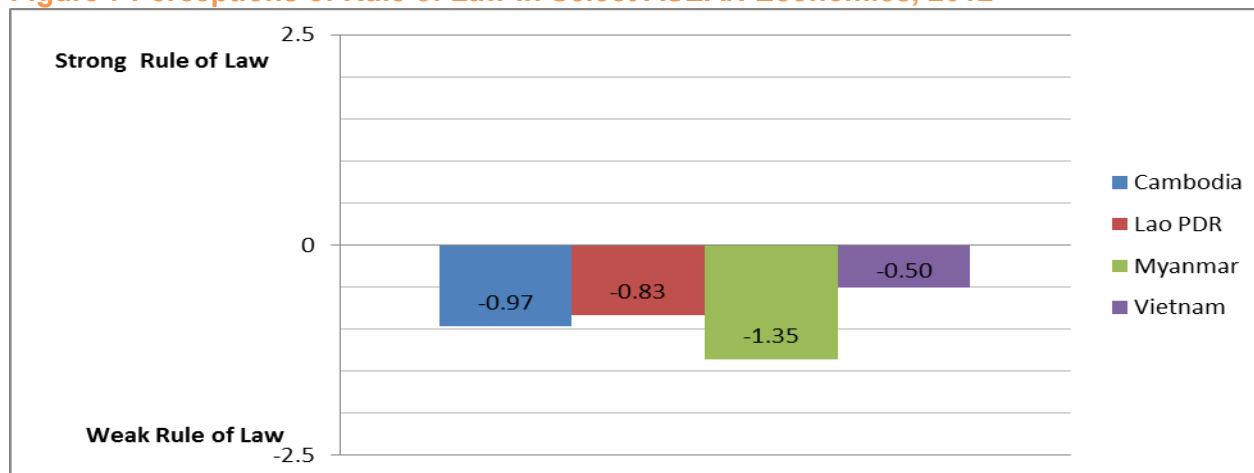
**Figure 6 Perceptions of Regulatory Effectiveness in Select ASEAN Economies, 2012**



Source: World Bank, Worldwide Governance Index 2013

Comparatively, Vietnam fares best on the perception of the rule of law with Lao PDR being the next best rated and Vietnam following closely behind.

**Figure 7 Perceptions of Rule of Law in Select ASEAN Economies, 2012**



Source: World Bank, Worldwide Governance Index 2013

### Skills

Lao PDR has made significant strides on the Human Development Index (HDI) which measures a country's average achievement on three dimensions of development – health, education and

income. In 2012, Lao PDR ranked (jointly with Cambodia) 138 out of 187 countries on the HDI with a score of 0.543. (Table 3) From 2000 and 2012, Lao PDR's annualised HDI growth rate stood at 2.23 per cent well ahead of its peers. Achievements in educational development contributed significantly to this positive development. Despite these gains, the 2013 Investment Climate Statement drew attention to the difficulties faced by businesses in finding skilled persons. (World Bank 2011: 18)

**Table 3 Performance of Select ASEAN Economies on the Human Development Index, 2012**

Country	HDI Rank	2007-2012 HDI Rank Change	HDI Score	2000-2012 Average Annual HDI Growth
Viet Nam	127	-1	0.617	1.68
Cambodia	138	3	0.543	1.53
Lao PDR	138	1	0.543	2.23
Myanmar	149	0	0.498	1.22

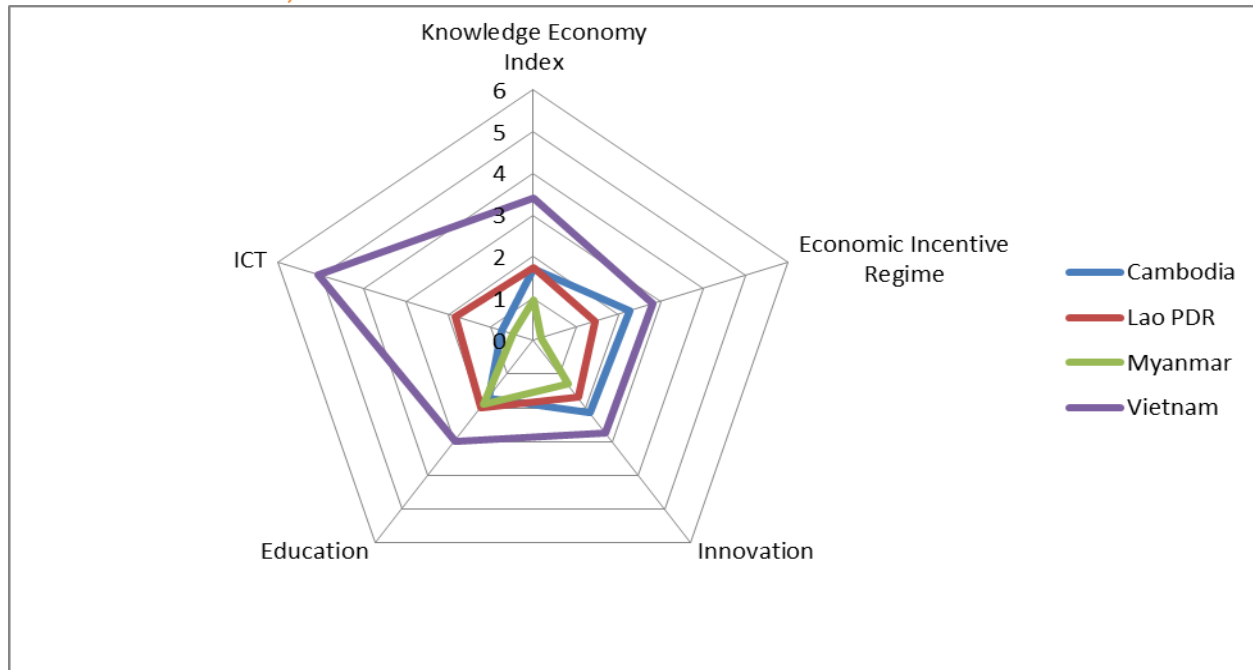
Source: United Nations Development Programme, Human Development Index Report, 2013

The Knowledge Economy Index (KEI) assesses whether the environment within a country is conducive to knowledge being used effectively for economic development measures through four pillars:

- An economic and institutional regime to provide incentives for the efficient use of existing and new knowledge and the flourishing of entrepreneurship;
- An educated and skilled population to create, share and use knowledge well;
- An efficient innovation system of firms, research centres, universities, consultants and other organisations to tap into the growing stock of global knowledge, assimilate and adapt it to local needs and create new technology;
- Information and communication technology (ICT) to facilitate the effective creation, dissemination and processing of information.

The KEI tells an interesting story of skills endowments and their potential for transforming the economies of Cambodia, Lao PDR, Myanmar and Vietnam. Out of 146 countries, the former three ASEAN economies rank 130, 131 and 144 respectively. By contrast, Vietnam ranked significantly ahead of its neighbours at 103 - 27 spots ahead of Lao PDR. The scorecard in **Figure 8** reveals that Vietnam is benefiting from a strong head start on the use of ICTs. Of the four indicators presented – innovation, economic incentive regime, ICT and education, Lao PDR scored highest on the latter score. Nevertheless the low level of the indicator suggests that Lao PDR does not possess a highly educated and skilled population, especially as compared to Vietnam. The weakest element of Lao PDR's performance was with respect to the ability of economic and academic agents to make use of global knowledge.

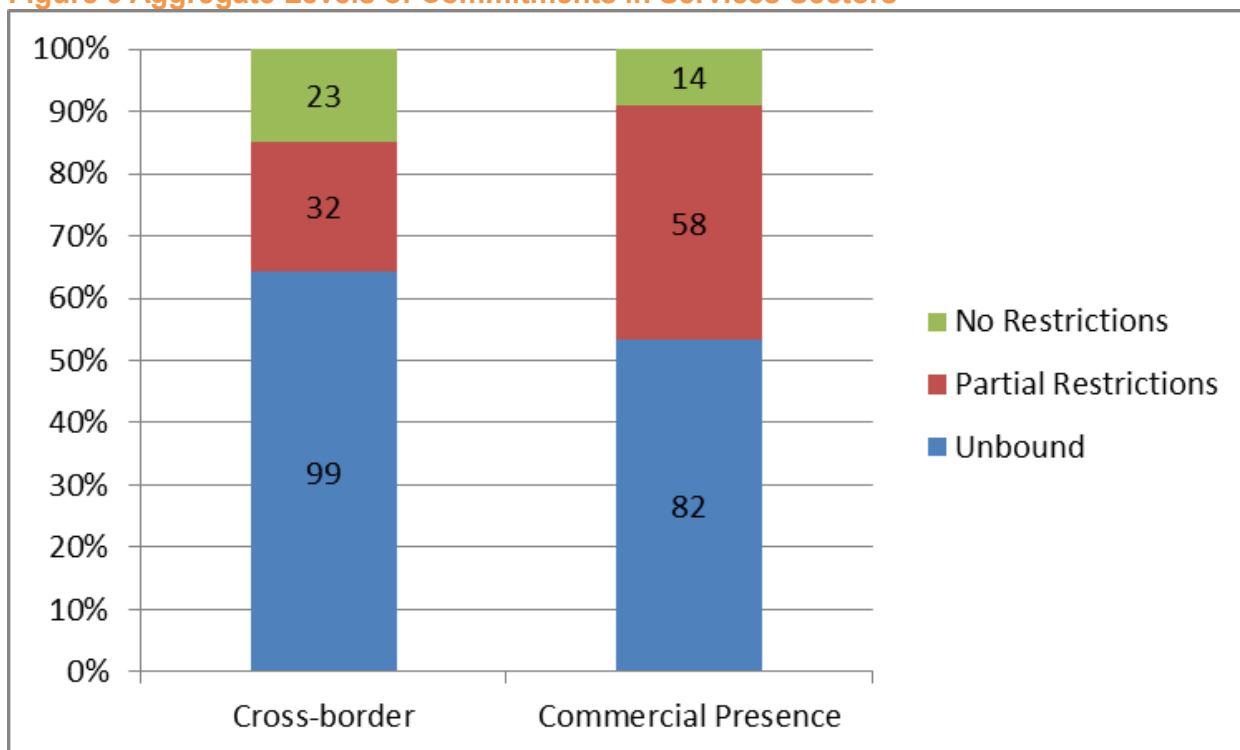
**Figure 8 Basic Scorecard of Knowledge Economy Readiness for Select ASEAN Economies, 2012**



Source: World Bank, Knowledge Economy Index, 2012

### 3. GATS and ASEAN Commitments

At the multilateral level, Lao PDR has undertaken meaningful and realistic commitments on services. Backbone services such as financial and telecommunications services make for a large share of Lao PDR's commitments, while transport and logistics services remain uncommitted. Most commitments, in particular those regarding investment in services industries are subject to transition periods between 5 to 7 years. Ceilings on foreign equity are the main restriction to international trade in services, although foreign majority participation will be allowed in all committed sectors by the end of the transition period.

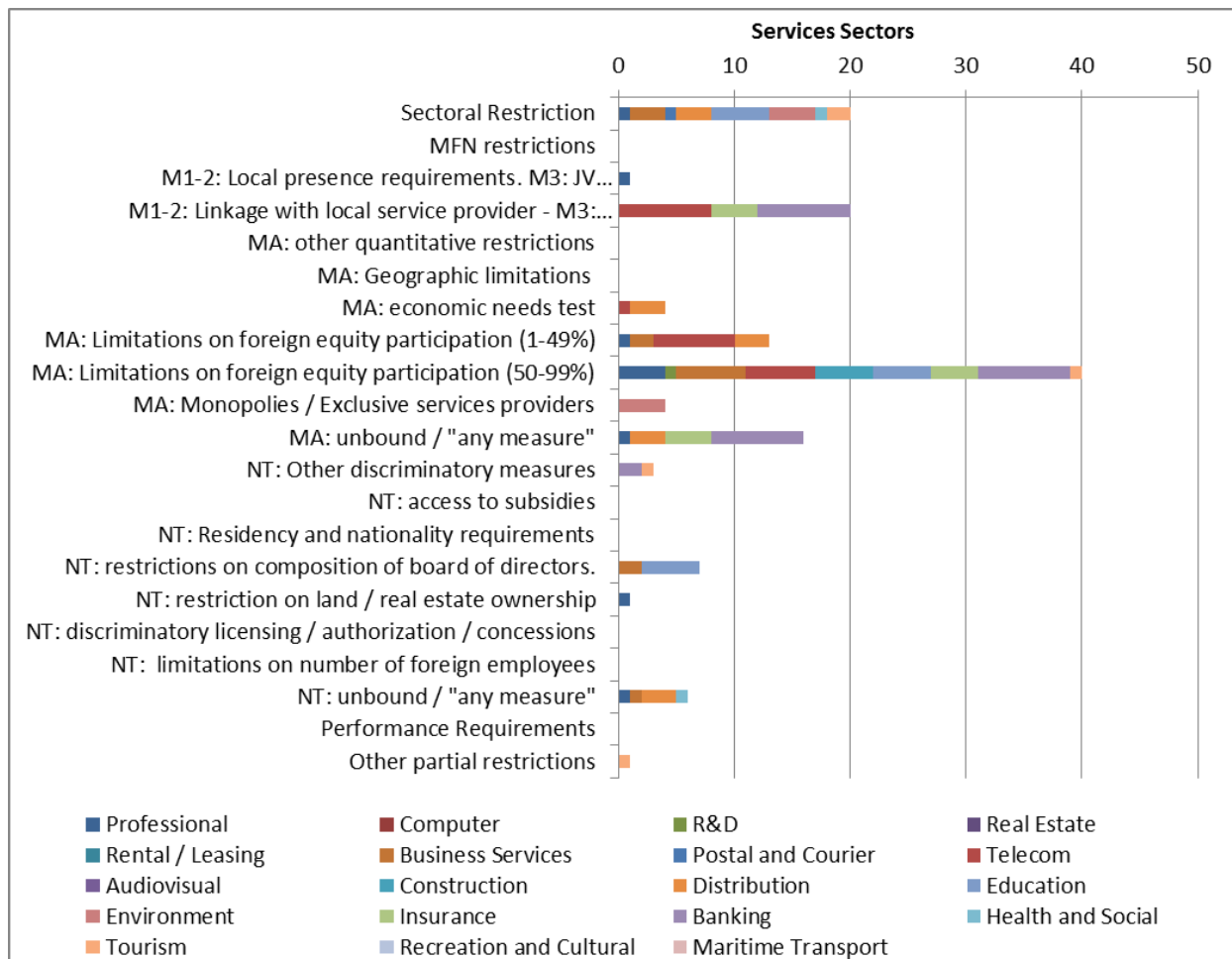
**Figure 9 Aggregate Levels of Commitments in Services Sectors**

Source: author, based on Lao PDR's GATS commitments

Lao PDR has made commitments subject to agreed conditions and limitations, in 10 sectors, covering a total of 79 sub-sectors, including all modes of services supply. The 10 sectors with commitments are: business services, courier and telecommunications services, construction, distribution, private education, environmental services, insurance, banking and other finances, private hospital services, tourism and air transport.

Commitments on cross-border trade are found in one third of 154 services activities, while commitments on commercial presence extend to half of the list.

Throughout the sectoral commitments Lao PDR made widespread use of caps on foreign equity, usually ranging from 49 to 70 per cent. They are found in more than one of every two committed services. Most of these equity ceilings are subject to transitional periods of 5 to 7 years, after which they are to be relaxed or removed. These measures relate to restrictions on commercial presence. The supply of services through the establishment of commercial presence has implications for economic competitiveness as it enhances services infrastructure. **Figure 10** depicts the type of restrictions scheduled by Lao PDR.

**Figure 10 Scheduled Restrictions on Commercial Presence**

Source: author

Note: "MA: Unbound" and "NT: Unbound" refer to such entries when explicitly found in scheduled sectors for commercial presence (i.e. when a commitment was undertaken with regard to only one of the two obligations). Services activities in which both market access and national treatment are "unbound" are not counted.

Restrictions on the type of establishment follow, but they are found solely on telecommunications and financial services. In the telecommunications sector, the restriction refers a (temporary) limitation on de novo investments on basic telephony. In financial services, Lao PDR has not taken any obligation to allow branches of banks or insurance providers.

Discriminatory restrictions, usually in the form of nationality requirements, are few and maintained mainly on professional services. A number of "sectoral restrictions" limit the coverage of the service for which the commitment is taken. In that way, Lao PDR has excluded, inter alia, public education and public health from its GATS commitments, which apply to fully-privately funded services.

Commitments on cross-border trade tend to be full commitments, largely due to the difficulties in regulating this mode of supply. The bulk of specific restrictions to cross-border trade in Lao PDR



are found on basic telecom services, in the form of mandatory linkage with domestic suppliers and licensing restrictions.

As it is the usual in GATS negotiations, commitments on the presence of natural services providers are taken in the form of horizontal commitments and with regard to specific types of service providers. Lao PDR's commitments follow standard practice and cover:

- Business visitors, for a stay of up to 90 days
- Intra-corporate transferees, encompassing managerial staff and specialists, for a stay of up to 3 years.

Lao PDR specifies that skilled foreign personnel should not exceed 20 per cent of the total staff. Also, similar to other LDCs, Laos did not include commitments on “contractual services suppliers” – a category with increasing commitments by acceding countries.

### *Sectoral Coverage*

Lao PDR's commitments span all services sectors, with the exception of most transport and logistics services, audio-visual, and recreational and cultural services. While most sectors have received at least a partial commitment; only two services subsectors have received full liberalisation obligations across all modes of supply:

- value-add telecommunications services, including internet and data transmission services.
- computer services (business services), which includes, business outsourcing activities like IT consultancy, software implementation and data processing, etc. Such activities are seldom subject to cross-border restrictions.

Lao PDR also adopted full commitments on both cross-border and commercial presence for taxation services and market research services – two activities closely linked to back-office services. On cross-border trade, additional full commitments can be found on insurance services (reinsurance and retrocession and auxiliary services), tourism (travel agencies and tour operators) and maintenance of aircraft.

Sectors that remain largely uncommitted include:

- several sub-sectors within business services, including real estate services, rental and leasing services, and most “other business services”;
- audio-visual services and recreational services; and
- all transport services.

Audio-visual and a number of transport services form part of list of businesses which are reserved for Lao nationals. Another subset of transport services has been included on the controlled business list which conditions foreign participation on compliance with prescribed minimum capital requirements and equity restrictions.

The dearth of commitments on transport services is particularly noticeable given the sector's role as an infrastructural sector. Commitments are limited to national treatment and market access commitments on maintenance and repair of aircraft and computer reservation services.

Like many acceding countries, Lao PDR has made substantial use of phase-out commitments (or “future commitments”) to take effect at the end of transitional periods of 3, 5 or 7 years from WTO accession. These future commitments are found in about half of the scheduled services activities

on commercial presence (32 out of 72 listed) and include services such as professional services, telecommunications services (basic telephony), distribution and financial services.

For professional services, full market access and national treatment on architectural and engineering and related services are granted at the end of a transitional period of five years.

### *Financial Services*

Upon accession, Lao PDR did not adopt market access commitments on financial services, but, in contrast, it did make commitments regarding national treatment. Market access obligations kick in for financial services at the end of a 5-year transition period. Beyond that transition period, however, Lao PDR maintains the ability to limit foreign equity ownership to 51 per cent and require domestic incorporation. Those limitations, however, are not currently applied, and wholly foreign owned companies do operate in Lao PDR, including 13 branches (as of 2014).

Commitments on financial services, however, do not cover services related to investment banking, which remain unbound even after the transition period.

### *Telecommunications*

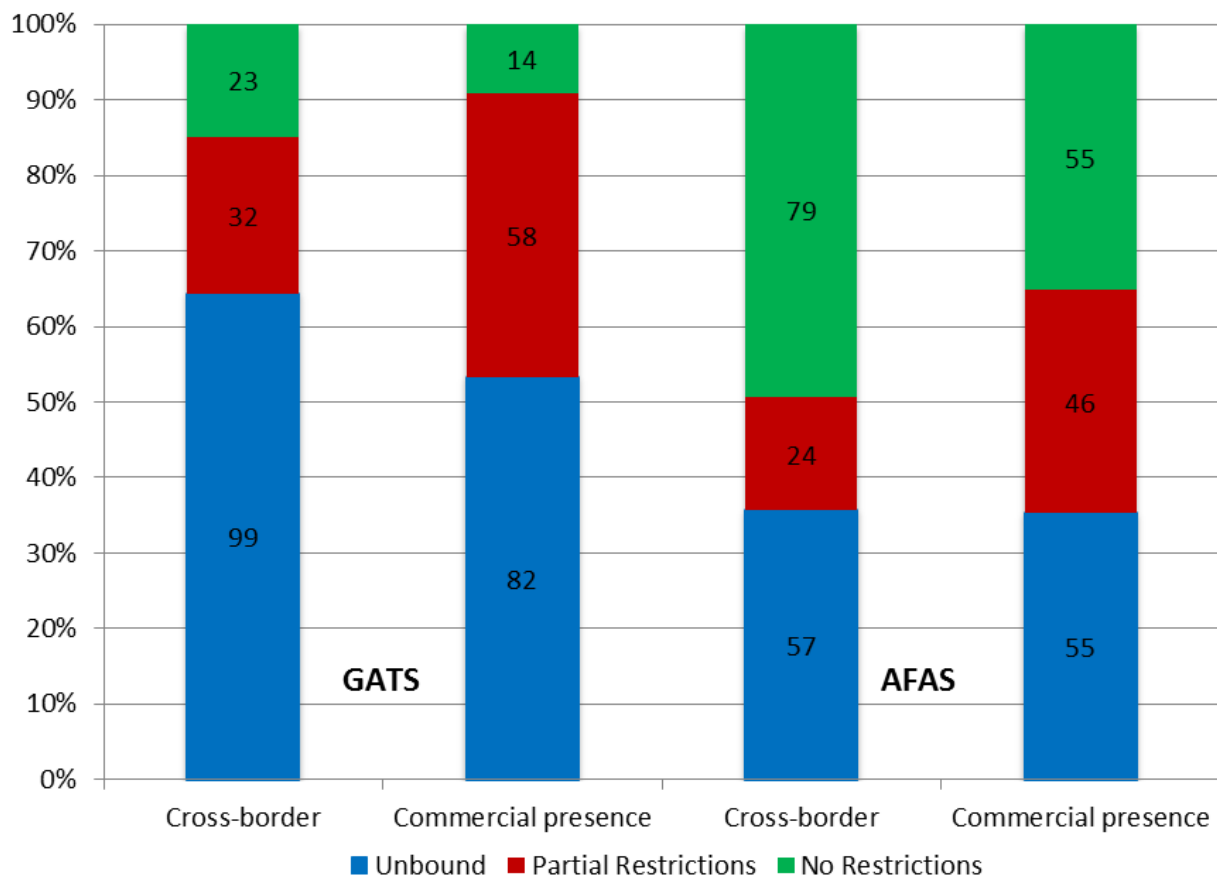
Lao PDR has limited the establishment of basic telephony operators to the acquisition of a minority share in existing operators, an entry reflecting the minority participation acquired by Thaicom in the state-owned Lao Telecommunication Co. New operators with up to 60 per cent of foreign participation will be allowed 5 years after accession.

A full commitment on value added services, for both cross border trade and commercial presence, reflects Lao PDR's current open regime.

Lao PDR also committed to a 2-year transition period for the adoption of the Telecommunications Reference Paper. The Reference Paper sets out principles and institutional requirements needed for the regulation of the telecommunications sector, including aspects such as rules on access and use of telecommunications infrastructure, independence of the regulatory body and rules on anti-competitive behaviour. This is probably Lao PDR's greatest implementation challenge. First, the 2 year transition period is a high bar for a country like Lao PDR where the adoption of these principles will face important political economy challenges. Second, these commitments require not only the putting in place of necessary laws and regulations, but also the establishment of the actual regulatory authority, training of staff and the provision of necessary resources. The framework for value added telecom services is currently largely open, but the adoption of an adequate pro-competitive regulatory and institutional framework is still missing.

A comparison between GATS and the ASEAN Framework Agreement on Services (AFAS) commitments show greater progress towards liberalisation undertaken in the regional setting. (See **Figure 11**) Preferences for ASEAN Members are found in almost all services.

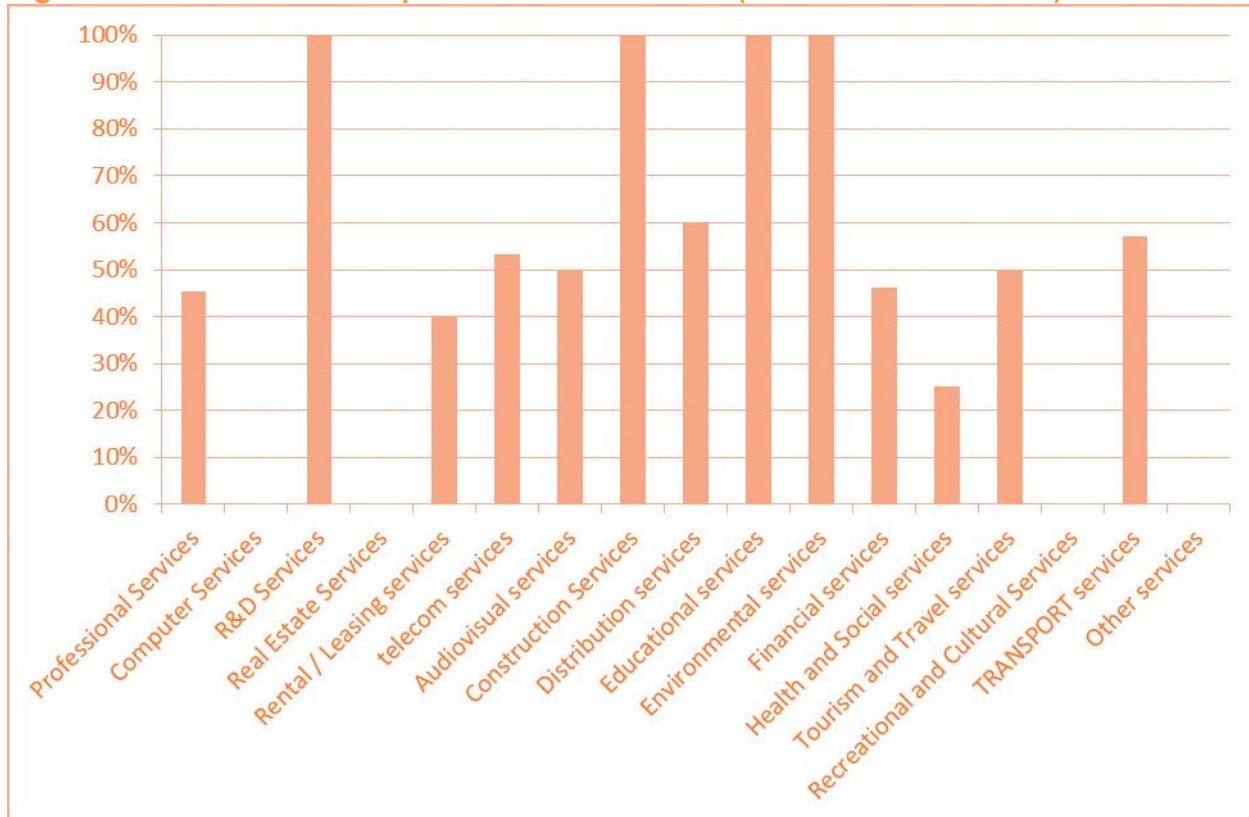
**Figure 11 Laos' Aggregate Level of Commitments in Services Sectors**



Source: author, based on Lao PDR's GATS schedule of commitments; AFAS 9<sup>th</sup> package of commitments; AFAS – financial services 5<sup>th</sup> package of commitments and AFAS – financial services safeguards.

Laos PDR's AFAS commitments go significantly beyond GATS particularly on cross border trade in services, where Lao PDR has not only offered a broader sectoral coverage, but also provided unrestricted commitments in two thirds of the listed services, as opposed to one third in the GATS. On commercial presence, improvements over GATS commitments can be found in almost all sectors except:

- real estate services, which remains unbound in both agreements; and
- computer services, which is unrestricted under GATS.

**Figure 12 AFAS Sectoral Improvements over GATS (Commercial Presence)**

Source: author, based on Lao PDR's GATS and AFAS 9 commitments.

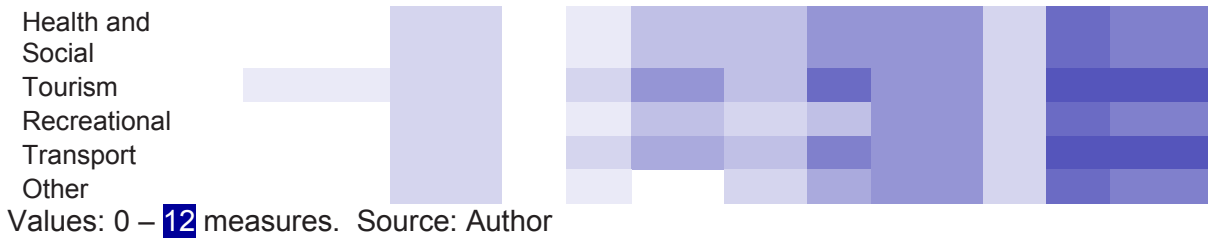
In all other sectors Lao PDR provides preferential treatment to its regional partners. The main preferences afforded to the ASEAN services providers appear to be:

- far less foreign equity limitations; and
- national treatment with regard to subsidies and state support measures

However, the striking differences between the two schedules raise doubts about the coordination between the negotiating teams in the different fora. Some commitments offered under AFAS improve on those made under the GATS commitments. Yet, other entries offer less generous conditions under ASEAN than at the multilateral forum. In fact, on a number of issues both schedules differ drastically, including several areas where it remains unclear which schedule provides more favourable conditions to services providers. The commitments offered by the two fora seem to create two different regulatory regimes on services that are, if not openly contradictory, at least inconsistent.

Taken together, these differences amount to establishing two different regimes for investments in services from ASEAN or abroad, with the added complication that the regional regime does not necessarily provide for more preferential treatment over the general framework. The administration of these investment regimes may send mixed signals on general trade and investment policy. Furthermore, lack of coordination between multilateral and regional negotiations may undermine commitments and flexibilities negotiated in other fora.





### Horizontal Policies and Regulations

As discussed earlier, Lao PDR achieved a significant level of unilateral reform of its services regime and its commitment to engaging in further reforms is illustrated by its multilateral and regional commitments on trade in services. Nevertheless, it is clear that work remains to be done on improving the environment in which services are provided and service suppliers operate. **Table 4** offers a graphical snapshot of the incidence of limitations to trade and investment in services which are of a legal or regulatory origin and those stemming from *de facto* administrative practices. By way of explanation, darker shading points to a higher incidence of limitations in the different sectors while the absence of colour suggests that no such limitations are found in that sector. The horizontal shading for each mode of supply – cross border supply and commercial presence – sets the floor for sectoral limitations, as those horizontal restrictions are, by definition, found in all services sectors. While some sectors such as professional services and banking face a number of governance challenges (as depicted by the darker shading), most sectors are unfavourably impacted by practices that apply across the board. Notably, for both modes of supply qualitative measures constitute the main limitation on market access and regular business operation once the supplier is established in the market.

A cursory glance suffices to highlight that regulatory and governance limitations are more heavily applied to investment and the movement of natural persons than on cross-border trade. (See **Table 5**) As will be discussed later on, for commercial presence, the incidence of restrictions was higher in most cases at the sectoral level than at the horizontal level.

**Table 5 Formal Horizontal Restrictions to Trade**



Measures of a horizontal nature which impede the development of the services sector are primarily of a qualitative nature. The impact of horizontal restrictions on business is appreciably higher on operations than on the market entry phase.

The regulatory framework for the services sector includes not only laws and regulations governing a particular sector but also measures that affect a wide range of sectors ('horizontal' measures). Typically, horizontal policies are not necessarily meant to regulate services industries, but rather may focus on general policies or regulate a mode of supply that cuts across different services sectors. Measures at the horizontal level are hence those affecting all services industries. Examples of horizontal measures not directly aimed at regulating international trade, but that imply horizontal restrictions on a mode of services supply include the following:

- Cross-border trade: measures on transfer of funds, restrictions on access to foreign currency;
- Consumption abroad: exit visas for nationals, restrictions on access to foreign currency;
- Commercial presence: limitations on land ownership, restrictions on establishment of juridical persons and domestic employment requirements for foreign companies; and
- Presence of individual services suppliers: visa requirements for foreigners, limitations on periods of stay.

#### *Cross-Border Trade*

Lao PDR's regulatory regime contains a very limited number of restrictions on cross-border trade. Such light regulation may be linked to the recognition of limited capacity to control this trade. The Bank of Lao PDR's (BoL) approval is required for persons in Lao PDR to obtain loans and credit from abroad as well as for the extension of loans to persons and entities outside of Lao PDR. As **Table 6** outlines, there are a number of documentary requirements to be satisfied.

**Table 6 Documentary Requirements and Conditions for Foreign Borrowing and Loans**

Transaction	Documentary Requirements	Conditions
External Loans	<ul style="list-style-type: none"> <li>□ Application for borrowing externally</li> <li>□ Brief feasibility study of project to be financed by loan</li> <li>□ Plan for use of funds and debt repayment schedule</li> <li>□ Resolution of meeting or decision on foreign borrowing</li> <li>□ Business licence and tax licences (for juridical persons)</li> <li>□ Copy of investment licence (foreign investors)</li> </ul>	<ul style="list-style-type: none"> <li>□ BoL approval required</li> <li>□ MoF agreement required</li> <li>□ Funds to be brought in and managed through the loan recipient's commercial bank in Lao PDR</li> <li>□ Except where BoL otherwise authorises, loans are to be withdrawn and converted to kip to be used domestically</li> <li>□ Loan recipient must report monthly on loan implementation until the loan is repaid</li> </ul>
Foreign Credit	<ul style="list-style-type: none"> <li>□ Application to receive foreign credit</li> <li>□ Revenue and repayment plan</li> <li>□ Draft of commercial credit contract/ evidence of</li> </ul>	<ul style="list-style-type: none"> <li>□ BoL approval required</li> <li>□ Credit recipient or creditor must report on repayment or payment until the credit is fully settled</li> <li>□ Payment/ repayment must be made via the banking system</li> </ul>

	<ul style="list-style-type: none"> <li>connection between creditor and credit recipient</li> <li><input type="checkbox"/> Business licence and tax licence</li> <li><input type="checkbox"/> Copy of investment licence</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Commercial banks may consider supplying foreign exchange to its customers for these transactions</li> </ul>
Lending to persons abroad	<ul style="list-style-type: none"> <li><input type="checkbox"/> Application for the extension of credit abroad</li> <li><input type="checkbox"/> Balance sheet and financial statement audited by an external auditor</li> <li><input type="checkbox"/> Draft loan contract between lender and loan recipient</li> <li><input type="checkbox"/> Resolution of board of director's or shareholder's meeting of the lender</li> <li><input type="checkbox"/> Payment guarantee issued by a creditable bank in the country of the loan recipient.</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> BoL approval required</li> <li><input type="checkbox"/> BoL to be provided with reports on loan performance from disbursement to approval</li> <li><input type="checkbox"/> Transactions are to be made via the banking system</li> </ul>

Source: Presidential Decree Law No. 01/P, March 17, 2008 Governing the Management of Foreign Exchange and Precious Metals and Instruction on Implementation of Decree Law on Management of Foreign Currency and Precious Metals No. 1/PC dated 17 March 2008, No. 01/BOL, April 2, 2010.

In terms of the ability to purchase foreign exchange within Lao PDR, Lao and foreign individuals and investors are permitted to perform a specified range of permissible foreign currency transactions. (Greenlee Jr., Sihanoung and Ingkapattanakul 2012: 145) The documentary requirements for obtaining permission for these transactions are clearly outlined.<sup>2</sup> For example, the repatriation of capital of a foreign investor would require a certificate for business down-sizing or capital reduction, but still continuing business; a capital importation certificate issued by the BoL; closure certificate, sales contract or sale of shares contract based on the decision of the management board or shareholders' meeting or certificate of bankruptcy by the court. Although there are a number of documentary requirements to be complied with to secure approvals and permits, the measures are legitimately part and parcel of the monitoring and enforcement mechanism to maintain the stability of the exchange rate and to prevent money laundering.

In the case of other transactions which are not included in the list, commercial banks are permitted to sell the requisite foreign exchange, but the purchaser is required to complete an application package in accordance with the regulations. If it is not already included in subsequent regulations which may not have been reviewed by this assessment, ***it is recommended that payment for services be added to this list.*** To do so would facilitate access to high quality services from abroad particularly in cases where the production of such services within Lao PDR is at a more nascent stage of development.

Finally, there are regulations which require any individual or a legal person residing in Lao PDR who has income in foreign currency from exporting goods and services to import such incomes into Lao PDR within 120 days starting from the date of the delivery at the border. However, there are some exceptions for foreign loan repayment and foreign letters of credit.

<sup>2</sup> Instruction on Implementation of Decree Law on Management of Foreign Currency and Precious Metals 1/PC dated 17 March 2008 01/BOL.



### Commercial Presence

In terms of investment, some sectors are completely open to participation; some are reserved for Lao nationals; and in a few others foreign participation is permitted, but subject to conditions. Lao PDR welcomes foreign investment and incentives offered include concessionary rates of tax and access to land. (MPI 2011a: 7 – 8) In addition, the establishment of a one stop shop which facilitates investment licensing, business registration and tax registration is a key achievement in enhancing the investment climate. However, the investment regime still features a number of restrictions both in terms of the establishment as well as the operation of foreign service suppliers. These restrictions include limitations on acquiring land and hiring foreign personnel.

The Law on Investment Promotion of 2009 is the key instrument which regulates investment in Lao PDR.<sup>3</sup> This is further supported by the Decree on the Implementation of the Investment Promotion Law. The law has succeeded in creating a 'level playing field' for both domestic and foreign investors; reducing the time it takes to get approval for business ventures; removing the time limits on investment for promoted activities; providing extended incentives and permitting access to local financing among other things. It definitively sets out which sectors are open to investment, the possible forms of investment, incentives available, the rights and duties of investors and the investment licensing process. (DFDL 2013) Further, the Implementing Decree clarifies some elements of business registration and issues related to the use of land. Additionally, the Law provides guarantees on expropriation, the right to repatriate capital and access to courts and arbitration.

With respect to the provisions on expropriation, language on the public interest and the method of compensation would appear to deviate from standard international practice.<sup>4</sup> It is stipulated that investors shall be compensated with a real amount at market price at the time of transfer by using payment methods agreed by both sides. In reality, the amount determined tends to be below market value. International best practices would suggest that compensation should be equivalent to the value of the expropriated investment before the date on which the actual or threatened expropriation became publicly known. In addition, compensation should be fully realisable, freely transferable and be effected without delay. ***It is recommended that the operation of this provision be subject to review in the context of a wider regulatory impact assessment of the Land Law.*** Failure to frontally address issues such as these tends to detract from the overall investment climate.

In terms of access to courts and arbitration, the Law recommends that disputes may be resolved in the following manner:

1. Mediation;
2. Administrative dispute resolution;
3. Dispute resolution by the Office of Economic Dispute Resolution (OEDR); and
4. Litigation.

Procedures for mediation and arbitration are clearly spelt out in the Law on Economic Disputes. Depending on their business contract, parties to a dispute may use the services of Lao, foreign or international institutions for economic dispute resolution. In order to use the Lao Centre or Offices for Economic Dispute Resolution (OEDR) five conditions must be satisfied. Namely, the

<sup>3</sup> Law on Investment Promotion 02/NA, dated July 8, 2009.

<sup>4</sup> Land Law, 2003 Articles 71 and 71; Decree on the Implementation of the Land Law, 2008, Article 28; and Law on Investment Promotion 02/NA, dated July 8, 2009, Article 61.

dispute must be related to economics or trade; the disputing parties have agreed to mediation or arbitration in a contract; the disputing parties voluntarily agree to dispute resolution through mediation or arbitration; the dispute has not been referred to the People's Court for consideration nor has the court rendered a final decision; and the dispute is not related to the violation of laws and regulations concerning the stability of the State, social security and public order and the environment.

Clear timeframes are established in relation to determining whether the claim may be adjudicated by OEDR; the duration of the different steps in the resolution of the dispute including the process of appointing mediators or arbitrators; and the deadline for the commencement of proceedings. Procedures for the selection of mediators or arbitrators are also articulated. The Law provides for the use of foreign mediators or arbitrators once they are included on the list of mediators and arbitrators maintained by OEDR. However, regulations on the qualifications and conditions for foreign mediators or arbitrators have not been developed as yet. Hence, there is no legal mechanism through these foreign adjudicators can be selected and used.

The Economic Dispute Resolution Law gives parties the right to change from mediation to arbitration. If they do not wish to use arbitration then they may submit their dispute to the People's Court.

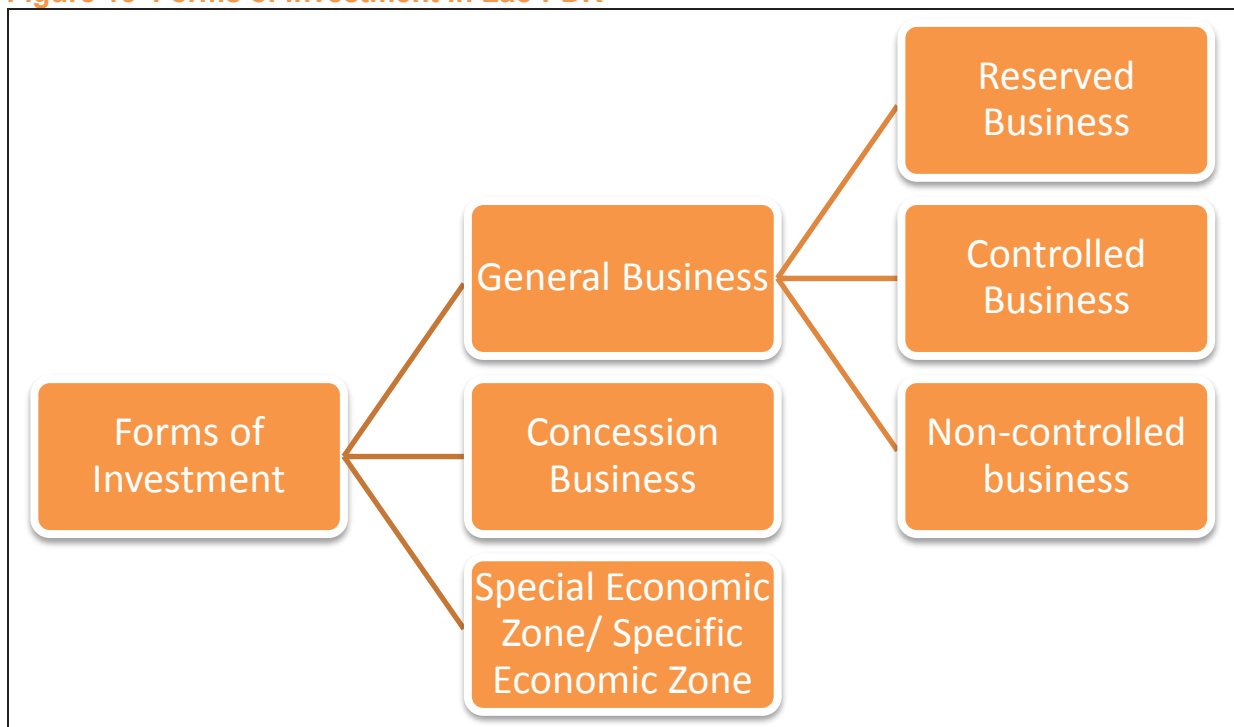
However, the MPI Investment Guide specifies that investment disputes arising from either joint ventures between foreigners and Lao nationals or involving fully foreign owned enterprises must be resolved in the following order:

1. Mediation;
2. Submission of dispute to the CPMI where investment licenses were issued. (The duration for mediation of disputes is within 30 business days);
3. Submission of dispute to the State Arbitration Agency for Economic Dispute or to judicial process as agreed by the parties.

As there are no explicit carve out of economic activities from this requirement to exhaust the alternative methods of dispute resolution before litigation, it is presumed that it applies to all sectors. ***It is recommended that the Investment Guide be amended to reflect the provisions of the Investment Promotion Law and the Law on the Settlement of Economic Disputes.***

**Figure 13** offers a diagrammatic presentation of the possible forms of investment in Lao PDR. General business is divided into reserved business, controlled business and non-controlled business. An amplified explanation of reserved business and controlled business is provided in the preceding paragraphs. As reserved business activities are to be exercised only by Lao citizens, foreigners may only participate in controlled and non-controlled business activities.

Figure 13 Forms of Investment in Lao PDR



Notifications related to the Law on Enterprises 11/NA, dated November 9, 2005, which is the main pillar of Lao PDR's corporate law framework, carve out specific areas in which Lao nationals have exclusive access or where they are given preferential access. According to the reserved list, these areas of exclusivity represent business categories with a long heritage of the ethnic minorities, business that do not require a high degree of knowledge or large amounts of capital for business.<sup>5</sup> The legislation describes these economic activities as being intimately intertwined with the national identity of the Lao people; and necessary for the creation of jobs, generation of income and the improvement of the livelihood of the Lao people, ethnic minorities and Lao citizens. Services activities which fall into this category are show in **Box 2**.

#### Box 2 Services Activities on the Reserved List

- activities related to picture printing;
- hydroelectric power projects with a capacity of less than 15 megawatts which are non-concession based;
- electrical installation;
- plumbing, heat and air-conditioning installation;
- wholesale trade business;
- retail trade business;
- urban and suburban passenger land transport; other passenger land transport, except taxi meter services;
- service activities incidental to land transportation - passenger transport terminals;
- guest houses, resorts, hotels of 3 stars or less;
- publishing of newspapers, journals and periodicals;
- the establishment of printers;

<sup>5</sup> Notification 1590/MOIC.ERM on the List of Reserved Businesses for Lao Citizens, August 26, 2013.

- sound recording and music publishing activities;
- establishment of public radio stations;
- establishment of public television stations;
- establishment of trusts, Non-Deposit Taking Microfinance Institutions, Savings and Credit Unions;
- pawnshops;
- survey, design, construction consultancy activities and the installation of Lao historical, natural, cultural architectural and engineering and the design, construction and installation of electric grids and generators from 22 kv-35 Kv and low 0.4 Kv;
- Lao language translation activities;
- employment referral services;
- tourism in specific areas;
- general cleaning of buildings;
- labour skills development centres, except technic-vocational schools, specialized technical colleges in accordance with national curriculums;
- teaching of Lao language to foreigners;
- private specialized health centres;
- repair of footwear and leather goods;
- washing and (dry-) cleaning of textile and fur products;
- hairdressing and other beauty treatments;
- funeral and related activities; and
- activities related to decoration and lighting systems installation, light, colour and sound.

Source: Notification 1590/MOIC.ERM on the List of Reserved Businesses for Lao Citizens, August 26, 2013

Notification 1591/MoIC.ERM (also known as the controlled list) sets forth the economic activities (i.e., controlled activities) in which foreign participation is subject to discriminatory equity restrictions and minimum capital requirements. **Box 3** highlights the sectors into which these activities fall.

### **Box 3 Services Activities on the Controlled List**

- construction;
- wholesale distribution;
- transport and warehousing;
- accommodation and restaurants;
- professional, scientific and technical activities;
- education; and
- human health.

Source: Notification 1591 /MOIC. ERM on the List of Conditional Businesses for Foreign Investors, August 26, 2013.

While the level of compliance of these restrictions with Lao PDR's trade commitment is taken up in the sectoral analysis in Chapter 5, ***one broad recommendation which can already be made is that a mechanism be should be established between the Enterprise Registration Department (ERD) and the Foreign Trade Policy Department (FTPD) to ensure that any additions to the lists are compliant with trade commitments.*** This mechanism could be as simple as requiring a formal no objection from FTPD before any amendments are made or perhaps proposed amendments could be discussed by a joint working group of the FTPD and the ERD at periodic intervals and the final decision could be made by this working group.

Concession business refers to investment activities authorised by the Government to utilise ownership and other rights of the Government for the purpose of developing and conducting business operations; these include rights on land concession, minerals, electric power, airlines, telecommunications, insurance and financial institutions.

Special Economic Zones (SEZ) are to facilitate investment in the construction of complete infrastructure and new city development. SEZs may consist of various Specific Economic Zones, which are targeted at specific sectors such as industry, export production, tourism or duty-free trade.

#### *Corporate Framework*

The general regulatory corporate framework – the Law on Enterprises – has been modernised.<sup>6</sup> The new Accounting Law – which was passed in 2013, but is awaiting promulgation by the National Assembly – will modernise the rules on corporate financial accounting.

The Law on Enterprises is applicable both Lao and foreign business. It provides guidance on business registration, incorporation, corporate governance and financial accounting and monitoring among other things. Companies are required to present audited financial statements to shareholders annually. The new Accounting Law will require companies to prepare and submit audited accounts to the Ministry of Finance and other concerned ministries. These audited accounts will be accessible to the public. This represents a significant improvement as the availability of independently verified data of the financial status of companies posed serious challenges for potential investors seeking to purchase companies or acquire shares.

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<sup>6</sup> The Law on Enterprises is supported by a raft of sub-regulations and other measures such as notifications. Sub-regulations include Order on the Implementation of the Enterprise Law; the Regulation on the Reservation and Approval of the Enterprise Name; Instruction on the Implementation of Declaration for Enterprise Registration

### Land Regime

In line with Lao PDR's Constitution, land is owned by the national community and is available only on a leased or concession basis.<sup>7</sup>

Land use rights may only be transferred to a Lao citizen or a Lao organisation. Aliens, apatrids (stateless persons), foreign individuals and their organisations are given the opportunity to apply for land leases or land concessions with the state. Exceptionally, the Investment Law grants foreign investors with registered investment capital of US \$500, 000 and above the ability to acquire land use rights for an area which is not to exceed 800 square meters. The Government will allocate land to investors for a duration consistent with the investment period and based on the consent of local authorities according to prevailing regulations to build facilities for residential or business purpose. This right is granted only one time per enterprise and under the name of one legal entity regardless of the number of shareholders or branches.

Land is available on a leased basis to Lao nationals for 30 years and the period of land lease by Lao nationals to foreign investors is 30 years. (See **Table 7**) The latter may be extended on a case by case basis with the approval of the national Land Management Authority on the basis of a recommendation from the Provincial or City Administration. ***In line with regulatory best practices, there should be clear criteria to govern the granting of extensions.*** Lease of developed land by a foreigner requires prior recommendation from the Provincial and City Administration as well as the Land Management Authority.

The period of land lease or concession by the state to foreign investors is 50 years and this may be extended. In the SEZs and Specific Economic Zones, the maximum period of the land lease is 75 years with the possibility of extension on a case by case basis with the approval of the National Assembly. In addition, the lease or concession of land beyond 10 thousand hectares requires approval from the National Assembly.

**Table 7 Duration of Land Tenure in Lao PDR**

Lessor	Lessee/ Concessionaire	Type of Land	Duration (years)	Possibility of Extension	Authorising Authority
Lao citizen	Alien/ apatrid	Developed	20	Yes	Provincial or city administration
Lao State	Alien/ apatrid	Not specified	30	Yes	Government of Lao PDR
Lao citizen	Foreign investors	Not specified	30	Yes	National Land Management Authority
Lao State	Foreign investors	Not specified	50	Yes	Government of Lao PDR
Lao State	Not specified	Specific or Special Economic Zones	75	Yes	National Assembly

Source: Land Law 2003

<sup>7</sup> Access to and use of land is governed by Land Law, No. 04/NA, dated October 21, 2003 and Prime Ministerial Decree on the Implementation of the Land Law 88/PM dated June 3, 2008. Additional regulatory instruments include Presidential Decree on the Leasing Rate of Land 02/PO dated November 18, 2009; and Prime Minister's Decree on the Leasing of State Land 135/PM dated May 25 2009.

Additional measures include the requirement for state approval for foreigners to use land as collateral when dealing with commercial banks in Lao PDR or to use the lease contract as a capital contribution with another person. In the latter case, the approval of the land use rights holder may be sufficient.

These measures are for the most part consistent with GATS commitments with one exception – the duration of land tenure. While the general regime for leasing land from Lao citizens and the Lao state are 30 years and 50 years respectively, with the possibility of extension, Lao PDR committed under the GATS to permit foreigners to lease land up to 75 years. ***It is recommended that Article 65 of the Land Law be amended to allow foreigners to lease land for the duration specified in the GATS commitments, i.e., 75 years. Such an amendment would also require a re-examination of Article 13 which limits the maximum land lease period granted to Lao citizens by the state to 30 years with the possibility of extension. This recommendation is made on the basis that it would be incongruent to allow Lao citizens to lease land to foreign investors for 75 years while Lao citizens themselves only hold a land lease for 30 years.***

Similarly, for the AFAS commitments, the time limitation on land leases has been eliminated. Consequently, limitations on the duration of tenure in the Land Law conflict with the trade regime provided for under the AFAS. ***It is therefore recommended that a new provision be included in the Land Law which specifically creates a regime for ASEAN individuals and investors. The hallmark of the new regime would be that land leases would be available to ASEAN investors for an indefinite duration.***

***In order to improve the land regime, it is suggested that Lao PDR continues with the process of allocating land rights to Lao nationals as this likely to foster clarity when Lao nationals and entities lease land to foreigners. As noted earlier, it would be useful for a regulatory impact assessment to be performed on the Land Law as there are some issues which may need to be reassessed – these include the expropriation guarantee and level of fees charged when registering land as collateral.***

### *Concessions Regime*

The concessions regime, which is regulated by Law on Investment Promotion and its Implementing Decree, represents one pillar of the overall investment framework. Concessions transfer land to companies, which are then responsible for their investments. Concessions are available for the following sectors:

- Mineral exploration and exploitation;
- Hydropower;
- Electricity;
- Land;
- Telecommunications;
- Radio and television stations;
- Airlines, air and sea transports;
- Insurance;
- Financial institutions;
- Construction of markets, commercial centres, touristic areas, camps, parks, offices, residence and others which acquire the use of Government land; and
- Construction of infrastructure: roads, transportation (land, water), railways, bridges, airports, water supply and sanitation services.

Concession agreements are mandatory for the provision of services on the abovementioned list. However, there is a slight variation between the listed sectors in Article 15 and Annex 3 to the Investment Promotion Law which elaborates the sectors open for concessions, namely, the list in Annex 3 does not include insurance and financial institutions.

It is not clear why services such as telecommunications; airlines and insurance are included in the list of concession business as the traditional economic rationale for concessions is linked the use of scarce natural resources. The conditions attached to these concession agreements come from the line Ministries themselves and are taken from the relevant sectoral regulations. While the MPI does not have any broad conditions itself, it incorporates the conditions from the line Ministries into the concession agreement.

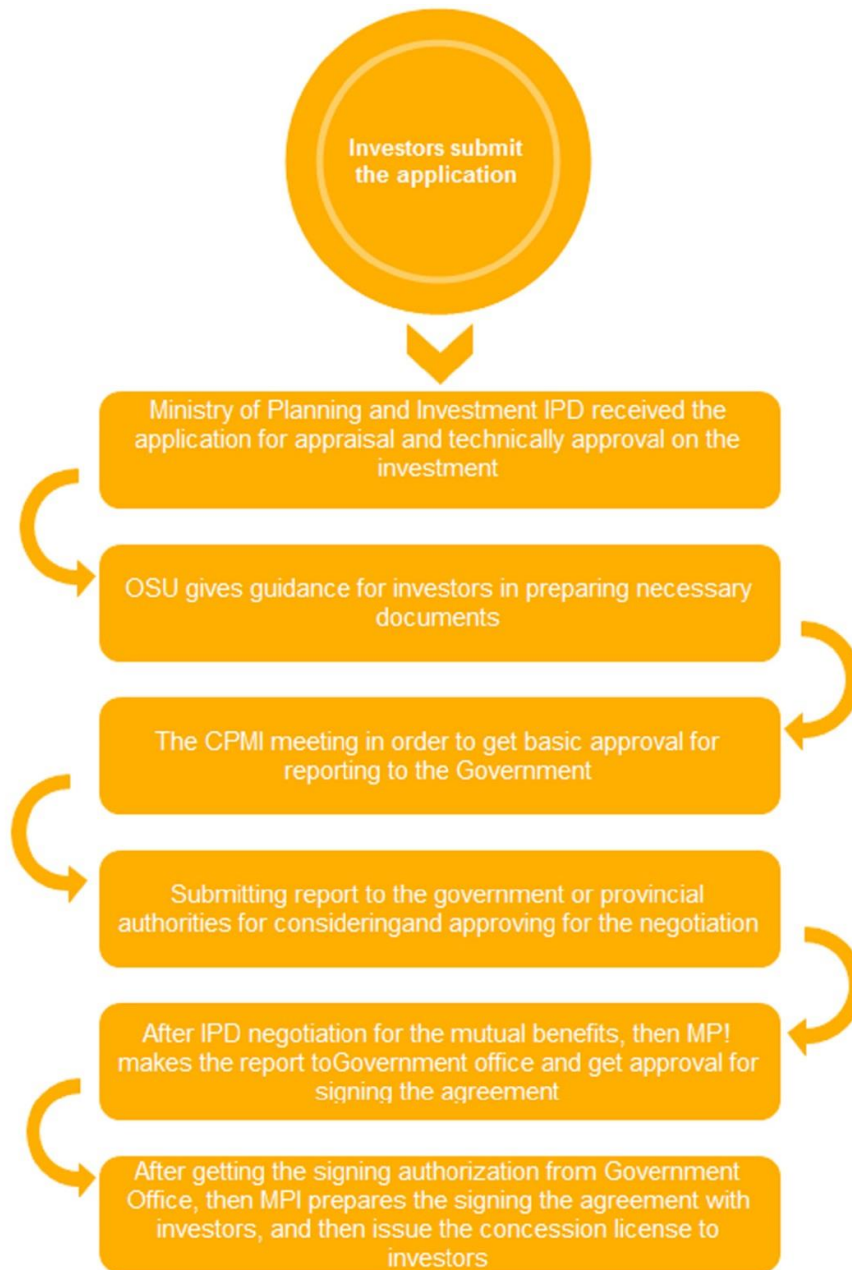
The level and scope of tax and other incentives granted depends on the outcome of one on one negotiations between the investor and the Government of Lao PDR. As the GoL maintains ownership stakes in concession operations the state is in a privileged position to influence the company's further operations if there is a conflict between the state's interests and those of private owners.

The GoL has established an investment calling list which prioritises investments in specific areas, nevertheless, investment proposals which are not on the investment calling list are still given consideration. Services activities such as tourism and the construction of infrastructure (roads, bridges, logistic parks, a bus terminal and a hospital) feature prominently on the investment calling list.

The screening process operated by the MPI takes into account the financial and technical feasibility of the project, input from relevant line ministries and whether the proposed project conflicts with government policy. (US Department of State 2012) Officials of the MPI indicate that potential investors are assessed on the basis of the economic plan they submit. Factors taken into account in the decision-making process include the technical capacity of the investor, its track record in the area of the proposed economic activity and membership in professional associations where relevant. It was difficult to determine definitively whether there are set criteria for assessing concession proposals. However, ***if these do not exist, it is recommended that the MPI create such criteria and make them publicly available.***



**Box 4 Procedure for Approving Investment in Concession Activities**



Source: MPI, Investment Guide 2011, 12.

**Notes:**

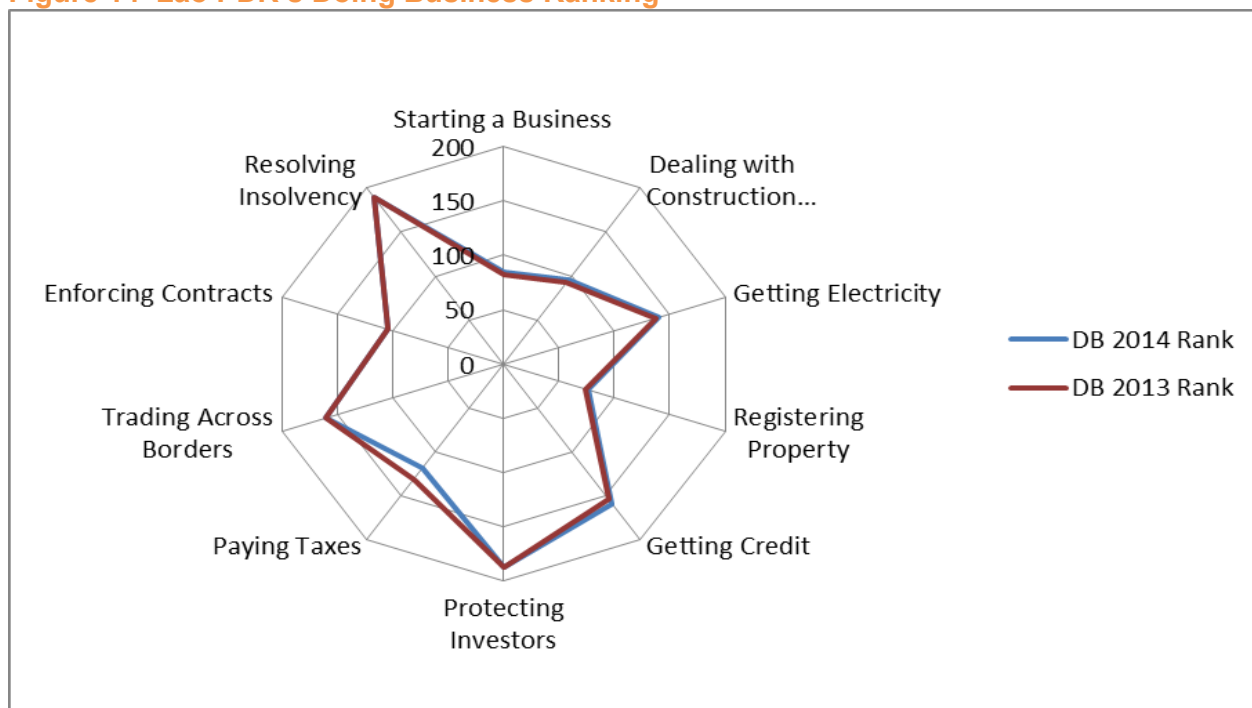
CPMI – Committee for the Promotion and Management of Investment

IPD – Investment Promotion Department

OSU – One-stop shop services unit

*Business Registration*

Lao PDR ranks 159<sup>th</sup> out of 189 economies in terms of the ease of doing business. This represents an upward movement of 4 places on the rankings. Nonetheless, a closer look at Lao PDR's performance reveals slippage on 6 of the 11 indicators on which the index is calculated – business registration, dealing with construction permits, getting electricity, registering property, getting credit, protecting investors and trading across borders. Nevertheless, these movements do not seem to point to a deterioration in the country's performance rather it suggests that other countries had engaged in relatively more reforms.

**Figure 14 Lao PDR's Doing Business Ranking**

Source: World Bank, Doing Business Database, 2014

Lao PDR has made significant progress in facilitating business establishment placing 85<sup>th</sup> out of 189 economies in 2014. In 2008, it made the process of obtaining an operating license faster and removed the requirement of obtaining Ministry approval for registering a new company; and in 2013 it further eased the process by allowing entrepreneurs to apply for tax registration at the time of incorporation. **Table 8** below highlights that the length of time taken to start a business in Lao PDR, i.e., 92 days, is significantly longer than the average time for the East Asia and Pacific region and the OECD countries. The longest process appears to be the carving of a seal which takes an estimated 45 days.<sup>8</sup> According to the data, applying for the enterprise registration certificate and tax registration certificate takes 3 weeks.

<sup>8</sup> All companies are required to have a seal from the Ministry of Public Security. Traditionally, the primary objective of the company seal is to confirm the authenticity of company documents in order to make them legally binding by

This stands in contrast to the timeframes laid out in the Enterprise Law. For general non-controlled business, the ERD of the Ministry of Industry and Commerce (MoIC) will issue the business licence and tax registration number within 10 days. If the application is refused, then reasons will be provided to the applicant for the non-issuance of the licence. For controlled business, the ERD will submit the application to the relevant line Ministry immediately for its comments. The line Ministry or agency is required to respond within ten working days, except in the cases of certain businesses that require a longer technical review process. Thereafter, within three working days, the ERD will make a decision on whether or not to issue the enterprise registration certificate. For concession business, foreign investors are required to go through the MPI. Applications to the MPI are to be processed and decided upon within 45 working days.

Some elements of the Enterprise Law have come under scrutiny with the conclusion of a 2014 preliminary impact assessment (PIA). The issues highlighted by the PIA are the length of time taken to start a business; tax numbers not being provided at the time of business registration which causes the investor to have to spend time and money acquiring one on his/her own; lack of information about the approval of businesses on the controlled list; confusion about the type of businesses which ought to register with which authority, i.e., the MoIC or the MPI; businesses operating without meeting standards; lack of guidance on how to change from a limited liability enterprise to an unlimited liability enterprise. Consultations on the proposals from the ERD are currently being undertaken. (ERD 2014)

***The ERD is encouraged to move ahead with conducting a full regulatory impact assessment (RIA) on the operation of the Enterprise Law as there are likely to be more issues to be addressed beyond those captured in the PIA. Issues identified by this study include the need for approvals for changes related to incorporation details such as the business address and changes in directors whereas notification represents a less resource intensive process; and challenges in condensing a pre-existing AoA into the standardised form provided by the ERD.*** These issues are raised later in the discussion on horizontal administrative practices.

**Table 8 Starting a Business, Lao PDR and Select Comparator Groups, 2014**

Indicator	Lao PDR	East Asia & Pacific	OECD
Procedures (number)	6	7	5
Time (days)	92.0	37.8	11.1
Cost (% of income per capita)	6.7	29.8	3.6
Paid-in min. capital (% of income per capita)	0.0	293.3	10.4

Source: World Bank, Doing Business Database, 2014

### *Tax Incentives*

Tax incentives apply equally to foreign and domestic investors. However, investments in non-prioritised sectors are not eligible for the tax incentives that are available to promoted activities.

### *Terms of Investment*

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affixing a stamp to an official document. In this sense, the Company Seal acts more or less as the signature of a company. IFC, 'Streamlining Business Registration in Lao PDR: Reducing the Burden of the Company Seal', *Business Issues Bulletin* 49091, no. 8, June 2009.

There is no fixed term for general business licenses; concession licenses are available for a maximum of 15 years; and SEZ licences are available for up to 99 years. The representative office licence is for a maximum of three years.

#### *Rules on Shareholding and Minimum Capital Requirements*

The main horizontal measure on equity relates to state owned companies where the Enterprise Law precludes investors (both domestic and foreign) from acquiring more than 49 per cent of the operation.<sup>9</sup>

The Investment Law mandates that minimum foreign equity in a joint venture is 10 per cent. Further, the Investment Law stipulates that foreign investors engaging in general business activities must have a minimum capital of not less than LAK 1 billion and the Enterprise Law provides the legal basis for other sectorally determined minimum capital limits. The minimum capital limits applied on a sectoral basis are discussed in Chapter 5. **Box 5** places minimum capital requirements in the historical perspective and suggests that other regulatory tools such as mandatory disclosure of information, mandatory filing of annual financial accounts in company registries and enhancing the supervisory role of company registries may present better alternative to achieve efficiency and protect consumers.

#### **Box 5 Minimum Capital Requirements in Perspective**

The minimum capital requirement finds its roots in continental Europe of the 20<sup>th</sup> century.<sup>10</sup> Back then, the minimum paid-up capital was stipulated by law and its primary legislative purpose was to protect creditors and nurture confidence in financial markets. Nowadays, despite the financial burden that minimum capital requirements impose on potential entrepreneurs, some argue that they protect investors and consumers from new firms that are set up carelessly, might not be financially viable and will likely close soon after launching. Advocates of this argument claim that minimum capital requirements enable prospective investors to consider investments more cautiously. But this regulatory fix does not adequately address the problem. Paid-in minimum capital is often a fixed amount that does not take into account firms' economic activities, size or risks. In some cases it is the same for different types of companies as well. For instance, a small company in the services industry with low startup capital has to pay as much as a large manufacturing company with high initial capital in Gabon, despite the difference in business activity and size. Moreover, funds tied up in minimum capital requirements, particularly in economies where the amount is sizable, could impose financial constraints on companies that have other needs, such as hiring, buying equipment or developing services.

Others argue that minimum capital requirements shield firms from insolvency and so protect creditors and investors. But lenders tend to base their decisions on commercial risks rather than government-imposed minimum capital requirements. Creditors usually prefer to evaluate firms' income statements, business plans and other representative indicators. Thus, many economies have found other ways to protect investors, particularly with limited liability companies. For instance, Hong Kong SAR, China outlines solvency safeguards in its Companies Act and does not require a specific amount of paid-in minimum capital for business incorporations. Furthermore, companies have different probabilities of becoming insolvent. Even with a minimum capital requirement there is no guarantee that a firm would not face insolvency because of other factors such as poor management and decision making, bad business conditions and market changes.

<sup>9</sup> Enterprise Law Article 196.

<sup>10</sup> World Bank, *Why are Minimum Capital Requirements a Concern for Entrepreneurs*, 2014, 42 – 43.

If the enforced minimum capital requirement is too high, it might impede the development of start-ups. It could block potential entrepreneurs seeking to start businesses as alternatives to unemployment.

Some researchers also argue that high minimum capital requirements distort healthy competition by putting entrepreneurs with less financial capacity at a disadvantage. A firm is expected to use its financial resources to establish the business and day-to-day operations. So freezing capital in a bank account may undermine a company's growth. Moreover, high minimum capital requirements can enable fraudulent activities that they are supposed to prevent. Entrepreneurs eager to incorporate companies but lacking the required funds, often falsify company incorporation forms or withdraw funds soon after incorporation. If the capital requirement is too low, it fails to screen out potentially unviable businesses. A low requirement does little to protect creditors if a company undergoes financial distress.

A better way to make markets more efficient and protect creditors would be to enforce mandatory disclosure of information, such as mandatory filing of annual financial accounts in company registries and enhancing the supervisory role of company registries. Other forms of creditor protection already exist in many economies, including corporate governance monitoring, setting of interest rates and contractual provisions such as bond indentures and loan agreements.

### *Performance Requirements*

Law on the Promotion of SMEs 11/NA of December 21, 2011 requires the transfer of skills to Lao staff and imposes an obligation on foreign investors and large scale enterprises to provide opportunities for SMEs to supply raw materials, finished goods and services and ensure the transfer of technology.

### *Movement of Natural Persons*

The temporary entry of foreign persons to provide services is controlled primarily by the Ministries of Public Security and Labour and Social Security. The Ministry of Public Security through the Foreign Control Department operates 14 categories of visa schemes.<sup>11</sup> These include visas for business; tourism; transit and technical experts. Visitors may enter Lao PDR for 30 days with the possibility of extension or they may cross the border and return to Lao for an additional 30 days. The maximum permissible stay is 90 days. These durations accord with the commitments made under the ASEAN Agreement on the Movement of Natural Persons (AMNP). ***It would enhance the services regime if visitors were able to obtain a multiple entry visa for the 90 days rather than being issued a single entry visa for thirty days with the possibility of renewal. In the long run this would be easier administratively.***

Matters related to labour are regulated through Labour Law 06/NA, dated December 27, 2006. A new Labour Law was passed by the National Assembly in 2013 and is awaiting promulgation. The Labour Law features a requirement to give priority to Lao labour and mandates that approval be sought for the use of foreign labour. The Law also features quotas on the use of foreign skilled and unskilled labour with companies being able to employ a maximum of 25 per cent of the former and 15 per cent of the latter. Both the new Labour Law and the Investment Law confirm the right of investors to seek approval to hire staff beyond these limits. Given that Lao PDR's commitments

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<sup>11</sup> Authority for the exercise of these functions is derived from Prime Minister's Decree on the Management of Exit and Entry of Foreign Workers in Lao PDR, 136/PM, dated May 25, 2009.

are based on the lower quotas found in the old Labour law, these new limits essentially translate to an improvement on the level of market access and are GATS compliant.

The determination of the necessity and reasonableness of the request is made by the line Ministry and local authorities check to verify whether there is a need for the additional human resources from abroad. Consideration is given to factors such as the necessity of the work to be undertaken by the foreign employee, business performance, production expansion and the use of advanced technology.

In general, companies are only permitted to hire additional foreign workers if they prove that no Lao national is qualified or available to do take up the employment opportunity. This practice equates to a labour market test. The ability to employ such mechanisms to control foreign entry is guaranteed by Lao PDR's horizontal commitments under both the GATS and the AMNP.

Article 69 of the Labour Law imposes a requirement on foreign staff to transfer knowledge to Lao workers while Ministerial Agreement on Approving Importation of Foreign Labour in Lao PDR 5418/MLSW, dated December 10, 2007 requires both the investor and the skilled foreign worker to train and transfer knowledge to Lao staff. The requirement for foreign investors to provide training to Lao nationals is consistent with the country's GATS and AFAS commitments. However, no limitation has been imposed via the GATS or AMNP commitments which would require skilled foreign workers to train Lao nationals. ***As such it is recommended that the obligation on foreign skilled workers to train Lao nationals be removed from the Labour Law and the Ministerial Agreement or both foreign and domestic skilled workers be required to train Lao nationals.***

Intra-corporate transferees (ICTs) are initially permitted to work for 1 year with renewals being granted for 6 months to 1 year thereafter. The maximum period of employment is 4 years. The new Labour Law allows renewals to be granted every 12 months and the maximum permissible stay will be for five years. These provisions are more generous than Lao PDR's GATS commitment which grants ICTs one year initially with renewals being granted every 6 months for a maximum of 3 years.

While foreign workers pay a US \$10 per month for their work permits; provision is made for workers from Cambodia and Vietnam who are based in the Southern part of Lao PDR to pay a lower fee. Registration and issuance of temporary work permits for more transitory natural persons such as those required to verify work, monitor, inspect projects, install and repair machines based on a sales contract for equipment and machines must not exceed 3 months. Such persons appear to be considered as unskilled and hence their entry and stay is unaffected by GATS and AMNP commitments.

### Other Horizontal Policies

Taxation matters are for the most part covered by the Tax Law 058/NA of January 16, 2012. This law covers all direct and indirect taxes with the exception of valued added tax (VAT). De jure, the tax system is the same for foreign and domestic businesses. There are two regimes for business tax – one for companies which keep formal accounts and the other for small

businesses which do not have a proper accounting system, also known as, the lump sum tax. Businesses established under the Investment Law are required to adhere to the tax regime for

companies which maintain formal accounts. All companies falling into this category pay tax according to their official records with some being audited once a year and others being audited every quarter with audits in some cases lasting for 3 months. Small businesses that fall under the lump sum regime can negotiate the tax payable with the inspector and pay this agreed amount. This is usually a significantly understated amount.<sup>12</sup> This issue is among a number of others which has recently engaged the attention of the MoF in the form of a recently executed PIA.<sup>13</sup> Other issues included in the PIA were the lack of awareness and understanding of how lump-sum tax is implemented, difficulties in estimating a business' turnover (and the lump-sum tax), difficulties in paying/collecting lump-sum tax and lump-sum tax being paid by some ineligible businesses. (Ministry of Finance 2014)

The administration, collection and enforcement of the VAT are provided for under the Law on Value-added Tax, 04/NA, dated December 26, 2006.<sup>14</sup> Business operators who have a minimum annual business turnover of LAK 400 million are subject to value-added tax registration with the tax authority and are required to file VAT returns. In addition, VAT registration is also required for non-resident service suppliers in Lao PDR on a temporary basis. Sub-regulations and the VAT guidelines provide detailed guidance on compliance with the VAT regime. Taxpayers charged VAT have the right to offset VAT paid on goods and services.

One striking feature of the tax regime is the size of the tax base. It is estimated that 10 per cent of enterprises follow the formal tax system and hence the burden of the tax regime falls on this sub-set of tax payers. The PIA considers providing information to those who fall into the lump-sum regime to enhance compliance and suggests making record-keeping mandatory for small enterprises as a way to widen the tax base. ***However, it is recommended that the operation of the entire tax system be subjected to the RIA process as there are other issues which should be addressed. These include the level of enforcement on the regime for those whose taxes are calculated on the basis of formal accounts; the VAT regime, tax exemption certificates, the depreciation of the fixed assets of enterprises and the interface between the Tax Law and the Foreign Investment Law in relation to issues such as personal income tax.***<sup>15</sup>

The Decree on the Administration of Prices of Goods and Fees of Services, 474/PM, November 18, 2010 permits intervention into the market to regulate the prices of specific goods and services. Where a good or service is on the price control list, then business operators require the approval of the Price Administration Authority before using proposed price structures for sales or services. Services to which this law applies are telecommunications, metered taxis, inter-provincial road and air transportation, city and intra-provincial road and air transportation and air ticket service fees and reservations. ***Perhaps consideration could be given to using the competition law framework, when it is fully implemented, to address concerns about anti-competitive behaviour in some of these services sectors as opposed to price administration.***

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<sup>12</sup> Interviews with private sector service providers.

<sup>13</sup> The PIA is still in draft form and has not been officially disseminated as yet.

<sup>14</sup> Supporting regulations include Regulation on Tax Registration 3225/MOF, dated December 17, 2009; Regulation on VAT Declaration and Payment, 3227/MOF dated December 17, 2009; Regulation on Financial Source and VAT 3229/MOF, dated December 17, 2009; and VAT Guidelines.

<sup>15</sup> Interviews with private sector service providers

## Governance and Institutional Setting on Services Trade

### *Institutional Framework*

A good number of barriers to trade in services are grounded in opaque and discretionary administration of laws and regulations. The quality of institutions matters in the design of policies to the services sector (Goswami, Mattoo and Saez 2012: 5). The institutional capacity to design adequate policies, regulate different services sectors and ensure compliance with laws and regulations is thus a key driver of success in the services sector. An assessment of the governance framework aims to identify shortcomings in the regulatory process and institutional setting that may undermine the functioning of the services market.

**Table 9 Lao PDR, Select Governance Indicators, 2008 – 2012**

Indicator Name	2008	2009	2010	2011	2012
<b>Government Effectiveness: Estimate</b>	-0.87	-0.95	-0.87	-0.84	-0.87
<b>Government Effectiveness: Percentile Rank</b>	18.44	16.74	20.09	20.37	21.05
<b>Regulatory Quality: Estimate</b>	-1.12	-1.05	-1.01	-0.97	-0.83
<b>Regulatory Quality: Percentile Rank</b>	14.07	13.87	17.22	18.48	22.01
<b>Rule of Law: Estimate</b>	-0.83	-1.00	-0.92	-0.94	-0.82
<b>Rule of Law: Percentile Rank</b>	21.15	16.58	19.43	18.31	23.22

Source: World Bank, Worldwide Governance Index 2013

Notes: Estimates range from the lowest point of -2.5 to the highest point of 2.5

As noted earlier in Chapter 2, and as reaffirmed by **Table 9** above, the WGI highlights that there is room for Lao PDR to improve its performance on the key dimensions of governance. This provides important clues as to the number of *de facto* restrictions which affect services trade. **Table 10** identifies the main administrative practices that restrict services trade and investment in Lao PDR and the modes of services supply most affected by them. As it can be expected, cross-border trade and consumption abroad are less vulnerable to governance deficiencies in the importing country (Lao PDR, in this case), since the production or consumption of the services takes places beyond its jurisdiction. Foreign companies or individual services suppliers wishing to offer services within Lao PDR, instead, are confronted by the governance deficiencies during establishment as well as during the regular operation of their services.



Table 10 Administrative Practice Restrictions

Market Access/ Establishment	Operations
No licenses or permits being granted Requirements not publicly disclosed Ambiguous / unclear requirements Unofficial fees Inconsistent / unpredictable regulation Discriminatory application Burdensome administrative procedures	Missing or outdated regulation Requirements not publicly disclosed Ambiguous / unclear requirements Unofficial fees Inconsistent regulation Discriminatory application Deficient monitoring/enforcement procedures
<b>Cross-Border</b>	● ● ● ● ● ●
<b>Consumption Abroad</b>	● ● ● ● ● ●
<b>Commercial Presence</b>	● ● ● ● ● ●
<b>Natural Persons</b>	● ● ● ● ● ●

Source: author

Key: ● = restriction applies.

Administrative practices restrict both the establishment of suppliers and operation of the business. Despite the improvements made by the GoL in improving the ease of setting up a business, a few practices continue to hinder the establishment of foreign and domestic companies.

As noted earlier, registration procedures take 15 days with the carving of the seal requiring an additional 45 days. The Enterprise Law foresees the completion of business registration within 10 days for non-controlled general business. On the basis of interviews with the private sector, it would appear that issues arise from the failure to comply with prescribed timeframes. The main one is the volume of applications in comparison with the ERD's staff complement. Further issues also arise from non-compliance with other procedures as set forth in the law, for example, the process of business registration may be delayed by consultations with line Ministries on non-controlled business when it is not required. In addition, applicants for business registration appear to be challenged by the large number of documents to be completed. Special mention was made of the need to fill a standardised Articles of Association (AoA) form which does not appear to permit the full provision of relevant information as determined by the company and fully reflect its original AoA. This has the potential to create unpredictable outcomes as there is no certainty in a legal conflict of which version of the AoA would take precedence. ***It is recommended that the consultation procedures set out in the Law on Enterprises be complied with until a new regime can be introduced. Moreover, it may be more appropriate for the ERD to provide options for the submission of AoAs. Small businesses which do not already have an AoA could make full use of the standardised form. In the case of larger businesses which already have an AoA, the ERD could accept the completed form with the original AoA attached as an integral part of the application.***

Business operation is hindered by the inconsistent or unpredictable enforcement of laws and regulations, especially in the application of taxes. The payment of tax is a prime example with tax compliance falling more heavily on larger business than on SMEs and, by extension, more heavily on foreign firms; audits being conducted on a frequent basis on the same companies (some yearly and some quarterly); pressure on business operators who are subject to the formal tax regime to pay over and above the amount of tax considered to be due after the assessment of the business' accounts; and requests for reassessment of taxes hindering the issuance of a tax clearance certificate which is a requisite for renewal of the annual business licence and the non-issuance of VAT returns.

Other examples include the need for approvals for changes related to the legal documentation establishing the company.<sup>16</sup> Some regulatory authorities such as the BoL impose a requirement to notify of changes of directors and business address once they have been made while other regulatory authorities like the MoIC require the business to seek approval for such changes. ***In order to ease the administrative burden on both the regulatory agencies and businesses, it is recommended that regulatory agencies comply with the regulations by accepting notifications.***

In addition, there is a need to improve the clarity of regulations as there are instances where rules may be interpreted differently by different persons. This applies to practically all sectors, but was particularly noticeable in relation to the interpretation of tax regulations by different officials at the Ministry of Finance. Private sector representatives cite cases where the depreciation of assets for tax purposes is allowed and then in other cases it is not.

In other cases, procedural requirements do not match the stage of the actual regulatory process being undertaken. An example of the latter point is where business registration requires the presentation of documents such as lease agreements and labour contracts which a company could not reasonably possess before incorporation.

There are also cases where laws appear to be amended with inadequate attention to how they then interact with concession agreements. For example, a telecommunications company was granted a 20 year licence with the right to run as many promotions as it wished. These rights are in limbo with the telecommunications law granting licences for a maximum of 15 years with the possibility of renewal and limitations on all service providers to run promotions only for 90 days and only being able to use 5 days for major events.

These issues may be addressed by a number of methods – the creation of user friendly guidelines for staff and the public to ensure a common understanding of rules; continuing to use RIAs to assist in preparing regulatory changes and ensuring that the RIA also takes into account the interaction with other laws and contracts such as concession agreements; and ensuring that requirements in administrative procedure reflect the logic of the process.

In addition, the practice of implementing a law and then providing the sub-regulation at a much later date creates regulatory uncertainty. Sub-regulations play an important clarifying role. For example, the Law on Economic Dispute Resolution provides for the appointment of foreign mediators and arbitrators, but the implementing regulation on the conditions governing these

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<sup>16</sup> Enterprise Law Article 18.

appointments and qualifications for foreign mediators and arbitrators still remains to be drafted. ***It is suggested that rules be established to ensure that Law and sub-regulations be drafted at the same point or to set a minimum timeframe within which the sub-regulations should be drafted and implemented.***

The lack of clarity arising from missing sub-regulation is compounded by a legal system which does not provide sufficient transparency in the sense that written or oral justifications of judgement are not provided. As such one cannot rely on an interpretation by the courts to shed light on regulations. It is likely to increase investor confidence if there was certainty that issues would be resolved in a specific way based on precedent.

Finally, business operations are challenged by regulatory requirements not being publicly available as detailed requirements tend to be articulated in notifications and other instruments which are difficult to find in one central place. For foreign investors, this is compounded by the fact that these instruments are for the most part in Lao. Steps are being taken to remedy this deficiency as the Law on Making Legislation 19/NA of July 12, 2012 requires that all laws and regulations which were in effect before its implementation must be published in the Official Gazette. Such laws which remain unpublished by January 1, 2015 will cease to have effect. ***The proposed services trade and investment portal is likely to provide support for this transparency process and so efforts should be made to encourage the completion of this information tool.***

The Standing Committee of the National Assembly appoints all People's courts judges and may also remove them from office. A law is declared constitutional by the Standing Committee of the National Assembly. No constitutional court is currently entrusted with the interpretation of laws. This is likely to affect the hearing of appeal cases.

The rest of this section examines the institutional and regulatory framework relevant to trade and investment in services in Laos. It analyses the national government's broad institutional capacity to design, adopt and implement regulations conducive to an efficient services market; compares legal and regulatory procedures with internationally recognised principles of good governance and best regulatory practices.

As in most countries, policies related to trade and investment in services are covered by multiple institutions. Different ministries and agencies have jurisdiction over different sectors and modes of supply. For instance, the MoF is charged with regulation and oversight over the insurance sector and the BoL is the regulatory body for financial institutions such as banks. The mandates of the MoF and the Ministry of Labour cut across all services sectors, as they related to cross border transfer of funds and the ability of natural persons to provide services in Laos PDR respectively.

The MoIC has a broad mandate on trade matters, including international negotiations. However, in terms of regional negotiations, other Ministries take the lead on negotiations – the MPI is responsible for the negotiation of services commitments at the ASEAN level, the BoL leads negotiations on Financial Services and Air Transport services fall under the Ministry of Transport. Nevertheless there is a significant level of co-ordination between these line Ministries or agencies and the MoIC with formal mechanisms for consulting and updating on negotiating

developments. In light of the existence of GATS and AFAS regimes which appear to be somewhat inconsistent, questions naturally arise as to whether this decentralised mechanism should be critically reassessed to ensure that there is effective coordination on trade negotiations. ***Perhaps consideration should be given to centralising these responsibilities under the MoIC while creating a strong mechanism for consultation and coordination with the line Ministries.***

The MoIC has specific regulatory powers in relation to the distribution sector. In addition, it is the agency charged with developing standards for business practices and dealing with consumer protection issues. The latter authority is granted under the Consumer Protection Law. However, there are two drawbacks – the law focuses on goods and the consumer hotline mechanism to receive complaints has not been established. The MoIC does not currently have the mandate and authority to address market power and market design rules, but work is actively ongoing to draft a competition law and policy.

### *Institutional Capacity*

The MoIC's capacity to formulate and implement effective comprehensive trade policies is somewhat limited. The MoIC is considered to be understaffed and the capacity of technical staff varies according to departments. The FTPD appears to be an outlier to the rest of the MoIC as the completion of a master's programme seems to be a prerequisite to work in that department. Qualifications held by staff in that department tend to be in the area of economics, international relations and diplomacy.

The institutional framework provides clear mandates for each department within the MoIC as each one is guided by a Ministerial agreement on the role and functions of the department. There is no separate regulatory authority and responsibility for regulating most services sectors is vested in line Ministries. All regulators are legally and financially dependent on the government. The only regulatory body which is separate from a Ministry is the BoL which regulates banking services. The functions and responsibilities of the latter agency are well defined by the Decree establishing the BoL.

### *Rule-making procedures*

A clear and open rule-making process can contribute to the improvement of the regulatory framework. A number of developed and developing countries have introduced mandatory procedures or guidelines that govern the regulatory process itself, in order to make sure that government regulatory actions abide by general good governance standards. Different countries recognise different guiding principles on good regulatory practices, generally reflecting idiosyncratic regulatory conditions. Members of Asia-Pacific Economic Cooperation (APEC) and the Organisation for Economic Co-operation and Development (OECD) jointly prepared a checklist for regulatory reform (**Box 6**), building on the 2005 OECD Principles for Regulatory Quality. These approaches seek an adequate regulatory framework that, at a minimum, incorporates the following elements:

- Transparency: Regulatory action should be known within and outside government agencies; regulation should be simple, coherent, user friendly, and easily publicly available at all times.
- Stakeholder consultations: Links with the private sector should be an institutional component of the regulatory process;
- Agency coordination: Regulation should take place at the right level of government and benefit from relevant inputs, taking into account all relevant opinions;
- Efficiency: Regulators should consider the full range of regulatory options and evaluate the impact of regulation.



## Box 6 Good regulatory principles: Excerpts from the APEC – OECD Integrated Checklist on Regulatory Reform

Regulatory reform refers to changes that improve regulatory quality to enhance the economic performance, cost-effectiveness, or legal quality of regulations and related government formalities.

### A. Horizontal Dimension

A1. To what extent is there an integrated policy for regulatory reform that sets out principles dealing with regulatory, competition and market openness policies?

A5. To what extent has regulatory reform, including policies dealing with regulatory quality, competition and market openness, been encouraged and coordinated at all levels of government (e.g., Federal, state, local, supranational)?

A6. Are the policies, laws, regulations, practices, procedures and decision making transparent, consistent, comprehensible and accessible to users both inside and outside government, and to domestic as well as foreign parties? And is effectiveness regularly assessed?

A8. To what extent are there effective inter-ministerial mechanisms for managing and coordinating regulatory reform and integrating competition and market openness considerations into regulatory management systems?

### B. Regulatory Policy

B2. Are the legal basis and the economic and social impacts of drafts of new regulations reviewed? What performance measurements are being envisaged for reviewing the economic and social impacts of new regulations?

B4. To what extent are rules, regulatory institutions, and the regulatory management

process itself transparent, clear and predictable to users both inside and outside the government?

B5. Are there effective public consultation mechanisms and procedures including prior notification open to regulated parties and other stakeholders, non-governmental organisations, the private sector, advisory bodies, accreditation bodies, standards-development organisations and other governments?

B8. To what extent have measures been taken to assure compliance with and enforcement of regulations?

### C. Competition Policy

C9. To what extent does the competition law apply broadly to all activities in the economy, including both goods and services, as well as to both public and private activities, except for those excluded?

C12. In the absence of a competition law, to what extent is there an effective framework or mechanism for deterring and addressing private anti-competitive conduct?

### D. Market Openness Policies

D2. To what extent does the government promote approaches to regulation and its implementation that are trade-friendly and avoid unnecessary burdens on economic actors?

D8. To what extent are measures implemented in the countries accepted as being equivalent to domestic measures?

Source: OECD 2005.

While most ministries and agencies do try to follow procedures that incorporate elements of good regulatory practices, their adoption remains partial. Indeed, the more widespread adoption of these practices would drive the maturation of the overall regulatory system. Ministries and agencies try to publicise regulatory changes in advance, but it would appear that the reach of their dissemination methods is limited. Each governmental agency establishes its own regulatory procedures in line with the specific ministerial guidelines. These regulations are known and available to public officers.

The Law on Making Legislation which governs the regulatory process as a whole represents a strong step in the right direction. It mandates that the process of developing and amending the law should be transparent, open and benefit from cooperation with relevant sectors. In addition, it should broadly expand democracy and comments must be extensively sought. It confirms the rights of foreign and domestic individuals and entities to provide comments and requires the Ministry or entity leading the regulatory change process to post draft legislation on a website or publicise it via the print media or other means. A 60 day window is provided for interested parties to make comments. In addition, the Law definitively indicates the steps to be followed by Ministries and agencies as they engage in the reform process. Special mention should be made of the fact that the process involves the completion of an impact assessment. The Law on Making Legislation also resolves the question of contradictions between legal instruments and assigns responsibility for the interpretation of law to the Standing Committee of the National Assembly. It is early days yet and so it is difficult to reach firm conclusions on the operation of this law. While preliminary indications suggest that the timeframe for consultations is not being respected, it is important to recall that officials are still on a learning curve as it relates to the adoption of the procedures set out by the law.

The right of appeal against decisions of public authorities or actions against individuals is guaranteed under the Law on Petition, 07/NA, dated November 9, 2005 and represents another pillar in strengthening the governance framework. Petitions may be presented to the relevant administrative authority for the sector, the Court of Law or the National Assembly. The decisions of these authorities have legal effect.

### *Transparency*

Private sector feedback has consistently highlighted difficulties in accessing laws and regulations and the lack of clarity of their substantial requirements as hindrances to both the establishment and operation of services suppliers. This creates uncertainty about the requirements with which businesses must comply at the time of establishment and later during the course of their operations. Overall access to main laws can be described as ranging from generally available to available only with great effort. Main laws are readily available on the websites of many government agencies as well as on that of the National Assembly. While the National Assembly website represents the central point for the collection of laws, there is an appreciable difference between the number of Laws available in Lao and those available in English. Moreover, at times, the on-line version of the law is not the most recent one.

In addition, a number of Ministries and agencies maintain websites with their main regulations. However, few Ministries or agencies provide a comprehensive catalogue of the most recent version of laws related to their sector. The main stumbling block for foreign investors is the lack of a definitive translation of the laws. While some sub-regulation is posted on the websites of government agencies, these are generally less available. For other types of regulations below this level, they tend to be available only with great effort. These regulations are generally available at the ministries themselves and access to them is normally granted to any inquiring party.

Many legal instruments remain general in scope and offer little specific information and require secondary legislation to complement them. Where such information is not available, the

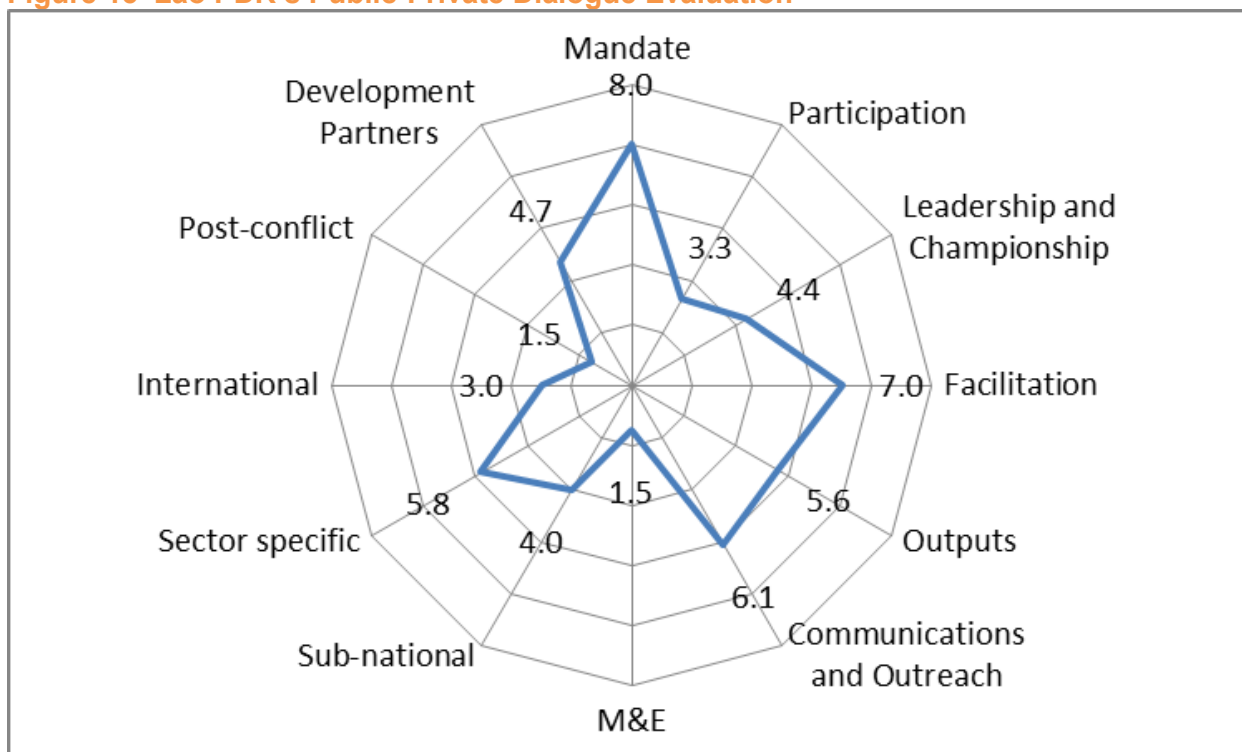
requirements remain ambiguous or vague, which leaves discretionary power to officials, reducing transparency and likely increasing costs in the process.

International donors and information technologies offer alternatives to increase transparency for the services sector. In this regard Lao PDR is already a step ahead of the game as it is currently in the process of establishing a Services Trade and Investment Portal (STIP) aimed at having a central virtual information centre that facilitates access to all regulations in the services sector, thus allowing services providers – and government officials – to gain a clear understanding of the regulatory framework that applies to the services sector.

### *Stakeholder Consultation*

In 2006, Lao PDR established formal mechanisms and procedures for public consultation in the form of the Lao Business Forum (LBF). This mechanism has been subsequently reinforced by the Law on Legislation which mandates that stakeholder consultations be undertaken. The LBF is an advocacy forum linking the government and the private sector. In terms of organisational effectiveness, a World Bank 2009 review of 30 public-private dialogues worldwide placed Lao PDR 4<sup>th</sup> on the rankings (Toland, 2009).

**Figure 15 Lao PDR's Public-Private Dialogue Evaluation**



Source: International Finance Corporation (IFC), PPD Evaluation, 2009.

Generally, the LBF is designed to improve the business enabling environment by providing a platform for effective dialogue between the business community and the government. It is also intended to facilitate information-sharing with potential investors. The dialogue aims to promote the consistent enforcement and non-discretionary interpretation of laws and regulations, remove market-entry or -exit barriers for businesses, provide feedback on draft government laws and regulations relevant to the private sector, and to assist the Lao government in developing the private sector. The Forum is structured in six sector-specific working groups and biannual meetings. The current sector-specific working groups (WG) focus on overarching issues such as



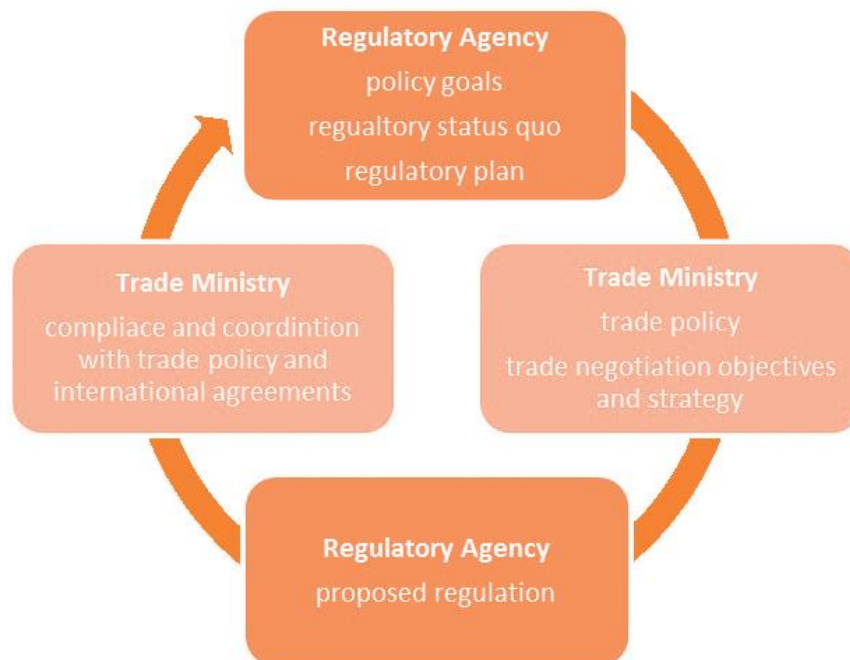
tourism; trade and services; manufacturing; energy and mining; banking and insurance; and cross-sectoral issues.

Consultations cover a range of issues which are important to the broad spectrum of private sector players and are firmly linked to the regular regulatory process. For example, among the issues discussed by the 8<sup>th</sup> LBF in 2013 were problems related of labour and skilled labour development issues, an amendment to the Prime Ministerial Decree on the leasing law, implementation of court verdicts and the appellate process, the management and development of tourist transport services, preservation of eco-tourism sites, the tourism promotion board, high domestic and international transport costs, the high cost and time consuming process for checking goods transport documents at border checkpoints, the cost of electricity and the construction of hydropower dams and issues related to the construction business.

The consultation processes appears to be quite open and participatory with the WGs being hailed as the engine of the LBF. Each WG is co-chaired by a senior government official and a designated leader chosen by members of the respective private sector working group (PSWG) and benefits from the participation of members of an Inter-Ministerial Team from relevant WG ministries and private sector representatives chosen by the respective PSWG. The WG discussions focus on an agreed agenda of issues that generally relate to restrictions on business, planning and prioritisation. Importantly, WGs are empowered to set up task force groups to investigate specific issues. PSWG meetings are held in advance of the WG and permit private sector co-ordination. These meetings are open to representatives from the Lao National Chamber of Commerce and Industry (LNCCI), representatives of business associations and all persons working in private enterprises legally operating in Lao PDR that wish to attend. The 2011 transition of the LBF Secretariat from IFC management to that of LNCCI with the support of the MPI stands as a testament to the value placed on this consultative mechanism by stakeholders.

*Inter-agency Co-ordination*

**Figure 16 Information Flow for Services Trade Policy and Regulation**



Lao ministries and agencies strongly favour inter-agency collaboration and generally welcome inputs from other ministries. Ministries - especially ministries addressing horizontal issues - promote coordination with other agencies by inviting other relevant ministries to comment on the drafts they produce. This practice appears to be standing practice across the Lao civil service. Further, agencies tend to be informed of regulatory activity when a specific draft is complete and being circulated. The Law on Making Legislation has institutionalised this process and specifically mandates the submission of the draft law to concerned Ministries and parties.

### *Regulatory Efficiency*

Regulation is efficient if it is well targeted to address the relevant problem and conducive to achieving the desired policy goal, promotes innovation and competition and avoids erecting undesirable barriers to trade and investment. With varying degrees of sophistication, many countries have established institutional and procedural mechanisms to try to achieve regulatory efficiency (Kirkpatrick 2004; Ladegaard 2005; IFC 2009). At a minimum, these initiatives seek to promote the consideration of alternatives when introducing regulation and evaluating the different quantitative and qualitative benefits and costs each may entail. More complex systems require studies to assess the economic impact of laws and regulations, and their alternatives, as a mandatory step in the regulatory procedure (regulatory impact assessments).

As mentioned earlier, the Law on Making Legislation has introduced the requirement to undertake formal impact assessments. This will facilitate the consideration of regulatory alternatives and the provision of a reasoned assessment of the options. Properly conducted regulatory impact assessments can be resource intensive in terms of time and human resources. The Lao model seems to foresee that the process will be undertaken by the Ministries leading the regulatory reform. Some models attempt to centralise this function in a single agency. For example, in the South African case, the RIA function is embedded in the office of the Presidency and clear criteria on which regulatory changes ought to be subjected to a RIA are established. While both models have clear advantages and disadvantages, the success of this initiative requires the intensive training of human resources to effectively perform RIAs.

## **5. Sectoral Regulation and Governance**

Policies and governance across services sectors differ greatly in terms of openness and regulatory capacity. Banking services have been fairly liberalised and are comparatively better regulated. Other sectors, like distribution feature strong restrictions, or, like telecommunications and insurance services, are have a nascent regulatory framework. The regime for foreign investment in many services sectors is subject to a number of minimum capital requirements and equity limits. This impacts on the creation of a competitive environment that can foster growth and private sector development. **Tables 11** and **12** highlight the measures which are applied to investment in services activities in Lao PDR at the establishment and operation stages.

**Table 11 Restrictions to Commercial Services Trade – Establishment  
Legal and Regulatory Measures**

	Legal and Regulatory Measures													Administrative Practices		
	Monopoly / exclusive service suppliers	Limitations to foreign equity 1-50	Limitations to foreign equity 50-99	Local Presence (M1) / Joint Venture requirements (M3)	Licensing (qualifications)	Licensing (experience)	Nationality (for services supplier)	Residency (for services supplier)	Track record requirements	Requirement to subscribe to association	Domestic partner requirement	Form of establishment	Minimum capital requirements	Other	No licenses or permits being granted	Burdensome administrative procedures
Professional Business	•				•	•	•		•	•	•	•	•	•		
Telecom				•	•									•		
Audio-visual							•									
Construction		•					•						•			
Distribution		•		•			•		•				•			
Educational		•					•									
Insurance									•			•	•			•
Banking			•	•	•	•						•	•	•	•	
Health and Social		•											•			
Tourism and Travel		•						•			•		•			
Transport		•					•		•				•			
Other							•						•			

Key: • = restriction applies. Source: author

At the sectoral level, more qualitative restrictions are applied to the supply of a service through the establishment of an enterprise. These restrictions negatively impact business both at the stage of establishing the enterprise and the operation of the enterprise. Compared to other sectors, professional services are most heavily impacted upon by both types of measures. Banking and tourism have the highest incidence of restrictions to market access while the services most significantly affected by restrictions on operation include telecommunications and distribution.

With respect to other modes of trade, the only sector significantly affected by barriers to cross-border trade is the professional services sector where measures of a qualitative nature affect both the market entry and operations stage.

**Table 12 Restrictions to Commercial Services Trade – Operations**

	Legal and Regulatory Measures					Administrative Practices			
	Advertising limitations	Rules on anti-competitive behaviour	Limitations on distribution channels	Limitations on pricing	Other	Missing or outdated regulation	Inconsistent regulation	Deficient monitoring / enforcement procedures	Other
Professional	●			●	●	●			
Telecom	●	●		●		●	●		
Distribution			●	●		●		●	
Insurance		●		●	●	●			
Banking					●	●		●	
Tourism and Travel				●		●		●	
Transport				●		●			●

Key: ● = restriction applies. Source: author

### Professional Services

Professional services matter for development. Just as telecommunications and financial services are recognised as the infrastructure for other economic activities, business services are increasing being acknowledged as key inputs into the production of other goods and services. Greater use of professional services is associated with higher labour productivity. (Dihel, Fernandes, Mattoo and Strychacz, 2010:1) Business skills and services, such as accounting and legal services play a critical role in reducing transaction costs while engineering services contribute to the development of infrastructure, the dynamism of manufacturing and engagement in the emerging knowledge economy. However, for many developing countries a gulf exists between the potential benefits from the use of professional services and the limited contribution they currently make.

Despite their importance, professional services which are among Lao PDR's more restricted services sectors, remains underdeveloped. Professional services, particularly legal and accounting services, are typically amongst the most restricted services to foreign participation for countries at all levels of development, and are commonly affected by nationality or residency limitations, domestic partnership requirements, or restrictions in the form of establishment. (Borchert, Goottiz, Mattoo 2012: 34 - 36) In Lao PDR, legal services stand out as the most restrictive professional services sector, while the accounting sector is somewhat less so and architectural services and engineering are relatively more liberalised. The Lao economy suffers from a considerable shortage of qualified professionals in the legal and accounting professions. (See **Table 13**)



Integrated engineering services	•	• •	• • • • •	• •	
Urban planning and landscape architectural services	•	• •	• • • • •	• •	

Key: • = restriction applies. Source: author

### Accounting and Taxation

Much of the regulation governing these two sub-sectors is being updated. The new Accounting Law was passed by the National Assembly in 2013 and is awaiting promulgation. The sub-ministerial instructions which support the new law are to be developed at a later date. Given the integral nature of sub-ministerial instructions/ regulations to the main law, the study has categorised the legislation as being missing. (Table 14)

The new Accounting law provides a modern framework for supervising financial accounting in Lao PDR. It identifies the financial accounting standards to be used by different entities with the main types of entities being public interest enterprises,<sup>17</sup> non-public interest enterprises<sup>18</sup> and state owned enterprises. Separate international financial reporting standards (IFRS) are to be used by the former two categories, i.e., there will be one set of IFRS for public interest enterprises and another set for the non-public interest enterprises. Further, the law sets out qualification and experience requirements for certain types of accounting professions such as accounting managers and accounting staff and identifies the accounting personnel for whom registration with the Lao Institute of Certified Public Accountants (LICPA) is compulsory. As mentioned earlier, the law requires all accounting entities to submit audited annual reports. However, entities supervised by the BoL will follow the reporting related regulations established by that agency.

The new Accounting Law is quite broad and a number of details on elements of the regulatory framework are not included in the law. On the face of it, the regulatory regime would appear to be open as there is no mention of rules to be applied to foreign accounting firms and professionals or of reserved sectors.

A new Independent Audit Law has been drafted and is to be submitted to the National Assembly for approval in 2014. Similar to the new Accounting Law, the new Independent Audit Law creates a stronger governance and regulation framework for the sector's development. This law requires audits to be performed in line with Lao auditing standards and clarifies the rules applicable to auditing operations. Unlike the Accounting Law, it does clearly identify restrictions which apply to foreign auditors and auditing firms. Namely, where an audit is undertaken by a foreign audit firm and the engagement partner is also foreign, the report must also be signed by a Lao engagement partner. Should there not be a Lao engagement partner, then the signature of the Lao manager will suffice. In addition, foreign CPAs must successfully complete a training programme jointly organised by the Ministry and LICPA and an aptitude test designed by the

<sup>17</sup> Enterprises which are of significant public interest/ relevance because of the nature of their business, their size or the number of employees; listed enterprises; and enterprises holding and managing assets in fiduciary capacity for individual, legal entity and organization such as banks, insurance companies, securities company and other financial institutions that have a wide range of activities. The Ministry of Finance can determine other enterprises as public interest enterprises.

<sup>18</sup> Enterprises which are not of significant public interest/ relevance such as individual enterprise, limited company, sole limited company and other enterprises.

Ministry of Finance. The aptitude test focuses on Lao PDR tax and related regulation, the code of ethics and national financial reporting standards.

Further, the Law provides a clear description of the procedures for setting up an accounting or auditing operation. Finally, it articulates the role of the Accounting Department as the supervisory agency and specifies the rights and duties of LICPA.

Other conditions imposed on the provision of these services include the requirement that an accounting firm must have at least one CPA while the auditing firm must have at least two. Additionally, accounting and auditing services can be provided only through a legal entity. A further requirement for auditing firms is that a CPA partner must hold three-fifths of shares and work on a full time basis; at least three-fifths of the management body must be CPAs; and the legal representatives, general directors or directors must be CPAs. Finally, CPAs must be registered with LICPA.

Other measures detected include the need for ASEAN accountants to acquire the regional CPA qualification. As such where ASEAN CPAs have either a national or international professional accreditation, they will also need to acquire a regional accreditation to provide services in another ASEAN Member.

Also foreign accountants are required to successfully complete a Lao language proficiency test within three years. Moreover, there are two restrictions on non-established suppliers. These include the need to associate with a Lao accounting or auditing firm if services are provided by a foreign supplier with no presence in Laos; and the requirement to use the name of both the foreign firm and the domestic firm with which it has formed an association for the purposes of advertisement. Until the passage of the new Audit law, temporary guidelines are being used to licence firms in the sector. The guidelines are slightly more restrictive than the draft Law as they require a foreign group of companies or headquarters to illustrate a track record of excellent performance at the regional and national level.

In addition to a business licence, rendering accounting or auditing services requires a practice licence from the Accounting Department in the Ministry of Finance. An additional licence is required for both the firm and the professional in order to perform a statutory audit.

Comparing these measures to Lao PDR's trade commitments a few observations can be made. First, measures requiring the sign off on audit reports by a Lao accountant and the requirement for non-established firms to work in association with a Lao accounting firm would seem to be a violation of Mode 1 national treatment commitments. Neither under the AFAS or GATS, Lao PDR did not inscribe these two national treatment limitations on the cross-border supply of these services. The requirement to have a Lao accountant sign off on reports would be inconsistent with both of these commitments as it gives Lao service providers a competitive edge and the requirement to work in association with a Lao accounting firm is likely to increase the cost of the service thereby making it relatively less competitive.

Further the requirement to have audit reports signed off on by a Lao accountant was not inscribed in Lao PDR's AMNP schedule in relation to the supply of these services through the temporary presence of a natural person. Again, requiring firms which are utilising foreign auditors to have reports signed off by a Lao accountant makes it relatively more attractive to utilise the services of a Lao auditor. This would constitute a national treatment violation of AMNP Mode 4 national treatment commitments. Under the GATS, Lao PDR did not make any Mode 4 national treatment

commitments and therefore the restriction can be legitimately applied to professionals from all other WTO member states.

Therefore, ***it is recommended that the restriction requiring non-established firms to work in association with a Lao accounting firm be removed from the Independent Audit Law. In addition, the Independent Audit Law should be revised to ensure that the requirement to have work verified by a Lao accountant does not apply any foreign auditor where such services are supplied cross-border. The Law should also be revised to ensure that this same requirement does not apply to ASEAN professionals who are supplying services through the temporary movement of a natural person.***

The need for foreign headquarters to have an excellent track record violates Mode 3 national treatment commitments as there is no similar requirement for national firms to have an excellent track record. Given that this measure was not included in either the AFAS or GATS commitments, then it would represent a national treatment violation. ***Compliance may be achieved by either applying this track record restriction to both domestic and foreign firms or removing the restriction completely from the temporary guidelines.***

Additionally, while the Labour Law will limit foreign skilled labour to 25 per cent of the firm's staff, Lao PDR's AMNP commitments raise this limit to 30 per cent. ***In this vein, it is recommended that the Labour Law be amended to indicate that ASEAN firms operating in the accounting, auditing and bookkeeping sector are entitled to a maximum quota of foreign professionals up to 30 per cent of the staff complement.***

The accounting profession is regulated by the Accounting Department and LICPA. The institutional weakness of LICPA however is a source of concern as the professional body lacks capacity and is not currently offering courses which would lead to the conferral of the CPA title. Regulations are created by the Accounting Department while the professional body assists with the implementation of these regulations by disseminating them. Disciplinary measures are decided upon by the Accounting Department, but the professional body also applies a Code of Ethics and can cancel CPA membership.

The presence of three of the international Big Four accounting companies sends a positive signal about the Lao accounting related services market. Desired complementary developments would be the strengthening of domestic firms in terms of their ability to compete on quality and the enhancement of the quality of the professionals being trained in Lao PDR. To achieve this, a number of actions are recommended. ***As recommended by the Dahanayake study, mechanisms ought to be put in place to ensure that the courses conducted and qualifications awarded in subjects related to professional services by all educational institutions are uniform and that they conform to required standards. (Dahanayake 2012: 34) In addition, a programme of institutional strengthening should be embarked upon with key recipients of support being LICPA and the agencies under the remit of the MoF which have responsibility for the profession.***

***To these recommendations this assessment would add that, given the imminent deadline for the implementation of the ASEAN MRA on Accountancy in 2015, efforts should be intensified to advance the preparatory work under the TDF-2 project which will provide guidance on how Lao PDR can implement these commitments. Further, the drafting of the sub-regulations should be undertaken with alacrity to ensure that service providers are able to have a clear idea of the detailed rules which apply to their profession.***



### *Legal Services*

As of February 2014, it was reported that there are some 31 law firms operating in Lao PDR. Seven of these firms are foreign. The legal profession is regulated by the Law on Lawyers 010/NA, December 21, 2011. The Ministry of Justice is in the process of reviewing the sub-regulations to ensure consistency with the law. Among other things, the law lays out the qualifications and experience requirements for lawyers; the approvals required by law firms to operate; the areas in which foreign lawyers and law firms cannot provide services unless they comply with specified conditions and the role of the Bar Association.

All lawyers are required to take the legal examination administered by the Bar Association and need to be appointed by the Ministry of Justice following the successful completion of the examination. Membership in the Bar Association is a prerequisite for providing services. A recent study however noted that no foreign lawyer has been able to gain membership in the LBA. (Dahanayake 2012: 23) The Law on Lawyers stipulates that lawyers may only operate through a legal entity and a firm may be a private enterprise, a partnership enterprise or limited company. Only lawyers or enterprises that have lawyers as partners or shareholders are permitted to operate a law firm.

As mentioned earlier, the regime for foreign lawyers is quite restrictive. Among the qualifications for foreign lawyers is that they must have a good knowledge of Lao language and culture and hold a Bachelor's degree in Lao law. Interestingly, Lao nationals only need to have a Bachelor's degree in Law. In addition, lawyers are required to have professional legal training in accordance with the curricula established by the Ministry of Justice. Naturally, this requirement is more difficult for a foreign lawyer to comply with.

Foreign lawyers may only provide advice on foreign and international laws, but they may not do so on domestic laws or participate in litigation proceedings before a Lao court. In effect, foreign lawyers who do not work in association with domestic lawyers would need to undertake the Bachelor in Lao Law which can be completed in 5 years. This would be followed by the concurrent completion of the programme at the Training Institute for Law and Justice for one year and an internship.

In addition, foreign firms are only allowed to provide consultancy services or advice on foreign or international law. Exceptionally, if the foreign firm has either a Lao lawyer as an investor or has a Lao lawyer as an employee, it may provide advice on Lao law or engage in litigation before the Lao courts through that Lao lawyer.

Beyond the enterprise registration certificate, legal entities require an authorisation from the Ministry of Justice to operate. As a hold-over from the previous regulatory regime, permits for individual lawyers and law firms are issued by the Ministry of Justice. The duration of the permit for the lawyer is lifetime and for law firms the duration is 3 years. As noted earlier, there are plans to review the relevant regulations in light of the Law on Lawyers.

Since Lao PDR left the legal services sector unbound for the supply of services via the movement of natural persons under the GATS the country maintains the right to impose discriminatory qualification requirements on foreign professionals such as the need for foreign lawyers to have a Bachelor of Lao law. Likewise, Lao PDR did not take commitments on legal services under the AMNP and thus Lao PDR remains free to impose discriminatory qualification requirements for these professionals.

The legal services sector is supervised by the Ministry of Justice and appears to be regulated by both the Ministry of Justice and the Bar Association. As is the case with LICPA, the LBA is characterised by weak capacity. Disciplinary action is taken by the Bar Association and reports on such actions are reported to the Minister and the Ministry of Justice. In addition, penalties for infractions are provided for under the Law on Lawyers.

***Similar to the accounting sector, it is recommended that strengthening of the capacity of the LBA with be undertaken; and mechanisms be put into place to ensure the quality of legal education provided by all educational institutions.***

#### *Other Professional and Business Services*

The list of activities reserved for Lao nationals includes survey, design, construction consultancy activities and the installation of Lao historical, natural, cultural architectural and engineering and the design, construction and installation of electric grids and generators from 22 kv – 35 Kv and low 0.4 Kv. This would constitute a market access restriction as it effectively limits the number of foreign service suppliers to zero. Since Lao PDR did not carve these specific activities out of the scope of commitments, this measure would represent a violation of Lao PDR's GATS commitments. Similarly, the measure is also contrary to AFAS commitments where the country has undertaken full market access commitments. ***In order to ensure compliance with commitments, it is recommended that these services be removed from Notification 1590/MOIC.ERM.***

A small subset of professional services activities related to engineering and architectural services have been included on the controlled list and are subject to discriminatory minimum capital requirements and equity limits. (Refer to **Table 15**) In light of the fact that Lao PDR has undertaken full national treatment commitments on Mode 3 under both the GATS and AFAS, the discriminatory capital requirements contravene trade commitments under both regimes. A similar case obtains for the discriminatory minimum capital requirement that is applied to the provision of testing services. ***It is also recommended that Notification 1591/MOIC.ERM be brought in line with Lao PDR's trade commitments by either completely removing the minimum capital requirements or applying them to both domestic and foreign service suppliers.***

**Table 15 Other Professional Services on the Controlled List**

Architectural and engineering activities and related technical consultancy	Conditions for Foreign Investors		
	Registered (Kip)	Capital	Percentage (max %)
<i>for this ISIC, specific conditions are:</i>			
a. Project research and feasibility studies	4 to 8 billion up for small project;	8 billion up for large project	49%
b. House survey and design and town planning			
c. Internal and external decorations			
d. Construction consultancy			
e. Construction survey, design and engineering			
<b>Technical testing and analysis.</b> <i>for this ISIC, specific conditions for the establishment of vehicle testing centres.</i>	1 billion up		100%

While the inclusion of foreign equity limitations on participation in the engineering and architecture activities in Lao PDR's GATS schedule enables it to continue to impose these measures, Notification No. 1591 /MOIC. ERM limits foreign participation in juridical entities to 49 per cent. This is below the permissible 51 per cent shareholding provided for under GATS commitments. By contrast, no foreign equity limits are imposed under the AFAS. ***In this regard, it is recommended that the maximum limit on foreign participation in the Notification be revised from 49 per cent to 51 per cent for WTO Members. Given that there are no foreign equity limits on these architectural and engineering activities under the AFAS, the notification should make clearly indicate that the equity limit does not apply to ASEAN service suppliers.*** Further, in terms of phase-in commitments under the WTO, Lao PDR will grant full market access by 2018, ***it is recommended that the Notification also be amended to reflect that full foreign ownership is permitted in 2018.***

For technical testing services, commitments under both trade regimes limit foreign equity participation to 51 per cent and phase-in GATS commitments further raise the limit for WTO Members to 70 per cent by 2018. The regime in the notification is more generous as it allows for 100 per cent foreign ownership, but this is only in relation to the operation of vehicle testing centres.

Other limitations applied to the engineering and architecture services sectors include the prohibition of advertising and marketing by professionals; construction cost management services and testing and certification services must be provided in association/collaboration with a Lao professional; professionals must operate through a legal entity; and foreign professionals are required to provide certified evidence of their foreign qualification; undergo local retraining; take aptitude tests and a language proficiency test.

The requirement to work in association/collaboration with a Lao professional for some engineering activities runs afoul of GATS and AFAS national treatment commitments as such a limitation has not been imposed on either cross-border supply or supply through a commercial presence. The sole limitation applied to the mode 1 supply of these services under the GATS is the obligation to have the service authenticated by a qualified Laos based professional. ***It is advised that the relevant legislation or regulations be amended to remove this restriction.***

### Distribution services

The competitiveness of the distribution sector is of paramount importance to any economy. It is an essential infrastructure with critical links to other services such as logistics and transport and a significant generator of employment. It is in this context that expected gains from the liberalisation of goods such as lower prices for consumers can be eroded by a distribution sector which is shielded from the forces of competition. Other potential gains include the possible inclusion of Lao goods into value chains as domestic producers improve the quality of their products to meet the standards set by foreign distributors with regional and global links.

In Lao PDR, the distribution services sector is under-developed and is dominated by retail trade which accounts for about 98 per cent of the total wholesale and retail trade businesses. (Dahanayake 2012: 20) It is estimated that approximately 61 per cent of wholesale and retail sale businesses are in the informal sector and nearly 99 per cent of enterprises are small sized, single Lao owned, and earning less than LAK 30 million per month. Unlike its neighbours, Lao does not have any major retail chains. This has been attributed to two factors - difficulties associated with importing goods and the returns on navigating a regulatory framework which makes market entry

and operation difficult are perceived to be low. The Lao distribution sector features a number of restrictions.

### Regulation and Governance Framework

Distribution services are governed by the Decree on Goods Distribution No. 206/GoL, dated June 10, 2001 and the Decision on Wholesale and Retail Enterprises 0977/MOIC.ITD, dated May 18, 2012. While the Decree is archaic, the Decision provides a relatively more modern framework for business operation in the sector. Even so, the Department of Domestic Trade is still seeking to improve the operation of this instrument and is currently reviewing it. The Decision clarifies the terms on which foreign individuals and legal entities may participate in the sector and indicates the conditions for the issuance and revocation of licences.

A number of other laws and measures apply to this sector. Prior to WTO accession, Lao PDR reformed two key laws to the benefit of the distribution sector – Decree on Import-Export 114/GoL, dated April 6, 2011 and the Decree on Price Administration 744, dated November 11, 2010. The Decree on Import-Export removed discrimination against foreign operations and simplified procedures for import-export licensing by allowing for automatic licensing for some goods. (Dahanayake 2012: 27) The Decree on Price Administration shifted the focus from the use of price controls as a means of price stabilisation to the use of price administration measures in case of necessity and on the basis of non-discrimination and transparency. Nevertheless, a number of goods which are elaborated in the Agreement on Identification of Goods Subject to Price Control by the Industry & Commerce Sector, 1064/DTD-MOIC of June 4, 2012 are still subject to price controls. These include petroleum products, food, construction materials, animal feed, fertiliser and educational materials.

Decision 0977 imposes a number of restrictions on the sector. It limits the participation of foreign investors in wholesale operations to joint ventures. Notification 1591/MoIC.ERM further restricts this access for textiles, garments and footwear by capping foreign equity at 49 per cent and requiring foreigners to invest more than LAK 1 billion. Decision 0977 also reserves the retail business for Lao nationals. In addition, foreign investors must distribute their products either through the channels such as distributor or franchise business of Lao nationals; or invest in a joint-venture in the construction of modern complexes such as hypermarkets, supermarkets, shopping centres or malls.

Moreover, there is a nationality requirement for staff working in wholesale or retail shop distribution shops. This nationality requirement does not apply to managers or specialists and so these types of natural persons are allowed to the extent permitted by the Labour Law. The measure is line with the scheduled GATS commitments which only cover retail and wholesale distribution of motor vehicles, motor cycles, spare parts and accessories. Under the AMNP, Lao PDR did not make any commitments to permit Mode 4 entry for this sector. Again, this would imply that the nationality requirement for shop staff and the limited entry for managers and specialists is AFAS compliant.

Lastly, wholesalers and retailers must operate through a shop or owned/ rented premises in order to distribute goods on a permanent basis; a temporary shop or premises (such as trade fair, exhibitions); a mobile shop to distribute goods (such as street-vendor or direct sales) or a permanent shop or premises in the market (traditional market) or in a modern complex building (such as hypermarket, shopping mall or centre, supermarket. This would imply that there is a restriction being applied to Mode 1 supply as foreign distributors would require some form of physical presence in Lao PDR. However, under the AFAS Lao PDR took full Mode 1 commitments for wholesale trade services on a fee or contract basis of textiles, clothing and footwear and under the GATS it undertook to full market access and national treatment for cross-border suppliers involved in the wholesale trade of motor vehicles, car parts and accessories and motor cycles. It is in this vein that the requirement to have a physical presence to supply these specific services would contravene Lao PDR's market access commitments. ***It is recommended that Decision 0977 be amended to permit cross-border trade in wholesale trade services on a fee or contract basis of textiles, clothing and footwear for ASEAN service suppliers which do not have a physical presence in Lao PDR. In addition, the Decision should be amended to permit cross-border trade in wholesale trade of motor vehicles, car parts and accessories and motor cycles for WTO service suppliers who do not have a physical presence in Lao PDR.***

One area in which the Decision could benefit from increased clarity is the definition of the major forms of wholesale and retail business. These are defined as the following:

- General form of the wholesale and retail business;
- Re-sale;
- Agent;
- Franchise trading; or
- Other wholesale and retail businesses under the laws and regulations.

The Decision conflates commission agents' services and franchising with wholesale and retail distribution. ***It is recommended that these categories be properly distinguished in the Decision to ensure that it is sufficiently clear which activities the restrictions apply to.*** Further, the Decision contains inconsistencies. While it gives Lao citizens, aliens, foreigners residing in Lao PDR including their organisations the right to establish enterprises or participate in wholesale and retail business; it also preserves retail business for Lao nationals. ***Consideration should be given to identifying inconsistencies in the Decision and rectifying them in line with trade commitments.***

In accordance with the reserved list some distribution activities are to be undertaken exclusively by Lao nationals. Namely, non-specialised wholesale trade and other retail sale trade in non-specialised stores. Given that neither the GATS commitments nor the AFAS commitments cover these non-specialised distribution activities Lao PDR can continue to apply this measure.

While foreign investors may fully own operations which maintain and repair motor vehicles, the controlled list imposes a minimum capital requirement of LAK 1.5 billion. (See **Table 16**) This measure is in accordance with Lao PDR's commitments under both regimes as those undertakings do not cover these activities. Therefore Lao PDR may continue to impose this limitation.

**Table 16 Distribution Services on the Controlled List**

Maintenance and repair of motor vehicles <i>For this ISIC there are specific conditions for the establishment of vehicle and machinery repair garages.</i>	Conditions for Foreign Investors		
	Registered (Kip)	Capital	Percentage (max %)
	1,5 billion up		100%

In terms of regulatory institutions, distribution service providers are licenced by the MoIC. The Department of Domestic Trade of the MoIC regulates this sector for the most part and enforcement is undertaken via the MoIC's Trade Inspectorate Division. The Department of Domestic Trade's capacity needs to be improved to effectively carry out its responsibilities. Adequate training for staff to understand and initiate the legislative reforms are required to properly regulate the sector.

However, other regulatory agencies are also involved in the regulation of this sector. These include Ministry of Health, Ministry of Agriculture and Forestry and Ministry of Science and Technology. It would appear that casual visits to trading establishments suggest that regulations relating to areas such as food safety, the sale of medical products, weights and measures are not fully adhered to. (Dahanayake 2012: 41).

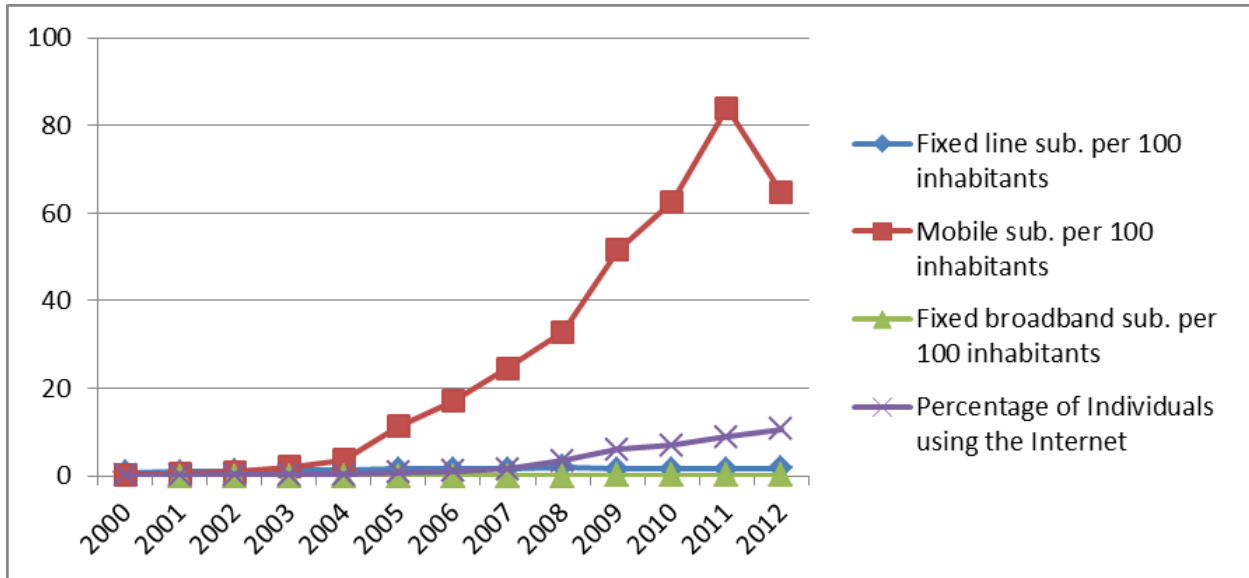
***To reflect good practice the Decree on Goods Distribution No. 206/GoL of 2001 should be updated to respond to the changes in the distribution market and Decision 0977 should be revised to ensure increased clarity. As such, it is recommended that a review of these instruments be undertaken to support the formulation of a modern legal framework to regulate the sector. If it is not already being done, it is further recommended that training be provided to the Department of Domestic Trade in order to strengthen the capacity of officials to engage in effective regulatory change.***

## Telecommunications

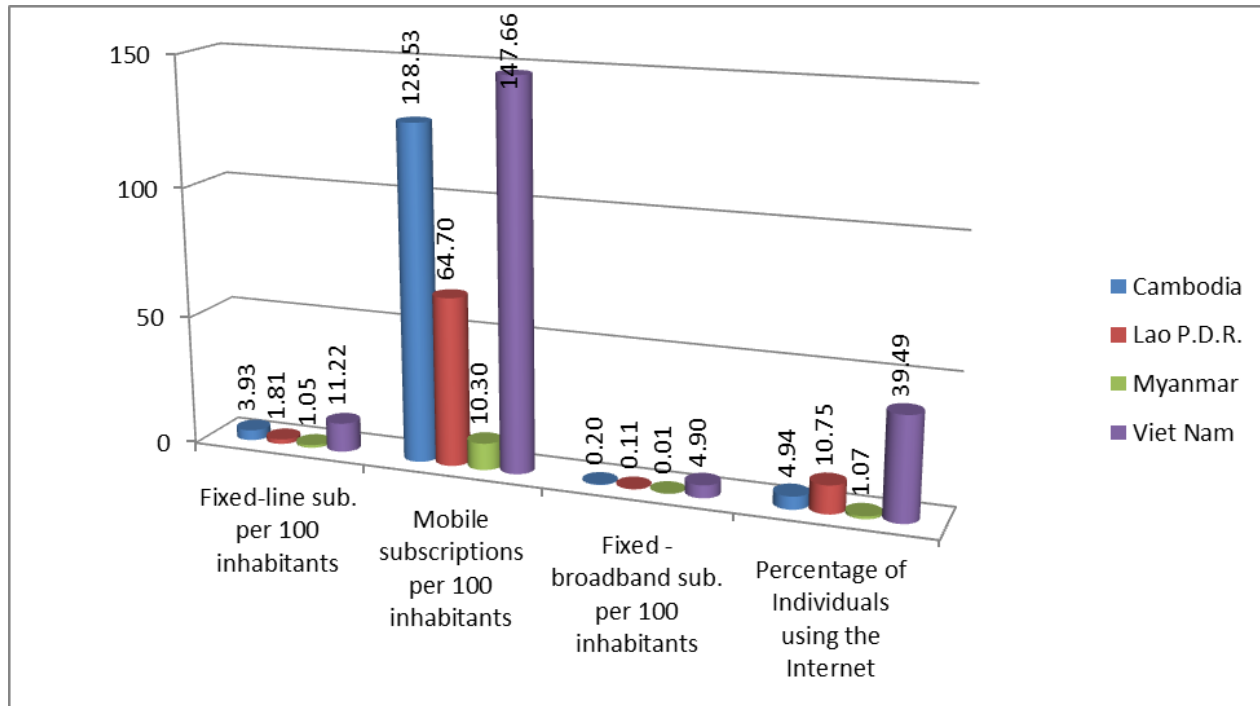
Telecommunications services have long been considered as one of the standard elements of a country's trade infrastructure. The cost, quality and introduction of new technologies significantly affect the ability of economic agents to compete and participate in the global knowledge economy. Developments in Lao PDR's telecommunications market vary drastically according to the market segment. A competitive mobile telephone market has emerged with mobile telephone

subscriptions increasing at a phenomenal rate. Subscriptions leapt from almost 1 mobile phone per 100 inhabitants in 2002 to 64.70 some ten years later. (See **Figure 17**) However, as shown in **Figure 18** this penetration rate lags well behind some of Lao PDR’s neighbours such as Cambodia and Viet Nam. This success story has not been replicated in the fixed line telephone or fixed-broadband market segment as it appears that growth has been stagnant in those segments. The extremely sluggish uptake of internet services represents a challenge for Lao PDR with only 4.94 per cent of individuals taking advantage of this technology.

**Figure 17 Telecommunications Market Growth in Lao PDR, 2000 – 2012**



Source: International Telecommunications Union, ICT Statistics, 2014

**Figure 18 Core Telecommunications Indicators for Select South East Asian Economies, 2012**

Source: International Telecommunications Union, ICT Statistics, 2014

The Lao telecommunications market supports the operations of 3 fixed line telephone service and broadband providers and 4 mobile telephone service providers.

#### Regulation and Governance Framework

The Law on Telecommunications 09/NA dated December 21, 2011 is the overarching legal instrument governing the sector. This is supported by a veritable plethora of telecommunications sub-regulations, ministerial agreements and instructions. The main features of the telecommunications regime include the establishment of an independent Telecommunications Management Authority; interconnection on equal principles and the provision of information on network connection and disclosure of the interconnection contracts of telecommunications services providers. Also regulated is the sharing of telecommunications facilities; the basis for setting interconnection charges; and the procedure for licensing. The legislation provides for four licensing regimes as indicated in **Box 7** below.

#### Box 7 Lao PDR's Telecommunications Licensing Regime

Service	Duration of Licence
Network services	15 years
Telecommunications services for those who own their own networks	10 years
Consultancy, installation, repair, export, import, manufacturing, and distribution of telecommunications equipment	5 years
Installation of telecommunications network for the use of service providers	3 years



Currently there is no licensing framework in place and no telecommunications licences have been issued in accordance with the Telecommunications Law 2011. Where a licence is required, Lao PDRs' WTO obligations require the following:

- All licensing criteria and the period of time normally required to determine an application must be made publicly available;
- The terms and conditions of individual licenses must be made publicly available; and
- Reasons for denial of a license must also be made available to an applicant on request.

In practice, there are no regulations as yet which enumerate the terms and conditions attached to each category of licence. Previously licences were issued by the MPI to telecommunications operations and the duration of the licence depended on the outcome of negotiations between the investor and the MPI. There appears to be a regulatory vacuum in terms of the treatment of licences granted under the investment regime governed by the MPI. The Government and regulator may need to negotiate with operators and providers in order to bring all activities and businesses requiring a licence under the ambit of the 2011 Law.

***Lao PDR needs to formulate the implementing regulations which cover, among other things:***

- ***The eligibility criteria for applying for and receiving a licence;***
- ***The process for the application for and renewal of licences;***
- ***Licence application and renewal fees;***
- ***A set of general licence conditions;***
- ***The rights and responsibilities of licensees, including disclosure requirements; and***
- ***Penalties for breach of licence terms.***

Competition rules are established through the Telecommunications Law and provision is made for the control of prices by the Ministry. Lao PDR is in the process of overhauling its competition legislation and as such ***due care needs to be taken to ensure the coherence of sectoral rules with the wider competition law framework.***

Limitations identified in this sector include approval requirements for the sale of shareholding in a telecommunications business; significant price setting; limitations on the duration of promotions; and a prohibition on interconnection with foreign based internet service providers. The first three measures do not constitute market access or national treatment restrictions. Lao PDR's GATS commitments would seem to permit the prohibition on interconnection with foreign internet service providers as Mode 1 market access is subject to the restriction that service must be offered through commercial arrangements with an entity established in Lao PDR and licenced to provide international telecommunications services. The AFAS schedule does not feature an equivalent restriction and it would appear that this measure is not in accordance with the Lao PDR's commitments. ***In this vein, the regulations on internet café services should be amended to permit interconnection with ASEAN internet service providers.***

The Reference Paper on Telecommunications which forms an integral part of Lao PDR's GATS commitments requires that the regulatory body be separate from the policy-making authority, that it is not accountable to any supplier of basic telecommunications services and that its decisions and procedures must be impartial to all market participants. According to the telecommunications consultancy under the TDF-2 project, ***the establishment of the independent regulator will require amendments to the Law on Telecommunications or the introduction of a separate Decree or both.***

*Recommendations for the telecommunications sector include working consistently towards the implementation of its trade commitments for the sector, especially through the creation of the independent regulator. This should go a long way towards increasing private sector confidence in the regulatory regime. In addition, the supporting regulations to the new Telecommunications Law should be drafted and implemented as soon as practically possible to ensure the full implementation of the Law.*

## Financial services

The development of a country's financial services sector is closely linked to the development of the economy itself. Lao PDR's financial system is relatively small with low intermediation and is at an early stage of development. (World Bank 2012: 16) Currently, the financial sector comprises banking, insurance and capital markets. **Table 17** provides a snapshot of the main institutions in the sector.

**Table 17 Snapshot of the Lao PDR Financial Services Sector, 2012**

Institution	Number of operators
Commercial banks	33*
Insurance companies	11*
Deposit taking and non-deposit taking micro-finance institutions	34
Credit co-operatives and savings deposits	20
Pawnshops	26
Financial leasing companies	8
Money transfer representatives	5
Postal deposit institutions	1
Savings co-operatives	2

Source: Bank of the Lao PDR, Annual Report 2012 and interviews by author.

\* - data from 2014

While the banking sub-sector continues to dominate the financial sector, it is still small with deposits totalling US \$3.69 billion or LAK 29,684.21 billion (40.81 per cent of GDP) and loans standing at US \$3.18 billion or LAK 25,566.00 billion (35.15 per cent of GDP) in 2012. (Bank of the Lao PDR 2012: 22 - 24) Penetration of bank branches is amongst the lowest in the world, with almost three branches per 100,000 people. (See **Table 18**) Vietnam and Cambodia have a slightly better level of access with 3.18 and 4.38 branches per 100, 000 persons respectively. Although the banking sector is dominated by four state-owned commercial banks, there is increasing private and foreign participation. There are also reports of the growth of micro-finance institutions (MFI) across the country.

The insurance market is narrow, and most insurance coverage applies to non-life insurance products with over 90 per cent of insurance policies being related to the commercial and industrial sectors. Lao PDR's insurance density and insurance premium per capita is ranked among the lowest in the region. Similarly, insurance penetration is less than 1 per cent of the country's GDP.

**Table 18 Basic Indicators of Financial Access for Select ASEAN Member States**

Indicator	Economy			
	Cambodia	Myanmar	Laos	Vietnam
<b>Geographical Outreach</b>				
Commercial bank branches per 1,000 km <sup>2</sup>	2.54	1.04	0.49	6.91
Credit union and financial cooperative branches per 1,000 km <sup>2</sup>	0.00	...	...	3.73
All MFI branches per 1,000 km <sup>2</sup>	8.11	0.05	...	0.07
Commercial bank branches per 100,000 adults	4.38	1.87	2.71	3.18
Credit union and financial cooperative branches per 100,000 adults	0.00	...	...	1.71
All MFI branches per 100,000 adults	...	0.54	...	...
ATMs per 1,000 km <sup>2</sup>	3.86	0.05	2.34	46.02
ATMs per 100,000 adults	6.66	0.09	12.92	21.16

Source: World Bank, Financial Access Survey, 2013  
Regulation and Governance Framework

### *Banking*

The activities of commercial banks are governed by the Law on Commercial Banks 03/NA, December 26, 2006 and the Decree on the Implementation of the Law on Commercial Banks 275/PM, dated 25 September 2009. These are supported by a number of decisions and guidelines. Regulation is at the early stage of development and is in some cases lagging behind the emergence of new products. With respect to prudential regulations, the BoL is applying Basle I principles. While Basle II principles are being applied to a few areas such as non-performing loans, the BoL has formulated a strategy to implement Basle II principles in preparation for ASEAN financial integration. It anticipated that the main pieces of legislation will need to be significantly revised to take into account Lao PDR's WTO and ASEAN commitments.

In terms of the regulatory regime, entry of banks with foreign ownership or control is permitted. Foreign banks are permitted to enter as branches or locally incorporated subsidiaries. However, approval is required for the opening of additional branches. Foreign banks are permitted to acquire private and state-owned banks. In addition, foreign banks can enter the market in any legal form except a one-person limited liability company. Moreover, there are no joint venture requirements or foreign equity limitations.

Maximum single and aggregate shareholding in a local private bank or a local joint venture is 100 per cent. The holding or transfer of common shares constituting more than ten per cent in a commercial bank requires the written authorisation of the BoL. Also requiring BoL approval are mergers, acquisitions or the purchase/ sale of substantial assets provided they exceed the threshold set by the Bank. The situation is somewhat different for state-owned banks as the Enterprise Law limits shareholding to less than 50 per cent. This would be equally applicable to both local and foreign investors as well as single and aggregate shareholding. In sum, while a foreign bank can acquire the controlling stake in a local private bank or joint venture, it cannot do so for a state-owned bank.

The categorisation of a bank as foreign or domestic is relatively straightforward - if enters as a locally incorporated subsidiary, it will be treated equally as a domestic bank, but if it enters as a branch, it will be treated differently in a few areas, namely, foreign branches may not create service units outside of the branch's location, they are limited to banking activities (the mobilisation of deposits, provision of credit, buying foreign currencies, payment and investment services); and they are not subject to the credit exposure restrictions applied to other banks. While commercial banks are prohibited from engaging directly in industry, commerce, or services other than financial and banking activities, a bank that has a strong financial position can hold an equity interest in a legal entity that is not a financial business or a bank. The shares held in the legal entity must not exceed 15 per cent of the commercial bank's regulatory capital and must not exceed 20 per cent per cent of the voting shares of that entity. Moreover, aggregate shareholding of the commercial bank in other businesses must not exceed 8 per cent of its risk-weighted assets.

Licensing requirements are applicable to the banking sector with the criteria for licensing being publicly available and licenses issued by the BoL are for an indefinite duration. Provided that the criteria set by the BoL are met the license will be granted. Criteria for the preliminary issue of a licence are: the applicant has a good and reasonable business plan; proof of sufficient capital as specified under the law; the proportion of shareholding of its shareholders can be identified and is transparent; the qualifications, experience and integrity of its administrators and principal shareholders are appropriate for undertaking banking and financial business; and an investment license has been granted by the CPMI. A permanent licence will be issue if: the applicant has a sound shareholders' agreement and charter and a reasonable feasibility study; a sufficient number of qualified employees; facilities and premises to ensure its business operations; a comprehensive mechanism for internal audit and control; and the shareholders have paid their portion of shares in full.

The sole difference in licensing criteria is the minimum capital requirement - a locally incorporated subsidiary or locally incorporated bank pays LAK 300 billion, but a foreign branch pays LAK 100 billion.

The provision of financial services such as bank loans and bank deposits through cross-border supply is regulated by the Decree Law on the Management of Foreign Currencies and Precious Metals which was mentioned earlier in the section on horizontal regulation. Individuals and legal entities in Lao PDR are permitted to use the services foreign bank once they have received the approval of the BoL. In addition, foreign borrowing requires a permit from BoL. The conditions for these types of transactions are pre-established, publicly available and consistently applied. By contrast, the provision of asset management services through cross-border supply is not regulated.

#### Foreign Currency Bureaux

There are also a number of restrictions on the operations of foreign currency bureaux. Namely, these entities must have registered capital of LAK 200 million for establishment in Vientiane Capital and LAK 100 million for establishment in the provinces or special zones; and a domestically licensed commercial bank can set up its foreign exchange shop or foreign exchange agent anywhere while a branch of a foreign bank can only conduct its foreign exchange business within the branch.

## Micro-Finance Institutions

The micro-finance sector is governed primarily through a number of regulations.<sup>19</sup> The BoL serves as the regulator for micro-finance activities.

Nationality and residency requirements effectively preclude the entry of foreign service suppliers into the savings and credit union business. No minimum capital requirements are applied to the non-deposit taking financial institutions. Deposit taking institutions are required to have minimum capital of LAK 3 billion. Non-deposit taking institutions must have a minimum registered capital of LAK 200 million and co-operatives for loans and savings must have a minimum capital of LAK 100 million.<sup>20</sup>

## Securities

Provision of services in the securities market is subject to the Law on Securities 021/NA of December 10, 2012. This is supported by a number of regulations and decisions covering issues such as market surveillance; listing on the stock exchange; operating as a security exchange agent; market operations; depositing and transferring securities; clearing and settling in the securities market; qualifications for admission and withdrawal of memberships in the Lao Securities Exchange; and reporting and disclosure obligations of listed companies.

Foreign investors may enter the securities services market as a securities company, a branch or a representative office (subject firstly to the prior grant of approval from its home jurisdiction). A branch of the foreign securities company is allowed to provide securities brokerage services; securities dealing on its own account; and other kinds of securities businesses as granted by the Lao Securities Commission (LSC).

The minimum required registered capital for securities companies operating all kinds of securities services is LAK 100 billion.

In addition, the LSC has determined that a foreign individual or entity can hold a maximum of 1 per cent of the total shares of a single listed company; and all foreign individual and legal entity investors together can hold a maximum of 10 per cent of the total shares listed of a single listed company. (Greenlee Jnr. et al. 2014: 2) However, there are some variations depending on the listed company. For example, for the subsidiary of the state owned energy company Electricité du Laos - EDL-Generation Public company - aggregate foreign shareholding must not exceed 20 per cent; individual investors may not own shares in excess of 1 per cent and the shareholding of foreign institution investors (financial institution and non-financial institution) should not be more than 5 per cent of total company's shares. (Lao Securities Commission 2012)

The measures identified appear to accord with Lao PDR's trade commitments.

Given that Lao PDR's GATS market access commitments on banking and other financial services will be phased in five years after accession, the country is free to impose limitations on the ownership of shares in state-owned commercial banks until 2018. However, from 2018, foreign participation in the sector will be limited to 51 per cent. **Consequently, the Enterprise Law needs**

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<sup>19</sup> Regulation for Non-Deposit Taking Microfinance Institutions 02/BOL, dated June 20, 2008; Regulation for Savings and Credit Union, 03/BOL, dated June 3, 2008, and Regulation for Deposit-taking MFIs, 04/BOL dated June 20, 2008.

<sup>20</sup> Decree on Micro-Finance Institutions, no. 460/GOVT, dated October 3, 2012.

***to be revised to permit foreigners to have a 51 per cent stake in state-owned institutions in order for foreign investors to hold 51 per cent of the shareholding in banks by 2018.***

All of abovementioned financial services are regulated by the BoL whose independence is enshrined in the Decree on the Organisation and Activities of the Bank of Lao PDR, 40/PM of April 6, 2000. It is independent from the Ministry of Finance and the sector's trade association. The BoL is required to inform applicants of the decision on the application within 90 days as prescribed by the Commercial Banks Law. There is also a legal obligation to inform applicants of the reason for the non-issuance of a licence. The obligation to be impartial is expressly indicated in the Decree establishing the BoL. The BoL is the lead entity responsible for the ASEAN financial services negotiations and there are formal mechanisms for updates and the exchange of information between the BoL and the MoIC after every package.

Strengthening the BoL's supervisory framework and effective enforcement represents an important element in promoting banking stability in Lao PDR, especially in the volatile global market economy. To increase stability, it is crucial that the BoL strengthens its supervisory functions and monitoring systems, updates prudential regulations and enforces the rule of law. Capital adequacy requirements are in line with or below Basel I standards, but enforcement is still weak.

Banks are given advance notice of proposed regulatory change and the opportunity comment on these changes. In formulating proposals for regulatory change, the BoL takes into account the impact of laws, programs, international regulations and developments in the business environment in which service providers operate. The procedure used by the BoL is the circulation of the draft to commercial banks for comment or the convening of a meeting to introduce the draft to the staff and managers of commercial banks to receive their input. In terms of the appeal of regulatory decisions, the Law on Petition gives an individual or an entity the right to appeal by submitting a petition letter to the head of regulatory authority.

In the course of interviews the BoL requested assistance in updating its legislation and bringing its regulatory framework in line with Lao PDR's trade commitments. ***Given that the Commercial Banks Law is somewhat dated with implications for the currency of the other sub-regulatory instruments, it is proposed that a RIA be undertaken as a first step to overhauling the regulatory framework and this should culminate in the formulation of a modern law. It is also recommended that steps be taken to strengthen the BoL's regulatory capacity.*** In order to do so, a formal assessment should be undertaken to determine the specific areas which should be targeted for assistance.

### *Insurance*

The Amended Insurance Law 06/NA, dated December 21, 2011 provides the overarching legislative framework for insurance activities. The regulatory regime does not distinguish between types of insurance and so the following discussion applies equally to automobile and life insurance as well as reinsurance activities. In addition, given that cross-border service provision is not regulated, the assessment is limited to the provision of services through a commercial presence.

With respect to market access, insurance firms with foreign ownership/ control are allowed. In addition, only locally incorporated subsidiaries or locally incorporated insurance companies can

provide services as foreign branches are not permitted. This prohibition on branches is grounded in the need to ensure that the consumer is able to deal effectively with a single entity. Firms may take any legal form, but state-owned insurance providers must be limited liability companies.

Foreign firms can enter the market as 100 per cent locally incorporated subsidiaries or they may acquire part or all of a local firm. Nevertheless, firms (neither foreign nor local) may not acquire more than 49 per cent of a state-owned insurance company. The maximum single and aggregate foreign investment in a local private firm or joint venture is 100 per cent while the limit for state-owned firms is 49 per cent.

Licensing of insurance firms is undertaken by the MPI. A specific condition for insurance firms is the need to have a minimum registered capital of LAK 16 billion. Among the conditions to be satisfied for establishing a representative office in Lao PDR is the requirement to have experience in operating an insurance business for at least five years.

An examination of the Insurance Law also points to a number of other limitations. For instance, citizenship and nationality requirements are imposed on insurance agents; insurance brokers are required to purchase professional liability insurance with any insurer in Lao PDR; insurance premiums must not be lower than the fees set by the Ministry of Finance; insurance companies must not compete to attract senior experienced employees from each other; and insurance companies require separate licenses to offer life and general insurance. In addition, if the insurance company is interested in investing its capital, it may do so in the order of the following prioritised areas: (i) buy government bonds; (ii) buy corporate shares and bonds; (iii) invest in the real estate business; (iv) invest in other enterprises; and (v) deposit with commercial banks or finance institutions.

In terms of compliance with trade commitments, Lao PDR made full and immediate national treatment commitments on the insurance sector. The requirement for a representative office to have five years of operating experience is arguably a national treatment restriction. In strict terms, there is no exact domestic equivalent for a representative office; however, if a national entity wanted to engage in marketing and other non-transactional operations (as is the remit of a representative office), the national entity would not be required to have five years of operating experience. In this vein, this requirement appears to be a violation of Lao PDR's national treatment commitments. ***It is recommended that this track record requirement be removed from the Insurance Law.***

The limitation on equity shareholding in state-owned insurance companies tallies with Lao PDR's AFAS Safeguards Commitments where market access is limited to 49 per cent shareholding and entry is subject to economic needs testing. With respect to WTO Members, Lao PDR can legitimately apply this restriction until 2018 when liberalisation commitments kick in. At that time, maximum foreign shareholding in all insurance entities including state owned companies will be raised to 51 per cent. ***The Enterprise Law needs to be revised to permit 51 per cent shareholding in state-owned insurance companies from 2018.***

The sector is regulated by the Department of Enterprise Financial Management of the MoF. With respect to norms on informing of regulatory change, for major laws, there is a process to provide the private sector with prior notice and allow them to comment on proposed changes. The methods used are the circulation of drafts for comment and the convening of consultation

meetings to receive input. The input is sifted by the MoF and incorporated into the draft. There does not appear to be any Ministry procedures which allow the appeal regulatory decisions. Nonetheless, appeals can be made to the Government Office, but there does not seem to be any set format for appeal.

***It is suggested that the MoF accelerate the TDF-2 project which is aimed at establishing an independent regulator for the sector. It is also recommended that sub-regulations to the new Insurance Law be quickly drafted and implemented.***

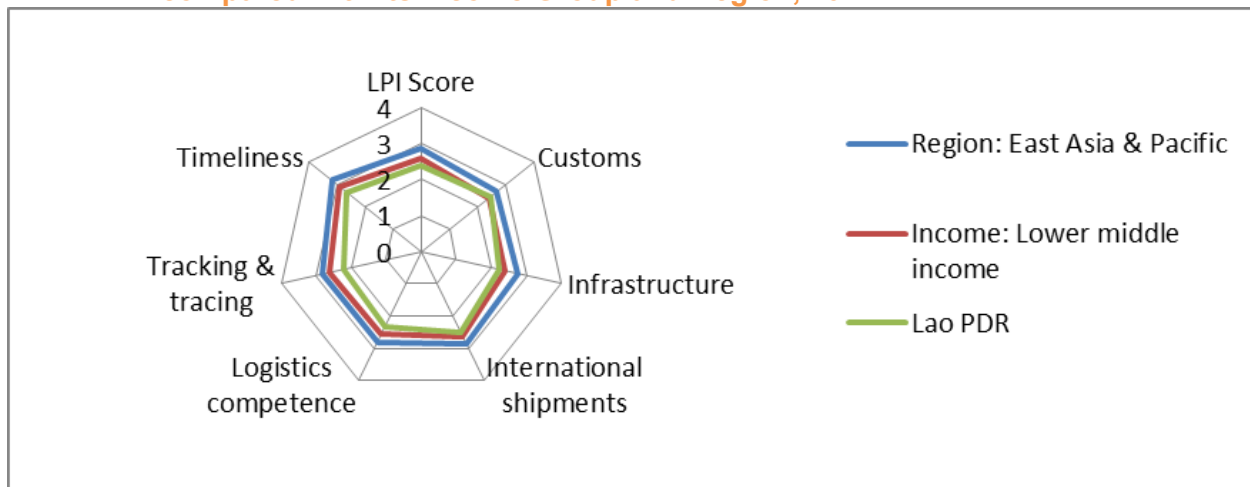
### Transport and Logistics

The logistics system in Laos PDR is highly underdeveloped. Transport operations have been limited to the owner-driver model of business and hence there are no large scale business operations in the transport sector. This has been attributed to the inability of Lao truckers to compete with operators from Thailand and other neighbouring countries; restrictive transport regulations in Lao PDR as well as in neighbouring countries; the scarcity of storage facilities; challenges with obtaining import-export licences; and arbitrarily determined duties. While prospects appear bleak on the transport side, there is a sense of optimism in the freight forwarding sector. This is based on the observation that while the road freight transport industry did not seem to have a competitive advantage vis-à-vis its regional competitors, the freight forwarding sector appears to be reaping significant success in their business operations.

Lao PDR ranked 149<sup>th</sup> out of 160 countries included on the International Logistics Performance Index (LPI). As **Figure 19** reveals, the country compares reasonably well with the average performance of its regional counterparts and countries in its income group. It lags slightly behind both groups on the timeliness of shipments, the ability to track and trace consignments and the competence of logistics service providers.



**Figure 19 Lao PDR's Performance on the International Logistics Performance Index compared with its Income Group and Region, 2014**



The Domestic LPI looks in detail at the logistics environment and provides clearer insights into Lao PDR's performance from the perspective of Lao logistics professionals. The main perceptions appear to be:

- Charges for the use of infrastructure such as airports and for services such as transport are high;
- The quality of transport infrastructure such as the airport and warehousing facilities is low;
- The competence of service providers on the logistics chain such as transporters and clearing agents as well as government agencies such as customs is low; and
- The transparency of customs clearance and of other border agencies is low and there is insufficient notice of regulatory changes.

However, logistics professionals indicated that since 2011 there were improvements in customs clearance procedures and other official clearance procedures; trade and transport infrastructure; telecommunications and IT infrastructure; private logistics services; regulation related to logistics; and addressing the issue of the solicitation of informal payments.

#### Regulation and Governance Framework

The main elements of Lao PDR's legal framework for the operation of transport services consist of the Law on Multimodal Transport 28/NA, dated December 12, 2012, the Law on Road Transport 24/NA, dated December 18, 2012 and the Law on Civil Aviation 01/NA, dated May 2005. There are also a number of sub-regulations on issues such as road transport, the management of foreign trucks, driving licences, driving schools, and maximum vehicle weight. This is supplemented by numerous guidelines, instructions and agreements. For civil aviation, there are a number of agreements on issues such as the management of the civil aviation management unit and the management of ticketing agencies and travel agencies. One other legal instrument which deserves mention is the Notification Regarding Regulations for the Authorization for the Establishment of Controlled Businesses in the Public Works and Transport Sector 13779/MPWT, dated August 21, 2012.

### Land Transport

The Road Transport Law determines, among other things, the regime for the administration, organisation, and operation of the domestic, international and cross-border transport of goods.

Measures which affect market entry include requirements related to technical capacity, professional competence, financial capacity, honesty and integrity, roadworthiness of vehicles and insurance. In addition, a number of restrictions on the sector are imposed via the Notification Regarding Regulations for the Authorization for the Establishment of Controlled Businesses in the Public Works and Transport Sector, No. 13779/MPWT. This measure applies discriminatory minimum capital requirements and foreign equity limitations to the road freight transport, warehousing and storages; services activities incidental to land transport; and other transport services sectors. (See **Table 19** below) Measures affecting operations include the Ministerial Notification on the Pricing of Goods and Services which seems to point to some form of price setting for the sector.

**Table 19 Transport Services on the Controlled List**

Types of Business/ Activities	Conditions for Foreign Investors	
	Registered Capital (Kip)	Percentage (max %)
<b>Other passenger land transport.</b> <i>For this ISIC, specific conditions on the provision of taxi-meter services.</i>	5 billion up	100%
<b>Freight transport by road.</b> <i>for this ISIC, specific conditions are:</i>		
A. Domestic transportation of goods	3 billion up	100%
B. International transportation of goods	5 billion up	49%
<b>Warehousing and storage.</b> <i>for this ISIC, specific conditions on warehouses and storage</i>	1 billion up	49%
<b>Service activities incidental to land transportation.</b> <i>for this ISIC, specific conditions are:</i>		
a. Domestic goods transport stations	5 billion up	49%
b. International and cross-border goods transport stations	10 billion up	
<b>Other transportation support activities.</b> <i>for this ISIC, specific conditions are:</i>		
a. Domestic goods transport services	3 billion up	49%
b. International goods transport services		

Since Lao PDR has no land transport commitments under the GATS, there are no issues of compliance to be addressed there. While Lao PDR's AFAS schedule provides legal justification for the limits on foreign equity participation in the road freight transport sector, the scheduling of

full national commitments precludes the imposition of discriminatory minimum capital requirements for this sector. ***It is recommended that Notification 1591 /MOIC.ERM be amended to remove the minimum capital requirements for ASEAN nationals and juridical entities providing road freight transport services.*** Likewise, the scheduling of full market access and national treatment commitments on storage and warehousing services and freight agency services does not allow for the imposition of either foreign equity limitations or minimum capital requirements. ***Again Notification 1591 /MOIC. ERM should be amended to remove discriminatory equity limitations or minimum capital requirements for ASEAN nationals and juridical entities providing storage or warehousing services and freight agency services.***

Depending on the intention underlying these measures, consideration may be given to less trade restrictive alternatives. If the intention is to ensure the financial soundness of operators, then imposing reporting requirements may be a viable option. However, if the intention is to provide a preference to ensure that smaller transportation opportunities are reserved for nationals, then discriminatory capital requirements represent an avenue to achieve this objective. Nevertheless, these measures ought to be placed squarely in context. Foreign investment is likely to be welcomed in an industry characterised small operators and limited capacity. The growth of the industry is therefore limited to the extent that the minimum capital requirements serve as a deterrent to investors.

## Tourism

The importance of the tourism sector for Lao PDR is underlined by its inclusion in the investment calling list which outlines at least 20 projects across the country which are of high priority. This emphasis is logical given the potential held by the industry for economic diversification and poverty reduction. In 2013, the tourism industry in Lao PDR grew by 4.1 per cent making a direct contribution of US\$ 0.47 billion to the economy. It accounted for 4.6 per cent of GDP which is comparable to the industry's contribution to the Vietnamese economy at 4.5 per cent, but less than its contribution to the Cambodian economy – 10.4 per cent. (See **Tables 20 and 21**)

The industry provides a moderate number of employment opportunities with some 119.6 thousand persons working directly in the industry which represents 3.9 per cent of total employment. This is similar to Vietnam where 3.6 per cent of the workforce earn a living from the industry, but much less than Cambodia (8.9 per cent).

The wider/ indirect contribution of the industry to the Lao economy stood at US\$ 1.42 billion (or 14.1 per cent of GDP) with an annual growth rate of 6.1 per cent and an employment level of 373.9 thousand persons. In relative terms, while Cambodia's earnings (23.4 per cent of GDP) from the industry far outstrip those of Lao PDR (14.1 per cent) and Vietnam (9.5 per cent), it clear has an appreciable impact on all three economies.

Between 2008 and 2013, capital investment in the Lao industry climbed steadily to US\$ 0.32 billion. In absolute terms, this is very similar to investment levels in Cambodia (US\$ 0.34 billion) and Vietnam (US\$ 0.31 billion). Visitor spending in Lao PDR stood at US\$ 0.48 billion in 2013. This was substantial less than spending in Vietnam (US\$ 6.65 billion) and in Cambodia (US\$ 2.12 billion).

**Table 20 Lao PDR's Tourism Performance at a Glance, 2013**

Indicator	2008	2009	2010	2011	2012	2013
<b>Direct Contribution to GDP</b>						
US\$ bn	0.26	0.28	0.35	0.40	0.44	0.47
Real growth (%)	14.7	6.6	12.5	1.9	6	4.1
<b>Total Contribution to GDP</b>						
US\$ bn	0.73	0.82	1.03	1.19	1.31	1.42
Real growth (%)	14.7	14.1	10.6	4.4	5.3	6.1
<b>Direct Contribution to Employment</b>						
Real growth (%)	8.3	2.3	12	-2.7	-5.1	-1.4
'000	114.7	117.4	131.5	127.9	121.4	119.6
<b>Total Contribution to Employment</b>						
Real growth (%)	8.3	9.4	8.9	-0.4	-4.7	0.4
'000	329.1	360.1	392.2	390.6	372.1	373.9
<b>Visitor Exports</b>						
US\$ bn	0.28	0.27	0.38	0.41	0.46	0.48
Real growth (%)	25	-1.3	25.9	-3.1	6.9	1.4
<b>Capital Investment</b>						
US\$ bn	0.13	0.15	0.20	0.25	0.28	0.32
Real growth (%)	5.4	23.8	16.6	12.7	7.5	9.9

Source: World Travel and Tourism Council (WTTC), 2014

**Table 21 Comparison of Tourism Performance in Cambodia, Laos and Vietnam, 2013**

Indicator	Cambodia	Laos	Vietnam
<b>Direct GDP Contribution</b>			
US\$ bn	1.61	0.47	7.14
Real growth (%)	4.2	4.1	5.1
% share	10.4	4.6	4.5
<b>Total GDP Contribution</b>			
US\$ bn	3.62	1.42	14.82
Real growth (%)	4.9	6.1	1.7
% share	23.4	14.1	9.5
<b>Direct Employment</b>			
Real growth (%)	0.3	-1.4	1.8
% share	8.9	3.9	3.6
'000	735.1	119.6	1899.1
<b>Total Employment</b>			

Indicator	Cambodia	Laos	Vietnam
Real growth (%)	0.7	0.4	-1.5
% share	20.4	12.3	7.8
'000	1689.9	373.9	4071.3
<b>Visitor Exports</b>			
US\$ bn	2.12	0.48	6.65
Real growth (%)	3.3	1.4	3.6
% share	24.5	20.3	4.7
<b>Capital investment</b>			
US\$ bn	0.34	0.32	3.91
Real growth (%)	11.6	9.9	5.9
% share	14.6	8.9	7.8

Source: WTTC, 2014

### Regulation and Governance Framework

The Law on Tourism 32/NA, July 24, 2013 broadly regulates the tourism sector. Sub-regulations are currently being amended to ensure that there is no conflict between these instruments and the main law - the process should be completed in 2015. Nevertheless at the time of writing of this report, these regulations continue to be in force until they can be replaced.<sup>21</sup>

Access to and operation in Lao PDR's tourism industry is conditioned by a number of restrictions. These include the reservation of sub-sectors for operation by nationals only; foreign equity limitations and discriminatory minimum capital requirements for 3 star hotels and above; local presence requirements and price controls for travel agents; and the requirement for non-established service providers to partner with a Lao individual or entity to supply to market. (See **Table 22** and **23** below)

<sup>21</sup> Such regulations include the Decree on the Preservation of Cultural, Historical and Natural Heritage 03/PR of June 20, 1997; Regulation on the Management of Hotels and Guesthouses 159/OPM of 30 July 30, 1997; Regulation on

**Table 22 Restrictions on Tourism Services**

	Market Access/ Establishment						Operations					
	Quantitative	Qualitative					Qualitative	Administrative Practice				
	Limitations to foreign equity 1-50	Local Presence (M1) / Joint Venture requirements (M3)	Licensing (qualifications)	Licensing (experience)	Nationality (for services supplier)	Residency (for services supplier)	Domestic partner requirement	Minimum capital requirements	Advertising limitations	Limitations on pricing	Missing or outdated regulation	Deficient monitoring / enforcement procedures
Hotels and restaurants (incl. catering)	•		•	•	•	•		•	•	•	•	
Travel agencies and tour operators		•	•	•	•	•	•	•	•	•	•	
Tourist guides services			•		•	•	•	•	•	•	•	
Other			•	•	•	•		•	•	•	•	

Key: • = restriction applies. Source: author

**Table 23 Tourism Services on the Controlled List**

Types of Business/ Activities	Conditions for Foreign Investors		
	Registered (Kip)	Capital	Percentage (max %)
Short term accommodation activities For 3 to 5 star hotels	1 billion up		60%

Most of the restrictions above are permitted under the GATS and AFAS regimes. Nevertheless, the requirement for non-established service providers to partner with a Lao individual or firm can be interpreted as undermining GATS and AFAS market access commitments. Under both of these trade regimes, Lao PDR did not impose any market access or national treatment restrictions on the cross-border supply of these services. The measure therefore reduces the level of access provided. ***It is recommended that these requirements be removed from the Tourism Law in order to ensure compliance with trade commitments.***

In addition, the discriminatory equity and minimum capital requirements for hotels between 3 to 5 stars would not be in line with GATS or AFAS national treatment commitments as they were not scheduled. ***As such the Tourism Law should be revised to remove these restrictions.***

Finally, in the absence of either GATS or AFAS national treatment or market access restrictions to Mode 1, the local presence requirement impairs the level of access accorded to foreign travel agencies providing services remotely. ***In this vein, it is suggested that Lao PDR remove this measure by amending the Agreement on the Management of Ticketing Agencies and Air Travel Agencies.***

Licensing and registration are undertaken by the MoIC or in the case of large scale foreign investment, the MPI. As hotels above 2 stars fall on the list of controlled business, the MoIC will submit the application to the Ministry of Information, Culture and Tourism. In providing advice to the MoIC on the issuance of the licence, the technical capacity of the service provider is taken into account as well as the minimum capital requirement.

Hotels, restaurants, tour guides and tour operators are regulated by the MICT. Prior to commencing operation, these businesses are required to obtain a permit from the Department of Culture and Tourism. Permits are valid for five years. Among the documents to be submitted with the application are the business license; business residence certificate signed by village authority; land title certificate or premises leasing contract; share-holding contract (in case of share-holding); tax licence; tax return forms and the investment licence.

Travel agents are regulated by the Department of Civil Aviation of the MPWT. Permits are valid for one year and are renewable annually. Among the conditions required for the issuance of a permit are a contract with the airlines; competent technical staff; availability of information and communications technology; and a permanent presence in Lao PDR. Travel agents wishing to renew their permits must submit evidence of successfully running the business as illustrated through the agency's financial accounts; and be up to date in the payment of taxes. Evidence must also be presented again of the technical competence of the staff; a good ICT system; a contract with the airlines; and permanent premises in Lao PDR.

While licensing and authorisation procedures are supposed to be according to available rules, there are a few instances where practice may differ. This is more likely to be so in the provinces. Monitoring and enforcement of the laws and regulations are considered to be rather strong as this is undertaken by the district and village authorities. However, there are some indications that stakeholders are being affected by weak enforcement of rules which fall under the remit of agencies other than MICT. Among the concerns raised was the proximity of activities such as karaoke bars to hotels and operation times of those smaller businesses.

***Recommendations for the tourism services sector would include the swift drafting and implementation of sub-regulations which govern foreign investment in the sector; the elaboration of the conditions attached to service provision; and an update on the rules in old regulations to match the new Tourism Law. Also recommended are better enforcement of rules such as those related to zoning and health and safety; and the assessment of documentary requirements for the renewal of permits with a view to reducing the repeated submission of the same documents.***

### Construction

Electrical installation and plumbing, heat and air-conditioning installation are included on the reserved business list. (See **Table 24**) However, these activities have not been carved out of GATS or AFAS commitments on the sector. ***It is recommended that Notification 1590/MoIC.ERM be amended to reflect GATS and AFAS commitments by removing these construction activities from the list.***

The construction activities on the controlled list are subject to discriminatory minimum capital requirements and equity limits which are not reflected in Lao PDR's GATS or AFAS schedules. Full commitments are undertaken in the AFAS while Mode 3 provision under the GATS is limited by a foreign equity restriction of 70 per cent.

**Table 24 Construction Services on the Controlled List**

Types of Business/ Activities	Conditions for Foreign Investors	
	Registered Capital (Kip)	Percentage (max %)
<b>Construction of roads and railways.</b> <i>For this ISIC, there are conditions on the road and bridge construction sectors, namely:</i>		
a. <i>For domestic and foreign shareholdings</i>	1 to 240 billion	49%
b. <i>For foreign investment</i>	240 billion up	100%
<b>Site preparation.</b> <i>For this ISIC, there are conditions on the site construction(digging and refilling soil), namely:</i>		
a. <i>For small project</i>	8 to 40 billion	49%
b. <i>For large project</i>	40 billion	
<b>Other construction installation.</b> <i>For this ISIC, there are conditions on the provision of parts for constructed items namely:</i>		
a. <i>Small project</i>	8 to 40 billion	49%
b. <i>Large project</i>	40 billion up	
<b>Building completion and finishing.</b> <i>For this ISIC, there are conditions on the internal and external decorations (final) namely:</i>		
a. <i>Small project</i>	8 to 40 billion	49%
b. <i>Large project</i>	40 billion	

***Consequently, it is recommended that this notification be brought in line with Lao PDR's trade commitments by revising Notification 1591/MoIC.ERM to either remove the minimum capital requirements completely or apply them to domestic and foreign investors. In addition, it should be amended to allow ASEAN investors to fully own enterprises in this sector while investors of other WTO Members should be permitted to have a maximum shareholding of 70 per cent in construction companies.***

## **6. Conclusion: Main Findings and Policy Implications**

Despite efforts on a number of fronts to reform its services regime, Lao PDR continues to face a number of challenges in ensuring that the benefits of these initiatives come together in a meaningful way to create an efficient regulatory framework. Initiatives to date have included unilateral, regional and multilateral liberalisation of a number of services sectors; an ambitious campaign of legal reform especially of services related legislation; and improving procedures for business registration.

More broadly, the expected dividends for the abovementioned improvements would be significantly multiplied if efforts to enhance the country's fundamentals – those related to higher education, telecommunications and the governance and regulatory framework – were to bear fruit. The 7<sup>th</sup> NSEP points to substantial resources being devoted to improving skills and significant progress has been reported on that front. However, until Lao PDR achieves a sufficiently skilled workforce to undergird its economic growth, consideration needs to be given to the types of skills which need to be imported to drive the development of the services industries and the economy as a whole. Beyond growing its cadre of skilled persons, Lao PDR needs to take a critical look at the quality and capacity of three types of institutions – those that provide



training; those that assess qualifications gained outside of Lao PDR; and those that facilitate the entry of foreign professionals with key skill sets in which Lao PDR faces a shortage.

The 7<sup>th</sup> NSEP also sets goals in relation to the expansion of the telecommunications sector. Chapter 2 drew attention to the uneven development of Lao PDR's ICT sector which is characterised by the exponential growth of mobile services contrasted with a slow uptake on internet services. The TDF-2 project which aims to establish an independent regulatory framework for the industry is a significant step forward. This should be complemented by initiatives which seek to improve the network readiness of individuals and business to source and covert global knowledge to the benefit of the private sector. In essence, network expansion is an important vehicle for knowledge acquisition, but nurturing the ability to innovate and apply new knowledge and innovative thinking and practices should be firmly planted in the minds of key policymakers as the underlying motivation for reforms in this area.

Progress on these fundamentals needs to be complemented by a focused programme of actions to improve the regulatory and governance framework. At the very general level, two broad recommendations are identified to provide the context for further development of the regulatory and governance framework. First, the formulation of a comprehensive services strategy to ensure that there is a clear focus for the development of the sector. This will provide a clear target towards which policy makers can navigate and a concrete context for regulations and policies. The second suggestion relates to the preparation of an action plan based on the services strategy to ensure that broad objectives are transformed into actionable, measurable and time-bound activities.

### Horizontal Recommendations

This assessment of Lao PDR's horizontal framework provides key insights which should assist the country in setting a more detailed agenda aimed at improving the environment for service provision. The research presented suggests that while the governance framework in Lao PDR is still in the nascent stages of development, it is indeed improving. This was certainly the strong message emanating from the review of Lao PDR's performance on the WGI. Positive developments on this front include the passage and implementation of the Law on Legislation and the inclusion of rules on timelines and the procedures for dealing with applications in a number of horizontal and sectoral laws.

However, the existence of clear procedures for regulatory reform will yield little return if attention is not paid to strengthening the capacity of institutions to engage in good governance and produce quality regulations. The study revealed that regulatory agencies in Lao PDR struggle to achieve their mandates in the face of insufficient institutional capacity. Insufficient capacity is not only reflected in inadequate levels of staff to effectively undertake tasks, but perhaps more importantly in the quality of staff and the lack of financial resources. This weakness in capacity is a widespread problem across the civil service with officials lacking training to effectively apply laws and regulations and to respond to regulatory challenges in a timely fashion.

Administrative practice restrictions which affect regulatory quality include unclear or ambiguous laws or requirements, missing or dated legislation in a few instances and the slow development of regulations to complement broadly formulated laws. This serves to create uncertainty among stakeholders and either gives officials room for discretionary decision making or paralyses them from taking action as decisions would effectively lack a legal basis. Finally, deficiencies in monitoring the implementation of rules and ensuring effective enforcement stand to undermine gains made on improvements in the regulatory framework.

In concrete terms, it was found that many of the horizontal measures which impede the development of the services sector are primarily of a qualitative nature and, in a number of cases, are aimed at achieving legitimate socio-economic objectives. Given the importance of services as key inputs into production and exports, the challenge facing Lao PDR will be to determine the least trade restrictive measures to satisfy non-economic imperatives while facilitating the efficient development of the services industry. On average, the impact of horizontal restrictions on business is appreciably higher at the operations stage than on the market entry phase. Further, horizontal measures are most frequently imposed on the supply of services through the establishment of a commercial presence followed by the temporary movement of natural persons.

In response to these findings, a number of horizontal level reforms are proffered for consideration. These are as follows:

#### *Enhancing Business Registration*

- In approving enterprise applications, the ERD should comply with the consultation procedures set out under the Law on Enterprises until a new regime can be introduced;
- The ERD should embrace flexibility in the preparation of incorporation documents such as AoA. Small businesses which do not already have an AoA could make full use of the standardised form. In the case of larger businesses which already have an AoA, the ERD could accept the completed form with the original AoA attached as an integral part of the application.
- The ERD should move ahead to conduct a full RIA on the operation of the Enterprise Law as there are likely to be more issues to be addressed beyond those captured in the PIA.

#### *Improving the Operation of Specific Regimes*

- Continue with the process of allocating land rights to Lao nationals as this likely to foster clarity when Lao nationals and entities lease land to foreigners;
- Conduct a regulatory assessment on the operation of the Land Law. Issues to be included in the RIA are the expropriation guarantee and the level of fees charged when registering land as collateral;
- When the competition law framework is finally implemented, it should be used instead of price administration to address concerns about anti-competitive behaviour in some services sectors;
- Perform a full RIA on the operation of the entire tax regime to determine the areas which need to be targeted for improvement and amendment and follow through with the necessary legal modifications;
- Add payment for services to the list of permissible uses foreign exchange if it is not already there;
- Permit direct access to the law courts rather than making certain categories of investors resort first to the other forms of dispute settlement.

#### *Ensuring Policy Co-ordination and Trade Compliance*

- Centralise the responsibility for all trade negotiations under the MoIC while creating a strong mechanism for consultation and coordination with the line Ministries;
- Strengthen the capacity of the MoIC to deal with the expanded mandate of having responsibility for trade negotiations;

- Establish a mechanism between the ERD and the FTPD to ensure that changes to notifications and other measures are compliant with trade commitments and strengthen capacity in the ERD to recognise when trade commitments are likely to be negatively affected by proposed rules.

#### *Boosting Transparency and Legal Certainty*

- Fast-track work on the proposed services trade and investment portal as a means to enhance transparency;
- Establish rules to either ensure that Laws and sub-regulations be drafted at the same point; or, if the main law has already been implemented, to set a minimum timeframe within which the sub-regulations should be drafted and subjected to the formal legislative process;
- Create user friendly guidelines on the main horizontal laws for officials and the public to ensure a common understanding of rules;
- Continue to use RIAs to assist in preparing for regulatory change. Further, RIAs should also take into account the interaction with other laws and contracts such as concession agreements;
- Ensure that documentary and evidentiary requirements in administrative procedures reflect the logic of the process;
- Establish rules to guide enforcement and mechanisms to ensure effective enforcement (as opposed to excessive enforcement on a limited sub-set of actors) takes places regularly;
- Mandate the creation of criteria by which applications will be assessed and make them publicly available. Specifically, if criteria for assessing concession proposals do not exist, it is recommended that the MPI create such criteria and make them publicly available;
- Increase transparency in the legal system by moving to a system of written justification of judgements.

#### *Reducing Administrative Burdens*

- Subject changes of less significant details related to incorporation (such as a change of directors) to a notification requirement rather than an approval requirement;
- Provide visitors with the option to obtain a multiple entry visa for the 90 days rather than simply granting a single entry visa for thirty days with the possibility of extension;
- Assess documentary requirements for the renewal of permits with a view to reducing the repeated submission of the same documents.

### Sectoral Recommendations

At the sectoral level, more qualitative restrictions are applied to investments as opposed to the other modes of services supply. These restrictions negatively impact business both at the stage of establishing the enterprise and the operation of the enterprise. Compared to other sectors, professional services are most heavily impacted upon by both types of measures. Banking and tourism have the highest incidence of restrictions to market access while the services most significantly affected by restrictions on operation include telecommunications and distribution. With respect to other modes of trade, the only sector significantly affected by barriers to cross-border trade is the professional services sector where measures of a qualitative nature affect both the market entry and operations stage.

Proposed general interventions include:

#### *Ensuring the Implementation of Trade Commitments*

- Given the imminent deadline for the implementation of the ASEAN MRAs, redouble efforts to advance the preparatory work under the TDF-2 project which will provide guidance on how Lao PDR should implement these commitments;
- Work consistently towards the implementation of commitments related to the creation of the independent regulator for telecommunications;
- Commence the TDF-2 project which is aimed at establishing an independent regulator for the insurance sector;
- Bring inconsistent measures as highlighted in the RASTI into compliance with international trade commitments.

On this latter score, specific recommendations are:

#### *Land Law*

- Amend the Land Law by:
  - Revising Article 65 of the Land Law to allow foreigners to lease land for the duration specified in the GATS commitments, i.e., 75 years.
  - Adjusting Article 13 (which limits the maximum land lease period granted to Lao citizens by the state to 30 years with the possibility of extension) to ensure that Lao nationals are able to lease land to foreign investors for 75 years.
  - Including a new provision in the Land Law which specifically creates a special regime for ASEAN individuals and investors. A feature of the new regime would be the availability of land leases for ASEAN investors for an indefinite duration.

#### *Labour Law*

- Remove the obligation on foreign skilled workers to train Lao nationals from the Labour Law and Ministerial Agreement on Approving Importation of Foreign Labour in Lao PDR 5418/MLSW.
- Amend the Labour Law:
  - By creating a special regime for Mode 4 service suppliers from ASEAN. The main feature of this regime would be that there is no maximum duration of stay.
  - To ensure that ASEAN firms operating in the accounting, auditing and bookkeeping sector are entitled to a maximum quota of foreign professionals up to 30 per cent of the staff complement.

#### *Professional Services*

- Amend the Independent Audit Law by:
  - Removing the restriction requiring non-established firms to work in association with a Lao accounting firm;

- Revising the provisions to ensure that the requirement to have work verified by a Lao accountant does not apply to any foreign auditor where such services are supplied cross-border.
- Revising the provisions to ensure that the requirement to have work verified by a Lao accountant does not apply to ASEAN professionals who are supplying services through the temporary movement of a natural person.
- Amend the Temporary Guidelines on Licensing firms in the accounting/ auditing firms by either:
  - Applying the requirement for accounting, auditing and book keeping headquarters to have an excellent track record to both domestic and foreign firms; or
  - Removing the restriction completely.
- Amend Notification 1590/MOIC.ERM by:
  - Deleting survey, design, construction consultancy activities and the installation of Lao historical, natural, cultural architectural and engineering and the design, construction and installation of electric grids and generators from 22 kv – 35 Kv and low 0.4 Kv from the list.
- Amend Notification 1591/MOIC.ERM by:
  - Either completely removing the minimum capital requirement or applying it to both domestic and foreign service suppliers who are providing the specified architectural and engineering activities and technical testing and analysis activities on the list;
  - Revising the maximum limit on foreign participation from 49 per cent to 51 per cent for investors from WTO Members who are offering the architectural and engineering services listed;
  - Clearly indicating that the abovementioned foreign equity limits will not be applied to ASEAN investors who are offering the architectural and engineering services listed;
  - Including a provision which indicates that the phase-in commitment which will allow investors from WTO members to fully own juridical entities in the listed architectural and engineering sub-sectors will come into effect in 2018;
- Amend the relevant legislation or regulations to remove the requirement that foreign engineers or architects work in association/collaboration with a Lao professional.

#### *Distribution Services*

- Amend Decision 0977 to:
  - Permit cross-border trade in wholesale trade services on a fee or contract basis of textiles, clothing and footwear for ASEAN service suppliers which do not have a physical presence in Lao PDR;
  - Permit cross-border trade in wholesale trade of motor vehicles, car parts and accessories and motor cycles for WTO service suppliers who do not have a physical presence in Lao PDR.

*Telecommunications Services*

- Create the implementing regulations which cover, among other things:
  - The eligibility criteria for applying for and receiving a licence;
  - The process for the application for and renewal of licences;
  - Licence application and renewal fees;
  - A set of general licence conditions;
  - The rights and responsibilities of licensees, including disclosure requirements; and
  - Penalties for breach of licence terms.
- Amend the regulations on internet café services to permit interconnection with ASEAN internet service providers.
- Introduce a separate Decree to establish the independent regulator.

*Financial Services*

- Revise the Enterprise Law to permit foreigners to have a 51 per cent stake in state-owned institutions in order for foreign investors to hold 51 per cent of the shareholding in state owned banks and state-owned insurance companies by 2018;
- Remove the requirement for a representative office in the insurance sector to have 5 years of operating experience from the Insurance Law.

*Transport Services*

- Amend Notification 1591 /MOIC. ERM to :
  - Remove the minimum capital requirements for ASEAN nationals and juridical entities providing road freight transport services;
  - Remove discriminatory equity limitations for ASEAN nationals and juridical entities providing storage or warehousing services and freight agency services;
  - Either completely remove minimum capital requirements or apply them to domestic and ASEAN service suppliers who are providing storage or warehousing services and freight agency services.

*Tourism and Travel-related Services*

- Amend the Tourism Law (or adjust tourism regulations) by:
  - Removing the requirements for non-established service providers to partner with a Lao individual or firm;
  - Removing the discriminatory foreign equity for hotels between 3 to 5 stars;
  - Completely removing the minimum capital requirements for hotels between 3 to 5 stars or applying them to both domestic and foreign investors.
- Amend the Agreement on the Management of Ticketing Agencies and Air Travel Agencies by removing the local presence requirement on travel agency services.

### *Construction Services*

- Amend Notification 1590/MoIC.ERM by removing electrical installation and plumbing, heat and air-conditioning installation from the list.
- Revising Notification 1591/MoIC.ERM to:
  - either completely remove the minimum capital requirements or apply them to domestic and foreign investors who are providing construction services specified on the list;
  - allow ASEAN investors to fully own enterprises providing the construction services identified on the list;
  - Permit investors of other WTO Members to have a maximum shareholding of 70 per cent in companies which are providing the construction services on the list.

### *Verifying and Enforcing Standards*

- Put in place mechanisms to ensure that the courses conducted and qualifications awarded in subjects related to professional services by all educational institutions are uniform and that they conform to required standards;
- Ensure better enforcement of rules such as zoning and health and safety regulations.

### *Modernising and Completing Legal Frameworks*

- Conduct RIAs and modernise the legislation and regulations applicable to the banking, distribution and air transport sectors to ensure compliance with trade commitments among other objectives;
- Move to complete the regulatory framework for professional services, telecommunications, insurance and tourism by drafting needed sub-regulations.

### *Engaging in Institutional Strengthening*

- Strengthen the capacity of professional associations (LICPA, LBA and ALACE) to play a more critical role in regulating the industry;
- Strengthen the agencies under the remit of the MoF, the MoJ and the MPTW which have responsibility for the profession services;
- If it is not already being done, training should be provided to the Department of Domestic Trade of the MoIC in order to strengthen the capacity of officials in identifying and spearheading effective regulatory change;
- Strengthen the BoL's regulatory capacity. Initiatives should be based on a formal assessment of the specific areas which should be targeted for assistance.

On a final note, it is important to emphasise that elements of reform should operate in a mutually reinforcing manner. In this regard, a champion Ministry should be identified to ensure that parallel tracks of activities which seek to achieve the goals set out in the comprehensive services strategy. In this vein, the MoIC would appear to be the best placed Ministry to play this pivotal role in order to increase the coherence of the services trade regime.





## References

- Asian Development Bank. (2014) *Asian Development Outlook 2014*. Manila: ADB.
- Bank of the Lao PDR. (2012) *Annual Report*. Vientiane: Bank of the Lao PDR.
- Borchert I., B. Goottiz, and A. Mattoo. (2012) 'Policy Barriers to International Trade in Services: Evidence from a New Database'. Policy Research Working Paper 6109, Washington D.C.: World Bank.
- Deutsche Bank Research. (2013) 'Lao PDR, Frontier Country Report'. N.p.
- DFDL. (2013a) *Lao PDR – Legal, Tax and Investment Guide: 2014*. 4<sup>th</sup> Ed. Vientiane: DFDL
- (2013b) *Laos Property Investment Guide: 2013*. Vientiane: Jones, Lang La Salle, DFDL, Ashurst.
- Dihel, N., A. Fernandes, A. Mattoo, and N. Strychacz. (2010) 'Reform and Regional Integration of Professional Services in East Africa'. Africa Trade Policy Notes. Note #5.
- Dahanayake, S. (2012a) 'Implications of Liberalizing Professional Services: Legal, Accountancy, and Engineering Services in Lao PDR'.
- (2012b) 'Possible Impacts of the World Trade Organization Accession on Distribution Services in Lao PDR'.
- European Chamber of Industry and Commerce in Laos. (2013) *Investment Guide*. Vientiane: European Chamber of Industry and Commerce in Laos.
- Goswami, A., P. Gupta, A. Mattoo, and S. Sáez. (2012) 'Service Exports: Are the Drivers Different for Developing Countries?' In *Exporting Services: A Developing Country Perspective*. Washington D.C.: World Bank.
- Greenlee Jr., W., A. David, S. Sihanouvong and D. Ingkapattanakul. (2014) 'Recent Legal Developments in Lao PDR'. *IFLR* 1000 2.
- International Finance Corporation. (2007) 'Public-Private Dialogue: Internal Report, Impact Assessment of the Public-Private Dialogue Initiatives in Cambodia, Lao PDR and Vietnam'. N.p., World Bank Group.
- International Telecommunications Union. (2014) ICT Statistics.
- Mattoo, A. and R. Stern. (2008) 'Overview'. In *A Handbook of International Trade in Services*. Eds. A. Mattoo, R. Stern and G. Zanini. Oxford: Oxford University Press.
- Ministry of Finance. (2014) 'Preliminary Impact Assessment - Improving the Implementation of Lump-Sum Tax'.
- Ministry of Industry and Commerce. (2013) 'Preliminary Impact Assessment'.
- Ministry of Planning and Investment. (2011a) 'Investment Guide'.
- (2011b) 'Investment Calling List'.

- . (2011c) '7<sup>th</sup> Five Year National Socio-Economic Development Plan (2011 – 2015)'. Vientiane: n.p.
- . (2012) 'Diagnostic Trade Integration Study'. Vientiane: Ministry of Industry and Commerce.
- Molinuevo, M., and S. Saez. (2014) *Regulatory Assessment Toolkit*. Washington D.C.: World Bank.
- Rouzies, P., and T. Nguyen. (2006) 'Case Study 8 – Lao PDR, Lao Business Forum: Improving the business environment through constructive dialogue'. Paris, February 1 – 2.
- Securities Exchange Commission. (2012) 'Decision on increasing of foreigner (sic) share ownership portion in EDL-Gen Public Company 021/SECO, January 5.
- Sisombat, L. (2011) 'Transitioning from donor support to local ownership: The case of Cambodia and Laos'. Presentation to PPD Global Workshop. Vienna, June 13 – 17.
- Toland, M. (2009) 'Review of World Bank Group Support to Structured Public-Private Dialogue for Private and Financial Sector Development'. IFC and World Bank.
- World Bank. (2011) *Lao PDR Investment Climate Assessment: Policies to Promote Growth in the Non-Resource Sectors*. Washington: World Bank.
- . (2012) *Lao PDR Economic Monitor: Sustaining Robust Growth, Mitigating Risks and Deepening Reforms*. Vientiane: World Bank.
- . (2013a) Financial Access Statistics.
- . (2013b) World Development Indicators.
- . (2013c) Knowledge Economy Indicators.
- . (2013d) *Lao PDR Economic Monitor: Sustaining Growth, Maintaining Macroeconomic Stability*. Vientiane: World Bank.
- . (2013e) Worldwide Governance Index.
- . (2014) *Lao PDR Economic Monitor: Managing Risks for Macroeconomic Stability*. Vientiane: World Bank.
- UNCTAD. (2014) UNCTADstat.
- United Nations Development Programme. (2013) Human Development Index.
- US Department of State. (2012) 'Lao PDR: Investment Climate Statement'.
- . (2013) 'Lao PDR: Investment Climate Statement'.
- Van der Marel, E. (2012) 'Trade in Services and TFP: The Role of Regulation'. *World Economy* 11, vol. 35, 1530 –1558.

## Annex A: Terms of Reference

### NATIONAL IMPLEMENTATION UNIT MINISTRY OF INDUSTRY AND COMMERCE

#### Terms of Reference International Advisor on Trade in Services and Horizontal Regulatory Assessment for Services Trade and Investment

Lao PDR  
Second Trade Development Facility  
Project No. P130512

#### Background to the assignment

The Second Trade Development Facility (TDF-2) is a multi-donor program financed by Australia, the European Union, Germany, Ireland and the World Bank focusing on improving trade and private sector development in Lao PDR. The development objective of TDF-2, which is implemented by the Ministry of Industry and Commerce, is to support the implementation of government's trade and integration priorities outlined in the 2012 Diagnostic Trade Integration Study (DTIS) Roadmap, and in particular to contribute to improved competitiveness and diversification, focusing outside the natural resource sectors. TDF-2 has three main components:<sup>22</sup>

- (a) trade facilitation, trade policy and regulations;
- (b) diversification and competitiveness; and,
- (c) mainstreaming aid for trade.

The appraised value of the project is US\$ 14.0 million, with implementation to take place over a period of four years, starting in April 2013. Technical responsibility for implementation of the Trade Development Facility lies with the National Implementation Unit (NIU), based within the Planning and Cooperation Department of the Ministry of Industry and Commerce.

The trade policy aspect of the project will focus on the provision of essential and continued technical assistance in support of WTO accession related efforts, but progressively shifting to a "beyond WTO" agenda focused on effective implementation of goods and services commitments at both the WTO and ASEAN levels, including a strong emphasis on private sector engagement. A core theme will be on strengthening efforts to ensure that the benefits of integration are maximized in an equitable manner.

Typically services are affected by wide range of regulatory measures. Measures affecting the services sectors can be enshrined in general laws and regulations, or specific ministerial measures governing a specific services sector, or they may stem from administrative practices. A more efficient, modernized and better regulated services sector would support Lao competitiveness for exports of goods as well as services by providing a solid infrastructure to the economy. In addition, some services are themselves export-oriented industries, such as tourism and cross border services, which would further assist diversification and economic growth.

Lao PDR has undertaken, and will continue to undertake a number a reforms aiming at liberalizing the economy, including in services trade. The objective of the trade in services subcomponent

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<sup>22</sup> Fuller details on the scope of the TDF-2 are outlined in the Project Appraisal Document, November 1, 2012.

under TDF-2 is to complement these efforts by strengthening the governance of the regulatory environment affecting services trade. The subcomponent seeks to i) improve understanding of the services sector, ii) provide for greater access to and transparency of services regulations, and iii) enhance the performance of key services sectors.

### Objective of the assignment

The consultant will work together closely with a team of technical officials from the Trade in Services Division of the Foreign Trade Policy Department under the supervision of DG/DDG to perform the following key tasks:

- i) Review of Lao PDR's GATS/ASEAN obligations and commitments
- ii) Review the relevant Lao legislation and regulations
- iii) Analysis of the consistency of legislation/regulations with commitments under the GATS and ASEAN;
- iv) Analysis of Lao PDR's regulatory and administrative framework that affects services sectors. In addition to relevant horizontal laws and regulations, the assessment will also review the main sector-specific regulation instruments on services sector committed (including, but not limited to tourism, financial services, transport, professional and business services). The analysis should include the following elements:
  - Detailed analysis of the laws and regulations affecting trade in services;
  - The report will identify areas where gaps exist with regard to international obligations and best practices which may need to be developed to implement the obligations under the regional and international agreements;
  - Assess how the laws and regulations are applied in practice. This will identify possible inconsistencies between laws, administrative practices, and Lao PDR services commitments.
  - Identification of the government agencies responsible for the adoption and implementation of those laws and regulations;
  - The recommendation will detail the specific element (measures) of the law or regulation that should be considered and or amended for, and the regional and international obligations that apply in that case; especially, WTO and ASEAN obligations.
- v) Annex table summarizing the measures and practices that have been identified for reform and completed template files (spreadsheets or database files provided by the WB team) with the restrictions identified during the assessment, for each specific sector and mode of services supply
- vi) Annex table summarizing proposed action plan for reform, including level of priority, government agency/ies responsible for the reform, relevant timeline, etc.
- vii) Annex of a comprehensive collection of horizontal laws and regulations that affect trade and investment in services. When available, such laws should be collected in both Lao and English language.

### Scope of work

The analysis shall be done on the basis of the methodology for a regulatory assessment for services trade and investment developed by the International Trade Unit of the WB (to be provided to the selected consultant or available upon request). The review of laws and regulations shall be complemented with personal interviews with government officials and private stakeholders in order to evaluate the practices relevant to the administrations of such measures.

Examples of laws or regulations that should be examined during the horizontal regulatory assessment include:

- Law on Investment Promotion: sets out the general requirements for the establishment of services suppliers including foreign investors. Such law would usually feature the main horizontal conditions on market access, as well as some general guidelines on the conditions of operations;
- Law on Enterprises: provides for the procedural condition for establishment of juridical person, and the types that may be admitted, including branches and representation agencies of foreign services suppliers. Regulation implementing the Law on Enterprises should further clarify the principles and procedures governing the issuance of operation licenses;
- International transfers of funds regime: sets out the conditions for movement of funds across borders. Measures on transfer of funds may affect all modes of supply, including the ability to make cross border payments (cross border trade and consumption abroad), invest and repatriate funds (commercial presence), or receive payments (presence of natural persons);
- Land law: provides conditions for access to real estate, including for juridical persons and foreigners;
- Currency exchange regime: while the conditions for access to foreign currency are not normally aimed at governing the services market, they may limit trade in services by introducing barriers to international payments and transfer of funds.
- Regime on entry and stay of natural persons: the legal and regulatory framework including, but not limited to migration, taxation and insurance policy affects the provision of services through both the movement of natural persons in particular for the categories being committed and through the establishment of a services company.

Other horizontal regimes relevant to the regulatory mapping include:

- Access to court and dispute resolution
- Government procurement regime
- Subsidies and incentives regime
- Competition policy
- Performance requirements

Sectoral laws or regulations, including on financial services, telecommunication, tourism, distribution, construction, and transport will also be analysed in order to identify sector-specific restrictions.

The assessment will be submitted for review and comments by the World Bank, FTPD and relevant government agencies. A validation workshop with the representatives from such agencies will take place after incorporation of the comments.

The estimated inputs for this assignment are a minimum of six months (you want to leave it unchanged) to provide part-time over a twelve month period, with the possibility of being extended over future years of the project based on performance. It is expected that the majority of inputs will be delivered in Vientiane, Lao PDR working alongside government officials. During the remaining time the consultant will ensure periodic contacts with her/his counterparts in Lao PDR and continued supervision and monitoring of the work program by distance.

### **Transfer of knowledge**

Since, the transfer of technical knowledge on trade in services is a key objective of this assignment, the consultant will ensure knowledge transfer to government staff on issues related to trade in services, which should include collaboration on tasks, mentoring or coaching, regular sessions of training, and periodic meetings to discuss issues related to the tasks undertaken.

### **Deliverables**

The main deliverables associate to this exercise will be report and the annexes described in section 2 above. In addition, the following deliverables should be submitted for review and approval by FTPD and NIU during the exercise

- List of candidates for interviews and preliminary regulations: prior to setting up the interviews, the consultant will submit a list of candidates for interviews and a list of preliminarily identified laws and regulations.
- List of interviews and collected regulations: after the interviews, the consultant will provide a list of interviews effectively held and a list of laws and regulations that will be considered during the analysis.

### **Information, local services, personnel, and facilities to be provided by the borrower**

The Ministry of Industry and Commerce will provide the consultant with access to documents relevant to the assignment, including previous studies, legal texts and regulations, and will assist in facilitating meetings with key counterparts.

Office space will be provided in the Foreign Trade Policy Department, Ministry of Industry and Commerce.

All other inputs required to carry out the assignment will be the responsibility of the selected consultant.

### **Institutional arrangements**

On the technical level, the selected consultant will work under the direct supervision of the Deputy Director General of the Foreign Trade Policy Department, Ministry of Industry and Commerce.

The consultant will also be required to work in close cooperation with other key stakeholders involved in trade policy in the Lao PDR, including, but not limited to, key department in the Ministry of Industry and Commerce, but also relevant departments in the Ministry of Finance, Ministry of Planning and Investment, Ministry of Labour and Social Welfare, and representatives of the private sector.

Contractual arrangements will be managed by the National Implementation Unit, Department of Planning and Cooperation, Ministry of Industry and Commerce.

The consultant will also be required to work closely with the World Bank task team on trade, based in the Lao Country Office.

### Key requirements

- Graduate degree in law, economics, public administration, or related discipline.
- Minimum of eight years working experience on trade in services related issues, such as WTO trade law, trade in services negotiations, academic research on trade policy and trade in services, or proven international consulting experience on trade in services policy.
- Minimum two years working experience on related program management, especially on development programs.
- Relevant work experience in developing countries, in particular in connection with the public sector. Experience in Southeast Asia is an asset.
- Fluency in English (spoken and written). Knowledge of Lao language, while not required, would be a strong asset.
- Publication record of research papers or policy notes on trade in services is an asset.
- Strong interpersonal skills to facilitate dialogue with various government agencies, engage with senior and technical staff, and the private sector.
- Willing to work alongside and assist national counterparts in a practical and proactive way.



Annex B: Summary Table of Measures Affecting Trade in Services

Measures affecting trade in services	Sectors Covered	Modes of Supply	Stage affected	Nature of the measure	Origin	Impact	Regulatory goals		Additional Remarks
							Market Failure	Non-economic policies	
Employers to use Lao workers and approval for the employment of foreign workers is to be obtained from the Labour Administration Authority (LAA)	Horizontal	3, 4	Operation	Qualitative	Legal (Amended Labour Law)	Formally Discriminatory		Preserv. of econ. opportun. for nationals	
Importing foreign labour shall be selective, comply with regulations relating to labour and be authorized by LAA	Horizontal	3, 4	Operation	Qualitative	Legal (Amended Labour Law)	Formally Discriminatory		Preserv. of econ. opportun. for nationals	
Priority is to be given to Lao workers especially in the context of poverty alleviation schemes	Horizontal	3, 4	Operation	Qualitative	Legal (Amended Labour Law)	Formally Discriminatory		Poverty alleviation	
Foreign physical workers must not exceed 10% of staff. The new law increases the quota to 15%.	Horizontal	3, 4	Entry/MA	Quantitative	Legal (Amended Labour Law)	Formally Discriminatory		Preserv. of econ. opportun. for nationals	
Foreign skilled workers must not exceed 20% of staff. Government approval required for levels which exceed quota. The new law increases the quota to 25%.	Horizontal	3, 4	Entry/MA	Quantitative	Legal (Amended Labour Law)	Formally Discriminatory		Preserv. of econ. opportun. for nationals	
Foreign workers shall only be allowed to enter and work in Laos for a restricted period and have the obligation to transfer expertise to Lao workers	Horizontal	4	Operation	Qualitative	Legal (Amended Labour Law)	Formally Discriminatory	Skill and knowledge transfer		
Foreign workers are not allowed to work or engage in professions that are reserved for Lao citizens	Horizontal	4	Entry/MA	Qualitative	Legal (Amended Labour Law)	Formally Discriminatory		Preserv. of econ. opportun. for nationals	
Foreign workers must be skilled and have the level of expertise appropriate to the position being filled	Horizontal	4	Entry/MA/ Operation	Qualitative	Legal (Min. Agree. on Approv. of Import. of For. Labour)	Formally Discriminatory	Information Asymmetry		
Foreign labour is initially allowed to work for 1 year and thereafter renewals are granted for a 6 to 12 month period. The maximum permissible stay is four years. The new Labour Law allows renewals to be granted every 12 months and the maximum permissible stay will be for five years.	Horizontal	4	Operation	Qualitative	Legal (Amended Labour Law)	Formally Discriminatory		Preserv. of econ. opportun. for nationals	



Measures affecting trade in services	Sectors Covered	Modes of Supply	Stage affected	Nature of the measure	Origin	Impact	Regulatory goals		Additional Remarks
							Market Failure	Non-economic policies	
Registration and issuance of temporary work permits for transitory natural persons such as those required to verify work, monitor, inspect projects, install and repair machines based on a sales contract for equipment and machines must not exceed 3 months.	Horizontal	4	Operation	Qualitative	Legal (Amended Labour Law)	Formally Discriminatory		Preserv. of econ. opportun. for nationals	
Minimum foreign equity in a joint venture is ten per cent	Horizontal	3	Entry/MA	Qualitative	Legal (Law on Investment Promotion)	Formally Discriminatory			
Total capital of foreign investors in general business shall not be less than 1 billion kips	Horizontal	3	Market Access	Qualitative	Legal (Law on Investment Promotion)	Formally Discriminatory		Preserv. of econ. opportun. for nationals	
Investors are required to possess technical capacity (including qualifications and experience), membership in professional associations and other bodies (depending on the sector) and minimum capital requirements.	Horizontal	3	Entry/MA	Quantitative	Admin. Practice	Non-discriminatory	Information Asymmetry		
For investment in infrastructure, land use right is granted only one time per enterprise	Horizontal	3	Operation	Qualitative	Legal (Decree on Implement. of Invest. Prom. Law)	Formally Discriminatory			
A concession business must have registered capital which is not less than 30 per cent of its total capital	Horizontal	3	Entry/MA	Qualitative	Legal (Decree on Implement. of Invest. Prom. Law)	Non-discriminatory	Information Asymmetry		
The term of the representative office is one year and can be extended twice. The total term is not to exceed three years	Horizontal	3	Operation	Quantitative	Legal (Law on Investment Promotion)	Formally Discriminatory			
Investors are required to open accounts at a commercial bank incorporated in Lao. The Bank of the Lao PDR monitors and confirms that actual amount of funds brought in as a reference for repatriating the principals, interests, profits and dividends and other investment related funds. Should the foreign investor be unable to produce adequate evidence for their investment, repatriation will not be authorized by the BoL	Horizontal	3	Operation	Qualitative	Legal (Pres. Decree law Governing the Mgt. of the FEX)	De facto Discriminatory	Information Asymmetry		

Measures affecting trade in services	Sectors Covered	Modes of Supply	Stage affected	Nature of the measure	Origin	Impact	Regulatory goals		Additional Remarks
							Market Failure	Non-economic policies	
Investors are to declare their funds and provide the evidence of the funds imported each time	Horizontal	3	Operation	Qualitative	Legal (Pres. Decree law Governing the Mgt. of FEX)	De facto discriminatory	Information Asymmetry		
To pay for imported goods; transportation, insurance and warehousing; principal and interest incurred on foreign borrowing; and remittance of profits and dividends; transfer of capital back to the home country or the foreign investor or to a third country; and transfer of the received interest and wage/salary of foreigners back home or to a third country requires an application to BoL and supporting documentation	Horizontal	1, 3, 4	Operation	Qualitative	Legal (Pres. Decree law Governing the Mgt. of FEX)	De facto Discriminatory		For. exchange managem.	
Any individual or a legal person residing in Lao PDR who has income in foreign currency from exporting goods and services must import such incomes into Lao PDR within 120 days starting from the date of the delivery at the border	Horizontal	3	Operation	Qualitative	Legal (Pres. Decree law Governing the Mgt. of FEX)	Non-discriminatory		For. exchange managem.	
Land is available on a leased or concession basis. Approval for the lease of land from Lao nationals is required. The maximum period for land leased from the state is 50 years and for developed land leased from Lao citizens is 20 years. Both periods may be extended on a case-by-case basis	Horizontal	3	Operation	Qualitative	Legal (Amended Land law)	Formally Discriminatory		Maintenance of ownership by state	
Land use rights may only be transferred to a Lao citizen or a Lao organization. Aliens, apatrids [stateless persons], foreign individuals and their organizations do not have a right to acquire land use rights. If they have acquired this right, then they must transfer the land use right to a Lao citizen or Lao organization. Should the land not be transferred three years from date the Ministerial instruction requiring this action, such land shall become the state-managed land.	Horizontal	3, 4	Operation	Qualitative	Legal (Amended Land law)	Discriminatory		Maintenance of ownership by state	
Lease of developed land by a foreigner requires prior recommendation from the Provincial and City Administration as well as the Land Management Authority	Horizontal	3, 4	Operation	Qualitative	Legal (Amended Land law)	Formally Discriminatory			

Measures affecting trade in services	Sectors Covered	Modes of Supply	Stage affected	Nature of the measure	Origin	Impact	Regulatory goals		Additional Remarks
							Market Failure	Non-economic policies	
There is a requirement for state approval for foreigners to use land as collateral when dealing with commercial banks in Lao PDR or to use the lease contract as a capital contribution with another person. In the latter case, the approval of the land use rights holder may be sufficient.	Horizontal	3	Operation	Qualitative	Legal (Amended Land law)	Formally Discriminatory	Information Asymmetry		
Foreign investors with registered investment capital of USD five hundred thousand and above are able to acquire land use rights for an area which does exceed 800 meters. This right is granted only one time per enterprise and under the name of one legal entity regardless of the number of share-holders or branches	Horizontal	3	Operation	Qualitative	Legal (Amended Land law)	Formally Discriminatory	Information Asymmetry	Limiting access to incentives to large foreign investors	
There is no fixed term on general business licenses, concession licenses are available for a maximum of 15 years; and SEZ licences are available for up to 99 years	Horizontal	3	Entry/MA	Qualitative	Legal (Enterprise Law and Invest. Prom. Law)	Non-discriminatory			
Foreign branches are required to register in Laos	Horizontal	3	Market Access	Qualitative	Legal (Enterprise Law)	Formally Discriminatory	Information Asymmetry		
There is a requirement to maintain accounts in accordance with the Enterprise Accounting Law – in Lao and using a Lao system	Horizontal	3	Operation	Qualitative	Legal (Enterprise Law)	De facto Discriminatory	Information Asymmetry		
Approval is required from the Enterprise Registration Authority for changes in investment through the use of different methods, such as the change in objectives of business operation, shareholders and registered capital	Horizontal	3	Operation	Qualitative	Legal (Enterprise Law)	Non-discriminatory	Information Asymmetry		
Some sub-sectors in construction, distribution, transportation and warehousing, banking and insurance, tourism, education and health as well as the professional services are subject to a number of limitations such as foreign equity limits and minimum capital requirements for foreign investors.	Horizontal/ Sectoral	3	Entry/MA	Qualitative	Legal (Notif. List of Cond. Bus. for For. Invest. 1591/ MOIC.ERM)	Formally Discriminatory			
Approval is required for the opening of foreign branches in the following sectors: banking or financial institutes; insurance; international consultancies and foreign airlines	Horizontal/ Sectoral	3	Entry/MA	Qualitative	Legal (Min. Guideline on Enterprise Branch Estab.	Discriminatory			

Measures affecting trade in services	Sectors Covered	Modes of Supply	Stage affected	Nature of the measure	Origin	Impact	Regulatory goals		Additional Remarks
							Market Failure	Non-economic policies	
					1619/ MOIC.ERO)				
A business must change its tax licence where there is a change in directors, capital, address, warehouse or business activities	Horizontal	3	Operation	Qualitative	Legal (Amended Tax Law/ VAT Law)	Non-discriminatory	Information Asymmetry		
Where a good or service is on the price control list, then business operators require the approval of the Price Administration Authority before using proposed price structures for sales or services. Services on this list are: telecommunications, metered taxis, inter-provincial road and air transportation, city and intra-provincial road and air transportation and air ticketing and reservations	Horizontal	3	Operation	Qualitative	Legal (Notif. Identification of Goods & Services Subject to Price Control 1264/DTD-MOIC)	Non-discriminatory	Prevent anti-competitive behaviour		
A foreign individual or entity can hold a maximum of 1% of the total shares of a single listed company. Aggregate shareholding is restricted to a maximum of 10% of the total shares listed of a single listed company	Horizontal	3	Entry/MA	Qualitative	Legal	Formally Discrim.			
Lack of clarity on application of laws and inconsistency of interpretation of legal provisions by different officials	Horizontal	1, 2, 3, 4	Operation	Qualitative	Admin. Practice	Non-discriminatory			
Lack of formal i) reasoning to support judgments and; ii) written judgments in Law Courts (at all levels)	Horizontal	1, 2, 3, 4	Operation	Qualitative	Admin. Practice	Non-discriminatory			
Laws passed without sub-regulations	Horizontal	1, 2, 3, 4	Entry/ Operation	Qualitative	Admin. Practice	Non-discriminatory			
Most sub-regulations and other measures such as notifications are not easily available	Horizontal	1, 2, 3, 4	Entry/ Operation	Qualitative	Admin. Practice	Non-discriminatory			
Lack of monitoring of issues related to issuance of share certificates by companies; and increases in capital	Horizontal	3	Operation	Qualitative	Admin. Practice	Non-discriminatory			
Lack of enforcement for zoning and hours of operation laws, e.g. karaoke bars next to hotels, etc.	Horizontal	3	Operation	Qualitative	Admin. Practice	Non-discriminatory			
Rigid and unwieldy standard formats for forms such as Articles of Association (AoA) required by the Enterprise Registration Department. The company's own AoA cannot be used.	Horizontal	3	Entry	Qualitative	Admin. Practice	Non-discriminatory			

Measures affecting trade in services	Sectors Covered	Modes of Supply	Stage affected	Nature of the measure	Origin	Impact	Regulatory goals		Additional Remarks
							Market Failure	Non-economic policies	
Ineffective registration of personal and company property	Horizontal	3	Operation	Qualitative	Admin. Practice	Non-discriminatory			
Weak systems for registration of land	Horizontal	3	Operation	Qualitative	Admin. Practice	Non-discriminatory			
Timeframes for the issuance of business licences not complied with	Horizontal	3	Entry/ MA	Qualitative	Admin. Practice	Non-discriminatory			
Timeframes for the issuance of tax clearance certificates not complied with	Horizontal	3	Entry/MA	Qualitative	Admin. Practice	Non-discriminatory			
Training activities are taxable for both the employee and the employer	Horizontal	3	Operation	Qualitative	Legal	Non-discriminatory			Serves as a disincentive to training which is a key goal for Lao PDR
Tax exemptions for service operations for export are not granted	Horizontal	3	Operation	Qualitative	Legal (Tax Law)	Non-discrim.			
Foreign investors in joint ventures are required to refer issues first to mediation	Horizontal	3	Operation	Qualitative	Legal	Formally discrim.			
Expropriation may be used to pass land from one private investor to another	Horizontal	3	Operation	Qualitative	Legal	Non-discrim.			
Membership in the Bar Association is compulsory	Legal services	34	Entry/MA	Qualitative	Legal (Law on Lawyers)	Non-discrim.	Information Asymmetry		
Permits for individual lawyers (indefinite validity) and law firms (valid for three years and renewable) are issued by the Ministry of Justice	Legal services	3, 4	Entry/MA	Qualitative	Legal (Min. Agreement 178)	Non-discrim.	Information Asymmetry		
Law firms are subject to a one-off authorisation	Legal Services	3	Entry/MA	Qualitative	Legal (Law on Lawyers)	Non-discrim.	Information Asymmetry		
Foreign lawyers must have a good knowledge of Lao language and culture and hold a Bachelor's degree in Lao law	Legal Services	4	Entry/MA	Qualitative	Legal (Law on Lawyers)	Formally Discrim.	Consumer Protection		
Lawyers must operate through a legal form	Legal Services	1, 3, 4	Entry/MA	Qualitative	Legal (Law on Lawyers)	Non-discrim.	Consumer Protection		
Foreign lawyers may only provide advice on foreign and international laws	Legal Services	1, 3, 4	Entry/MA	Qualitative	Legal (Law on Lawyers)	Formally Discrim.	Consumer Protection		
If the foreign firm has either a Lao lawyer as an investor or has a Lao lawyer as an employee, it may provide advice on Lao law or engage in litigation before the Lao courts through that Lao lawyer	Legal Services	3	Entry/MA	Qualitative	Legal (Law on Lawyers)	Formally Discrim.	Consumer Protection		

Measures affecting trade in services	Sectors Covered	Modes of Supply	Stage affected	Nature of the measure	Origin	Impact	Regulatory goals		Additional Remarks
							Market Failure	Non-economic policies	
Registration with LICPA is compulsory	Accounting & Auditing	4	Entry/MA	Qualitative	Legal (Account. Law/ Auditing Law)	Non-discrim.	Information Asymmetry		
Licenses for accountants and auditors are required	Accounting & Auditing	4	Entry/MA	Qualitative	Legal (Account. Law/ Auditing Law)	Non-discrim.	Information Asymmetry		
Requirements for an accounting/ auditing firm licence include: certificate confirming three years of work experience as an accountant to have an accounting consultancy; and the three years of auditing to have an auditing consultancy.	Accounting & Auditing	3, 4	Entry/MA	Qualitative	Legal (Temp. Guidelines on Proc. for approving bus. operat.)	Non-discrim.	Information Asymmetry		
Professionals must practice through a legal entity	Accounting & Auditing	1, 3, 4	Entry/MA	Qualitative	Legal (Account. Law/ Auditing Law)	Non-discrim.	Consumer Protection		
Foreign accountants and auditors are required to pass a language proficiency exam after being in Lao PDR for 3 years	Accounting & Auditing	4	Entry/MA	Qualitative	Legal (Account. Law/ Auditing Law)	Formally Discrim.	Consumer Protection		
Foreign accounting professionals must complete an aptitude test on related regulation of Lao PDR, code of ethics and national financial reporting standards co-organised by the Ministry of Finance and the Lao Institute of Certified Public Accountants (LICPA).	Accounting & Auditing	4	Entry/MA	Qualitative	Legal (Account. Law/ Auditing Law)	Formally Discrim.	Information Asymmetry		
For auditing, the signature of the foreign CPA must be accompanied by that of a local CPA	Auditing services	1,3,4	Entry/MA/ Operation	Qualitative	Legal (Auditing Law)	Formally Discrim.	Consumer Protection		
A foreign group of companies or headquarters that wishes to establish a business operation must have an excellent performance at the region and national level	Accounting & Auditing consultancy	3	Entry/MA	Qualitative	Legal (Temp. Guidelines on Proc. for approving bus. operat.)	Formally Discrim.	Information Asymmetry		

Measures affecting trade in services	Sectors Covered	Modes of Supply	Stage affected	Nature of the measure	Origin	Impact	Regulatory goals		Additional Remarks
							Market Failure	Non-economic policies	
If services are provided by a foreign supplier with no presence in Laos, then the name of both the foreign firm and the domestic firm with which it has formed an association must be used	Accounting & Auditing	1, 4	Operation	Qualitative	bus. operat.) Legal (Accounting Law/Auditing Law)	Formally Discrim.	Consumer Protection		
In order to do statutory audits, both the audit firm and the auditor himself/ herself must each be in possession of their own statutory audit licence.	Auditing	1, 3, 4	Entry/MA	Qualitative	Legal (Auditing Law)	Non-discrim.	Information Asymmetry		
In the case where a foreign auditor is used to perform a statutory audit, he must be a high level partner in the audit firm.	Auditing	1, 3, 4	Entry/MA	Qualitative	Legal (Auditing Law)	Formally Discrim.	Consumer Protection		
Separate business licences are required for firms providing legal and accounting related services	Accounting & Auditing	3	Entry/MA	Qualitative	Legal?	Non-discrim.	Information Asymmetry		
Licences for engineers and architects are required	Engineering	3, 4	Entry/MA	Qualitative	Legal	Non-discrim.	Information Asymmetry		
Professionals must operate through a legal entity	Engineering	1, 3, 4	Entry/MA	Qualitative	Legal	Non-discrim.	Consumer Protection		
Foreign professionals are required to provide certified evidence of their foreign qualification; undergo local retraining; take aptitude tests and a language proficiency test	Engineering	4	Entry/MA	Qualitative	Legal	Formally Discrim.	Information Asymmetry		
Fees are regulated	Engineering	1, 3	Operation	Qualitative	Legal	Non-discrim.	Prevent anti-competitive behaviour		
Advertising and marketing by professionals is prohibited	Engineering	1, 3	Operation	Qualitative	Legal	Non-discrim.	Information Asymmetry		
Construction cost management services and testing and certification services must be provided in association/collaboration with a Lao professional	Engineering	1, 3	Entry/MA	Qualitative	Legal	Non-discrim.			
For small projects in project research and feasibility studies; house survey and design and town planning; internal and external decorations; construction consultancy; and construction survey, design and engineering, foreign investment must be at least LAK 4 – 8 billion and foreign investors may own up to 49 % of the enterprise. For large projects in these areas, the	Engineering & Architecture	3	Entry/MA	Qualitative	Legal (Notif. List of Cond. Bus. for For. Invest. 1591/ MOIC. ERM)	Formally Discrim.			

Measures affecting trade in services	Sectors Covered	Modes of Supply	Stage affected	Nature of the measure	Origin	Impact	Regulatory goals		Additional Remarks
							Market Failure	Non-economic policies	
minimum foreign capital requirement is over LAK 8 million. Foreigners may also own 49% of the operation.									
Conditional goods may be controlled by one of the following measures: prohibition or restriction of business in the trade of some goods; stipulation of registered capital higher than indicated in the Business Law; certain qualification requirements for directors, managers, owners or staff; establishment of standards, etc.; determination of which areas of business activity will be allowed; the establishment of price limits and the margins of stock accumulation	Distribution	3	Operation	Qualitative	Legal (Dec. on Goods Distrib.)	Non-discrim.			
Foreign investors (individual or entity) are required to invest as a joint-venture enterprise with Lao investors to establish wholesale operations	Distribution (Wholesale)	3	Entry/MA	Quant.	Legal (Dec. on Wholesale and Retail Enterprises 0977.)	Formally Discrim.		Preserv. of economic opp. for nationals	
For the wholesale distribution of garments, footwear and textiles, participation is capped at 49 per cent	Distribution (Wholesale)	3	Entry/MA	Quant.	Legal (Dec. on Wholesale and Retail Enterprises 0977/ Notif. 1591/MOIC. ERM)	Formally Discrim.		Preserv. of economic opp. for nationals	
For the wholesale distribution of garments, footwear and textiles, foreign investors are required to invest LAK 1 billion and above	Distribution (Wholesale)	3	Entry/MA	Qualitative	Legal (Notif. List of Cond. Bus. for For. Invest 1591/ MOIC. ERM)	Formally Discrim.		Preserv. of small scale econ. opp. for nationals	
The retail business is reserved for Lao nationals.	Distribution (Retail)	1, 2, 3, 4	Entry/MA	Quant. (quota of 0)	Legal (Dec. Wholesale and Retail Enterprises 0977/)	Formally Discrim.		Preserv. of economic opportun. for nationals	



Measures affecting trade in services	Sectors Covered	Modes of Supply	Stage affected	Nature of the measure	Origin	Impact	Regulatory goals		Additional Remarks
							Market Failure	Non-economic policies	
Foreign investors (individuals or entities) can: distribute their products through channels such as a distribution or franchise business of Lao nationals; or invest in a joint-venture in the construction of modern complexes such as supermarkets, supermarkets, shopping centres or malls	Distribution (Wholesale, retail, franchise)	1, 3	Entry/MA	Quant.	Legal (Dec. on Wholesale and Retail Enterprises 0977)	Formally Discrim.		Preservation of economic opportun. for nationals	
Staff in retail and distribution outlets must be Lao nationals	Distribution	4	Operation	Quant.	Legal (Dec. on Wholesale and Retail Enterprises 0977)	Formally Discrim.		Preserv. of economic opp. for nationals	
Wholesalers and retailers must operate through the following forms: shop or owned or rented premises in order to distribute goods as permanent basis; temporary shop or premises (such as trade fair, exhibitions); mobile shop to distribute goods (such as street-vendor or direct sell [door to door sale]; permanent shop or premises in the market (traditional market) or in a modern complex building (such as hypermarket, shopping mall or centre, supermarket).	Distribution	3	Entry/MA	Qualitative	Legal (Dec. on Wholesale and Retail Enterprises 0977)	Non-discrim.		Preserv. of economic opp. for nationals	
A number of goods and services are subject to price controls – petroleum products, food, construction materials, animal feed, fertiliser, educational materials, powder detergent etc.	Distribution	3	Operation	Qualitative	Legal (Notif Identification of Goods & Services Subject to Price Control 1064/ DTD-MOIC)	Non-Discrim.		Socio-economic reasons	
Four telecommunications licensing regimes have been established ranging from 3 to 15 years. There is an annual licensing fee and the	Telecoms	3	Entry/MA	Qualitative	Legal (Telecoms Law)	Non-discrim.	Information Asymmetry		

Measures affecting trade in services	Sectors Covered	Modes of Supply	Stage affected	Nature of the measure	Origin	Impact	Regulatory goals		Additional Remarks
							Market Failure	Non-economic policies	
operators are permitted to extend the term of the license.									
Companies have the right to sell their shareholding in a telecommunications operation, but the approval is required first	Telecoms	3	Operation	Qualitative	Legal	Non-discrim.	Information Asymmetry		
Service price increases and decreases require approval; tariffs, interconnection rates, termination charges and SMS prices are set by the Ministry as well as minimum prices for SIM cards and internet services and the prices.	Telecoms	3	Operation	Qualitative	Legal (Telecoms Law/ PMO Agree. 993/ Notif. 1307/ Notif. 1820)	Non-discrim	Prevent anti-competitive behaviour		
Promotions need to be authorised and are limited to 90 days per year and 5 days for major events.	Telecoms	3	Operation	Qualitative	Legal (PMO Agree. 579)	Non-discrim.	Prevent anti-competitive behaviour		
Qualification requirements for internet café service providers	Telecoms	4	Entry/ Operation	Qualitative	Legal (PMO Agree. 579)	Non-discrim.	Consumer Protection		
Service providers may not interconnect with foreign based internet service providers	Telecoms	1	Entry/MA	Qualitative	Legal (PMO Agree. 579)	Formally Discrim.		National security	
Fixed line services are subject to joint venture requirements	Telecoms	3	Entry/MA	Quant.	Legal (?)	Formally Discrim.			
Approval is required for the opening of additional branches	Financial (Banks)	3	Operation	Qualitative	Legal (Bank Law)	Non-discrim.	Information Asymmetry		
Banks can enter as any legal form except a one-person limited liability company	Financial (Banks)	3	Entry/MA	Qualitative	Legal (Bank Law)	Non-discrim.	Consumer Protection		
The holding or transfer of common shares constituting more than ten per cent in a commercial bank requires the written authorisation of the Bank of the Lao PDR	Financial (Banks)	3	Entry/MA	Qualitative	Legal (Bank Law)	Non-discrim	Prudent. Req.		
BoL approval is required for mergers, acquisitions or the purchase-sale of substantial assets provided they exceed the threshold set by the Bank	Financial (Banks)	3	Entry/MA	Qualitative	Legal (Bank Law)	Non-discrim.	Prevent anti-competitive behaviour		
For state-owned banks the Enterprise Law limits shareholding to less than 50 per cent	Financial (Banks)	3	Entry/MA	Quant.	Legal (Enterprise Law)	Non-discrim.		Maintain control of	

Measures affecting trade in services	Sectors Covered	Modes of Supply	Stage affected	Nature of the measure	Origin	Impact	Regulatory goals		Additional Remarks
							Market Failure	Non-economic policies	
Foreign branches may not create service units outside of the branch's location	Financial (Banks)	3	Operation	Qualitative	Legal	Formally Discrim.		state investment	
Foreign branches are limited to banking activities (the mobilization of deposits, provision of credit, buying foreign currencies, payment and investment services)	Financial (Banks)	3	Entry/MA	Qualitative	Legal	Formally Discrim		Prudential Requirement	
Commercial banks are prohibited from engaging directly in industry, commerce, or services other than financial and banking activities	Financial (Banks)	3	Operation	Qualitative	Legal (Bank Law)	Non-discrim.		Prudential Requirement	
A bank that has a strong financial position can hold an equity interest in a legal entity that is not a financial business or a bank. The shares held in the legal entity must not exceed 15 per cent of the commercial bank's regulatory capital and must not exceed 20 per cent of the voting shares of that entity	Financial (Banks)	3	Operation	Qualitative	Legal (Bank Law)	Non-discrim.		Prudential Requirement	
Licensing requirements are applicable to the banking sector	Financial (Banks)	3	Entry/MA	Qualitative	Legal (Bank Law)	Non-discrim.	Information Asymmetry		
Foreign branches must have a minimum equity of LAK 100 billion	Financial (Banks)	3	Entry/MA	Qualitative	Legal (Notif. List of Cond. Bus. for For. Invest. 1591 /MOIC. ERM)	Non-discrim.			
All incorporated banks must have a minimum equity of LAK 300 billion	Financial (Banks)	3	Entry/MA	Qualitative	Legal (Notif. List of Cond. Bus. for For. Invest. 1591 /MOIC. ERM)	Non-discrim.		Prudential requirement	
Individuals and legal entities in Lao PDR are permitted to use the services foreign bank once they have received the approval of the Bol. In addition, foreign borrowing requires a permit from Bol.	Financial (Banks)	1	Entry/MA	Qualitative	Legal (Foreign Exchange Decree)	Formally Discrim.		Exchange rate management	

Measures affecting trade in services	Sectors Covered	Modes of Supply	Stage affected	Nature of the measure	Origin	Impact	Regulatory goals		Additional Remarks
							Market Failure	Non-economic policies	
Foreign exchange bureaux must have registered capital of LAK 200 million for the establishment in Vientiane Capital and LAK 100 million in provinces or special zone	Financial (Banking – Foreign exchange bureaux)	3	Entry/MA	Qualitative	Legal (Instruct. on Implement. of FEX. Decree)	Non-discrim.		Prudential requirement	
A branch of a foreign bank can only conduct its foreign exchange business within the branch	Financial (Banking – Foreign exchange bureaux)	3	Operation	Qualitative	Legal	Formally Discrim.		Prudential requirement	
Nationality and residency requirements effectively preclude the entry of foreign service suppliers into the savings and credit union business	Financial (Banking – savings and credit union and DTFIs)	3	Entry/MA	Quant. (quota of zero)	Legal (Reg. of Sav. & Cred. Unions/ Notif. 1590 /MOIC.ERM )	Formally Discrim.		Support of nationals	
Deposit taking institutions are required to have minimum capital of LAK 3 billion	Financial (Banking – savings and credit union and DTFIs)	3	Entry/MA	Qualitative	Legal (Notif. List of Cond. Bus. for For. Invest. 1591 /MOIC.ERM)	Non-discrim.	Information Asymmetry		
Savings and credit unions must have a minimum capital of LAK 100 million	Financial (Banking – savings and credit union and DTFIs)	3	Entry/MA	Qualitative	Legal (Regs. For Savings & Credit Unions)	Non-discrim.	Information Asymmetry		
In order to determine the professional suitability of persons proposed to become officials and the manager of a Savings and Credit Union, the Bank of Lao PDR shall have regard to the educational background and experience in finance, banking, accounting, auditing and business management of the person concerned.	Financial (Banking – savings and credit union)	3, 4	Entry/MA	Qualitative	Legal (Regs. For Savings & Credit Unions)	Non-discrim.	Information Asymmetry		
Foreign investors may enter the securities services market as a securities company, a branch or a representative office (subject to firstly grant an approval from its home jurisdiction	Financial (Banking – Securities)	3	Entry/MA	Quant./ Qualitative	Legal (Decree on Securities)	Non-discrim.			

Measures affecting trade in services	Sectors Covered	Modes of Supply	Stage affected	Nature of the measure	Origin	Impact	Regulatory goals		Additional Remarks
							Market Failure	Non-economic policies	
A branch of the foreign securities company is allowed to provide securities brokerage services; securities dealing on its own account; and other kinds of securities businesses as granted by the Laos Exchange Commission	Financial (Banking – Securities)	3	Entry/MA	Qualitative	Legal (Decree on Securities)	Formally Discrim.			
The minimum required registered capital for securities companies operating all kinds of securities services is LAK 100 billion	Financial (Banking – Securities)	3	Entry/MA	Qualitative	Legal (Decree on Securities)	Non-discrim.	Information Asymmetry		
Only locally incorporated subsidiaries or locally incorporated insurance companies can provide services as foreign branches are not permitted.	Financial (Insurance)	3	Entry/MA	Qualitative	Legal (Insurance Law)	Discrim.	Information Asymmetry		
Firms may take any legal form, but state owned insurance providers must be limited liability companies.	Financial (Insurance)	3	Entry/MA	Qualitative	Legal (Enterprise Law)	Non-discrim.			
Firms (neither foreign nor local) may not acquire more than 49 per cent of a state-owned company.	Horizontal/ Financial (Insurance)	3	Entry/MA	Quant	Legal (Enterprise Law)	Non-discrim.		Maintain control of state assets	
A licence from MPI is required to establish a commercial presence in the market	Horizontal/ Financial (Insurance)	3	Entry/MA	Qualitative	Legal	Non-discrim.	Information Asymmetry		
A specific condition for insurance firms is the need to have a minimum registered capital of LAK 16 billion	Financial (Insurance)	3	Entry/MA	Qualitative	Legal (Insurance Law)	Non-discrim	Information Asymmetry		
A representative office in Lao PDR is required to have experience in operating an insurance business of at least five years	Financial (Insurance)	3	Entry/MA	Qualitative	Legal (Insurance Law)	Formally Discrim	Information Asymmetry		
Citizenship and nationality requirements are imposed on insurance agents	Financial (Insurance)	4	Entry/MA	Qualitative	Legal (Insurance Law)	Formally Discrim.		Preserv. of economic opp. for nationals	
Insurance brokers are required to purchase professional liability insurance with any insurer in Lao PDR	Financial (Insurance)	3	Operation	Qualitative	Legal (Insurance Law)	Non-discrim.	Information Asymmetry		
Insurance premiums must not be lower than the fees set by the Ministry of Finance	Financial (Insurance)	1, 3	Operation	Qualitative	Legal (Insurance Law)	Non-discrim.	Prevent anti-competitive behaviour		
Insurance companies must not compete to attract senior experienced employees from each other	Financial (Insurance)	3, 4	Operation	Qualitative	Legal (Insurance Law)	Non-discrim.	Prevent anti-competitive behaviour		

Measures affecting trade in services	Sectors Covered	Modes of Supply	Stage affected	Nature of the measure	Origin	Impact	Regulatory goals		Additional Remarks
							Market Failure	Non-economic policies	
Insurance companies require separate licenses to offer life and general insurance.	Financial (Insurance)	3	Entry/MA	Qualitative	Legal (Insurance Law)	Non-discrim.	Information Asymmetry		
An insurance company which wishes to invest its capital may do so in the order of the following prioritised areas: (i) buy government bonds; (ii) buy corporate shares and bonds; (iii) invest in the real estate business; (iv) invest in other enterprises; (v) deposit with commercial banks or finance institutions.	Financial (Insurance)	3	Operation	Qualitative	Legal (Insurance Law)	Non-discrim.			
Foreign branch and representative office establishment is determined under bilateral air services agreements (BASAs) or international agreements to which Laos is signatory	Transport (Air)	3	Entry/MA	Qualitative	Legal (Civil Aviation Law)	Formally Discrim.			
Tariffs for domestic air transport are determined by the Government and tariffs for international air transport are determined under the BASAs	Transport (Air)	1, 3	Operation	Qualitative	Legal (Civil Aviation Law)	Non-discrim.			
Transport companies must have prior experience in the transport business.	Transport (Road)	3	Entry/MA	Qualitative	Legal (Road Transport Law)	Non-discrim.	Information Asymmetry		
Price regulation is applied to road transport	Transport (Road)	1, 3	Operation	Qualitative	Legal (Notif. Identification of Goods & Services Subject to Price Control 1064/ DTD-MOIC)	Non-discrim.	Prevent anti-competitive behaviour		
For domestic freight transportation, the minimum capital requirement is LAK 3 billion	Transport (Road Freight)	3	Entry/MA	Qualitative	Legal (Notif. List of Cond. Bus. for For. Invest. 1591 /MOIC. ERM)	Formally Discrim.		Preserv. of economic opp. for nationals	

Measures affecting trade in services	Sectors Covered	Modes of Supply	Stage affected	Nature of the measure	Origin	Impact	Regulatory goals		Additional Remarks
							Market Failure	Non-economic policies	
For international freight transportation, there is a minimum capital requirement of LAK 5 million	Transport (Road Freight)	3	Entry/MA	Qualitative	Legal (Notif. List of Cond. Bus. for For. Invest. 1591 /MOIC. ERM)	Formally Discrim.		Preserv. of economic opp. for nationals	
For international freight transportation, the maximum stake in the business which a foreigner can control is 49 per cent.	Transport (Land Freight)	3	Entry/MA	Quant.	Legal (Notif. List of Cond. Bus. for For. Invest. 1591 /MOIC. ERM)	Formally Discrim.		Preserv. of economic opp. for nationals	
For warehousing and storage, registered capital must be at least LAK 1 billion	Land Transport (Warehouses)	3	Entry/MA	Qualitative	Legal (Notif. List of Cond. Bus. for For. Invest. 1591 /MOIC. ERM)	Formally Discrim.		Preserv. of economic opp. for nationals	
For warehousing and storage, foreign equity is restricted to 49%	Land Transport (Warehouses)	3	Entry/MA	Quant.	Legal (Notif. List of Cond. Bus. for For. Invest. 1591 /MOIC. ERM)	Formally Discrim.		Preserv. of economic opp. for nationals	
For services incidental to land transport (ISIC 5221), foreign ownership must not exceed 49%.	Transport (Services incidental to road freight)	3	Entry/MA	Quant.	Legal (Notif. List of Cond. Bus. for For. Invest. 1591 /MOIC. ERM)	Formally Discrim.		Preserv. of economic opp. for nationals	
Companies operating domestic goods transport stations (ISIC 5221) must have at least LAK 5 million	Transport (Services incidental to road freight)	3	Entry/MA	Qualitative	Legal (Notif. List of Cond. Bus. for For. Invest. 1591 /MOIC. ERM)	Formally Discrim.		Preserv. of economic opp. for nationals	

Measures affecting trade in services	Sectors Covered	Modes of Supply	Stage affected	Nature of the measure	Origin	Impact	Regulatory goals		Additional Remarks
							Market Failure	Non-economic policies	
Companies operating international and cross-border goods stations (ISIC 5221) are required to have at least LAK 10 million	Transport (Services incidental to road freight)	3	Entry/MA	Qualitative	Legal (Notif. List of Cond. For. Invest. 1591 /MOIC. ERM)	Formally Discrim.		Preserv. of economic opp. for nationals	
The foreign equity limitation of 49 per cent applies to other transport services (ISIC 5229)	Transport (Other road Transport)	3	Entry/MA	Quant.	Legal (Notif. List of Cond. For. Invest. 1591 /MOIC. ERM)	Formally Discrim.		Preserv. of economic opp. for nationals	
For other transport services (ISIC 5229) companies must have over LAK 3 million as their registered capital.	Transport (Other road Transport)	3	Entry/MA	Qualitative	Legal (Notif. List of Cond. For. Invest. 1591 /MOIC. ERM)	Formally Discrim.		Preserv. of economic opp. for nationals	
Delays in the issuance of tax exemption certificates for imports being cleared by freight forwarders	Transport (Services aux. to all modes of transport)	3	Operation	Qualitative	Admin. Practice	Non-discriminatory			
The entry of foreign firms and individuals is not allowed for guesthouses and homestays and hotels of 2 stars and below.	Tourism (Hotels)	3	Entry/MA	Quant. (quota of 0)	Legal (Tourism Law)	Formally Discrim.		Preserv. of economic opp. for nationals	
The entry of foreign firms and individuals in tour guiding is not allowed.	Tourism (Tour guides)	1, 3, 4	Entry/MA	Quant. (quota of 0)	Legal (Tourism Law)	Formally Discrim.		Preserv. of economic opp. for nationals	
While cross-border service suppliers are not required to have a local establishment in order to provide services, they are required have specific commercial arrangements with domestic service providers – co-operation by contract – in order to supply the local market	Tourism	1	Entry/MA	Qualitative	Legal (Tourism Law)	De facto Discrim.			



Measures affecting trade in services	Sectors Covered	Modes of Supply	Stage affected	Nature of the measure	Origin	Impact	Regulatory goals		Additional Remarks
							Market Failure	Non-economic policies	
Non-established service providers cannot solicit business on a cross-border basis.	Tourism	1	Operation	Qualitative	Legal (Tourism Law/ Enterprise Law)	Formally Discrim.	Information Asymmetry		
For the hotels sub-sector of 3 to 5 stars, there is a foreign equity limit of 60 per cent.	Tourism (Hotels)	3	Entry/MA	Quant.	Legal (Notif. List of Cond. Bus. for For. Invest. 1591 /MOIC. ERM)	Formally Discrim.		Preserv. of economic opp. for nationals	
For the hotels sub-sector of 3 to 5 stars, there is a minimum capital requirement of LAK 1 billion	Tourism (Hotels)	3	Entry/MA	Quant.	Legal (Notif. List of Cond. Bus. for For. Invest. 1591 /MOIC. ERM)	Formally Discrim.		Preserv. of economic opp. for nationals	
Operating licences granted by the Ministry of Tourism are limited temporally and renewable	Tourism	3	Entry/MA	Quant.	Legal	Non-discrim.	Information Asymmetry		
There is a requirement for foreign tour guides to pass their clients over to Lao tour guide	Tourism (Tour guides)	4	Entry/MA	Quant. (quota of 0)	Legal (Tourism Law)	Formally Discrim.		Preserv. of economic opp. for nationals	
Operators need to provide advance notice and justification for increases in the price of their services.	Tourism	3	Operation	Qualitative	Legal (Tourism Law)	Non-discrim.			
Travel agents fall into the list of businesses under the Price Control list	Tourism (Travel agents)	3	Operation	Qualitative	Legal (Notif. Id. of Goods & Services Subject to Price Control 1064/DTD-MOIC)	Non-discrim.	Prevent anti-competitive behaviour		
Licensing and registration for tourism business is undertaken by MoIC	Tourism	3	Entry/MA	Qualitative	Legal (Enterprise Law)	Non-discrim	Information Asymmetry		

Measures affecting trade in services	Sectors Covered	Modes of Supply	Stage affected	Nature of the measure	Origin	Impact	Regulatory goals		Additional Remarks
							Market Failure	Non-economic policies	
Travel agency permits are valid for one year	Tourism (Travel Agents)	3	Operation	Qualitative	Legal	Non-discrim.	Information Asymmetry		
Travel agents must have a permanent presence Lao PDR	Tourism (Travel Agents)	1, 3	Entry/MA	Qualitative	Legal	Non-discrim.	Information Asymmetry		

**Annex C: Definitions of Commercial Services Sectors**

<u>SECTORS AND SUB-SECTORS</u>		<u>CORRESPONDING CPC</u>
1.	<u>BUSINESS SERVICES</u>	<u>Section B</u>
A.	<u>Professional Services</u>	
B.	<u>Computer and Related Services</u>	
C.	<u>Research and Development Services</u>	
D.	<u>Real Estate Services</u>	
E.	<u>Rental/Leasing Services without Operators</u>	
F.	<u>Other Business Services</u>	
2.	<u>COMMUNICATION SERVICES</u>	
A.	<u>Postal services</u>	7511
B.	<u>Courier services</u>	7512
C.	<u>Telecommunication services</u>	
D.	<u>Audiovisual services</u>	
E.	<u>Other</u>	
3.	<u>CONSTRUCTION AND RELATED ENGINEERING SERVICES</u>	
A.	<u>General construction work for buildings</u>	512
B.	<u>General construction work for civil engineering</u>	
		513
C.	<u>Installation and assembly work</u>	514+516
D.	<u>Building completion and finishing work</u>	517
E.	<u>Other</u>	
		511+515+518
4.	<u>DISTRIBUTION SERVICES</u>	
A.	<u>Commission agents' services</u>	621
B.	<u>Wholesale trade services</u>	
		622
C.	<u>Retailing services</u>	631+632
D.	<u>Franchising</u>	8929
E.	<u>Other</u>	
5.	<u>EDUCATIONAL SERVICES</u>	
A.	<u>Primary education services</u>	921
B.	<u>Secondary education services</u>	922
C.	<u>Higher education services</u>	923
D.	<u>Adult education</u>	924
E.	<u>Other education services</u>	929

6.	<u>ENVIRONMENTAL SERVICES</u>	
A.	<u>Sewage services</u>	9401
B.	<u>Refuse disposal services</u>	9402
C.	<u>Sanitation and similar services</u>	9403
D.	<u>Other</u>	
7.	<u>FINANCIAL SERVICES</u>	
A.	<u>All insurance and insurance-related services</u>	812**
B.	<u>Banking and other financial services</u> (excl. insurance)	
C.	<u>Other</u>	
8.	<u>HEALTH RELATED AND SOCIAL SERVICES</u>	
A.	<u>Hospital services</u>	9311
B.	<u>Other Human Health Services</u> (other than 93191)	9319
C.	<u>Social Services</u>	933
D.	<u>Other</u>	
9.	<u>TOURISM AND TRAVEL RELATED SERVICES</u>	
A.	<u>Hotels and restaurants (incl. catering)</u>	641-643
B.	<u>Travel agencies and tour operators services</u>	7471
C.	<u>Tourist guides services</u>	7472
D.	<u>Other</u>	
10.	<u>RECREATIONAL, CULTURAL AND SPORTING SERVICES</u> (other than audiovisual services)	
A.	<u>Entertainment services</u> (including theatre, live bands and circus services)	9619
B.	<u>News agency services</u>	962
C.	<u>Libraries, archives, museums and other cultural services</u>	963
D.	<u>Sporting and other recreational services</u>	964
E.	<u>Other</u>	
11.	<u>TRANSPORT SERVICES</u>	
A.	<u>Maritime Transport Services</u>	
B.	<u>Internal Waterways Transport</u>	
C.	<u>Air Transport Services</u>	
D.	<u>Space Transport</u>	733
E.	<u>Rail Transport Services</u>	
F.	<u>Road Transport Services</u>	

- G. Pipeline Transport  
H. Services auxiliary to all modes of transport  
I. Other Transport Services
12. OTHER SERVICES NOT INCLUDED ELSEWHERE 95+97+98+99

## Annex D: Plan of Action

The plan of action elaborated below sets forth concrete policy actions along four main lines – institutional strengthening, capacity building, governance and regulatory reform. It is anticipated that institutional strengthening and capacity building will result in a more efficient administration of the services trade regulatory regime and provide a strong basis for continued regulatory reform.

The economic benefits of this are threefold – for government agencies, more staff with enhanced skills should be able to better apply existing regulations thereby improving the accuracy and speed of procedures; staff should be able to make more informed recommendations on potential regulatory changes; and better enforcement should result in a more equitable playing field for all operators. For autonomous regulatory agencies, such as those for professional services, institutional strengthening will enable them to play a critical role in ensuring that standards are maintained. Generally, these policy actions should facilitate the ease of doing business and reduce administrative costs to government agencies as time/ resource consuming mistakes are minimised.

Similarly, governance and regulatory reforms will work to the advantage of both private sector operators and public sector officials as clarified rules result in higher levels of transparency, thereby improving the overall investment climate. Removing regulatory grey areas and the scope for discretion in interpreting rules is likely to result in more predictable regulatory outcomes. In addition, regulatory reforms which implement trade commitments will induce higher levels of competition with the corollary benefits of more choice for consumers, better quality of services and lower prices. This should be a welcomed boost to the Lao economy as these gains are passed on to both the final consumers and other economic agents which utilise services in their production processes.

Strategy	Action	Responsibility	Priority
<b>General</b>			
Formulate strategic direction for services development	Secure technical and financial support to prepare: 1. Services Sector Strategy; 2. Plan of Action.	MoIC	Medium
<b>Horizontal</b>			
Enhance Business Registration	Perform a full RIA on the operation of the Enterprise Law.	MoIC	High
Improve the Operation of Specific Regimes	Continue the process of allocating land use rights to Lao nationals.	MoNRE	Medium
	Conduct a regulatory assessment on the operation of the Land Law.	MoNRE	High

	Perform a full RIA on the operation of the entire tax regime.	MoF	High
Ensure Policy Co-ordination and Trade Compliance	Centralise responsibility for all trade negotiations under MoIC and create a strong mechanism for consultation and coordination with the line Ministries.	NA	High
	Strengthen the capacity of MoIC to deal with the expanded mandate of having responsibility for trade negotiations.	MoIC	High
	Amend notifications issued by ERD to reflect GATS and AFAS commitments.	MoIC	Medium
	1. Establish a mechanism between the ERD and the FTPD to ensure that changes to notifications and other measures are compliant with trade commitments. 2. Strengthen capacity in ERD to recognise when trade commitments are likely to be negatively affected by rules.	MoIC	Medium
Boost Transparency and Legal Certainty	Fast-track work on the proposed services trade and investment portal as a means to enhance transparency.	MoIC	High
	Establish rules on timeframes for the creation of sub-regulations.	MoJ	Medium
	Create user friendly guidelines on the main horizontal laws for officials and the public.	Ministries responsible for horizontal issues	Medium
	Establish rules to guide enforcement and mechanisms to ensure effective enforcement.	Line Ministries	Medium
	Mandate the creation of criteria by which applications will be assessed and make them publicly available.	Line Ministries	High
	Implement a system of written justification of judgements.	NA/ MoJ	Medium
Verify and Enforce Standards	Put in place mechanisms to ensure that the courses conducted and qualifications awarded in subjects related to professional services by all educational institutions are uniform and that they conform to required standards.	Professional Regulatory Agencies (PRA) and MoE  Relevant line ministries	Medium
	Put in place mechanisms to ensure that there is adequate enforcement of standards across services sectors.		
Modernise and Complete Legal Frameworks	Conduct RIAs and modernise the legislation and regulations applicable to the banking, distribution and air transport sectors to ensure compliance with trade commitments among other objectives.	BoL MoIC MPWT	High

	Move to complete the regulatory framework for professional services, telecommunications, insurance and tourism by drafting needed sub-regulations.	MoF MoJ MICT	High
Engage in Institutional Strengthening	Strengthen the capacity of professional associations.	MoF MPWT MoJ	Medium
	Strengthen the departments under the remit of the MoF, MoJ and MPTW which have responsibility for professional services.	MoF MOJ MPWT	Medium
	Strengthen BoL's regulatory capacity.	BoL	High
Ensure the Implementation of Trade Commitments	Intensify efforts to advance the preparatory work for the implementation of MRAs under the TDF-2 project.	MoF MoJ MPWT	High
	Work consistently towards the implementation of commitments related to the creation of the independent regulator for telecommunications.	MPT	High
	Commence the TDF-2 project which is aimed at establishing an independent regulator for the insurance sector.	MoF	High
	Bring inconsistent measures as highlighted in the horizontal assessment into compliance with international trade commitments.	MoIC and line Ministries	High
Specific Legislative Actions to Implement Trade Commitments:			High
Horizontal			
Land Law 2003	<p>Revise Article 65 of the Land Law to allow foreigners to lease land for the duration specified in the GATS commitments, i.e., 75 years.</p> <p>Adjust Article 13 (which limits the maximum land lease period granted to Lao citizens by the state to 30 years with the possibility of extension) to ensure that Lao nationals are able to lease land to foreign investors for 75 years.</p> <p>Include a new provision in the Land Law which specifically creates a special regime for ASEAN individuals and investors. A feature of the new regime would be that land leases would be available to ASEAN investors for an indefinite duration.</p>	MoNRE	
Labour Law 2013 and Regulations	<p>Remove the obligation on foreign skilled workers to train Lao nationals.</p> <p>Amend the Labour Law:</p> <ul style="list-style-type: none"> <li>○ By creating a special regime for Mode 4 service suppliers from</li> </ul>	MLS	

	<p>ASEAN. The main feature of this regime would be that there is no maximum duration of stay;</p> <ul style="list-style-type: none"> <li>○ To grant ASEAN firms operating in the accounting, auditing and bookkeeping a maximum quota of 30 per cent foreign professionals in their staff complement.</li> </ul>	
Sectoral		
Professional Services	<p>Amend Independent Audit Law 2013 by:</p> <ul style="list-style-type: none"> <li>○ Removing the restriction requiring non-established firms to work in association with a Lao accounting firm;</li> <li>○ Revising the provisions to ensure that the requirement to have work verified by a Lao accountant does not apply any foreign auditor where such services are supplied cross-border;</li> <li>○ Revising the provisions to ensure that the requirement to have work verified by a Lao accountant does not apply to ASEAN professionals who are supplying services through the temporary movement of a natural person.</li> </ul> <p>Amend the Temporary Guidelines on Licensing firms in the accounting/ auditing firms by either:</p> <ul style="list-style-type: none"> <li>○ Applying the requirement for accounting, auditing and book keeping headquarters to have an excellent track record to both domestic and foreign firms; or</li> <li>○ Removing the restriction completely.</li> </ul> <p>Amend Notification 1590/MOIC.ERM by:</p> <ul style="list-style-type: none"> <li>○ Deleting survey, design, construction consultancy activities and the installation of Lao historical, natural, cultural architectural and engineering and the design, construction and installation of electric grids and generators from 22 kv-35 Kv and low 0.4 Kv from the list.</li> </ul> <p>Amend Notification 1591/MOIC.ERM by:</p> <ul style="list-style-type: none"> <li>○ Either completely removing the minimum capital requirement or applying it to both domestic and</li> </ul>	MoF MPW MoIC



	<p>foreign service suppliers providing the specified architectural and engineering activities and technical testing and analysis activities on the list;</p> <ul style="list-style-type: none"> <li>○ Revising the maximum limit on foreign participation from 49 per cent to 51 per cent for investors from WTO Members who are offering the architectural and engineering services listed;</li> <li>○ Clearly indicating that the abovementioned foreign equity limits will not be applied to ASEAN investors who are offering the architectural and engineering services listed;</li> <li>○ Including a provision which indicates that the phase-in commitment which will allow investors from WTO members to fully own juridical entities in the listed architectural and engineering sub-sectors will come into effect in 2018.</li> </ul> <p>Amend the relevant legislation or regulations to remove the requirement that foreign engineers or architects work in association/collaboration with a Lao professional.</p>	
Distribution Services	<p>Amend Decision 0977 to:</p> <ul style="list-style-type: none"> <li>○ Permit cross-border trade in wholesale trade services on a fee or contract basis of textiles, clothing and footwear for ASEAN service suppliers which do not have a physical presence in Lao PDR;</li> <li>○ Permit cross-border trade in wholesale trade of motor vehicles, car parts and accessories and motor cycles for WTO service suppliers who do not have a physical presence in Lao PDR.</li> </ul>	MoIC
Telecommunications Services	<p>Create the implementing regulations which cover, among other things:</p> <ul style="list-style-type: none"> <li>○ The eligibility criteria for applying for and receiving a licence;</li> <li>○ The process for the application for and renewal of licences;</li> <li>○ Licence application and renewal fees;</li> <li>○ A set of general licence conditions;</li> </ul>	MPT

	<ul style="list-style-type: none"> <li>○ The rights and responsibilities of licensees, including disclosure requirements; and</li> <li>○ Penalties for breach of licence terms.</li> </ul> <p>Amend the regulations on internet café services to permit interconnection with ASEAN internet service providers.</p> <p>Introduce a separate Decree to establish the independent regulator for telecommunications.</p>	
Financial Services	<p>Revise Enterprise Law 2013 to permit foreigners to have a 51 per cent stake in state-owned institutions in order for foreign investors to hold 51 per cent of the shareholding in state-owned banks and state-owned insurance companies by 2018.</p> <p>Remove the requirement for a representative office in the insurance sector to have 5 years of operating experience from Insurance Law 2013.</p>	MoIC MoF
Transport Services	<p>Amend Notification 1591 /MOIC. ERM to :</p> <ul style="list-style-type: none"> <li>○ Remove the minimum capital requirements for ASEAN nationals and juridical entities providing road freight transport services;</li> <li>○ Remove discriminatory equity limitations for ASEAN nationals and juridical entities providing storage or warehousing services and freight agency services;</li> <li>○ Either completely remove minimum capital requirements or apply them to domestic and ASEAN service suppliers who are providing storage or warehousing services and freight agency services.</li> </ul>	MoIC MTPW
Tourism Services	<p>Amend Tourism Law 2013 (or adjust tourism regulations) by removing the requirements for non-established service providers to partner with a Lao individual or firm.</p> <p>Amend Notification 1591 /MOIC. ERM to:</p> <ul style="list-style-type: none"> <li>○ Remove the discriminatory foreign equity requirement for hotels between 3 to 5 stars;</li> <li>○ Completely remove the minimum capital requirements for hotels</li> </ul>	MICT MTPW MoIC

	<p>between 3 to 5 stars or apply them to both domestic and foreign investors.</p> <p>□ Amend the Agreement on the Management of Ticketing Agencies and Air Travel Agencies 2526/MPWT, February 16, 2011 by removing the local presence requirement on travel agency services</p>	
Construction Services	<p>Amend Notification 1590/MoIC.ERM by removing electrical installation and plumbing, heat and air-conditioning installation from the list.</p> <p>Revising Notification 1591/MoIC.ERM to:</p> <ul style="list-style-type: none"> <li>○ either completely remove the minimum capital requirements or apply them to domestic and foreign investors who are providing construction services specified on the list;</li> <li>○ allow ASEAN investors to fully own enterprises providing the construction services identified on the list;</li> <li>○ permit investors of other WTO Members to have a maximum shareholding of 70 per cent in companies which are providing the construction services on the list.</li> </ul>	MTPW MoIC

## Annex E: List of Legislation and other Measures Reviewed

### Horizontal

- Law on Investment Promotion 02/NA, July 8, 2009
- Decree on the Implementation of the Investment Promotion Law, May 2, 2011
- Law on Enterprises 11/NA, November 9, 2013
- Order on the Implementation of the Enterprise Law Regulation on the Reservation and Approval of the Enterprise Name
- Instruction on the Implementation of Declaration for Enterprise Registration
- Notification 1590 /MOIC.ERM on the List of Reserved Businesses for Lao Citizens, August 26, 2013
- Notification 1591 /MOIC.ERM on the List of Conditional Businesses for Foreign Investors, August 26, 2013
- Notification 1592 /MOIC.ERM on the List of Prohibited Businesses, August 26, 2013
- Ministerial Guideline on Enterprise Branch Establishment 1619/MOIC.ERO, August 28, 2013
- Land Law 04/NA, October 21, 2003
- Prime Ministerial Decree on the Implementation of the Land Law 88/PM dated June 3, 2008
- Presidential Decree on the Leasing Rate of Land 02/PO, November 18, 2009
- Prime Minister's Decree on the Leasing of State Land 135/PM, May 25 2009
- Amended Labour Law 43/NA, December 24, 2013
- Ministerial Agreement on Approving Importation of Foreign Labour in Lao PDR 5418/MLSW, December 10, 2007
- Decree on the management of entry – exit of Lao PDR and the management of foreigners 136/PM, May 25, 2009
- Tax Law 058/NA, January 16, 2012
- Law on Value-added Tax 04/NA, December 26, 2006
- Regulation on Tax Registration 3225/MOF, December 17, 2009
- Regulation on VAT Declaration and Payment, 3227/MOF December 17, 2009
- Regulation on Financial Source and VAT 3229/MOF, December 17, 2009
- VAT Guideline Presidential Decree Law Governing the Management of Foreign Exchange and Precious Metals 01/P, March 17, 2008
- Implementation of Decree Law on Management of Foreign Currency and Precious Metals 1/PC dated 17 March 2008 01/BOL, April 2, 2010
- Decree on the Administration of Prices of Goods and Fees of Services, 474/PM, November 18, 2010

### Professional Services

- Amended Accounting Law 47/NA, December 26, 2013
- Independent Audit Law
- Temporary Guidelines on Procedures Approving Business Operation in Accounting and Auditing Consultancy 007/MOF, January 3, 2014
- Law on Lawyers 010/NA, December 21, 2011

### Distribution Services

- Decree on Goods Distribution 206/GoL, June 10, 2001
- Decision on the Wholesale and Retail Enterprises 0977/MOIC.ITD, May 18, 2012

### Telecommunications Services

- Law on Telecommunications 09/NA dated December 21, 2011
- Agreement on telephone tariffs
- Regulation on internet café services
- Instruction on telephone and SMS tariffs
- General principles on sales and promotion of mobile and telephone SIM cards
- Prime Minister's Decree on setting up internet service network, importation, usage and management
- Notification on Tariffs of Phone-calls 0024, August 1, 2011
- Restrictions of internet services and uses in Lao PDR
- Telecommunication tariffs in Lao PDR

### Financial Services

- Law on Commercial Banks 03/NA, December 26, 2006
- Decree on the Implementation of the Law on Commercial Banks 275/PM, September 25, 2009
- Regulation for Non-Deposit Taking Microfinance Institutions 02/BoL, June 20, 2008
- Regulation for Savings and Credit Union 03/BoL, June 3, 2008
- Regulation for Deposit-taking MFIs 04/BoL June 20, 2008
- Charter of Depositor Protection Fund 03/DPF, December 27, 1999
- Regulation on Depositor Protection Fund 283/BoL, August 30, 1999
- Regulation on Protecting Soundness Practices among of the Commercial Banks and Financial Institutions which are under the supervision of the Bank of the Lao PDR 04/BoL, January 15, 1996
- Regulation on Loan Classification requirement for Commercial Banks which are under the Supervision of the Bank of the Lao PDR 06/BoL, May 11, 2004
- Final Draft of the Microfinance Regulation for the Lao PDR
- Decree on Microfinance Institutions 460/G, October 3, 2012
- Amended Insurance Law 06/NA, December 21, 2011
- Decree on Securities and Securities Market 255/PM, May 24, 2010
- Deposit Regulation 26/LSX, January 7, 2011
- Market Operation Regulation (Amended) 01/LSX.Rg, October 6, 2011
- Securities Transfer Agent Regulation 27 /LSX, January 7 2011
- Decision on Regulation Regarding the Issuance of Stock to the Public 008/SEC, July 21, 2010

## Transport Services

- Law on Multimodal Transport 28/NA, December 12, 2012
- Law on Road Transport 24/NA, December 18, 2012
- Law on Civil Aviation 01/NA, May 2005
- Ministerial Notification on Pricing Control of Goods and Services Provided by Line Sectors 1064, DTD-MOIC
- Law on National Roads
- Regulation on the Management of Foreign Trucks entering Lao PDR on a Temporary Basis 09539/MTWT/4, June 4, 2012.
- Regulation on the Principles of Truck Inspection
- Regulations on Technical Specifications and Spare Parts
- Guidelines on Driving Licences
- Guidelines on Driving Licence Applicants
- Guidelines on Changing Driving Licences
- Instruction on Inspecting Vehicles
- Agreement on the Maximum Weight of Trucks with 22 Wheels or 6 Axles
- Regulation on the Maximum Weight of Vehicles
- Agreement on Facilitating Transit Trucks
- Agreement to establish Weight Stations
- Regulation on Driving Licences
- Regulation on the Establishment of Driving Schools
- Decree on the Punishment of Road Traffic Law Violators
- Decree on the National Committee on Road Safety

## Tourism Services

- Law on Tourism 32/NA, July 24, 2013
- Decree on the Preservation of Cultural, Historical and Natural Heritage 03/PR, June 20, 1997
- Regulation on the Management of Hotels and Guesthouses 159/OPM, July 30, 1997
- Regulation on the Establishment and Management of Tourist Service Operators 1150/PM, October 25, 1993
- Agreement on the Management of Ticketing Agencies and Air Travel Agencies 2526/MPWT, February 16, 2011

## Annex F: List of persons interviewed

Name	Position	Organisation
Mr. Phomma Inthanam	Director	Domestic Trade Department, Ministry of Industry and Commerce
Mr. Sivone Nanthavong	Technical Officer	Domestic Trade Department, Ministry of Industry and Commerce
Mr. Syfong Soumontha	Technical Officer	Consumer Protection and Competition Division, Domestic Trade Department, Ministry of Industry and Commerce
Ms. Souphaphone Ssayalerd	Technical Officer	General Investment Promotion Department, Ministry of Industry and Commerce
Mr. Vilakone Chanhthavongsa	Technical Officer	General Investment Promotion Department, Ministry of Industry and Commerce
Mr. Phouthasack Souvannasao	Deputy Director	General Investment Promotion Department, Ministry of Industry and Commerce
Mr. Soulikham Chengsavang	Head of Enterprise Division	Enterprise Registration and Management Department, Ministry of Industry and Commerce
Mr. Phouvong Sihmvong	Deputy Director General	Enterprise Registration and Management Department, Ministry of Industry and Commerce
Col. Visoun Silapany	Deputy Head of Permanent Secretary	Foreign Relations Department, Ministry of Public Security
Mr. Sayyaphone Douangmany	Director	General Police Department, Ministry of Public Security
Mr. Saysaming Sivilay	Deputy Director General of Immigration	Immigration – Emigration Department, Ministry of Public Security
Mr. Phetdavong Keogunya	Deputy Head of Permanent secretary	Immigration – Emigration Department, Ministry of Public Security
Mr. Savannaxay Sisouvanh	Technical Officer	Foreign Relations Department, Ministry of Public Security
Ms. Ketkeo Phommachanh	Deputy Director	Foreign Relations Department, Ministry of Public Security
Mr. Phonethip Phomphakdy	Deputy Director General	Foreigner Control Department, Ministry of Public Security
Mr. Xeng Xongsuenou	Deputy General Director	Higher Education Department, Ministry of Education and Sports
Mr. Bounpheng Somchanmavong	Deputy General Director	Vocational Education Department, Ministry of Education and Sports
Mr. Bounvilay Keosouliya	Deputy Director	Finance Department, Ministry of Education and Sports
Ms. Nilinthone Souklokham	Technical Officer	Higher Education Department, Ministry of Education and Sports

Name	Position	Organisation
Mr. Vilay Phonekeo	Deputy Head of Permanent Secretary	
Mr. Virana Sonnasinh	Acting Director of Planning Division	Department of Planning and Co-operation, Ministry of Natural Resources and the Environment
Mr. Siphadone Sihavong	Director General	Department of Land Administration, Ministry of Natural Resources and the Environment
Mr. Thevaram Phonekeo	Director	Pollution Control Department, Ministry of Natural Resources and the Environment
Mr. Thanongkham Vanthongkham	Technical Officer	Pollution Control Department, Ministry of Natural Resources and the Environment
Ms. Daomanivone Vilayvieng	Acting Director	Foreign Relations Department, Bank of Lao PDR
Ms. Phothichanh Thammatheva	Deputy General Director	Bank Supervision Department, Bank of Lao PDR
Mr. Sithong Chanthasouk	Technical Officer	Foreign Relations Department, Bank of Lao PDR
Ms. Vilavanh Viyavong	Technical Officer	Foreign Relations Department, Bank of Lao PDR
Mr. Sonexay Silapeth	Director, Assurance Services	Ernst & Young Co. Ltd
Ms. Nitiphone Savanvongthong	Technical Officer, Assurance Services	Ernst & Young Co. Ltd
Mr. Daniel Harrison	CPA Tax Manager	VDB Loi Co. Ltd
Mr. Brennan Coleman	Managing Director	DFDL
Mr. Lasonexay Chanthavong	Senior Adviser, Head of Regulatory and Compliance	DFDL
Mr. Gerald Walewijk	President	Lotus Consult Ltd
Mr. Daovone Phachanthavong	Vice-President	Lao National Chamber of Commerce and Industry
Dr. Ramon Bruesseler	Executive Director	European Chamber of Commerce and Industry in Lao PDR
Mr. Mark Jerome	Manager	KPMG Lao Co. Ltd
Mr. Nalonglith Norasing	Director General	Department for International Co-operation and Relations, Ministry of Justice
Mr. Bounta S.Phabmixay	Director General	Judicial Administration System Department, Ministry of Justice
Ms. Lotjana Khemthong	Head of Division	Judicial Administration System Department, Ministry of Justice
Ms. Valaphone Aekaphan	Deputy Head of Division	Judicial Administration System Department, Ministry of Justice
Ms. Thipakesone Bulomavong	Technical Staff	Judicial Administration System Department, Ministry of Justice



Name	Position	Organisation
Mr. Ounethouang Khaophanh	Director General	Tourism Management Department, Ministry of Information, Culture and Tourism
Mr. Bouthsady Kantavong	Deputy Chief, Tourism Standards and Investment Management Division	Tourism Management Department, Ministry of Information, Culture and Tourism
Mr. Khamkhoun Baylatry	Deputy Director	Department of Information, Culture and Tourism of Vientiane Capital
Mr. Vandy Chanlernsouk	Technical Staff	Tourism Management Department, Ministry of Information, Culture and Tourism
Mr. Math Sounmala	Director General	Department of Planning and Cooperation, Ministry of Public Works and Transportation
Mrs. Chanthanom Sulienu	Head of International Relations Division	Department of Planning and Cooperation, Ministry of Public Works and Transportation
Ms. Daophet Siriphokha	Technical Officer	Department of Planning and Cooperation, Ministry of Public Works and Transportation
Mr. Souksamay Saysith	Technical Officer	Department of Civil Aviation, Ministry of Public Works and Transportation
Mr. Souliphon Takhounethong	Technical Officer	Department of Civil Aviation, Ministry of Public Works and Transportation
Mr. Vongphachanh Boualaphanh	Head of Division	Department of Roads, Ministry of Public Works and Transportation
Mr. Xaysomphone Banchongphanith	Deputy Head of Division	Department of Waterways, Ministry of Public Works and Transportation
Mrs. Doungmany Laomao	Deputy Director General	Economic Dispute Resolution Centre, Ministry of Justice
Mr. Vorlachit Hadaoheuang	Head of Legislation Division	Economic Dispute Resolution Centre, Ministry of Justice
Mr. Khamkhoun Baylatry	Deputy Director General	Vientiane Capital City Department of Information, Culture and Tourism
Mr. Phetsomphone Keomoungkun	Deputy Head	Tourism Operation Management Unit, Vientiane Capital City Department of Information, Culture and Tourism
Mr. Boualith Khounsy	Deputy Director General	International Co-operation Department, Ministry of Finance
Mr. Bounson Chantanung	Official	Tourism Operators Association
Mr. Khenlangsy Seangkhamyong	Deputy Director General	Enterprise Financial Management Department, Ministry of Finance
Mrs. Vanida Savaddy	Deputy Director General	Enterprise Financial Management Department, Ministry of Finance
Mr. Phonevilay Thepvilay	Technical Officer	Enterprise Financial Management Department, Ministry of Finance

Name	Position	Organisation
Mr. Sivath Sengdouangchanh	Managing Director	Allen & Gledhill (Laos) Co. Ltd
Prof. Dr. Somphone Dethoudom	Vice President	Council of Science and Technology, Ministry of Public Works and Transport
Mr. Xeng Xiong Nengxay	Deputy Director General	Department of Housing and Urban Planning, Ministry of Public Works and Transport
Ms. Vanny Keoxayyavong	Head of Employment Promotion Division	Department of Skills Development and Employment, Ministry of Labour and Social Welfare
Mr. Thay Sengaloun	Deputy Chief of Cabinet	Permanent Secretary Office, Ministry of Labour and Social Welfare
Ms. Douangnary Ditthavong	Finance Manager	SDV Lao Co. Ltd
Mr. Bounthanh Vongsoury	Deputy Managing Director	Phongsavanh Bank
Ms. Manola Luangkhot	Head of Treasury and International Services Department	Phongsavanh Bank
Mr. Inthy Deuansavan	President	Green Discovery Adventure & Eco-Tourism, Kop Chai Dei Restaurant
Mrs. Douangmala Matsanisone	Sales Manager	DM Construction - Trading Co. Ltd
Mr. Vira Salikoun	Director	Geotrans Logistics & Movers Co. Ltd
Mr. Sourasinh Sipaseuth	Import-Export Manager	Societe Mixte De Tranport Co. Ltd
Mr. Somphone Phasavath	Deputy Managing Director	Lao Freight Forwarder Co. Ltd
Mr. Sompasong Darasack	General Manager	Sabaidee@Lao Hotel
Mr. Yoshi Phuntsho	General Manager	Settha Palace Hotel
Mr. Christopher Yeo	General Manager	Mercure Vientiane Hotel
Mr. Khamsouk Dejevongphan	Human Resources Manager	Mercure Vientiane Hotel
Mr. Le Cong Nguyen	Deputy Director	Lao - Viet Bank
Mr. Pham Van Ha	Deputy Chief of Customer Relations Department	Lao - Viet Bank
Ms. Chansada Phetsadahueng	Chief of International Payments Department	Lao - Viet Bank
Mr. Doan Thanh Chung	Deputy General Director	Lao - Viet Insurance Company
Mr. Yaser Maher	Chief Executive Officer	VimpleCom Lao Company Ltd (Beeline)
Ms. Jasreen Singh	Legal Counsel	VimpleCom Lao Company Ltd (Beeline)
Mr. Khamka Hadaoheuang	Head of Government Relations Department	VimpleCom Lao Company Ltd (Beeline)

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Mr. Vanpheng Sayakone	Deputy Director-General	Department of Telecommunications, Ministry of Posts and Telecommunications
Ms. Kesone Soulivong	Deputy Director-General	Department of Planning and Co-operation, Ministry of Posts and Telecommunications
Mr. Saengtavahn Khammavong	Director	Khamphay Sana Concrete
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