

Lao People's Democratic Republic

1. Overview

The Lao People's Democratic Republic (Lao PDR) has a population of only 6.7 million people, of which nearly 80 percent is engaged in the agricultural industry, with US\$1,500 GDP per capita. Under the socialist regime, its economic growth has been slow and is one of the least developed countries in Asia.

Most manufactured products are imported, while major sources of foreign currency are hydropower export and tourism. There are big potential in mineral resources and agricultural products export, but the development is hampered by the poor transportation infrastructure primarily attributable to its mountainous landscape. Even river transportation to and from the Mekong river mouth is difficult due to the series of falls along the Mekong River.

A PPP regime with government policies or regulations is not established in the Lao PDR yet. Infrastructure projects have historically concentrated in power, telecommunications, airports, and railways in the form of limited companies, where the government or designated state company holds voting equity interest as a shareholder. However, recent developments, including the development of a PPP decree and pilot PPP projects, show that the government may be taking an interest in developing its PPP sector. But it is still a challenge for the government to develop policy and legal frameworks for PPP.

2. Institutional and Regulatory Frameworks

Although there is no specific regulation or any legal framework setting out a clear PPP policy or concept, some infrastructure projects have been completed through joint ventures between the public and private sector in the form of limited companies (project companies established in the Lao PDR) under the Law on the Promotion of Foreign Investment introduced in 2004, where the government equity percentage is subject to negotiation but should be good enough to have the voting power.

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Infrastructure projects under PPP framework, if any, shall be implemented in line with the Seventh Five-year National Socioeconomic Development Plan and under the framework of Foreign Investment Law, which focuses on hydropower stations and renewal energy, power transmission networks, telecommunications, roads, and railways.

The government encourages foreign investment providing incentives such as:

- income tax holidays
- special rates for import duty on the necessary equipment and materials in need for the project
- tax exemptions on dividends
- guarantees against nationalization or expropriation without compensation

Other benefits available for foreign investors are:

- majority shareholding by foreign investors
- collateral securitization on project assets including leasehold on lands
- neutral arbitration, ratification of international treaties such as New York Convention 1958, ICC 500 Paris agreements on avoidance of double taxation
- facilitation of entry and exit visa and work permit for expatriates
- concession period of 25–30 years

The atmosphere is favourable to foreign investors in that the incentives and benefits mostly conform to world normal practice in infrastructure projects, as well as the availability of a 'One Stop Service Unit' under the Investment Promotion Department (IPD) to facilitate foreign investors through the whole process of relevant applications.

One major exception to the world standard conformity is that the land law prohibits foreign ownership of land, and only leasing or receiving land concessions from the states is allowed as is practiced in many countries under a socialist regime, where maximum leasing term is 30 years in cases from private entity and 50 years from the government. However these can be extended upon government approval. Concession periods is said to be a maximum 50 years, but this still is subject to extension by government approval.

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Certain approvals are required for a project finance transaction depending on the sector concerned. Generally required approvals, which are also consistent with world standards, are:

- use of International Financial Reporting Standards
- use of offshore bank accounts, foreign source loans, foreign exchange activities
- water source development
- construction work
- forestry activities
- import, possession, and use of wood processing and wood exploitation machinery
- disposition of aquatic animals and wildlife
- use of land for industrial purpose
- factory establishment
- mining, exploration, and survey

Also, under the Secured Transaction Law 2005, a foreign lender should obtain a licence or registration to take a security over assets in the Lao PDR or a guarantee from any entity incorporated in the Lao PDR.

As to the establishment of a joint venture, several registrations and approvals, usually required in other countries as well, such as investment licences, articles of association, enterprise registration licences, tax registration certificates, capital importation certificates, and business operation licences, are required under the Foreign Investment Law.

There is currently no central PPP agency in Laos. Agencies that may be relevant to PPP projects in Lao PDR are:

Ministry of Finance (MOF): The MOF is the designated representative of the government in projects with mixed public and private ownership. In addition, there are several state-owned enterprises that commonly hold shares on behalf of the MOF in project companies in Lao PDR.

Ministry of Planning and Investment (MPI): The MPI is a key actor involving management of investment project. Investment Promotion Department (IPD) under the MPI administers the foreign investment system and reviews investment applications in accordance with the Investment Promotion Law (2009). The Law stipulates principles,

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regulations and measures/ incentives regarding the promotion and management of domestic and foreign investments.

3. Recent Developments in PPP

The Lao PDR government is currently developing the framework for PPP with support of the Asian Development Bank (ADB). The initiative focuses on three main areas: (i) institutional capacity building, (ii) policy and legislation framework development, and (iii) demonstration of model and/or pilot projects in social sectors, education, and healthcare.³¹

The initiative on policy and legislation framework includes development of a Prime Minister's PPP decree. Some of the main articles in its fourth draft dated on 14 September 2014 can be summarized as follows:

- PPP may not be undertaken in the sectors specified in the Negative List updated from time to time.
- The Investment Committee is responsible for adopting the necessary PPP regulations and standard documents and supervising and approving PPP initiatives prior to tendering and contracting.
- A PPP Unit shall be established as the Secretariat of the Investment Committee, for the purpose of supervision, facilitation, and promotion of the PPP programme and improving skills and knowledge in PPP.
- A Project Preparation Facility shall be set up as a revolving fund managed by the PPP Unit to cover the cost of advisory and support services related to the preparation, structuring, tendering, award, and financial close.
- PPP contract may include direct payments and/or guarantees from the government to the private party.
- Direct negotiations may be applied subject to approval of the Investment Committee based on a recommendation from the PPP Unit.

³¹ Ministry of Planning and Investment website. <http://www.investlaos.gov.la/index.php/public-private-partnership> (accessed 10 June 2015)

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- Unsolicited proposals may be proposed to the project executing agency, which may either compensate the initiator for the proposal or give the initiator the right to match the winning bid that results from a tendering process.

At a project level, the Ministry of Public Works and Transport, supported by the World Bank and IFC, is seeking to attract private sector interest in a proposed PPP scheme to enhance the traffic capacity of National Road 13, which serves as the main north–south highway in the Lao PDR. In addition to the project, ADB is assisting in a feasibility study of the Savannakhet University project.³²

³² ADB Project Preparatory Technical Assistance. <http://www.adb.org/sites/default/files/project-document/152878/48127-001-pptar.pdf> (accessed 10 June 2015)

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