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# Reform of the Business Registration Procedure

Technical Assistance for Business Regulation  
Review and Rationalization - Component 1:  
Improving Business Registration

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## Executive Summary

Doing Business 2018 ranks Lao PDR as 164 out of 190 economies in terms of the ease of starting a business. A survey of business people in the country indicated that starting a business involves 8 separate procedures and takes a total of 67 days.

The current situation is blocking the potential of the country to attract FDI as well creating barriers to the regularisation and growth of the informal sector. National and international investors face a much more complicated, costly, lengthy and opaque series of procedures to start investing in Lao PDR than in neighbouring countries.

Certainly, some recent reforms are addressing some of the key constraints that the investors are facing, in particular the removal of the required minimum registered capital for the FDI investing in general business under the new Investment Promotion Law; and a strong commitment of the Prime Minister in encouraging steps to alleviate all the barriers to investment in Lao PDR prescribed under the Prime Minister Order No. 02/PM, dated 1 February 2018.

Based on the 'as is situation process map' and the international best experience, this Note aims to propose 9 options for reform that would be appropriate. It complements the work organised on business registration mapping part of the ToRs deliverables of the Technical Assistance for Business Regulation Review and Rationalization in Lao PDR.

### **Recommendation 1: Introduce an Ex-Post scheme for Business Registration**

It shall be made clear in a new scheme that an enterprise registration is not an operating license so if any specific business operation requires the application of the specific operating license, such enterprise need to comply with all the technical specifications in the application of those licenses from relevant lined agencies before it can lawfully operate.

Based on this new scheme, the Government should create an administrative procedure where the enterprise registration be undertaken under the sole determination of the Enterprise Registration Office without any necessity to get the technical comments from the lined agencies. The Enterprise Registration Office should only review the completeness of the application package under the Law on Enterprise and certain qualifications that relates directly to enterprise registration (i.e. minimum registered capital or the limitation on foreign shareholding for certain specific businesses).

Then, after the completion of the enterprise registration, the relevant lined agencies responsible for the issuance of each operating license would then have fullest authority to determine and evaluate the technical specification of each enterprise.

### **Recommendation 2: Loosen the Pre-Registration Requirement and Tighten the Post-Registration Monitoring/Inspection capacities**

The government should simplify business registration procedure by reducing the unnecessary pre-requisite conditions or qualifications. This will encourage more national enterprises and businesses to register in the same formalized system. It will also free government resources to be deployed into a more efficient monitoring/inspection scheme post-registration boosting compliance of those enterprises through sanction enforcement of all the relevant legal framework available.

### **Recommendation 3: Make Publicly Available Online all Information related to Business Registration should be made**

The government should leverage the use of the existing websites of the relevant departments, in particular the website of the Department of Enterprise Registration and management, Ministry of Industry and Commerce, to provide publicly available information about the whole process of business registration; the relevant list of business sectors (i.e. Prohibited List, Lao Reserved List; and Controlled / Negative List); the applicable fees; and the timeline. Importantly, all the application forms should be downloadable from the website.

This will assist the investor in understanding the process and requirements and in their preparation work before starting business. Also, it will increase access to information, transparency and accountability.

### **Recommendation 4: Establish a Mechanism for Enforcing Time Commitment**

The government should establish clear target for maximum response processing time shall be set for every step in the business registration. With a targeted timeline, a decision is needed regarding what will happen when the time limit is reached and the authority still fails to respond. One of the best practices for **low risk activities** could be to establish a '**silence is consent**' approach – meaning if a deadline is passed without certification or explicit objection, the relevant consent shall be automatically given. Introduction of a mechanism for enforcing time commitment would assist in encourage the relevant government authorities to observe and comply with the committed timeline. One reasonable example for the adoption of time- commitment mechanism is the process of blacklist checking of the foreign investor or foreign managing director undertaken by Department 203 that normally would take longer time than estimated (5 working days at the minimum and 1 month as the general practice).

### **Recommendation 5: Make more effective the Inter-Ministerial Coordination Mechanisms**

The government should strengthen the existing Inter-ministerial coordination mechanisms. For instance, the Investment Promotion Committee, should be substantially improved and expanded to strengthen the uniformity in the application and interpretation of the entire business registration scheme by each authority; and to reinforce the coordination mechanism of all these authorities in all the processes of business registration. The new institutional set up should have the capacity to follow up what needs to be done, by whom and when.

### **Recommendation 6: Simplify Complicated Procedures**

One of the key reasons for delay in registration processes is that documents are considered by more people than necessary. Documentation is frequently referred to very senior officers both before and after detailed consideration by responsible officials. These processes do not normally involve any discretion, but simply requires a check on whether legal requirements have been satisfied so no need for senior management involvement other than on an exceptional basis.

The internal document flow and process of all the governmental authorities relating to the business registration should be updated through internal instructions to limit the unnecessary involvement of senior management and provide a precise delegation of responsibility to the technical officers.

#### **Recommendation 7: Eliminate Unnecessary Procedures**

Lao PDR requires 3 procedures that have no equivalents in neighbouring countries.

- 7.1 **Registration of Articles of Association and List of Assets.** There is a requirement to register Articles of Association, incorporation contract and list of assets with the State Assets Management Department at the Ministry of Finance or one of the Ministry's provincial offices before the application of the Tax Identification Number despite the fact that such Articles of Association and Incorporation contract will already have been registered at DERM and there is no legal basis for registration of list of assets. Also, there is no legal basis that defines the registration of all these documents are pre-requisite condition in the business registration.

Government should remove the requirement for the document registration as a whole and the Decree No. 52/PM and relevant fees by Presidential Edict No. 03/PR should be repealed. Alternatively, if the registration is still required and necessary, it should be removed from the pre-requisite steps and conditions for the business registration.

- 7.2 **Seal Carving and Utilization Permit.** Many countries no longer require a business to have a seal. This is especially so where there is a move towards e-commerce. Thailand no longer requires a seal. In Cambodia or Myanmar, a seal is produced by a private-sector seal maker within a day. (Production and registration of a seal by the Lao Ministry of Public Security can take up to 4 weeks.) No other country in the region uses public sector facilities to produce seals and no other example of this approach has been identified elsewhere.

The government should eliminate the requirement of having a seal. If a seal is still required, there will be obvious benefit in entrusting seal production to authorised private-sector seal makers.

- 7.3 **Company Signage Formalities.** There is a requirement for approval of company signage by the Department of Mass Culture of the Ministry of Information, Culture and Tourism and the permit to install company signage by the Ministry of Public Work and Transportation or one of the Ministry's provincial offices. Considering the nature of the company signage that shall have a clear standard content different from the advertisement signage, no approval should be required.

The government should repeal the relevant provisions in the Decree on Signage and other regulations that requires the approval of signage content and signage installation.

#### **Recommendation 8: Avoid duplication of information requirements and annexed Documents during the Application Preparation and Submission**

Much of the same information and justification documentation is required during the whole procedure for business startup, in particular concerning the enterprise registration and tax registration. In the attempt of the merger between the Enterprise Database and the Tax Database with the support from Korean initiative, the application packages and information required shall be re-assessed and streamlined.

The Government should strengthen a single data provision mechanism based on a computerised system so that all the information can be submitted only once to Enterprise Registration Office and that information be shared electronically and automatically with the Tax Department.

**Recommendation 9: Take Advantage of Information and Communication Technology**

The government should accelerate the use of ICT for business start-up procedures, in particular an aim to develop electronic or online business registration. ICT based solutions can offer the potential for software vetting of the data for accuracy and consistency at the point of input, allowing any discrepancies to be investigated and corrected as necessary. Once all relevant information has been provided to the system, this can be reviewed and approved by a manager. The system can then automatically transmit data to appropriate agencies and generate a certificate.

## 1 Introduction

### 1.1 Why a Business Registration Reform is Important?<sup>1</sup>

Government wants new businesses to be incorporated for many reasons. Business registration increases economy growth by fostering firm productivity, increasing jobs in the new and incumbent business, and raising profitability. The competition from vast numbers of new enterprises created lower prices and drives innovation and technology adoption, creating a better range of products for customers. Registration also enables businesses to link into regional and global supply chains, with advantage of larger market, access to finance and technology, and exposure to good business practice and skills.

Barriers associated with registration or entry barriers are one of the early constraints that aspiring entrepreneurs encounter while attempting to access the formal economy – therefore, conversely, excessively cumbersome regulation for business registration is associated with higher levels of corruption.

### 1.2 Mapping and Simplifying Process

The Consultancy Team has reviewed and documented the existing procedure for registration of a business with all the departments relating directly to business registration both at the central and provincial levels (Vientiane Capital) and Champasak Province. Draft process maps have been made available to DERM officials in order to verify their accuracy.

One of the policy recommendations for the business registration re-engineering as recommended for ASEAN member states by OECD<sup>2</sup> that the Consultant Team has adopted pursuant to the requirement under the Terms of Reference is the process of mapping and simplifying. Now that the Consultant Team has finished the process of mapping to define what is really happening now, this report is prepared to reassess the potential re-engineering of the procedure in order to provide a more efficient service to investors while maintaining any necessary regulatory features.

### 1.3 Objective and Scope of the Report

This report intends to give a guideline and guidance on the potential re-engineering or reform in the business registration in Lao PDR that includes:

- Application for the Enterprise Registration Certificate with the Department of Enterprise Registration and Management, Ministry of Industry and Commerce or the Provincial Department of Industry and Commerce, Vientiane Capital / Champasack Province;
- Registration of the Articles of Association with the State Assets Management Department, Ministry of Finance or the Provincial Department of Finance, Vientiane Capital / Champasack Province;
- Application for the Tax Identification Number with Tax Department, Ministry of Finance or the Provincial Department of Finance, Vientiane Capital / Champasack Province;

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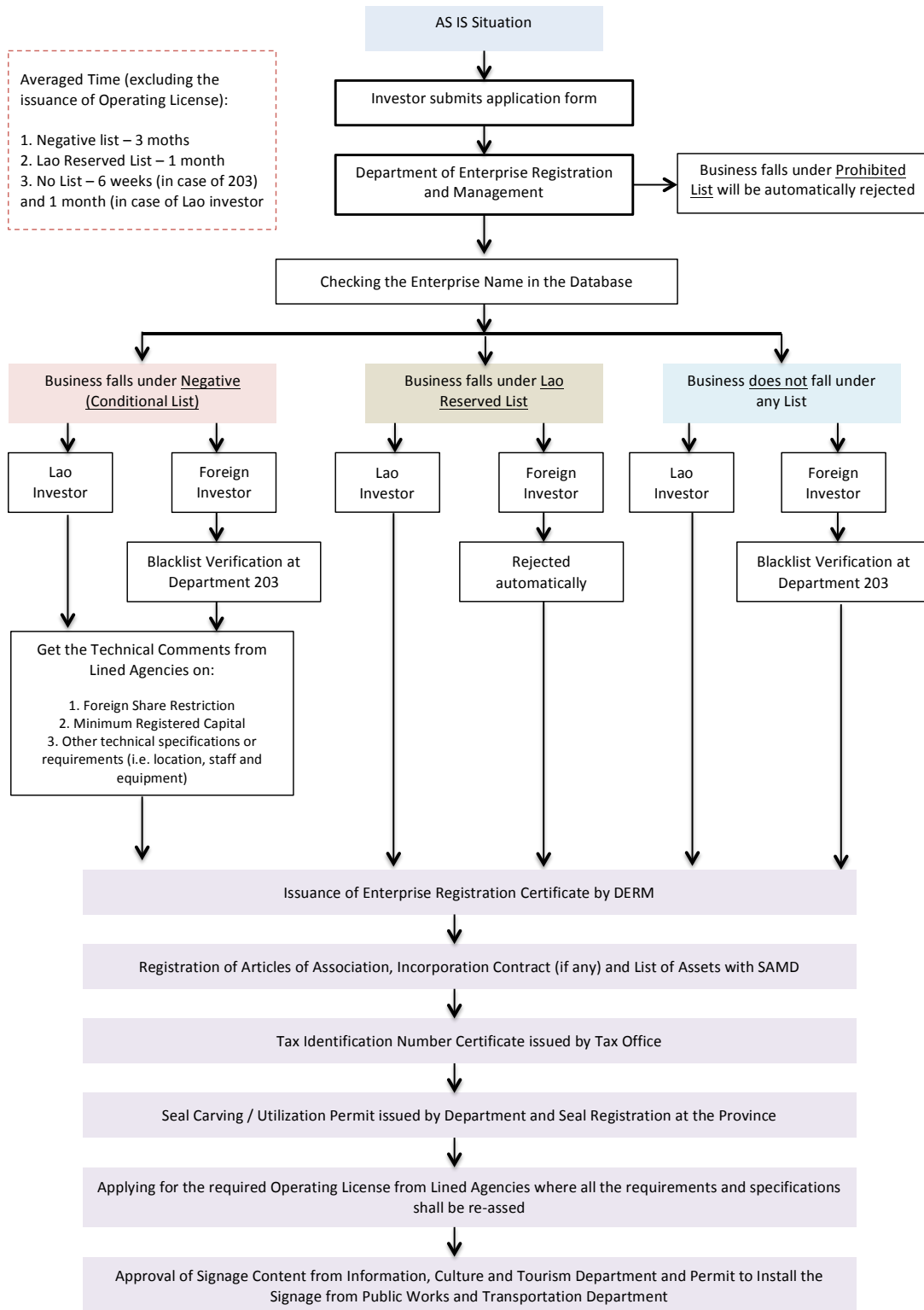
<sup>1</sup> OECD Regulatory Policy Working Papers No. 9, Business Registration Pillars: Good Regulatory Practice for ASEAN by Zoe Dayan and Winona Rei Bolisli, 2017

<sup>2</sup> OECD Regulatory Policy Working Papers No. 9



- Application for the Company’s seal and its registration with the Department of Family Registry and Fundamental Construction, Ministry of Public Security or the Provincial Department of Public Security, Vientiane Capital / Champasack Province; and
- Application for the approval of the enterprise signage with the Department of Mass Culture, Ministry of Information, Culture and Tourism or the Provincial Department of Information, Culture and Tourist, Vientiane Capital / Champasack Province.

#### 1.4 As Is Situation of Business Registration in Brief



## 1.5 Recommendations for the Business Registration Reform

All the recommendations are delivered based on the regional and international best practice in recognition of local contexts and the recommendations and opinion of the businesspersons, both the general investor – domestic and foreign investors – and the law firms (5 enterprises representing the enterprises registered at each level of Enterprise Registration Office). The detailed summary of the consultation conducted can be found in the Consultation Report (**Appendix 1**). Those recommendations are being proposed in two tiers include:

- (1) General Recommendations that are applicable to every process in the business registration; and
- (2) Specific Recommendations that are applicable specifically for each step of business registration.

## 2 General Recommendations

From the review of the business registration process map of both the central level, Vientiane Capital and Champasack Province and the consultation with the businesspersons, the Consultant Team conclude that there are 9 key constraints that are applicable to all the business registration process as follows:

1. Limited Public Accessibility of Information relating to Business Registration
2. Duplication of Documents required by many authorities in Business Registration
3. No Efficient Function of One-Stop Service Office and Limited Inter-Agency Coordination
4. Excessive Number of Visits by Investor to Authority Offices
5. Excessive Involvement of Senior Management in Internal Document Flow
6. Lack of Consistency and Uniformity for Government Application of the Business Registration Procedure
7. No Commitment to Timeline
8. Fee Collection resulting in Tax on Investment
9. Excessive Focus on Pre-Registration as opposed to Post-Registration Monitoring

For each identified constraint, the Consultant Team will elaborate the constraints observed from the process map and gathered from the interview with the businesspersons before identifying the problems incurred on the investors from those constraints. Finally, for each constraint, the Consultant Team would also recommend some possible resolution for consideration.

### 2.1 Limited Public Accessibility of Information relating to Business Registration

Constraint Issue. From an office visit to the relevant departments and the interview with the relevant authority, there is no guideline / guidebook on business registration widely available to the public both online and offline, especially online information. Internet information are mostly out-of-date that were not changed and updated when the law was reformed. The problem of limited accessibility is even worse for the English translation.

Also, from the consultation with the businessperson, the investor or even the intermediary do not have a full accessibility to the information relating to business registration from the government. The information that the businessperson would want to get access to include, among other things: (i) the

overview process for business registration and the specific business registration steps; (ii) qualifications and supporting documents required for the application of each business registration formality; (iii) the advantages for registering the business and the pros and cons for the establishment of each type of enterprise; (iv) where to register their enterprise – at the central, provincial or district governments; (v) guideline on how to fill in the application form; and (vi) time and cost that the investor shall spend in order to complete the business registration.

Problem. Limited accessibility to the information leads obviously to: (i) the discouragement and disincentive of the business registration; and (ii) the excessive time and cost for the preparation and submission of the application form to the authority.

Also, the limited access to information leaves a lot of room for the rent seeker and broker to operate and function. From the interview with the businesspersons, most of the investors (both domestic and in particular international investors) admitted that they decided to hire the broker or agent to proceed with the whole business registration process on their behalf. The main reason for the engagement of the broker is that the investors do not have time to run around to every authority just to understand the process and follow up with each authority while they still have to face a lot of uncertainties of how long it shall take to complete the whole process or the uncertainty of whether or not at the end of the day their business will be registered or not. Even though the service fee is collected at the excessively higher rate than the government fee, the businessperson anticipates that hiring the broker would at least save them some preparatory work; times cost and buy them more certainty. This situation of rent-seekers and broker transaction discourages the investment's effort to start the new business registration since the starting cost is too high.

Recommendations. To ensure that everyone will be entitled to and be capable of proceeding with the business registration process by themselves on the same playing field, the information relating to business registration should be widely and publicly available. A guideline or booklet that contains the information relating to business registration in all steps and other information as stated as required by the investor above should be prepared and disseminated at all the relevant department with the same and consistent contents. Additional startup advice should also be offered alongside the registration. The authority shall also ensure that all the information disclosed shall be accurate and up-to-date at all times. The information and the dissemination approach of those information, both online and offline should also be consulted with the businessperson who is the end-user and targeted audience to ensure the user-friendliness.

Also, in the internet-penetrating country like Lao PDR, an online portal should also be used and maximized. One possible option is to leverage the use of the existing websites of the relevant departments, in particular the website of the Investment Promotion Department, Ministry of Planning and Investment (<http://www.investlaos.gov.la>) or the website of Department of Enterprise Registration and Management, Ministry of Industry and Commerce (<http://www.erm.gov.la>) that are the main key focal departments with the direct mandates in handling business registration. Also, the link of this information should also be embedded in other government and chambers of commerce websites.

## 2.2 Duplication of Documents required by many authorities in Business Registration

**Constraint Issue.** From the observation of the list of supporting documents and the information required in the application form by the relevant department, in particular the Enterprise Registration Office and the Tax Authority, most of information and documentation are the same. Several of the documents required by the Tax Authority have already been submitted to Enterprise Registration Office. There is no system and mechanism for sharing information between the relevant departments; therefore, several hard copies of documents will have to be executed by the investors and submitted in several copies to several authorities.

The businessperson also reaffirmed that they would have to supply the same information to more than one government body.

### Documents required for registration

Business registration	Tax registration
<ul style="list-style-type: none"> <li>• Application form</li> <li>• Incorporation Agreement</li> <li>• Articles of Association</li> <li>• Minutes of statutory meeting</li> <li>• CV of shareholders / owner / partner and managing director</li> <li>• Office Confirmation Certificate signed by the head of village where the office will be situated</li> <li>• 6 photos size 3 cm x 4 cm of the nominated Managing Director</li> <li>• Power of Attorney in MOIC standard template (if another person is assigned to submit the application)</li> </ul>	<ul style="list-style-type: none"> <li>• Application Form</li> <li>• List of Assets signed by the Managing Director and registered with State Assets Management Department</li> <li>• List of Employees and estimated salaries signed by the Managing Director</li> <li>• Copy of the Lease Agreement attached with the evidence for the payment of income tax for the rental fee</li> <li>• Passport or ID of the Managing Director</li> <li>• Office location certificate signed and verified by the Chief of the Village</li> <li>• Map signed by the Managing Director</li> <li>• 2 photos of the Managing Director</li> <li>• Original Enterprise Registration Certificate</li> <li>• Original Articles of Association as registered with the State Assets Management Department</li> </ul>

**Problem.** Complex documentation requirements are a disincentive to registration as they increase the time which the investor has to devote to the application, and thus the cost, while also complicating the work of officials in examining the application. Also, since the managing director and the shareholders shall execute the application form, it becomes burdensome for the investors, in particular, foreign investors to sign all those documents several times without a clear justification or explanation of the key difference and rationale behind that information needed.

As well as being a waste of time, it makes data entry errors far more likely and the more documents submitted would need more time for the authority to review all those application documents and would potentially result in the delay in issuance process of the business registration formality. Also, it should be noted that submission of the same documents to two authorities and the data entry of the same information by those two authorities will not assure the consistency or same information recorded in the system by these two authorities.

Recommendations. A single data provision mechanism should be established and strengthened. There should be no duplication of information requests and a single application form should be used where possible, with requirements only separated if there is clear reason to do so. All the application forms and supporting document requirements should be reviewed and streamlined in order to ensure that one application form package would enable all the departments to get all the information required by each of the relevant department.

The first inter-agency coordination in the business registration is usually between enterprise registration and basic business tax registration. From the interview with the Tax Department, the Consultant Team understands that there is a proposal for the merger of the business registration and tax registration processes and fully supports this initiative.

In advance of the merger of processes, there is a need to critically analyse the information and documentation required for both business registration and tax registration. The Consultant Team recommends that there should be a detailed review of the documentation to identify the information that is necessary for the purposes of business and tax registration. If there is currently a demand for documents or information that is not subsequently used, the requirement should be abolished.

With a computerised system, it should not be necessary to submit more than one copy of any document and all the information submitted to Enterprise Registration Office should be shared electronically and automatically with the Tax Department so that a Tax Identification Number will be allocated automatically and issued with the incorporation certificate.

Streamlining registries and database should improve data integrity by reducing the number of times information has to be given.

### **2.3 No Efficient Function of One-Stop Service Office and Limited Inter-Agency Coordination**

Constraint Issue. The one-stop service offices for the Investment License and the Enterprise Registration Certificate have been established at Ministry of Planning and Investment and Ministry of Industry and Commerce under the Law of Investment Promotion 2009 with an aim to reduce the visit and involvement of the investor in the whole business registration process. However, from the review of the process map and the consultation with businessperson, the businessperson still needs to be involved throughout the process, in particular in the follow-up process of all the technical comments.

Apart from a constraint caused by the inefficient function of the One-Stop Service Office for the application of the Investment License and the Enterprise Registration Certificate, there is no other inter-agency coordination function with other departments that relates to business registration. Therefore, the investor will have to collect the documents from one authority and resubmit those documents to other authorities and directly follow up with those authorities one-by-one.

Problem. Lack of efficient function of one-stop service office and limited inter-agency coordination results in the excessive burden on the investor both in time and cost.

Recommendations. One-stop service function should be substantially improved and expanded to include every department into the system. The one-stop service office can be physical or online, to

provide only information or also be used for transactional process. At best, a business should be set up in a single visit and with a single affordable fee payment.

The Consultant Team recommend building on the existing One-stop service office – do not create another body and the Consultant Team would put up a remark that the One-stop service office will not be fully effective unless implemented as part of a wider programme of reform. The World Bank has published guidelines on planning a one-stop shop for business registration.<sup>3</sup> Particular points to note are:

- There needs to be a plan endorsed at Cabinet level in view of the need for cooperation across government.
- There needs to be a dedicated Project Board capable of making key decisions and a dedicated Project Manager with sufficient status to resolve problems with senior officials in various agencies.
- Procedures and payment arrangements need to be analyzed and simplified before attempting to integrate procedures across different agencies or specifying a computer system. This should include a review of checking and authorization arrangements.
- There may be a need to change the law if it is no longer relevant to the changed circumstances, but any proposed change should be included in the project plan and short-term alternatives should be considered if changes in legislation would delay implementation of the project.
- There is a need to ensure that staff in the agencies and representatives of the private sector is consulted and their views taken into account when planning changes.

#### **2.4 Excessive Number of Visits by Investor to Authority Offices**

*Constraint Issue.* As shown in the process map and the consultation with the businessperson, the investor needs to make excessive number of visits to one authority office, including, at the minimum, (1) a visit to buy application form; (2) a visit to submit the completed application form; (3) a visit to get feedback and comments from the authority; (4) a visit to resubmit the application form as revised pursuant to the feedback from the authority; (5) a visit to get the cover letter from one authority to another authority; (6) a visit to follow up and deliver the comments from the lined agencies; (7) a visit to attend the meeting or orientation with the authority; (8) for some authority (i.e. Enterprise Registration Office and Tax Authority), a visit to make the fees and charges payment; and (9) a visit to obtain the business registration formality.

Also, most of the time, the managing director or the investor shall visit the authority by themselves or in case of proxy, a specific template of the power of attorney shall be executed and the template for those power of attorney template normally provides limited scope of delegation – so many proxies will need to be executed for each specific purpose.

*Problem.* Considering the fact that for one authority, the investor will have to pay at least 8 to 9 visits and the fact that in order to complete a whole process of business registration, it would require 5 steps, the total numbers of visits that the investor will have to make to all the authorities is approximately 45 visits. Every visit the investor makes to the authority would result in time cost and

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<sup>3</sup> World Bank. 2010. *How many stops in a one-stop shop? A review of recent development in business registration.* Washington, DC: World Bank. <https://openknowledge.worldbank.org/handle/10986/27886>

travelling cost that the investor will have to spend and the excessive numbers of visit would certainly result in excessive cost and delay.

Recommendation. The Consultant Team recommends the streamlining process of all the business registration process to reduce and eliminate the unnecessary visits of the investor to the authority. The potential elimination and integration of some visits include a visit to buy the application form; a visit to get the feedback on the application form; and a visit to resubmit the application form. Also, the unnecessary meeting either one-on-one meeting or public orientation should also be limited or else eliminated.

## **2.5 Excessive Involvement of Senior Management in Internal Document Flow**

Constraint Issue. In government offices in Lao PDR, it is common practice for routine matters to be referred to very senior officers. It is also common for action taken by staff to be reviewed by at least one manager. The process maps show many instances of this. Incoming application are routed via the Director General of the Department, the Department In-Out office, the in-out desk of the relevant division, the chief of the relevant division or unit in the relevant department before being considered by the technical staff. Then, before the official issuance of the business registration formality, the draft formality will have to be resubmitted to various levels of senior management.

Finally, it is in keeping with custom that only the Director General or, only in his absence, the Deputy Director General should give instruction and direction on how to manage the document flow and to sign the formality.

Problem. Research for government in the United Kingdom established that a document that had been checked several times by different people was no more likely to be correct than one which had been checked only once. Involving several people in a checking process means that there is a lack of clear accountability as anyone in the chain of checkers knows that others will also be checking the document. It leads to the question whether the involvement of the senior management in all these steps is a necessary or appropriate use of senior officers' time and whether the function could be delegated.

Also, considering the mandates, responsibilities and duties of the senior management, the excessive involvement of the senior management would practically and normally result in the excessive delay in the issuance of business registration formality and the internal document flow would not be smooth since sometimes the documents are all pending at the desk of the senior management.

Recommendation. The Consultant Team recommend the streamlining process of all the business registration process to reduce and eliminate the unnecessary involvement of the senior management. The potential elimination of the unnecessary involvement includes a process that the application shall be first routed to the Department Director General before the application will be sent further to the relevant division – it shall be evident from the first glance at the application form which division is the responsible division, therefore, it should not be required to be submitted to Director General just for the evident reason. Also, a process that the application shall also be submitted to the Chief of the relevant division for delegation of workloads to the relevant technical staffs should also be managed differently so that the application be reviewed and delegated to the technical staff directly.

Also, the Consultant Team would like to point out that the business registration certificate does not indicate any approval of the business beyond an acceptance that the applicant has satisfied the legal formalities necessary in order to exercise his or her statutory rights to establish a business; therefore, the Consultant Team would propose that the signing authority should be delegated to the lower level of the management – no need to reserve for the final execution by the Director General or Deputy Director General level only.

## **2.6 No Commitment to Timeline**

*Constraint Issue.* From the interview and consultation with the businessperson, there is rarely the case that the application form for the business registration were processed and issued within the timeline defined under the Law on Investment Promotion or Law on Enterprise or even with the timeline indicated by the authority. Also, there is no mechanism for the relevant departments to keep track of the total time each department takes for the review of one business registration formality and there is no clear enforcement or measure to undertake in case the timeline elapses and the authority fails to respond.

*Problem.* No commitment to timeline results in the endless timeline of the whole business registration application process and a tremendous uncertainty for the investor to obtain the business registration formalities.

*Recommendation.* The Consultant Team recommend that the relevant authorities should set targets for maximum response processing time for every step. It should be noted that the timeline set in the Law on Investment Promotion and Law on Enterprise only covers the timeline for the issuance of the Investment License and the Enterprise Registration Certificate that are just the very first formalities needed in the business registration while there is no timeline established for the application for other formalities (i.e. Tax, Seal or Signage approval). Therefore, the specific timeline should also be defined for the remaining business registration procedures and steps.

Also, if time limits are defined, then a decision is needed regarding what will happen when the limit is reached and the authority still fails to respond. One of the best practices in a few jurisdictions is to have a ‘Silence is Consent’ approach: if the deadline is passed without certification or explicit objection, the business should be automatically considered registered and the formalities shall be automatically issued.

## **2.7 Lack of Consistency and Uniformity for Government Application of the Business Registration Procedure**

*Constraint Issue.* From the observation of all the process maps conducted at the central level, at provincial level (Vientiane Capital and Champasack Province) and at the district level (Xaysettha and Pakse District), there are many big gaps and differences in the application and interpretation of the business registration procedure – from one level to another, from one province to another and from district to another. The comparison note of those differences are summarized in **Appendix 2**.

In addition, from the interview with the businessperson, the difference and inconsistency in the application and interpretation of the business registration procedure also occurs even in the same office. If more than one technical officer are reviewing the application form, the businessperson may have to experience the never-ending review and revisions of the application form due to the subjective determination and discretion that each technical officer may exercise. Also, sometimes



even though the application form has been approved and endorsed by the chief of the unit, the technical officer at the lower level may also make other additional comments in addition thereof. The businessperson also pointed out that it is a tradition and norm in the government function that a rotation would normally be undertaken from time to time and the rotation would most of the times result in the uncertainty on the investor due to the different application and interpretation of the new officers on the application process of the business registration.

Problem. The lack of the consistency and uniformity for Government application and interpretation of the business registration procedure results in a tremendous uncertainty and delay that the investor will have to experience in the process of application preparation, review and revision.

Also, the different application of the business registration procedure at different levels and different province / district results in the unfair and unequal playing fields for the businesses that are operating at the different locations. The business registration procedure at the district level is evidently easier and simpler than the registration at other levels results in the phenomenon that most of the enterprises and businesses are being registered at the district level as the sole trader even though a sole trader is not categorised and recognised as a separate legal entity from the owner under the Law on Enterprise based on the interpretation of the officers at the Enterprise Registration Office.

Recommendation. The Consultant Team recommend that firstly, the business registration process map at each and every Enterprise Registration Officer should be collected and made as the reference for the consideration and analysis of the gap and differences among each and every office. Those process maps would assist in demonstrating the 'as-is' situation. The efforts that the Consultant Team has undertaken is only a starting point for further process that shall be rolled out.

Then, based on the 'as-is' situation, the 'to-be' recommendations should be determined and those 'to-be' recommendations should be interpreted and rolled out in a uniform standard, manual and guideline for the use of all the business registration officers with an aim to reduce and limit the subjectivity and the discretion that the technical officer will be entitled to exercise.

Apart from the manual that shall be developed for the internal use of the government authorities, the key information should also be disseminated to the general public for their information and reference in the communication and interface with the government officers as well.

Finally, in order to ensure the on-going consistency and uniformity, a monitoring and grievance mechanism should also be developed for the businessperson to give feedback to the business registration process undertaken and processed by the governmental authorities.

## **2.8 Fee Collection resulting in Tax on Investment**

Constraint Issue. Throughout the business registration process, several service fees and charges are collected. For instance, for the issuance of the Enterprise Registration Certificate, the investor is required to make two separate payments for charges and service fees as follows: (1) the certificate fee for an establishment based on the proposed registered capital; and (2) the flat rate of service fee. For every step of business registration, the fee shall be collected before the delivery of those formalities to the investors.

*Problem.* Some fees calculated on the basis of registered capital or assets value, in particular the fee for the issuance of the Enterprise Registration Certificate and the registration of the list of assets with the State Asset Management Department, do not reflect the cost to government of registering the business and are simply considered from the international perception as a tax on investment at a time when the government should be encouraging entrepreneurs to invest in a new business. Many countries have recognised that this approach is counter-productive. Taxing capital invested in a company is actually prohibited throughout the 28 countries of the European Union.<sup>4</sup>

Also, from the research, the Consultant Team conclude that it is rare for countries to charge applicants for tax registration. Apart from Cambodia, neighbouring countries do not impose a charge. Fees are a disincentive to registration, when registration is in the interests of government rather than of the enterprise. Revenue should come as a result of taxation based on profits once the business is established.

*Recommendations.* All the fees are established by Presidential Edict 03/PR of 19 November 2008 on Fees and Service Charges. The Consultant Team understand that this is currently under review, which means that this is an opportune time to make changes. The Consultancy Team recommend that the system of fees and charges should be simplified and some burdensome certificate and service fees for business registration should be abolished.

## **2.9 Excessive Focus on Pre-Registration as opposed to Post-Registration Monitoring**

*Constraint Issue.* Based on the approach and the legal framework that is being enforced on the business registration process, the Government seems to focus intensively and excessively on the pre-registration of the enterprise (i.e. many qualifications; pre-requisite conditions have been set for the enterprise applicant; and a lot of documentations shall be submitted). On the contrary, after enterprise incorporation, there is no monitoring and inspection mechanism to assure whether or not all the pre-requisite conditions and qualifications are met and maintained, despite the fact that in reality, the post-registration monitoring mechanism is imminent and shall be established.

*Problem.* The excessive focus of the Government on the pre-registration conditions and qualifications discourages the investor in establishing and registering their business and unavoidably result in the increase in informal business operation.

Also, in the absence of the post-registration monitoring and inspection mechanism, the government cannot assure that the enterprises that have been established do have the qualifications as vouched in the application document submitted and approved so all the pre-requisite conditions and qualifications that they requested the investor to provide pre-registration process has no enforcement so there is no clear benefit from focusing on the pre-registration. So, some incorporated enterprises may be just a paper company with no business operation or performance nor capital paid-up and in that circumstances, certainly those enterprise despite being incorporated cannot create any job / employment or generate any economic value to the nation economy.

*Recommendations.* In order to solve the problem of investor's discouragement from business registration and to assure that all the enterprises that have been incorporated do have the required qualifications and can perform their business operation properly and efficiently, the Consultant

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<sup>4</sup> Council Directive 2008/7/EC of 12 February 2008 concerning indirect taxes on the raising of capital

Team recommend the shift of the government focus from the pre-registration to post-registration monitoring and inspection. The Government should make it easy for the business to be registered by reducing the unnecessary pre-requisite conditions or qualifications and shift the focus of all the resources from the pre-registration to strengthen the mechanism to monitor and inspection the performance of the business instead. It should be noted that from the observation of the Consultant Team, Lao PDR has a good legal framework that the authority can use to sanction the non-complying enterprise or businessperson; however, the Government still lacks the function to monitor the compliance and a clear sanction to be enforced.

The relevant authorities should focus their resources on the development of the efficient monitoring scheme. For instance, Enterprise Registration Office shall monitor the compliance of the enterprise with the Law on Enterprise (i.e. capital paid-up or any amendment made in the enterprise shareholding or management structure); the Tax authority shall monitor the performance of tax obligations; and the relevant technical authorities who issue the relevant operating licenses shall monitor to ensure the full compliance of the enterprise with the licenses conditions and their respective legal frameworks.

### 3 Specific Recommendations

From the review of the process map for each business registration step, both at the central level and Vientiane Capital, and the consultation with the businesspersons, the Consultant Team also have specific recommendations that should be implemented and undertaken at each business registration step as follows:

#### 3.1 Recommendations for the Application of the Enterprise Registration Certificate

- **Getting Application Forms**

*Existing Reforms:* One of the reforms that the Department of Enterprise Registration and Management has achieved is the launch of the department website ([www.erm.gov.la](http://www.erm.gov.la)). The investor can download the application form as a Word file directly from the website without having to buy it in hard copy at the department office.

Despite a good reform being undertaken, there remain some constraints that should be overcome. Firstly, from the consultation with the businessperson, there is a need for some guideline or instruction be given to the investor online about how to fill in the application form correctly to avoid the need for subsequent revision and resubmission. Then, secondly, the application form that the investor can obtain from the website currently, only covers the application for the business registration with the Department of Enterprise Registration and Management, not include the application and registration at the provincial or district levels. Therefore, in the investors at the provincial and district levels still need to buy the relevant application form in paper form from each Enterprise Registration Office.

Another constraint that the businessperson or investors are facing from the business registration at the provincial and district levels is that the Enterprise Registration Offices are regularly updating the applicable application form yet the investors are not aware of those updates. Subsequently, some investors are facing the situation that the application that they obtain and prepare is not the latest version and the officer at the Enterprise Registration Office would reject the application solely based on that particular problem.

Recommended Reforms: The Consultant Team recommends that MoIC should provide more guidance online and encourage the public and the investors to use the website. Also, the reform of online application form should be undertaken and rolled out to cover the provincial and district levels as well. Finally, the administration team of the website should assure that the most updated version of the application form shall be uploaded on the website and a notification should be given to the investor on the website if there is any change made to the application form.

- **Set of the Application Form**

The Ministry of Industry and Commerce has issued the standard template for the Enterprise Registration application package pursuant to the Enterprise Law and the investor is required to follow and comply with the standard template. From the observation of the Consultant Team and from the consultation with the businessperson, the Consultant Team are of the opinion that some of the application forms are not necessary.

More Documents required at Vientiane Capital and Champasack Province than central level. From the observation of the application form and the supporting documents required by the Enterprise Registration Office at the Vientiane Capital, at Champasack Province and at the Department of Enterprise Registration and Management, there is one key application document that the Vientiane Capital requires more than the Department level – ‘a summary of the business operation proposed by the enterprise’. This summary asked for the information on the detailed estimation of business needs, performance and operation that goes beyond the normal application for the enterprise incorporation.

The more details of information the business enterprise provides, the more discretion that authority of the Enterprise Registration Office would normally have and the more comments as well as revisions the investor need to factor in. It should be noted that some of the comments are on the commercial feasibility and viability that should be subject to the absolute discretion of the businessperson. The authority should respect the statutory rights of the businessperson to start their own business at their own determination. Also, considering the nature of the documents and the timeline that this application needs to be filled – during this time no enterprise is being established nor no business is operating - the Consultant Team doubts the reliability, and thus the benefit of the estimation made in the summary.

Enterprise Warrant. One of the key application form that the Consultant Team and the businessperson opined as unnecessary in the application form is the Enterprise Warrant that the investor are required to sign. The content of the warrant quotes some provisions of the relevant laws that the enterprise shall be obliged to comply with no matter what with or without the execution of such warrant. It should be noted that from the interview of the businessperson since the enterprise warrant was being signed as one document in the application forms, the

businessperson do not read through the warrant carefully and they would normally just sign the document without knowing the importance or the implication of such warrants. Therefore, assuming that the authority would like to use the enterprise warrant as the mean to inform the investor of all the relevant legal requirements that the investor shall comply with after the receipt of the Enterprise Registration Certificate, in reality from the interview with the targeted audience – the businessperson, the enterprise warrant does not solve the issue.

The situation at the Enterprise Registration Office of Vientiane Capital is even complicated, there are a few cases observed from the interview with the businessperson that the Office obliges the investor to sign in additional memorandum of understanding that defines additional requirements that the investor shall comply with and the Office requires that the investor shall sign and notarise such memorandum of understanding with the Notary Office. Then, it appears that the Notary Office refused to notarise such memorandum of understanding due to the lack of legal reference and background for such action. Consequently, it becomes the bottlenecked situation where the investor faces a lot of uncertainties in this regards because there is no way out of this situation.

Lease Agreement. The Enterprise Registration Office requested the investor to submit the executed lease agreement that the investor enters into as the supporting document in the application form. The Consultant and the consulted businessperson are of the opinion that this request is not practical since the authority forces the investor to enter into the lease agreement even before the investor can be assured that their enterprise will be incorporated. It should also be noted that it is common in Lao PDR that the one-year or at least three-month advance payment of the rental fee will be obliged from the investor for the entry into the lease agreement. In that circumstance, therefore, the investor will have to bear the risk of paying the rental fee in advance and may lose those initial investments without getting the enterprise incorporated at the end.

Also, in the case of Vientiane Capital, if the enterprise will have a separate production facilities, the lease agreement shall be submitted for both headquarter and production facilities and that complicates the business registration documentation since it would mean the investor will have to enter into two separate lease agreements and pays two rental fees with still a lot of uncertainties.

Form over Substance. From the interview with the businessperson, sometimes the comments or feedbacks that the investor received after the review of the application form by the Enterprise Registration Office, in particular at the Vientiane Capital, involves form over substance – meaning the comments sometimes relate only to the format of the template (i.e. spacing or paper indent) and with those comments, the application form cannot be processed.

Recommended Reforms: The Consultant Team would recommend the following reforms to streamline and simplify the business application documents:

- (1) Application form of the enterprise registration shall be the same and consistent for both the registration at the central and provincial level – in particular, the summary of the business operation enforced at Vientiane Capital and Champasack Province should be removed since it implies the excessive exercise of discretion extent that the Enterprise Registration Office should have and exercise under the Law on Enterprise;
- (2) The enterprise warrant or the additional guidelines that the Vientiane Capital require the investor to comply with should be removed from the required application process because

the relevant authority can exercise their rights and mandates under the relevant laws to enforce the sanction in case of non-compliance or non-conformity that the investor may commit so there is no need to sign this additional documents that would burden the investor;

- (3) The requirements for the land lease agreement of headquarter and production facilities should be reconsidered of its necessity and the rationale behind this requirement, taking into consideration the real estate market practice of Lao PDR. An alternative should be assessed and it should be noted that in most of the countries, the lease agreement, in particular for the production facilities, are not needed at this stage. Also, in addition to the lease agreement, the investor is also required to prepare and submit the Address Certificate signed and endorsed by the Chief Village as the evidence for the presence and existence of the office location and in order to get such Address Certificate, the Chief Village would normally still request for the lease agreement. Therefore, the reform alternative that will be adopting to resolve the issue of the lease agreement should also take into consideration the requirement for the Address Certificate as well.

- **Business objectives and Negative List business**

Business-based Concept. It should be noted that the current business registration under Lao PDR laws is on a business-based basis, meaning that the enterprise will only be established if the relevant authorities give a consent that such enterprise is permitted to conduct all of the business operations that such enterprise has proposed. Those detailed objectives are currently included in the Articles of Association and at the back of the Enterprise Registration Certificate.

Negative List. The business-based basis permission is restated in the issuance of the ‘Negative List’ that defines ‘business types that are highly sensitive to national stability, social order, and fine national traditions and to the environment, which require the permission of, and inspection<sup>5</sup> by, the relevant authorities prior to the registration of the enterprise’.

Enterprise Registration Certificate vs. Operating License. The Government of Lao PDR is currently interpreting that upon the obtainment of the Enterprise Registration Certificate; such enterprise shall be entitled to commence their business operation. However, it should be noted that the Law on Enterprise made it clear that the Enterprise Registration Certificate is just the evidence certifying the approval of the legitimate establishment of an enterprise only<sup>6</sup>. Therefore, after the legitimate establishment of any enterprise, if that enterprise intends to carry out any specific business where the relevant laws defines that the specific authorization or formalities are needed, such enterprise shall apply for those operating license.

Technical Comments shall be given twice. As shown in the process map for the application of the Enterprise Registration Certificate both at the Department of Enterprise Registration and Management and the Department of Industry and Commerce, Vientiane Capital, prior to the

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<sup>5</sup> Translators note from the English version of the Enterprise Law 2005: In the Lao language, the same word is used to represent all of the following related (but slightly different) concepts: “control”, “inspection”, “supervision”, “audit” and “monitoring”. The translators have chosen “inspection” (and its variants) as the most appropriate English equivalent but readers should note and bear in mind the other meanings that might have been intended.

<sup>6</sup> Article 14, Law on Enterprise 2013

issuance of the Enterprise Registration Certificate, the technical lined agencies are required to provide their preliminary approval of the proposed investment by the enterprise and the Departments will not issue the Enterprise Registration Certificate until the technical agency gives a consent. These procedures shall be undertaken once before the issuance of the Enterprise Registration Certificate and then after the receipt of such certificate and such enterprise will need to re-submit the application to the relevant technical authorities to apply for the operating licenses again. Thus, the same application set shall be submitted to the same authority twice.

Existing Reform. In the case of the registration at the Department of Enterprise Registration and Management, there is a major improvement that only the Negative List business will be submitted to the technical comments, not all of them.

On the contrary, the situation at the Department of Industry and Commerce, Vientiane Capital, the situation is so different and severe – (i) all the foreign investment no matter which business sectors they are in, disregard of the Negative List, shall be submitted to the technical lined agencies for comment; (ii) even for the domestic investment if the authority exercises their discretion without a clear criteria that such business operation may cause any impact (environmental and other impacts), the authority shall submit the application to get the technical comment again even though such business operation is not listed in the Negative List; and (iii) in addition to technical comments from the lined agencies, a so-called One-Stop Service Committee meeting shall be held to consider and approve the application again. It should also be noted that in that Committee meeting, all of the departments will be invited to provide their feedback and inputs whether or not such authority will have a direct mandate on that specific business.

Recommended Reforms:

- (1) The concept of '**a general commercial company**' that can conduct any lawful activity and do not need to define clearly at the incorporation stage what would be the specific business operation that they will be performing should be introduced and considered.

The logical rationale for the general commercial company concept is that it is not necessary to have specific objectives for the business operation at the incorporation stage unless the shareholders decide to limit the enterprise's activities. It should be emphasized that the concept of 'a general commercial company' does not mean that there are no restriction on the enterprise's activities, but any restrictions arise from the law.

Also, it should be noted that under other relevant laws and regulations, if any specific business operation would require the application of the specific operating licenses or authorization, such enterprise would still be required to apply for that authorization before it can lawfully operate. The enterprise registration should not imply that the investor could operate the business without any required licenses from the relevant agencies.

Thus, it can be concluded that there will not be any difference in terms of the authorization application requirements between the current scheme of business-based company or general commercial company yet the business registration process, in particular the application for the Enterprise Registration Certificate, will be substantially improved and expedited.

- (2) The mandate of the Enterprise Registration Office and the function of the Enterprise Registration Certificate shall be reconsidered only to certify the legitimate establishment and incorporation of an enterprise, not implying the operating license.

Therefore, the Enterprise Registration Certificate should be issued right away without any requirement for the technical comments from the lined agencies. The technical comment will only be needed upon the application for the operating license pursuant to the relevant laws and regulations at the later stage when the enterprise is fully incorporated.

Also, during the review of the application package of the Enterprise Registration Certificate, the Enterprise Registration Office should only review the compliance of such enterprise incorporation with Law on Enterprise and other related regulations, not exercise their discretion to the technical and financial feasibility and viability of business operation.

- (3) The so-called ‘One-Stop Service Committee’ meeting at the Vientiane Capital Department of Industry and Commerce should be abolished and removed from the requirement for the issuance of the Enterprise Registration Certificate.

- **Enterprise names**

The rules regarding the names of enterprises are set out in the Enterprise Law<sup>7</sup>.

*Existing Reforms:* The Cabinet of Ministry of Industry and Commerce has issued Notification No. 1567, dated 19 May 2017 to revoke the requirement for the application to reserve the enterprise name and the approval of the enterprise name. Pursuant to such Notification, therefore, the investor is no longer required to sign the name reservation form and put forward 3 options for consideration of the enterprise name. Subsequently, the process of applying for the Name Reservation Certificate is no longer required and it should be reasonable to conclude that the business registration process should be expedited to some extent.

In addition, the DERM website includes a facility to search registered names where the investor can do an online self-search of the enterprise name that they would like to use against the enterprise database before the preparation of whole package of the application form and the submission of such form to the authority where the authority may reject the application form due to the prohibited enterprise name that the investor would like to use.<sup>8</sup>

Finally, when the investor submits the application to the Division of Enterprise Registration Management, Department of Enterprise Registration and Management, the technical staff at the front desk will also do an enterprise name search in the internal enterprise database to reconfirm the investor on-site at the first visit whether or not the selected name can be used so the investor will know at once whether or not they will need to revise the application form to reflect the permitted enterprise name – no need to wait for another day to get the confirmed enterprise name.

Application Form for Enterprise Name Reservation. From the discussion and confirmation with the Department of Enterprise Registration and Management, Ministry of Industry and Commerce, the Form for the Enterprise Name Reservation has been revoked nationwide but in reality, from the

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<sup>7</sup> Article 21 and Article 22 of Law on Enterprise 2013

<sup>8</sup> <http://www.erm.gov.la/index.php/en/search>



consultation with the businessperson, the authority at the Vientiane Capital Department of Industry and Commerce still requested the submission of such application form.

Still there are some constraints that need to overcome. Despite all the major improvement that the Department is attempting to overcome, in reality from the consultation with the businessperson, the applicant for the Enterprise Registration Certificate is still obliged to fill in the application to reserve the enterprise name, in particular, in case of registration at Vientiane Capital or the Provincial Department of Industry and Commerce.

Then, for the enterprise name search facility at the provincial Enterprise Registration Office, it should be noted that the facility is not fully functional and the provincial Enterprise Registration Office is still required to submit the proposed name to the National Enterprise Database Office for their confirmation of the duplication and the applicability of the selected enterprise name and it would take some times before the confirmation will be given from the National Enterprise Database Office. The investor applying for the Enterprise Registration Certificate at the provincial level, therefore, cannot get an immediate response whether or not their selected enterprise name can be used.

For the website facility, from the interview with the businessperson, most of the businessperson does not even acknowledge the existence of the website so they have never tried to use the website facility. Also, the Consultant Team has tried to use the search facility from the department website to try-out, while the web site facility is operational, some problems have been experienced in using the online search of the enterprise name, in particular, the insertion or omission of a space in a name can lead to a misleading result.

No Enterprise Name checking at District Level. From the interview and office visit at Pakse District, the enterprise name is not checked and several enterprises bear the same name, despite the fact that those enterprises are situated at the same location (i.e. same market).

Recommended Reforms:

- (1) The enterprise name shall be checked to ensure that no same and similar name will be used for more than one enterprise nationwide – in particular the enterprise name shall also be checked at the district level as well;
- (2) The Consultant Team recommends that, apart from addressing minor issues with the functioning of the software and website facility, the system should be developed in order to identify names which are similar, if not identical, to the name being searched, and to ensure that the name is not prohibited under the Enterprise Law. Applicants would then be able to determine with confidence whether a name was acceptable without reference to officials. The obligation would be on the applicant to ensure that the proposed name would meet the requirements of the law when submitting an application for registration of the enterprise.
- (3) The website facility should be rollout for the utilisation of the Enterprise Registration Office both in Vientiane Capital and other provinces. Lao PDR is one of many countries with high Internet penetration so the use of Internet and website facility should be encouraged. At least, the authority at the provincial and district levels should be entitled to give some

indicative answer to the investor at the front desk about the applicability of the enterprise name.

- (4) The consistency of the required application documents should also be assured between the Enterprise Registration Office at the Department of Enterprise Registration and Management and at the provincial level, in particular, the requirement for the application of the enterprise reservation name.
- (5) The search facility is very useful to applicants for registration and businessperson should be encouraged to use it.

- **Verification of Foreign Investor and Managing Director**

From the interview with the relevant businessperson and the officers at the Enterprise Registration Offices at all levels, one of the key delay in the application of the Enterprise Registration Certificate is the process of verification of the foreign investor and the foreign managing director.

From the discussion with the Enterprise Registration officers at Champasack Province, the situation is getting worse and more severe since the relevant department of public security even requested that the foreign investor or managing director be summoned for the interview before the verification clearance will be given. Such summon cost time (time cost, traveling cost and other associated costs), delay and cumbersome with no reasonable justifications.

The relevant department informed the Consultant Team that this is quite a sensitive issue that involves the national security so it is necessary to process this verification but they would try their best in giving a feedback from the verification back to the Enterprise Registration Office within 10 working days.

However, the businessperson informed the Consultant Team that in reality, this process would normally take at least 1 month to proceed.

*Recommended Reform:* In acknowledgement of the importance and necessity of this verification process, the Consultant Team would like to emphasize that a clear commitment to a target time should be established for this function and such target time shall be monitored and enforced.

<b>3.2 Recommendations for the process of Articles of Association Registration and the List of Assets with the State Assets Management Department</b>
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Prior to the application of the Tax Identification Number with the Tax authority, the applicant is required to register (i) the Articles of Association; (ii) the Incorporation Contract; and (iii) the list of assets with the State Assets Management Office of the Ministry of Finance or at Provincial Department of Finance – Vientiane Capital and Champasack Province.

Registration of the Incorporation Documents. The Articles and Association and the Incorporation Contract that shall be registered are the same documents as approved and certified by the Enterprise Registration Office. It should also be noted that the registration of these two documents are undertaken only once prior to the application of the Tax Identification Number, the revisions of those two documents are not registered so there is no guarantee that the Articles and Association and the Incorporation Contract registered with the State Assets Management Department will be

the final and definite one. On the contrary, it should be noted that all the amendments made to the incorporation documents will be registered and approved by DERM so the most updated incorporation documents will be recorded at DERM that is the key responsible department anyway while State Assets Management Department does not get involved or informed.

Registration of the List of Assets. For the list of assets, the enterprise shall be entitled to freely estimate and indicate how many assets that they will have; provided that the assets should be divided into both cash and other fixed assets. It should also be noted that at the time this list is being prepared and registered, the enterprise is not incorporated so no asset is acquired. Also, there is no mechanism to verify or crosscheck if the assets registered will be acquired after the enterprise incorporation.

Businessperson's Opinion. The businessperson normally does not have any specific problem in preparing the list of assets and register such list, the Articles of Association and the Incorporation Contract, except the issue with the fee calculation for the assets registration that shall be calculated depending on the amount of assets and normally would be high. However, they questioned the underlying rationale and the necessity for such registration.

It should be noted that there is one interesting case study that we gathered from the interview with the enterprise registering the list of assets with the State Asset Management Division at Vientiane Capital where the authority did verify and crosscheck the assets (in particular, its value) in the list that the investor has provided. In such circumstance, the investor had prepared the list of assets based on the actual value that the investor has paid to acquire the land and other equipment; however the authorities verify the value of those assets by applying the government-estimated value declared for such piece of land that are substantially lower than the market price that the investor paid. The authority, then, instructed the investor to reduce their registered capital as defined under the approved Enterprise Registration Certificate to show the estimated value, not the actual market price. The investor, therefore, is required to reduce their registered capital to match the assessment of the State Assets Management Division even though it is less than the actual spending that they have made. The Consultant Team is of the opinion that the governmental authority should not be in the position of adjusting the business operation of the investors like in this circumstance.

Decree No. 52/PM. The only relevant regulation that prescribes the requirement for the registration of the documents and list of assets from the interview of the State Assets Management Department is the Prime Minister's Decree No. 52/PM dated 13 March 1993. It is prescribed under Article 1 that document registration has the key objectives of:

- (i) collecting the statistics relating the socio-economic transactions;
- (ii) effectuating the documents to have full legal value;
- (iii) ensuring the collection of the documents for the ease of reference in the law proceedings; and
- (iv) generating incomes for the state.

Article 2 prescribes that in order to ensure the full effective and legal value of every document, those documents shall be registered and the registered documents will have legal value until there is evidence to prove otherwise.

It should be noted that from the desktop review of the Consultant Team in both the Decree No. 52/PM and the Presidential Edict No. 03/PR that prescribes the applicable fees for the registration of all the documents, there is a clear legal reference for the registration of the Articles and Association and potentially for the Incorporation Contract; however, there is no legal reference for the registration of the list of assets. It is just the interpretation of the relevant authority that the list of assets shall be registered and what would be the applicable rate of registration fee.

From the interview and observation of the work undertaken at the State Assets Management Department, the purposes as prescribed under the Prime Minister's Decree do not seem to be satisfied since there is no centralized record of all documents registered and there is no validation or verification of the contents of the documents at all – every document submitted is registered. Thus, the only perceived purpose is to require further payments to government.

Registration at the Vientiane Capital. The situation at Vientiane Capital is very complex and different from the Department, including (i) the Articles of Association, Incorporation Contract and List of assets shall be notarised with Notary Office before the registration; (ii) the bank statement of the enterprise's shareholders shall be submitted as supporting document in the registration; (iii) the officer will not accept the registration of documents of the foreign-owned enterprise or the foreign joint venture; and (iv) all the assets in the list of assets shall be transferred into the enterprise name even though the enterprise does not exist yet.

The registration at the Champasack State Assets Management Office is quite similar with the State Assets Management Department at the Ministry of Finance yet much simpler.

Recommended Reforms:

- (1) The Consultant Team recommends that the requirement for registration of Articles of Association and the Incorporation Contract at the State Assets Management Office of the Ministry of Finance be abolished since this seems to be a duplication of work between the Enterprise Registration Office that has a direct mandate to ensure the consistency of those documents with the relevant laws and regulations.
- (2) The Consultant Team would also recommend that the requirement for registration of the list of assets at the State Assets Management Office be abolished since it will only impose the burden on the businessperson both in time cost that needs to be spent for the preparation of this list and the cost incurred from the registration fee.
- (3) In order to accomplish those two recommendations, the Decree No. 52/PM may need to be amended or revoked.
- (4) The registration in all the offices should be adjusted to be uniform and consistent.

### **3.3 Recommendations for the application of the Tax Identification Number**

- **9-digit Tax Identification Number / 12-digit Tax Identification Number and Enterprise Code**

The Consultant Team observe that at the present, one enterprise registered both with Tax Department, Ministry of Finance, and the Tax Division of Vientiane Capital / Champasack Provincial Department of Finance have at least 3 identification numbers, including: (i) 9-digit tax identification number employed for the tax payment record; (ii) 12-digit tax identification number issued pursuant to the Decree on Tax Identification Number but from the discussion with the relevant authority is not utilized, except for the import duties clearance; and (iii) the Enterprise Registration Code issued by the Enterprise Registration Office in the Enterprise Registration Certificate.

It should also be noted that the 9-digit tax identification number is being issued at the Tax Department and some major provinces (i.e. Vientiane Capital), not nationwide, so for those other provinces, it remains unclear which mechanism is being used to monitor and inspect the tax payment of the enterprises in those provinces.

Existing Reform. From the interview with the Tax Department and the National Enterprise Database Office, there is one initiative supported by Korea in the improvement of the Tax system to merge and synchronize the 9-digit Tax Identification Number system into the 12-digit Tax Identification Number system before the revocation of the 9-digit Tax Identification Number. Also, under the same initiative, the Tax Identification Number system and the Enterprise Registration System will be merged with one single focal point at the Enterprise Registration Office so the investor can register for the Enterprise Registration Certificate and the Tax Identification Number Certificate just from the Enterprise Registration Office. It is anticipated that this Korean initiative will be completed in 2019.

However, it should be noted that at the final successful initiative, there would remain two separate digits for each enterprise, the Enterprise Code and the 12-digit Tax Identification Number.

From the observation of the tax registration process at the provincial level (in particular at Champasack Province), not every enterprise has the 12-digit Tax Identification Number. The authority will only issue the 12-digit Tax Identification Number to the enterprise that will be registering in the value-added tax system; therefore, if any enterprise is not qualified and not voluntary to register into value-added tax, such enterprise will only obtain the 9-digit Tax Identification Number and not the 12-digit.

It should be noted that the Consultant Team does not cover the process map for the tax registration at the District level where most of the enterprise are subject to lump-sum taxes.

Recommended Reform. The Consultant Team are in strong support of the Korean initiative to synchronize and eliminate the issuance of two separate Tax Identification Number. In addition, the Consultant Team would also recommend the detailed assessment of how other provinces that are not subject to the 9-digit Tax Identification Number is functioning and how the provinces are functioning the 9 and 12 Tax Identification Numbers so that the final Tax system can be used nationwide with a good success.

Also, the Consultant Team would like to put a remark that a good international best practice also indicates that the next development that are highly encouraged is to use a unique ID for legal entity, then link all information to the same entry. Having said this, the Consultant Team would encourage that the Enterprise Code should also be used for the tax payment supervision and monitor purpose as well.

- **Application Form and the Supporting Documents**

From the review of the application form and the list of supporting documents that the investor shall submit for the application of the Tax Identification Number, both 9 and 12 digits, and from the consultation with the businesspersons, some of the information required in the application form and some of the required supporting documents should be revisited of its necessity.

Application Form. The application form for 12-digit Tax Identification Number requires some information that have already provided and recorded in the application process of the Enterprise Registration Certificate (i.e. information relating to the shareholders) and some of the information may not be practicable to give at the stage of enterprise incorporation (i.e. warehouse information or branch information).

Investor's Bank Statement. For the registration and application of the Tax Identification Number at the Vientiane Capital, a foreign investor is required to submit their bank statement information to the authority.

The authority informed that they would like to be assured that the investor would have sufficient capital to contribute into the enterprise after incorporation.

However, it should be noted that since the bank statement is just a snapshot of the financial status of the investor, after getting the bank statement, the investor shall be entitled to withdraw those money from the bank account right away so the bank statement would not be able to give the required assurance to the authority.

Also, this requirement impose unnecessary burden on the investor since they will have to transfer money in one specific bank account to show the authority and it should be noted that these information is personal and sometimes confidential.

List of Employees, Tax Payment Plan and Income Generation Annual Plan. For the application of the Tax Identification Number, in particular for the 9-digit Tax Identification Number, the investor is required to prepare the List of Employee with the name, position and estimated salary for those employees and at this stage when the enterprise has not been incorporated, it is not feasible and practical to have those list compiled. This also applies to the list of assets that is required to be registered and submitted.

Also, the investor is required to prepare the tax payment plan and the income general annual plan and this information are all speculation and estimation without any clear basis.

From the consultation with the businessperson, there are two opinions in this regards, some has a serious concern in preparing and providing these information to the authority at this stage, since they are not certain about the binding effect of these information - they do not want to over-promise or over-commit to their estimation; on the contrary, some investors may not have a big concern on preparing these information yet they do not see the necessity for the submission of all these information to the authority so their concern is on the time cost for the preparation of all these list – the more documents they will need to submit, the more time, more burdensome and more cost will be involved.

Recommended Reforms:

- (1) The Consultant Team would recommend the streamlining of the application form that are needed to submit for the application of the Enterprise Registration Certificate and the Tax Identification Number to avoid any duplication of information needed and to eliminate any unnecessary information; provided that this streamlining should be undertaken at the same phase as the Korean initiative to synchronize the system;
- (2) The requirement for the submission of the Investor's bank statement should be removed. It should be noted that under the Law on Investment Promotion, the investor is required to import capital into Lao PDR within 90 days after incorporation and under the Law on Foreign Currency Management, foreigner who imports capital into Lao PDR shall apply for the Capital Importation Certificate, so the Government should shift their focus from getting the bank statement before enterprise incorporation to setting up a mechanism to assure the capital importation after the enterprise incorporation with the Bank of Lao PDR;
- (3) The list of employees, list of assets, tax payment plan and income generation annual plan should not be required at this stage of enterprise incorporation. After incorporation, the enterprise is obliged under the Law on Tax to pay their tax obligation and apply for the Tax Payment Certificate on an annual basis and the tax authority should be able to monitor and inspect the actual list of employee, list of assets and the annual income generation that should give a strong commitment to the authority than the estimation. Therefore, the tax authority should focus on those post-registration steps.

- **Investor Meeting and Orientation**

One-on-One Meeting with Tax Department. In case of the Tax Identification Number application at the Tax Department, the investor shall be called to have one-on-one meeting with the technical staff from the Tax Collection Division and the technical staff will explain the tax obligations to the investor before the entry into the memorandum of understanding between the investor and the Tax Department.

Orientation at Vientiane Capital Tax Division. On the contrary, in case of the Tax Identification Number applied at Vientiane Capital Tax Division, the investor will be called to attend the orientation hosted by the Legal Affairs Unit where the authority will give a lecture to investors and before the investor leave, they will have to sign the memorandum of understanding as the evidence that they have attended the orientation and they fully understood their tax obligations.

From the discussion and observation of the tax application process at Champasack Province, it should be noted that this kind of meeting or orientation is not provided.

Business's Opinion. From the consultation with the businessperson, some found the information provided in the one-on-one meeting or the orientation useful for them, in particular the foreign investor, however, it should be noted that the information content is only disseminated in Lao language so those investors will have limited access to all the information they intend to get. Acknowledging the usefulness of the information provided, it becomes burdensome for the investor to attend those meetings and it results in time cost and sometimes travel cost for the investor to attend the meeting or the orientation. So, some businessperson finds these mandatory meeting or

orientation unnecessary and burdensome. They fully understand that with or without this meeting or orientation, they would always be obliged to comply with all the required tax obligations under the Lao PDR laws so it is considered unnecessary to attend the meeting and sign a separate binding memorandum of understanding.

*Recommended Reform:* The Consultant Team would recommend the removal of the process of calling the investor to attend either one-on-one meeting with the Tax Department or the orientation with the Vientiane Capital Tax Division. However, if the Tax authority would like to facilitate in explaining the tax obligations to the investor, there would still be other approach to communicate with the investor (i.e. the publication of a guidebook or booklet on tax obligations to give a guidance to the investor) and the Consultant Team would highly encourage those approach. This guidebook or booklet can also be disseminated upon the issuance of the Tax Identification Number Certificate and it should also be prepared in both Lao and English languages.

### **3.4 Recommendations relating to Company's Seal**

Seal Production undertaken only by the Government and only at Vientiane Capital. Seal production is the responsibility of the Department of Family Registry and Foundation Construction at the Ministry of Public Security, which produces all official seals. The format of a company seal is standard, with the only variable being the name. As shown in the process map, the approval and production process involves 24 steps. Following this, the seal still has to be registered with the Provincial Department of Public Security. The relevant department informed that the normal process would take 3 to 4 weeks to complete.

From the observation at the Department office, the carving and compiling process of the seal are all manual without the use of any modern technology and it can only be produced at Department of Family Registry and Foundation Construction in Vientiane Capital. Therefore, every enterprise registered anywhere by any level of authority is required to travel to Vientiane Capital to produce the company's seal or to hire the authority to assist in the production of such seal.

The seal has a standard format, with only the name of the enterprise being distinctive. The particular arrangements associated with production and registration does not provide any real safeguard against forgery.

Seal Utilization Approval and Seal Registration. After the production of a seal by the Department of Family Registry and Foundation Construction, Ministry of Public Security, the enterprise shall also obtain the utilization approval from the same department before registering such seal with the Provincial Department of Public Security where the enterprise is situated again.

The total process of seal registration at the Vientiane Capital would take from 1 to 3 weeks to complete. On the contrary, the seal does not need to be registered at Champasack Province and the investor is only required to submit a copy of the business registration documentation and stamp the company's seal with the relevant division so the whole process only takes the maximum of 30 minutes to complete. The process of registering the company's seal at both provinces are undertaken with the same purpose of ensuring that the relevant division will get the record of the authenticate company's seal for comparison in case there is any doubt of the investor whether or



not the relevant documents have been stamped with the authenticate seal. The two different approaches that two provinces are undertaking can ultimately achieve the same purposes but the approach adopted by Champasak Province is much more simpler and faster.

Seal Requirements in other Countries. Many countries no longer require an enterprise to have a seal. In those countries that still require a seal, this can in most cases be produced in 1 or 2 days.

Even where a requirement for a seal still exists, no other country in South East Asia requires that a seal is carved by a government agency. The function is invariably carried out by private sector sealmakers, though there are in some cases requirements for prior authority or subsequent registration.

Recommended Reforms. From the research, the Consultant Team noticed that no other country in South East Asia requires that a seal be carved by a government agency. It is even rare from the Consultant Team's best knowledge, that any other country where seal production is handled by a government agency. One of the very last countries in South East Asia that just recently shifted the seal production work from Government to private sector is Vietnam.

Like Lao PDR, in Vietnam, an official company seal or chop is used for legally authorizing documentation. A seal gives legal validity to any documents or papers issued by companies, organizations or agencies. Each company or organization is permitted to use only one seal. In case the company or organization needs another seal with content identical to the first one, such second seal must have a specific mark that is distinctive from the original one. The Ministry of Public Security has the right to grant seal engraving permits, uniformly prescribe specimens of all seal types, and manage seal engraving activities.

In November 2014, based on the feedback received from the businessperson about the cost and the possible negative ramifications from the loss or misuse of the seal, the National Assembly promulgated Law No. 68/2014/QH13 on enterprises, which become into force on July 1, 2015. Under the new promulgated law, companies shall have the right to freely decide the form, content and amount of their seals, provided that the contents of seals display company's name and ID number. Companies must inform the business registration authority about the design, number and content of its company seal before using it. In addition, when the law takes effect, the Ministry of Public Security shall no longer manage and grant seal engraving permits.

Alternatively, the Consultant Team acknowledge and understand that it will not be possible to eliminate the requirement for company's seal immediately, considering the existing legal framework and the social norm that considers a company seal as one of the key element to authenticate any legal documents signed by any enterprise. Therefore, alternatively, if the seal authorization cannot be reformed entirely, there are 2 recommended reforms, including: (i) considering the privatisation or public-private partnership of the seal production in order to decentralise and ease the production procedure; and (ii) registration at the provincial level (if needed) shall be undertaken by adopting the simpler approach of Champasack Province.

### 3.5 Recommendations relating to Company's Signage Approval

The Law on Enterprise requires that after registration, every enterprise shall post a sign indicating its name<sup>9</sup>; however, there is no mandatory requirement about what are the contents and template of such company signage.

The relevant legal framework that refers to the specification and template of the company's signage is the Decree on Signage<sup>10</sup>. The company signage shall state the office location; contact information; the Enterprise Registration Certificate number and the Enterprise Code as issued by the Industry and Commerce Sector and the company signage shall have yellow background and red letters. The Decree on Signage defines that in case that any enterprise that intends to design their signage to be unique and different, it shall obtain the approval from the Information, Culture and Tourism Sector.

From the observation and interview with the businessperson registering their enterprises at all levels – central department, Vientiane Capital and Champasack Province, it is very rare that the business will have the standard enterprise signage (the one with yellow background and red letters). Most of the businessperson would normally design their own company's signage; however, it should be noted that the content of those company's signage do not have all the information required in the Decree on Signage – normally would only identify the name of the enterprise (not the location nor the enterprise registration code).

The approval of the signage content issued by the Information, Culture and Tourism sector has the validity period of 1 year and shall be renewed on an annual basis. The businesspersons do not see a necessity for the renewal requirement of the signage since the content of the company signage remains the same.

*Recommended Reform.* The Consultant Team would recommend that firstly, a clear decision and direction shall be given from the relevant governmental authorities, what kind of the company's signage (the yellow background with red letters one or the one designed by each enterprise) that the enterprise shall post in order to satisfy the requirements under the Law on Enterprise.

If the yellow background with red letters signage is not required and mandatory, then, the Decree on Signage shall be revised accordingly to avoid further confusion among the investors. If any enterprise can design and make their own company's signage, then the key question would be whether or not that company signage shall have the required content as defined in the Decree on Signage (i.e. bearing the office location, contact information, enterprise code or enterprise registration certificate number). The relevant government authorities shall make it clearer about all these requirements. Currently, the Consultant Team do not see a clear difference in terms of the approval procedure between the company's signage as required under the Law on Enterprise and the approval of other signage (i.e. advertisement signage). If the company's signage shall have the specifications as prescribed under the Decree on Signage, then the Consultant Team do not see any necessity to get the approval of such signage content so the approval procedure should be removed in that case.

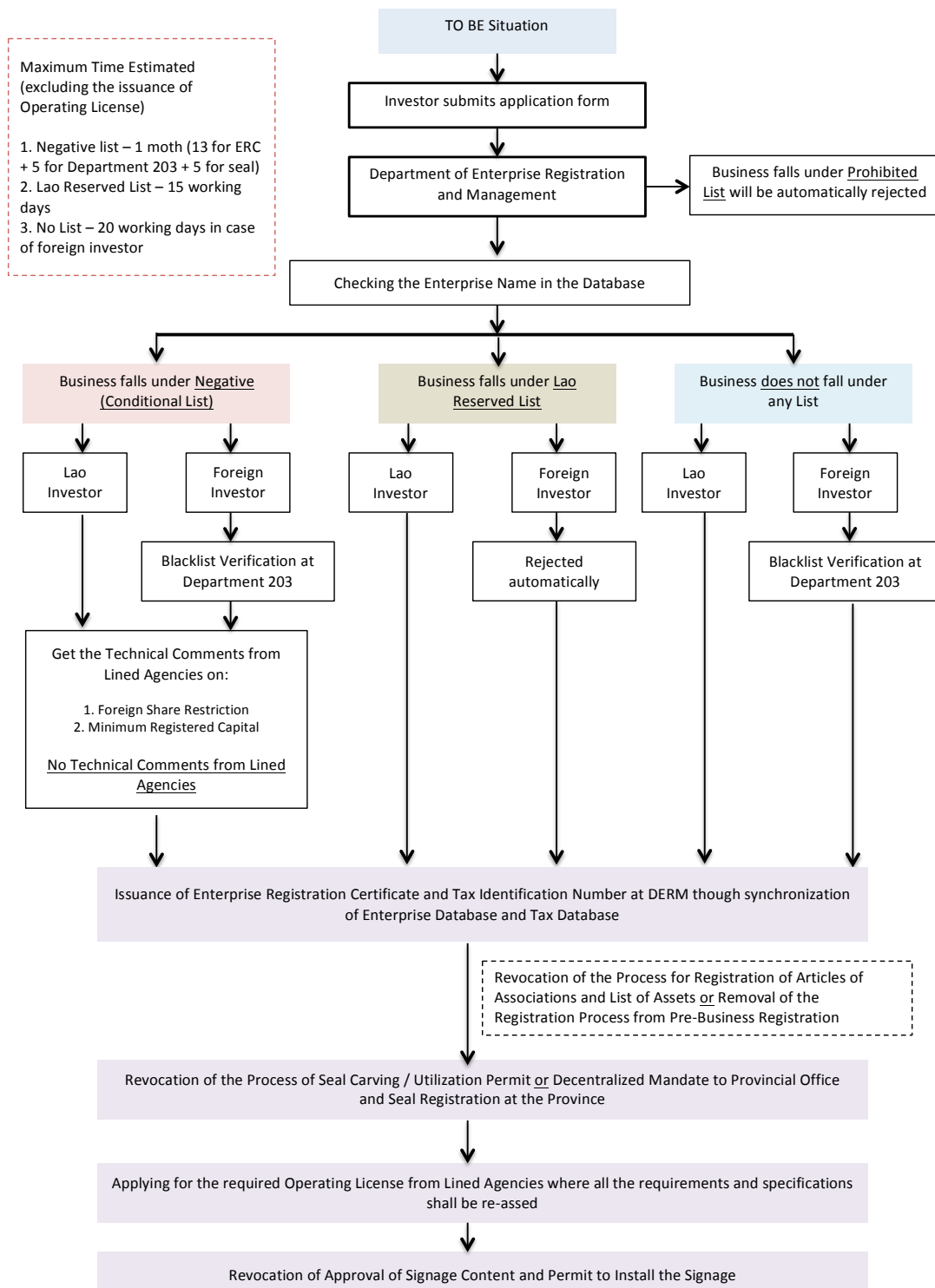
<sup>9</sup> Article 26, Law on Enterprise 2013

<sup>10</sup> Decree on Signage No. 36/PM, dated 29 January 2016 – Article 20 and Article 21

Also, the Consultant Team would recommend that the formalities relating to such company signage, issued by the Information, Culture and Tourism Sector shall be issued with no validity and shall not be required for renewal as long as the content is not changed.

#### 4 Recommended Reform on the Overview Process of the Business Registration

Based on the recommended reforms that the Consultant Team proposed both in general terms and specific terms, it is anticipated that the overview process of the business registration will be improved and the time and cost incurred for the business registration should be substantially reduced as shown below:



## 5 How to Implement the Proposed Recommendations

In order to achieve these recommended reforms in the overview process as depicted above, it would definitely require several commitments and efforts from the Government. The Consultant Team acknowledged and realised that with the financial and human resources of Lao PDR, it would not be practicable and feasible for the Government to adopt and implement all of these recommendations at the same time. Therefore, the prioritization and the phase-improvement approach should be undertaken.

Based on the recommendations that the Consultant Team provided for both in terms of general recommendations and specific recommendations, the Consultant Team would recommend the following phase development, divided into recommendations that can be implemented in short-term (3 to 6 months), medium-term (6 months to 1 year) and long-term (more than 1 year):

Short-Term Recommendations		
Recommendations	Activities	Implementing Agencies
Improved Public Access to Information relating to Business Registration	<ul style="list-style-type: none"> <li>Information sharing mechanism among all the relevant authorities about their responsible business registration steps</li> <li>Disclose the relevant information relating to Business Registration (including the steps, required documents, qualifications, timeline, downloadable application forms and other explanatory notes)</li> </ul>	DERM taking the lead in the coordination with other relevant authorities
Avoid the duplication of document submitted to each authority for each step of Business Registration	<ul style="list-style-type: none"> <li>Review all the application forms and the supporting documents required for each authority in the Business Registration Steps to assess the duplication for possible eliminations</li> <li>This initiative can be undertaken, starting from the application form and package for the Enterprise Registration Certificate and the Tax Identification Number that shall be linked under Korean-supported initiatives</li> </ul>	All relevant authorities in the Business Registration steps
Eliminate the unnecessary visits of investor to the authorities' offices	Use technology in the communication methodology between the investor and the government authorities (i.e. use of e-mail and website / portal for better and rapid communication and response)	All relevant authorities in the Business Registration steps

<b>Short-Term Recommendations</b>		
<b>Recommendations</b>	<b>Activities</b>	<b>Implementing Agencies</b>
Improve the internal document flow to avoid unnecessary involvement of senior management	<ul style="list-style-type: none"> <li>• Re-engineering of the internal document flow within the relevant authority to avoid the situation where the document will need to be reviewed and approved by the senior management every times unless it is necessary</li> <li>• Proper delegation of responsibilities and mandates should be established to alleviate the burden on the management's time.</li> </ul>	All relevant authorities in the Business Registration steps
Improve the Enterprise Name Search system	Improve the search function of the Enterprise Name displayed on DERM website by addressing minor issues with the functioning of the software and website facility and the system should be developed in order to identify names which are similar, if not identical, to the name being searched, and to ensure that the name is not prohibited under the Enterprise Law.	DERM
Abolition of the One-One-One meeting or Orientation on Tax Obligations	<ul style="list-style-type: none"> <li>• Abolish the requirement for the one-on-one meeting (in case of Tax Department) or tax orientation (in case of Vientiane Capital Tax Office)</li> <li>• Develop and disseminate the investor-friendly Tax Obligations guideline to the businesspersons upon the delivery of the Tax Identification Number Certificate</li> </ul>	Tax Department
Set a clear definition of the Company's Signage defined under the Law on Enterprise	<ul style="list-style-type: none"> <li>• Discuss to reach the final conclusion and agreement on the definition of the 'Company signage' under the Law on Enterprise and the signage that the company install to advertise their presence</li> <li>• Possible separation of those two kinds of signage and possible elimination of any approval of content of the actual Company Signage under the Law on Enterprise</li> <li>• Establish a clear standard content and requirement or format of the Company Signage to be installed and disclose those requirements to the general public upon the issuance of the Enterprise Registration Certificate</li> </ul>	DERM and Department of Mass Culture, Ministry of Information, Culture and Tourism

Short-Term Recommendations		
Recommendations	Activities	Implementing Agencies
Reassess the necessity for the registration of Articles of Association and List of Assets	<ul style="list-style-type: none"> <li>• Re-assess the necessity and justification for the registration requirement of the Articles of Association and the List of Assets with Department of Finance before the application for the Tax Identification Number Certificate</li> <li>• Shift the requirement for this registration to post-registration requirement – possibly with a specific timeline after business registration</li> <li>• Possible amendment of the Prime Minister Decree No. 52/PM relating to the document registration after re-assessment</li> </ul>	Ministry of Finance

Medium-Term Recommendations		
Recommendations	Activities	Implementing Agencies
Establish Time Commitment and deadline for each Business Registration steps	<ul style="list-style-type: none"> <li>• Get a clear time commitment on each business registration step from the relevant authorities and disclose those commitments to the general public</li> <li>• Establish a clear mechanism of what would happen in case of the time commitment is not honored (i.e. Silent is Consent in case of Department 203)</li> </ul>	DERM taking the lead in the coordination with other relevant authorities
Streamline the business registration undertaken at all levels of government	<ul style="list-style-type: none"> <li>• Review the detailed process maps for the business registration being undertaken at each government authorities in all levels (i.e. central government and local government – province and district and from one province / district to another</li> <li>• Share best practices from one government office to another</li> <li>• Streamline the business registration process and document requirements in all offices</li> <li>• Disclose the standardized business registration process to the general public</li> <li>• Establish a mechanism for general public to give a complain in case of any inconsistency in the business registration implementation at any office</li> </ul>	All relevant authorities in the Business Registration steps

<b>Medium-Term Recommendations</b>		
<b>Recommendations</b>	<b>Activities</b>	<b>Implementing Agencies</b>
Review of the Fees collected	<ul style="list-style-type: none"> <li>Review and reassess all the fees and charges collected in the business registration process on the effort and resources basis and to avoid the tax that would disincentive the business registration</li> <li>Propose the re-assessed fee in the amendment of the Presidential Edict No. 03/PR</li> </ul>	All relevant authorities in the Business Registration steps
Establishment of a proper coordination One-Stop Service mechanism	One-stop service function should be substantially improved and expanded to include every department into the system. The one-stop service office can be physical or online, to provide only information or also be used for transactional process. At best, a business should be set up in a single visit and with a single affordable fee payment.	All relevant authorities in the Business Registration steps
Synchronization the Tax Identification Number and the Enterprise Registration process	Assure smooth synchronization of the 9 and 12-digit Tax Identification Number and the merge of the TIN issuing database with the Enterprise Registration database	DERM and Tax Department
Establishment of Ex-Post Scheme	<ul style="list-style-type: none"> <li>Coordination and dialogue with the lined agencies who will issue the operating licenses for each business operation about the ex-post scheme implementation to ensure smooth implementation</li> <li>Disclose and disseminate information relating to Ex-Post and its implication to the general public</li> <li>Change of government mindset to focus more on Post-Registration monitoring than imposing extensive list of the Pre-Registration requirement</li> </ul>	DERM taking the lead in the coordination with other relevant authorities

<b>Long-Term Recommendations</b>		
<b>Recommendations</b>	<b>Activities</b>	<b>Implementing Agencies</b>

Long-Term Recommendations		
Recommendations	Activities	Implementing Agencies
Improve the Company's Seal system	<ul style="list-style-type: none"> <li>• Re-assess the importance and necessity for the company's seal based on other regional best experiences and practices</li> <li>• Consider the option of either (i) decentralize the company's seal carving and authorization to the local region; or (ii) privatization of the process to the private sector; or (iii) giving freedom to the businessperson to design their own carve and only requiring the registration of the finished seal with the government</li> </ul>	Ministry of Public Security

## 6 A possible reengineering for Enterprise Registration Certificate

In particular for the application of the Enterprise Registration Certificate, the Consultant would propose the following re-engineering recommendations as shown in the process map at **Annex A**. This reflects the recommendations in this report and is provided as the basis for discussion. It assumes some limited enhancements of the existing computer system. This re-engineering proposal can be implemented at a very short-term.

The approach can be summarised as follows:

1. It should be possible for an investor to get a set of forms either from the website or from DERM. There should not be a charge for the forms. There should be a clear basis for registration fees which should be set out in a slip issued with the forms (whether from the website or from DERM). The fee structure should be such that the investor can go directly to the cashier to pay the incorporation fee.
2. Instead of entering information in a book, the DERM officer should use the computer system. The proposed name, ISIC code and other details are checked at this stage. The entry number is allocated by the system.
3. The computer system now has the information required for registration. The Head of Division can review this.
4. Where it is necessary to refer an application to the Ministry of Public Security or other agencies, the relevant information can be sent by e-mail. In a final system this procedure could be entirely automated as the system could note the nationality of directors and shareholders and could identify from ISIC codes which agencies should be consulted.
5. Approval of a registration involves only one layer of management.



6. Instead of telling an investor in advance the date when the registration will be completed, a text message could be sent from the system as soon as the work is finished. If there are no foreign directors or shareholders it should be possible to complete the registration on a same-day or next-day basis.
7. It is not necessary to wait for a response from other agencies, though it would be helpful to investors to tell them the agencies that have been contacted and from which they will require permission before starting particular business activities.

This procedure could be implemented in advance of a merger of business registration and tax registration.

While the process as set out in **Annex A** relates to the Ministry of Commerce and Industry, it would also be relevant for Vientiane Capital Department of Industry and Commerce and other registration authorities.

## Appendix 1: Consultation Report on Business Registration

### **GENERAL RECOMMENDATIONS ON OVERVIEW BUSINESS REGISTRATION**

Topics	Comments and Suggestions
General recommendations	<ul style="list-style-type: none"> <li>• The investors are requesting for more channels for public-private dialogue and they are anticipating more dissemination of the relevant laws and regulations by the government to the general public – the general conditions and procedures relating to business registration and all of any amendments or modifications thereof.</li> <li>• The business registration do not seem to be a big issue or concern for the investors yet the biggest concern is on the compliance with the conditions and obligations relating to operating license or tax payment.             <ul style="list-style-type: none"> <li>○ The businessperson are willing to comply with the relevant laws and regulations but they just would like to get access to the information and would like to assure that they will be subject to the same standardized application of the laws and regulations.</li> <li>○ Now, the personal relationship of the businessperson with the government and the informal charges are the key driving factors for the normal business operation of the businessperson.</li> <li>○ Without having the basic information, the businessperson only need to wait for the authority to approach them and instruct what to do (i.e. what formality they will need to apply for; and what are the applicable tax or fees) and in that circumstance, the investor do not have other choice but to follow the instruction with no objection.</li> </ul> </li> <li>• The businessperson have the opinion that the government should make it easier for the business registration and then focus their resources on the enforcement, compliance monitoring and sanction post-registration instead.</li> <li>• Timing is of the essence for every investor in his or her business registration so time and deadline commitment shall be assured for each and every business registration authority.</li> <li>• It is difficult for the investor to get access to information relating to the business registration steps and the application form (which form to buy, how to fill in the application forms, what are the required supporting documents) so the investors will need to spend a lot of time running back and forth to prepare and revise the application form. Therefore, (i) the investor considers that it would be very helpful if the authority can give a clear and constant guidance to the investors; and (ii) the guidance that the investor should also include the post-registration requirement (i.e. that after the obtainment of the Enterprise Registration Certificate, what are the remaining formalities and with which the authority the investors shall apply for or coordinate with).</li> </ul>

**APPLICATION FOR ENTERPRISE REGISTRATION CERTIFICATE AT DEPARTMENT OF ENTERPRISE REGISTRATION AND MANAGEMENT, MINISTRY OF INDUSTRY AND COMMERCE**

Topics	Comments and Suggestions
Actual Time spent to complete the process	The normal timeline that they are experiencing is 1 month to the latest of 3 to 6 months.
Comment on the Supporting Documents in the Application Form	<ul style="list-style-type: none"> <li>• Enterprise warrant should be removed from the application form and if still needed, it should be delivered together with the Enterprise Registration Certificate instead. Normally the investor did not read through such warrant so it has no use having this warrant as a part of the application form. Also, actually, the warrant may not be needed since the authority should be entitled to exercise their statutory authority to enforce the enterprise to be in strict compliance even without the warrant.</li> <li>• Requirement for the submission of the land lease agreement for the office and facilities premises in the application form results in high upfront investment cost by the investors since the investors are required to enter into the lease agreement and most of the times pay the advance rental fee even though there remains a high risk and uncertainty if the enterprise will be incorporated and the uncertainty of not knowing how long will it take before the whole business registration process will be completed.</li> <li>• Some information given in the application form for the Enterprise Registration Certificate are duplicate with the information given for the application of other business registration formalities; therefore, may not be necessary.</li> </ul>
Determination and Discretion of the Enterprise Registration Officer	<ul style="list-style-type: none"> <li>• Most of the times, the existing business registration regime do not fully support the new and innovative business purposes, in particular the business operations that is not stated straightforward in the ISIC code.</li> <li>• Currently, the specific business purposes shall be defined in the Enterprise Registration Certificate, together with the specific ISIC code; therefore, in case of the new or innovative business operation that may not be covered in the ISIC system, it becomes burdensome and difficult for the investor to explain to the authority and to define which ISIC code will be specified in the Enterprise Registration Certificate.</li> <li>• Sometimes it was the technical staff that recommends the investor to change their business operation classification even without a clear understanding of the business operation just to fit in with the existing ISIC code.</li> </ul>
Allocation of Responsibilities between DERM and Vientiane Capital ERO	<ul style="list-style-type: none"> <li>• It remains unclear for the investor what is the clear division line of responsibilities between the central Enterprise Registration Office at DERM and the Vientiane Capital Enterprise Registration Office.</li> <li>• The allocation of responsibilities between the two levels of office should also be reconsidered and reassessed in details in case that one enterprise has several business operations – one operation being subject to DERM’s scope of authority while another operation being subject to Vientiane Capital Enterprise Registration Office. In such circumstance, based on the existing practice, the investor shall be required to firstly submit the application form to DERM but they will still have to follow up and prepare additional documents that would meet the requirement of the Vientiane Capital ERO as well. That practice results in double time and cost for the documentation and coordination with the relevant authorities.</li> </ul>

Topics	Comments and Suggestions
General Recommended Reforms in the Enterprise Registration Certificate	<ul style="list-style-type: none"> <li>• All the interviewed law firm agree that the Enterprise Registration Certificate should only be considered as evidence of the enterprise incorporation, not the permission to operate a business, so it should not be required to obtain the technical comments from the lined agencies prior to the issuance of the Enterprise Registration Certificate.</li> <li>• After the enterprise is fully incorporated with the Enterprise Registration Certificate being issued, the enterprise then should apply for the separate operating licenses from the lined agencies.</li> </ul>
Blacklist Verification for Foreign Investors at Department 203	<ul style="list-style-type: none"> <li>• The total timeline for the blacklist verifications of the foreign investors or managing director would be in the range of 1 week to 1 month; provided that the investors admitted that if they pay additional informal charges, that would expedite the process substantially.</li> <li>• Every interviewee all agreed that this step in the business registration process should be improved soonest since this step delays the process and this considers the barrier for foreign investment.</li> <li>• The situation in Champsasack Province is even severe since the authority would summon the investor for the interview before the completion of the blacklist verification and the authority will not approve the investment by that investor until the interview was completed.</li> </ul>

**APPLICATION FOR ENTERPRISE REGISTRATION CERTIFICATE AT ENTERPRISE REGISTRATION OFFICE, VIENTIANE CAPITAL**

Topics	Comments and Suggestions
Actual Time spent to complete the process	The normal timeline that they are experiencing is 6 months to 1 year; provided that the timeline would be extended if (i) the business operation is listed in the Negative List and require to pass the One-Stop Service Committee Meeting; or (ii) it has the foreign investor / managing director that would require a blacklist verification.
Lack of Information and Guidance from the Authority and Opportunity for Rent-seekers	<ul style="list-style-type: none"> <li>• To avoid the complication and the delay in the business registration process and to mitigate the uncertainty, most of the investors, therefore, decide to engage the third party contractor (rent-seekers – private or even the government insider) to proceed with the business registration on their behalf.</li> <li>• The investor also complain that sometimes, the authority does not give a proper guidance on what would be the best approach that the investors should undertake to achieve their business intention / actions. One example that the Consultant Team gathered from the interview is that there is one case that the investor would like to expand their existing business operations (primary and secondary schools) to cover a new business of language teaching centre but he was instructed to incorporate a new enterprise for that teaching centre while in fact under the applicable Lao PDR laws, he can just add a new business purpose in the existing enterprise and that would save time and cost that the investor will need to spend.</li> </ul>

Topics	Comments and Suggestions
<p>Comment on the Supporting Documents in the Application Form</p>	<ul style="list-style-type: none"> <li>• Currently, there is a new practice that the Vientiane Capital ERO is implementing, in particular foreign enterprise - the investor is instructed to enter into a specific minutes that defines some conditions for business operation shall comply with and to notarize such minute with the Notary Office before submitting the same to the Office in exchange of the Enterprise Registration Certificate. This practice delays the whole business registration process and also from the interview, there are some cases that the Notary Office refused to notarize such guideline so it becomes a major bottleneck for the investor since there is no way out of this situation.</li> <li>• The application documents requested at Vientiane Capital ERO are much more than the documents requested at DERM – a request of a summary of business plan and that business plan becomes burdensome to the investor.</li> <li>• The application form at Vientiane Capital ERO cannot be downloaded from the website so the investor shall purchase the application form from the office every time while the application form is being updated and revised from time to time and it becomes difficult for the investor to chase up the pace for the updated application form.</li> <li>• The notice board at Vientiane Capital ERO does not give a comprehensive information and not investor-friendly so most of the times, the investor would need to consult with the authority to make sure that they will get a correct form that would meet their business intentions. However, it should be noted that the authority that sell the application form is the staff from the Administrative Office that do not have a technical knowledge to advice the investors; therefore, in most cases, the investor would end up getting and preparing the wrong application form and they only know that the application form is wrong when they submit the complete form to the ERO authority. So, the investor was wasting those times preparing the documents that the authority finally rejected.</li> </ul>
<p>Discretion and Attitude of the Enterprise Registration Officer</p>	<ul style="list-style-type: none"> <li>• The investor complain that some technical staffs exercise the discretion to make a comment on business decisions, in particular the scope of business purposes and the business plan even beyond their authority under the Enterprise Law.</li> <li>• Also, some technical staffs takes formatting too serious and sometimes even over substances.</li> <li>• The general feeling or perception of the investor that visits the Vientiane Capital ERO is not positive. They do not feel welcomed and feel that there is a barrier in the coordination and discussion that they will have with the authority who do not seem to be investor-friendly (i.e. there is a big glass installed between the investor and the authority and the investor do not feel comfortable discussing their ideas with the authority through that glass). Also, the investor does not feel safe to communicate or share their business ideas at the public premises like that.</li> </ul>

Topics	Comments and Suggestions
One-Stop Service Meeting at Vientiane Capital ERO	<ul style="list-style-type: none"> <li>• In addition to getting the technical comments from the lined agencies, the Vientiane Capital ERO also requested for the host of One-Stop Service Meeting to agree and pass the investment application.               <ul style="list-style-type: none"> <li>○ In the One-Stop Service Meeting, all the governmental authorities, whether or not they have any direct or indirect relevance to the proposed business will be invited to join and give the comments.</li> <li>○ The managing director or the duly authorized representative of the company shall be present in the meeting and if the proxy will be attending the meeting, a new written power or attorney shall be submitted. Therefore, that presence by the investor would normally result in the time cost and traveling expenses for the investors with no certainty of how many visits they will have to make.</li> <li>○ If the One-Stop Service Meeting made any specific recommendations for the investor, the investors shall comply with those recommendations in all aspects and their investment application shall be resubmitted to the One-Stop Service Meeting again and again until their investment application will get the unconditional approval from the meeting.</li> <li>○ It should be noted that the One-Stop Service Meeting would only host twice a week so it would normally delay the application process of the investors.</li> <li>○ The atmosphere of the One-Stop Service Meeting is not investor-friendly and some investors feel intimidated that they will have to be there in the meeting and being questioned by a big committee.</li> </ul> </li> </ul>
Enterprise Name Reservation and Check	<ul style="list-style-type: none"> <li>• The enterprise name cannot be checked right away since the name shall be submitted further to DERM for verification and that would need more time to check (normally 2 to 5 working days) before the authority can give a clear answer to the investors.</li> <li>• The intermediate does not know about the search function available on DERM website and after tryout, they found that there are still some minimal errors in the search function of the website that cannot give a definite certainty to the investors and the final answer shall be given from the authority again.</li> </ul>

**APPLICATION FOR ENTERPRISE REGISTRATION CERTIFICATE AT ENTERPRISE REGISTRATION OFFICE, CHAMPASAK PROVINCE**

Topics	Comments and Suggestions
Actual Time spent to complete the process	The normal timeline that they are experiencing is quite quick, ranging from 1 week to 1 month.
Lack of Information about what to do after getting the Enterprise Registration Certificate	<ul style="list-style-type: none"> <li>• The investors are very satisfied with the guidance, advocates and supports that the officer at Champasak ERO facilitating and providing.</li> <li>• However, the investors have a problem that they do not have a clear understanding of what to do after getting the Enterprise Registration Certificate. Some investors do not have the company's seal or Tax Identification Number because they do not know that they are required to do so and what are the procedures that they will need to undertake to get those formalities.</li> </ul>

**REGISTRATION OF THE ARTICLES OF ASSOCIATION AND LIST OF ASSETS WITH STATE ASSETS MANAGEMENT DEPARTMENT / DIVISIONS**

Topics	Comments and Suggestions
No clear objective for the registration	<ul style="list-style-type: none"> <li>• The investors do not see a clear rationale for this registration requirement.</li> <li>• The investors would recommend a removal of this step from the business registration process, in particular removing from the pre-requisite condition for the application of the Tax Identification Number.</li> </ul>
Interesting case study for the registration at State Assets Management Office, Vientiane Capital	<p>One investor calculated their registered capital that will be defined in the Enterprise Registration Certificate based on the actual spending and investment costs that they have made (i.e. the actual purchase price of the land that they acquired). After the investor obtain the Enterprise Registration Certificate, the investor registered the list of assets with the State Asset Management Office, Vientiane Capital. After receiving the list of assets, the authority inspected the premises and applied the state-calculated land price to verify the list of assets. The state-calculated land price is obviously lower than the market price that the investor spent. The authority, therefore, informed that the investor to reduce his registered capital to the amount that the authority calculated. The investor then is required to reduce the registered capital in the Enterprise Registration Certificate before applying for the Tax Identification Number and proceed with other steps of the business registration, despite the fact that the investor has already spent those investment costs that exceed the registered capital that the authority calculated. Also, in this case, it means that investor needs to reduce their registered capital even before the actual commencement of their business operation.</p>

**APPLICATION OF THE TAX IDENTIFICATION NUMBER WITH TAX DEPARTMENT**

Topics	Comments and Suggestions
Comments on the Application Forms	<ul style="list-style-type: none"> <li>• The investor opines that the authority require too many irrelevant or duplicate information in the application form for the Tax Identification Number (that have been provided during the process of applying for the Enterprise Registration Certificate) and the investor, therefore, need to spend a lot of time preparing the documentation that is not necessary.</li> <li>• The investor considers that the requirement for the estimated annual income plan / tax plan / list of employees with the estimated salary are unnecessary and should be removed because all those plans and lists are just the estimation and most of the investors just made up the numbers sometimes without any justifiable reference for no specific purpose.</li> </ul>

Topics	Comments and Suggestions
Additional Required Documents from Vientiane Capital Tax Office	<ul style="list-style-type: none"> <li>• Vientiane Capital Tax Office requested the investor to submit a bank statement of the enterprise as the supporting document in the application form; however, at that stage, the enterprise is not able to open the bank account with the commercial bank just yet because the company’s seal is not obtained. Therefore, such requirement is not feasible.</li> <li>• Alternatively, the Vientiane Capital Tax Office would request the submission of the bank statement of the managing director or the shareholders and that also becomes the burden and inconvenience for the investor since they will have to show the private and sometimes confidential information to the authority.</li> <li>• The investors points out that the bank statement can only give a snapshot status of the investor’s financial status so the investor can just transfer the required capital into the bank account for awhile before transferring them out. So, the investor is of the opinion that request for the bank statement cannot assure the financial capability of the investors that the government is anticipating and it is unnecessary to request for this document.</li> </ul>
Meeting or Orientation with Businesspersons	<ul style="list-style-type: none"> <li>• The investors consider that the one-on-one meeting and orientation with the businessperson to explain the tax obligations not very helpful and it just create more steps that the investor will have to follow.</li> <li>• In addition to the meeting or orientation, the investor is required to sign the minutes of meeting to assure that they understand the tax obligations as lectured in the meeting or orientation. The investors opines that this minutes of meeting is also unnecessary since the tax authority shall be fully entitled to enforce the tax statutory obligations under the relevant laws and regulations already. On the contrary, requesting the investor to sign many documents become burdensome for the investors.</li> </ul>
9-digit / 12-digit Tax identification Number vs. Enterprise Code	<ul style="list-style-type: none"> <li>• Now there are 3 digits that one enterprise bears: (i) 9-digit Tax Identification Number for tax payment reference; (ii) 12-digit Tax Identification Number; and (iii) Enterprise Registration Code. It should be noted that all of these codes and numbers are not related or linked. The investors found these numbers confusing and unnecessary.</li> <li>• The 9-digit Tax Identification Number will be issued by one particular system by the relevant Tax Department or Tax Division in the provinces while the 12-digit Tax Identification Number is being issued in the centralized system at Tax Department. Since the 12-digit can only be issued at the Tax Department, it took longer times to get the 12-digit TIN and the certificate in case the application is made in the provinces than the 9-digit.</li> <li>• One interesting case study that we found from the interview with the businessperson at Champasak Province is that not every enterprise registered at Champasak having 12-digit Tax Identification Number – only the enterprise that are qualified to register into VAT system will be instructed by the Tax authority to apply for the 12-digit TIN, unless they will only have 9-digit TIN.</li> </ul>

**PRODUCTION AND REGISTRATION OF THE COMPANY SEAL**



<b>Topics</b>	<b>Comments and Suggestions</b>
Necessity of having the Company Seal	In general, the investors do not see a necessity of having the company seal produced exclusively by the Government and the requirement to register the government-produced seal with the relevant authorities. Therefore, some investors are proposing the removal of the requirement to have the company seal produced and registered.
Actual Time it take to get the carved Company's Seal	The businessperson appraised that there are a lot of improvements in the company seal carving process and now the timeline for the carving and utilisation of the company's seal are substantially reduced to the maximum of 2 weeks or 10 working days.
Complicated and Prolonged Procedure	<ul style="list-style-type: none"> <li>• Currently, in order to have a legitimate company seal, the investor shall take at least 3 steps: (i) having the seal produced by the Government; (ii) applying for the seal utilization permit; and (iii) register the seal with the provincial government unit where the enterprise is situated.</li> <li>• It should be noted that only the Department of Family Registry and Foundation Construction in Vientiane Capital can perform the first two steps of production and permission granted; therefore, every enterprise has to travel to Vientiane Capital for this particular activity and that takes a long time and cost to achieve these two steps.</li> <li>• It should also be noted that the production process is all manual so the more seal the Department is producing, the more production time and the longer time the investor will have to wait.</li> <li>• The investor, therefore, recommend the privatization of the company's seal and the removal of some steps in the company seal production and permission procedure to expedite the business registration overview procedure.</li> </ul>

**APPROVAL OF COMPANY SIGNAGE**

<b>Topics</b>	<b>Comments and Suggestions</b>
Necessity of having the Company's Signage (yellow background and red letter fonts)	<ul style="list-style-type: none"> <li>• It should be noted that for the purpose of this Consultation, the company's signage that the Consultant Team are referring to in the interview is the company signage that has yellow background and red letter fonts (as defined under the Decree on Sign), not company name signage that each enterprise designs their own identity.</li> <li>• From the interview with the businessperson, none of the interviewed enterprise has that company's signage. So, most of the businessperson are asking the necessity to have such company's signage and the required approval.</li> </ul>

<b>Topics</b>	<b>Comments and Suggestions</b>
Permit required for the installation of Company Signage	<ul style="list-style-type: none"><li>• Currently, the investor needs to apply for 2 separate permits to install the company signage, including: (i) the approval of the signage content from the Information, Culture and Tourism authority; and (ii) the permit to install the company signage from the Public Works and Transportation authority and those separate permits are required to be renewed on annual basis.</li><li>• The businessperson questions the necessity for having two separate permits just for a little thing as the company signage. Also, they question the necessity for the renewal of the formalities when the content remains the same.</li></ul>

## Annex A: Proposed business registration procedure

