ECCIL WHITE BOOK 2018

CROSS-CUTTING ISSUES

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Cross-cutting issues

EUROPEAN UNION

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TABLE OF CONTENT

ABOUT ECCIL

European Chamber of Commerce and Industry in Lao PDR (ECCIL) provides the only official representation for all European enterprises in Laos. ECCIL represents the interests of European businesses in Laos via active engagement in advocacy and provision of tailor-made services. Our services include advocacy, advertising, contact and business matching, trainings and seminars, personnel recruitment, business trips and trade fairs, economic/industry research and event organisation.

ECCIL is one of the biggest and most active chambers of commerce in Laos and has activities not only in the Lao domestic market but also internationally. ECCIL's managers and board members are regular speakers at major economic conferences and events in Laos, in the region and in Europe. ECCIL is a trusted and long term partner of the Lao National Chamber of Commerce and Industry (LNCCI), a founding member of the EU-ASEAN Business Council, active member of the European Business Organisatiovns Worldwide Network (EBO WWN) and has cooperation agreements with a number of bilateral European chambers. These relations give ECCIL access to a vast network and thousands of decision makers in Laos, Asia, Europe, and beyond.

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Message from the President

A warm welcome to all readers of the European Chamber of Commerce and Industry (ECCIL) White Book.

A White Book is often taken as an opportunity by a chamber of commerce to set out its immediate concerns and make them known to government and stakeholders. But ECCIL is currently able to make its immediate concerns known via the Lao Business Forum or other Public and Private dialogues, and therefore we saw in the White Book a chance to get ahead of the game, to anticipate what will be the issues in the near future.

For that reason we wanted to address in this first White Book the issues that are clear impediments to development of the Lao Economy, the appetite of the foreign investors, and the day to day challenges when having a business in Laos.

Not surprisingly the subject of first White Paper selected was the World Bank's Ease of Doing Business Index.

The Ease of Doing Business Index provides ECCIL with an opportunity to work with the Government of Lao PDR, to cooperate to improve the international image of the country and to make business easier to conduct. It is the government's stated intention to reduce the Lao ranking in the Index to below 100 by 2020, an aim that ECCIL wholeheartedly shares and supports. The White Paper is therefore presented as our friendly and candid suggestion as to how this might be done in such a relatively short time.

Even though the World Bank's Ease of Doing Business does not include foreign companies in its idealized scenarios, prospective foreign investors pay careful attention to the Index when looking to invest in a new country. All of the categories in the Index will be relevant to new foreign investors, including European ones. Many of the categories discussed will be of keen interest to existing foreign businesses, including those owned or run by Europeans. Every company pays taxes; every company may be concerned with insolvency law at least with respect to how to deal with a debtor who does not pay. Many foreign companies export and will be very interested in issues to do with trading across borders.

In this White Paper on **Ease of Doing Business Index**, we provide access for the ordinary reader to how the Index is put together,

Guy Apovy

President of European Chamber of Commerce and Industry in Lao PDR how to calculate the effect of improvements on the index and so on. We suggest a winning strategy for Lao PDR to achieve a ranking significantly below100 by 2020.

The Ease of Doing Business Index is often seen as an indication of how committed governments are to reforming their business-facing institutions and legislation, how pro-business they are and whether they really are keen on foreign investment. The global discussion in the media and elsewhere about India jumping 30 places to get into the top 100 ranking in the 2018 Index is testament to that. This again connects to the image of Lao PDR as a business welcoming country.

This brings us neatly to the second White Paper, **Creating the Right Impression: Attracting Quality Foreign Direct Investment to Lao PDR**. This paper shows how countries like Lao PDR that rely on foreign investment need to be open to how they are viewed abroad and how easy it is for that image among the foreign investor community to be affected by seemingly minor issues.

Our third paper on the subject of **Public Private Partnerships (PPP)** is of great interest to both potential private sector and public sector participants in PPP. Much is written in the international media about PPP that is inaccurate and confuses PPP with other forms of public-private interaction, such as concessions. ECCIL thought that since the Decree on PPP in Lao PDR is under development, this would be a good time to get the discussion going. Because PPP is a tricky subject, we decided to set out the discussion in as clear a fashion as possible in order to be accessible to the ordinary reader.

The fourth paper concerns an issue that is close to the heart of many employers and employees in Lao PDR, which is **the Skills Gap**. This is a complex subject and we don’t pretend that there is some quick and easy fix to the skills shortage on the one hand and the inability of some young Lao people to find jobs in their own country. A lot of progress has been made in this regard in the past few years by government, development partners and business but a lot remains still to be done. We have made a number of wide-ranging suggestions as to how the skills gap may be closed over the years.

As you can see these White Papers should be the basis of our Advocacy as they deep dive into topics which at the core of the Lao economical system and impact the Business Activity and all its stakeholders.

It should serve as a reference of our position papers in future Public Private dialogues and help bring the right arguments on the table when addressing our important issues, so that the current legislation might be amended according to our findings.

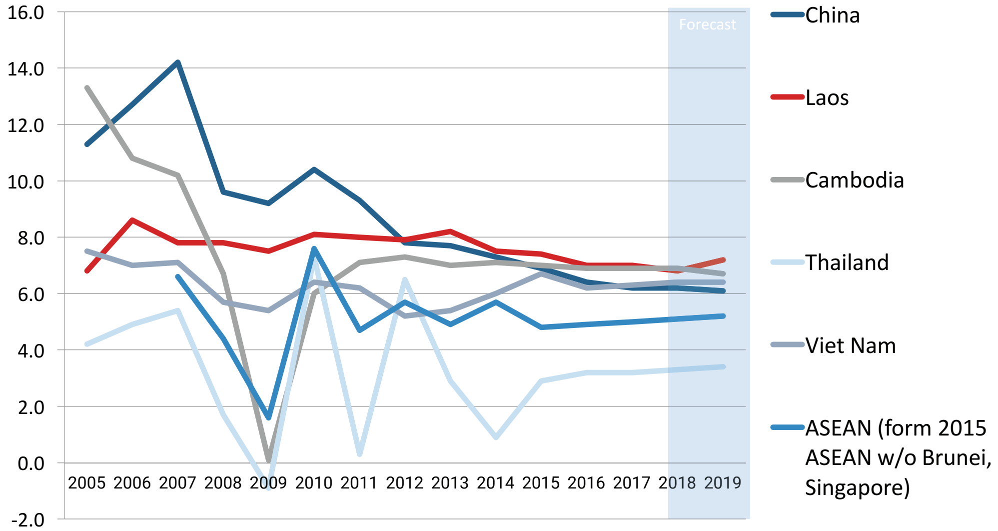
Of course these papers are only a starting point and many more on different major topics are in preparation for 2018, so that ECCIL can clearly impersonate the voice of the European Business in Laos and bring positive value added to the Lao Economy.

Last but not least, I would like to congratulate Dr. Dan Fitzpatrick, our Senior Economic Advisor, who has been quite instrumental in the realization of these works and has put of lot of effort and hard work in a short period of time.

Guy Apovy,

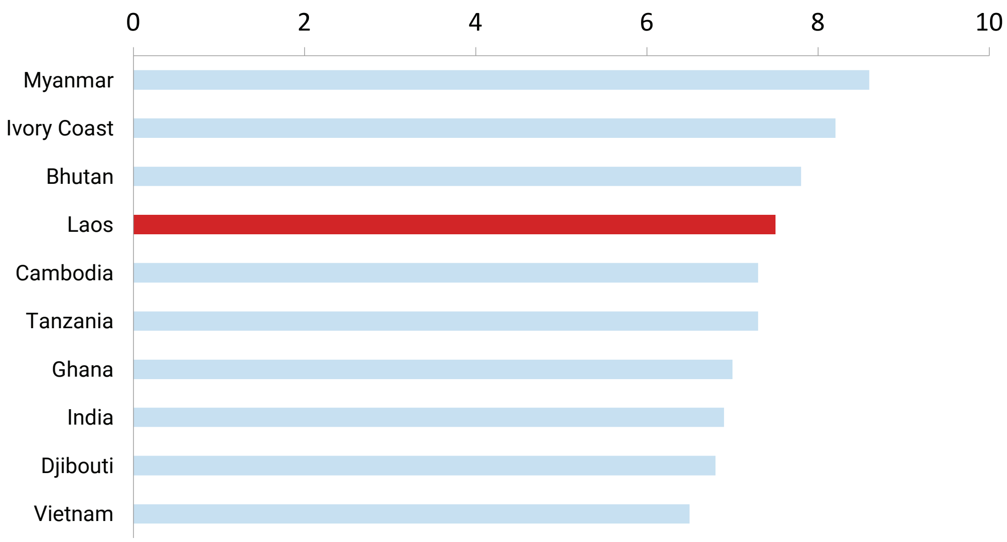
Lao PDR in International Comparison

Growth rates of real GDP (in %)
Selected Asian Economies, 2005-2019



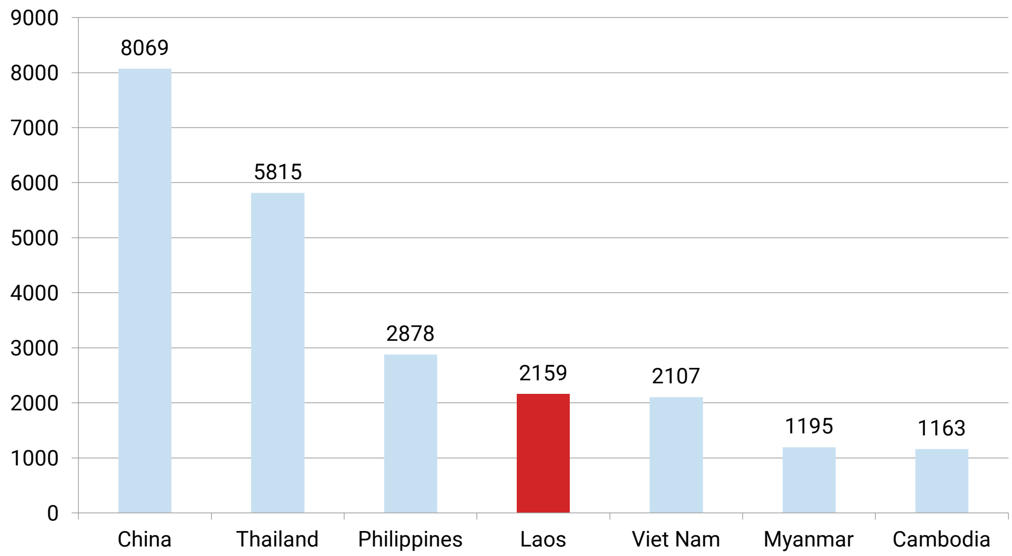
Source: Asian Development Bank (Ed.): Key Indicators for Asia and the Pacific, 2009. 40th ed., Manila 2009, p. 183. Asian Development Bank (Ed.): Key Indicators for Asia and the Pacific, 2013. 44th ed., Manila 2013, p. 220. ADB, ILO (Ed.): ASEAN Community 2015: Managing integration for better jobs and shared prosperity. Bangkok 2014, p. 133. http://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG as of Feb. 2nd 2017; World Bank (Ed.): East Asia and Pacific Economic Update April 2017. Sustaining Resilience. Washington 2017, p. 29.

GDP growth forecast for the 10 fastest growing economies for 2017
% change on a year earlier



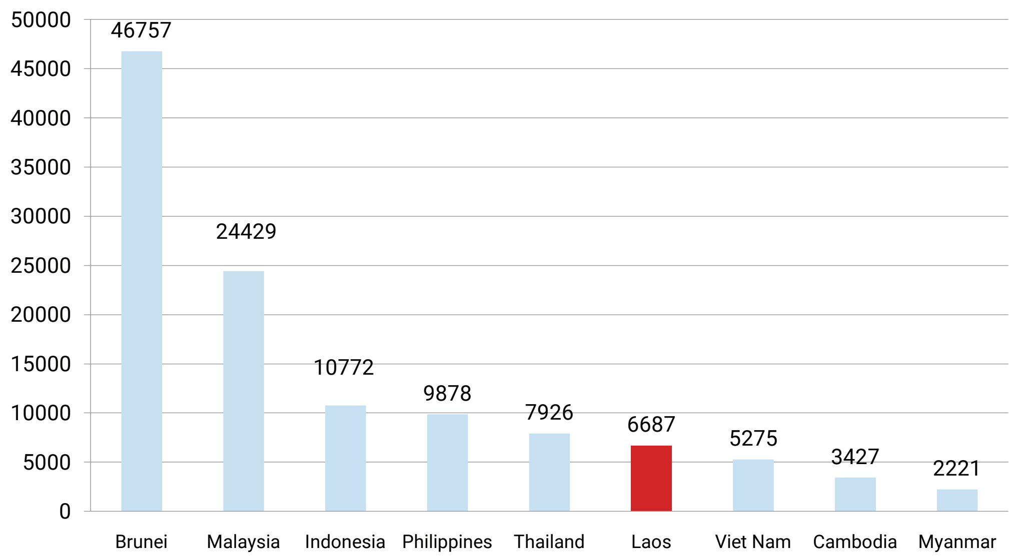
Source: Economist Intelligence Unit, cited after: GDP forecasts; In: The Economist, Vol. 422, No. 9022, January 7th 2017, p. 65

GDP per capita 2015 in current US $



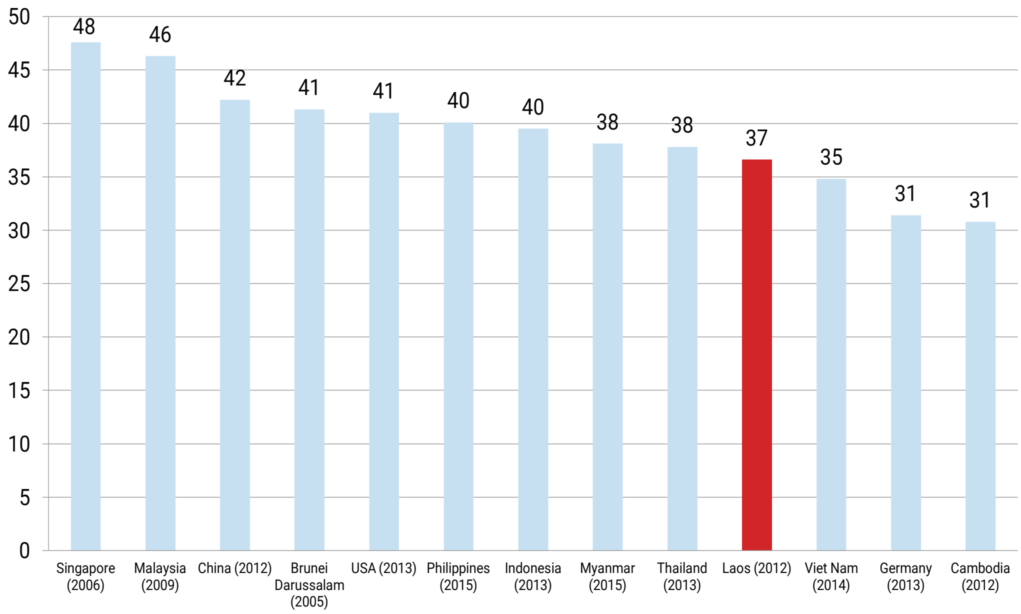
Source: World Bank Database (World Development Indicators).

Wealth in USD per adult in selected ASEAN countries (2016)



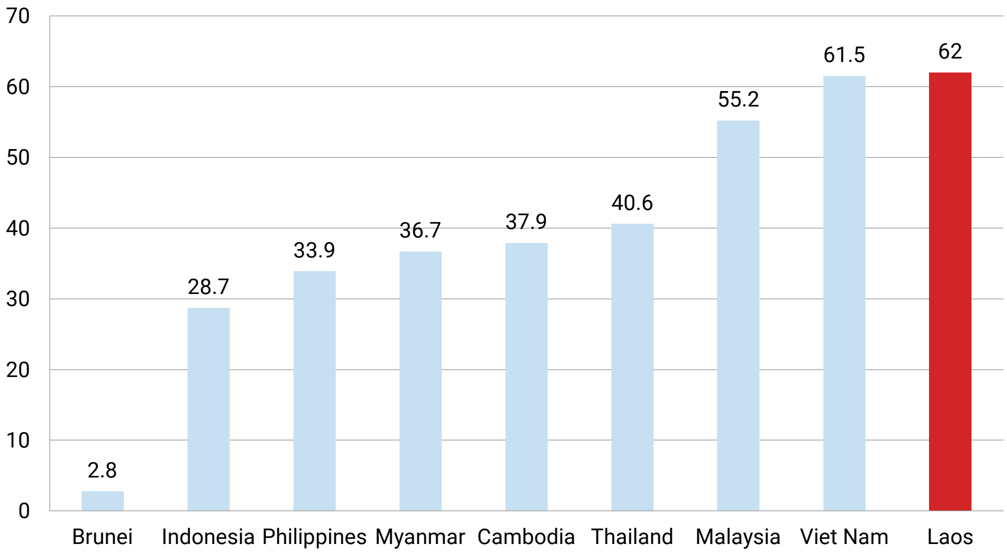
Source: Credit Suisse Research Institute (Ed.): Global Wealth Databook 2016. Zurich 2016, p 17 pp.

Gini Index
(World Bank estimate; 0=perfect income equality, 100=perfect income inequality)



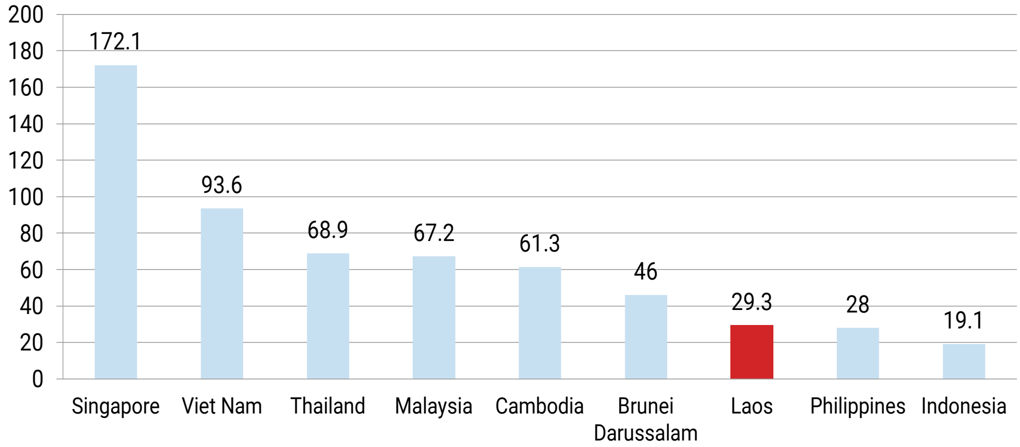
Source http://databank.worldbank.org/data/reports.aspx?source=2&series=SI.POV.GINI&country= as of December 11th 2017. Charting Economy (Ed..): Charting Laos. Country Report Presentation 1H2016., no location, 2015, p. 24.

General Government Gross Debt 2017
(% of GDP)



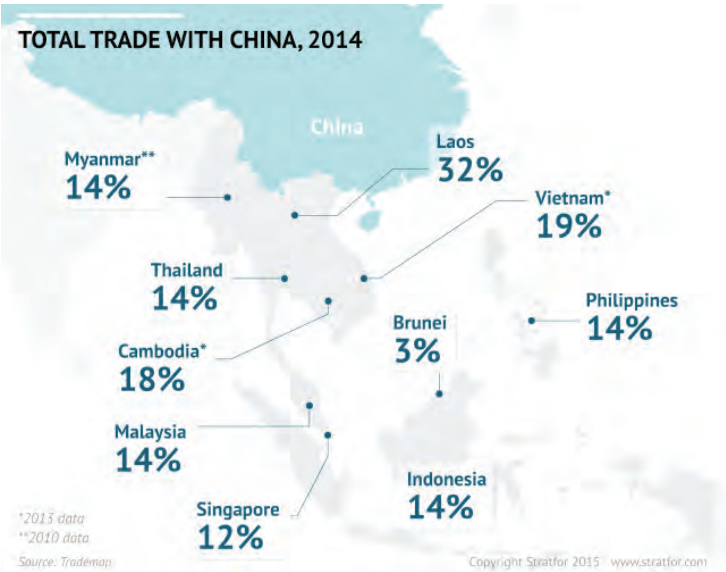
Charting Economy (Ed.): Charting Laos 1H2016. No indication of location, 2015, p. 33
IMF: http://www.imf.org/external/datamapper/GGXWDG_NGDP@WEO/OEMDC/ADVEC/WEOWORLD as of Dec. 11th 2017

Exports of goods and services as percentage of GDP in 2016



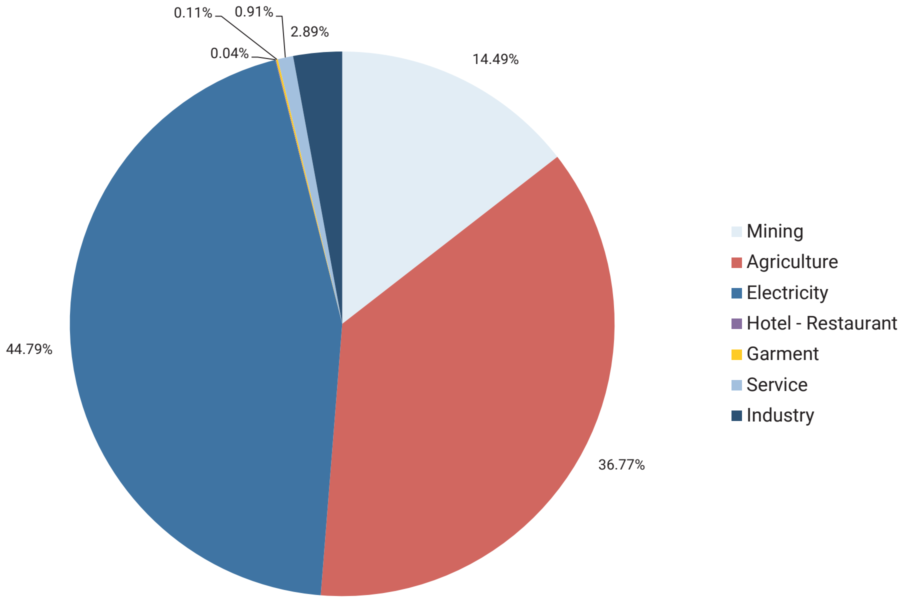
Source: http://databank.worldbank.org/data/reports.aspx?source=2&series=SI.POV.GINI&country=/ as of December 11th 2017

Total trade with China as percentage of all trade (2014)



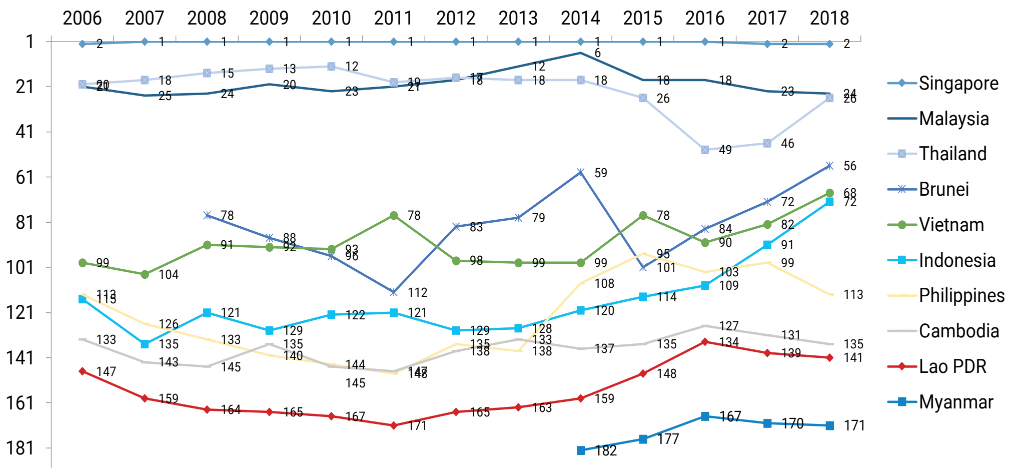
Source: STRATFOR (https://www.stratfor.com/analysis/asean-summit-countering-chinas-expanding-maritime-presence?login=1) as of February 16th 2016

FDI-DDI by sector (2015)



Source: http://www.investlaos.gov.la/index.php/resources/statistics, sept 2016

Ease of Doing Business 2018, Regional Comparison of Overall Ranking Development

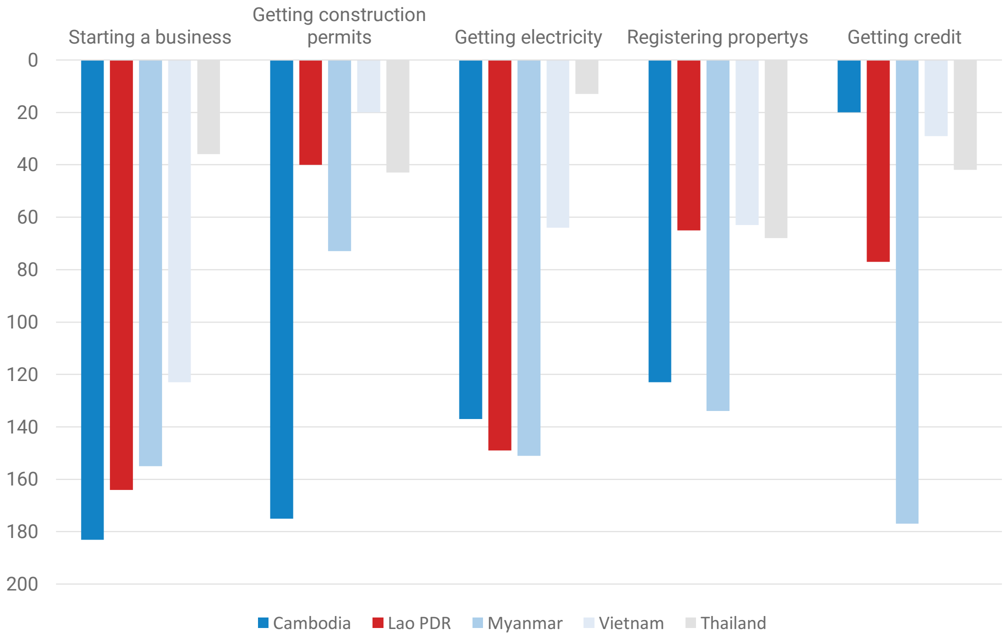


Explanation: Ranking of 155 (2006) to 190 (2017) countries where Rank 1 is the best world wide.

Source: World Bank (Ed.): Doing Business Washington, DC different years; rankings unadjusted, i.e. according to the original surveys.

Ease of Doing Business Index 2018 – details for selected countries and categories (I)

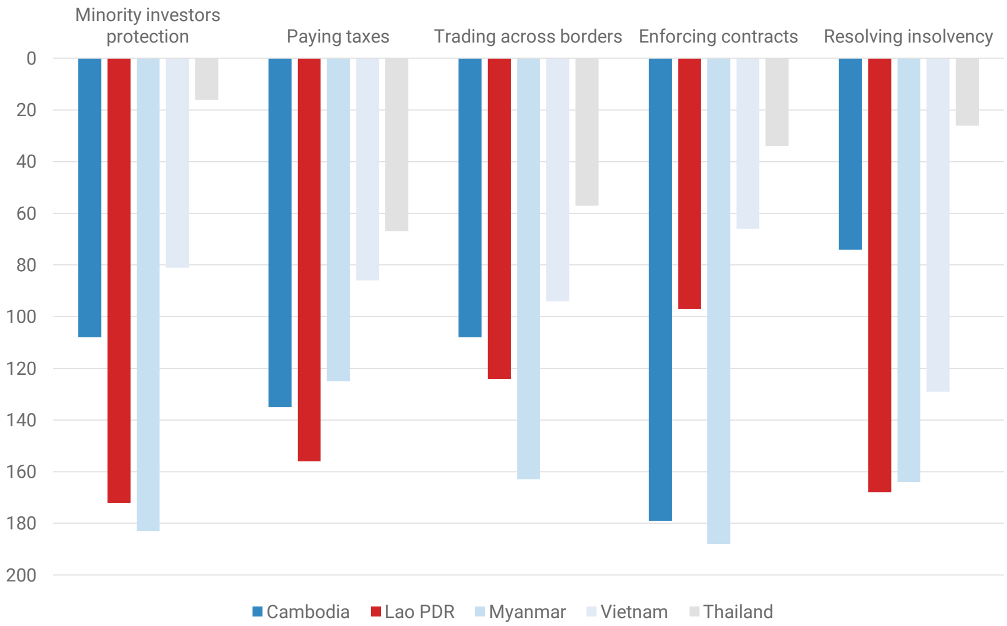
(Ranking of 190 countries; 1=best, 190=worst)



Source: World Bank (Ed.): Doing Business 2018: Reforming to Create Jobs. Washington, DC 2017, p.151, 172, 181, 198, 204

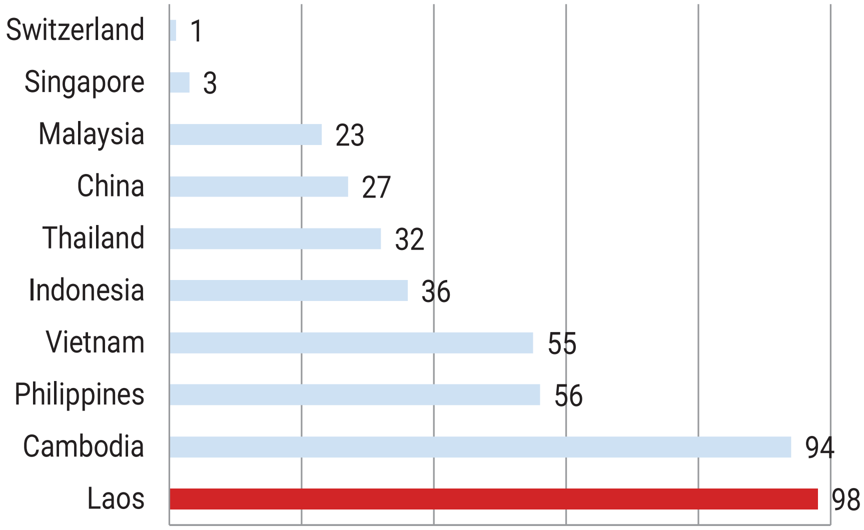
Ease of Doing Business Index 2018 – details for selected countries and categories (II)

(Ranking of 190 countries; 1=best, 190=worst)



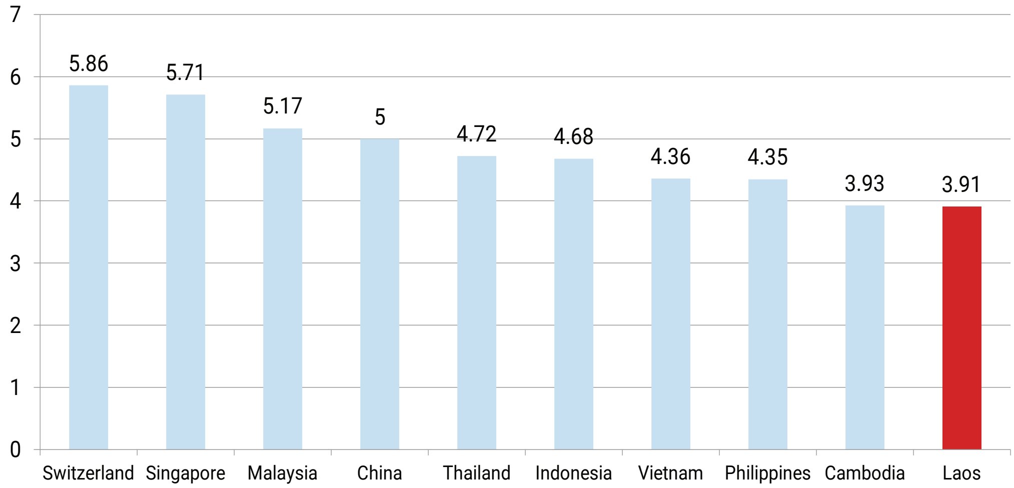
Source: World Bank (Ed.): Doing Business 2018: Reforming to Create Jobs. Washington, DC 2017, p.151, 172, 181, 198, 204

Global Competitiveness Index 2017-2018 (I)
(Ranking; 1=best, 137=worst)



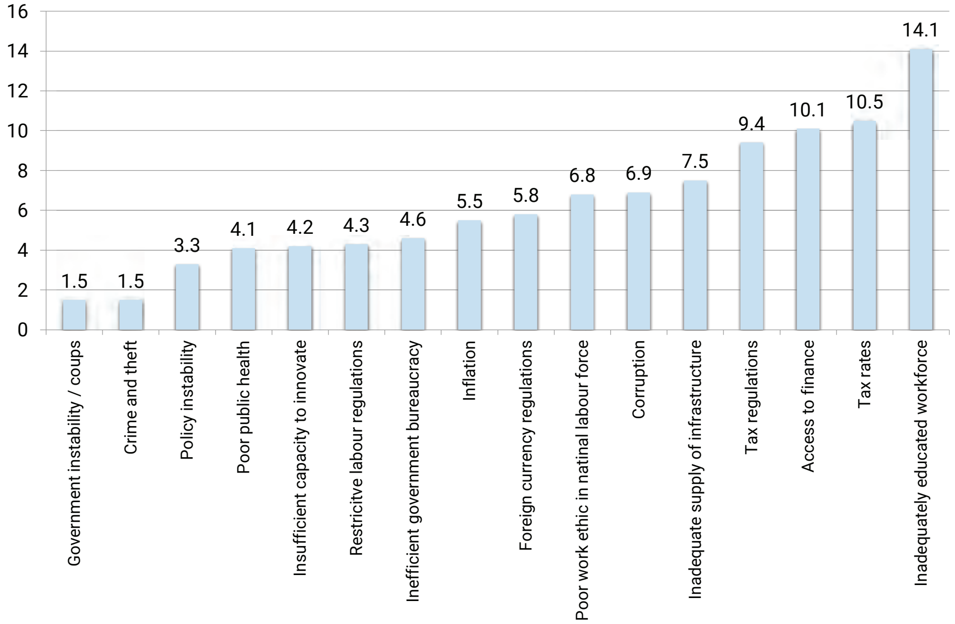
Source: World Economic Forum (Ed.): The Global Competitiveness Report 2017-2018, p. 13.

Global Competitiveness Index 2017-2018 (II)
(Score; 7=best)



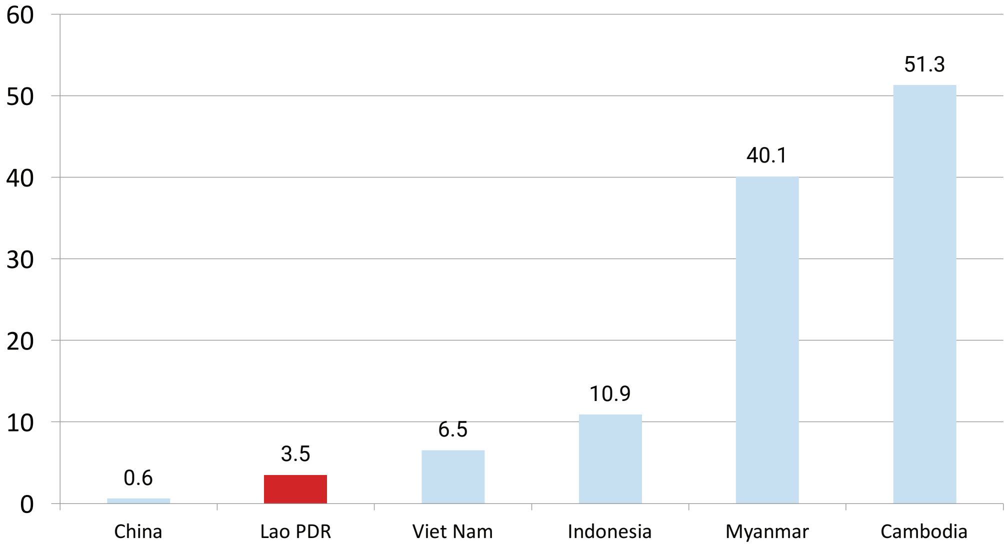
Source: World Economic Forum (Ed.): The Global Competitiveness Report 2017-2018, p. 13.

The most problematic factors for doing business in Laos
(World Economic Forum, Executive Opinion Survey 2017)



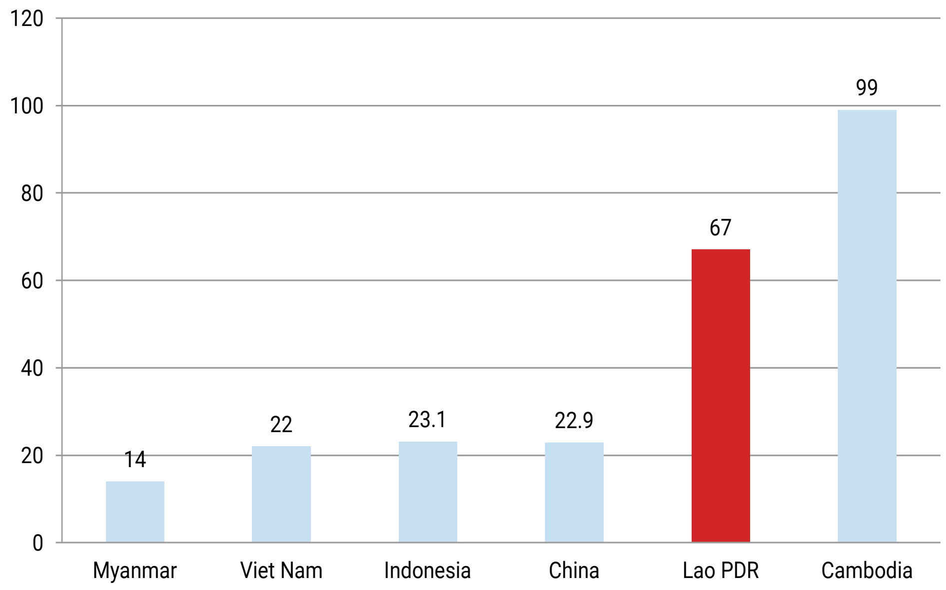
Source: World Economic Forum (Ed.): The Global Competitiveness Report 2017-2018, p. 174.
Note: From the list of factors, respondents to the World Economic Forum's Executive Opinion Survey were asked to select the five most problematic factors for doing business in their country and to rank them between 1 (most problematic) and 5. The score corresponds to the responses weighted according to their rankings.

Cost of Business Start-up Procedure (% of income p.c., 2017)



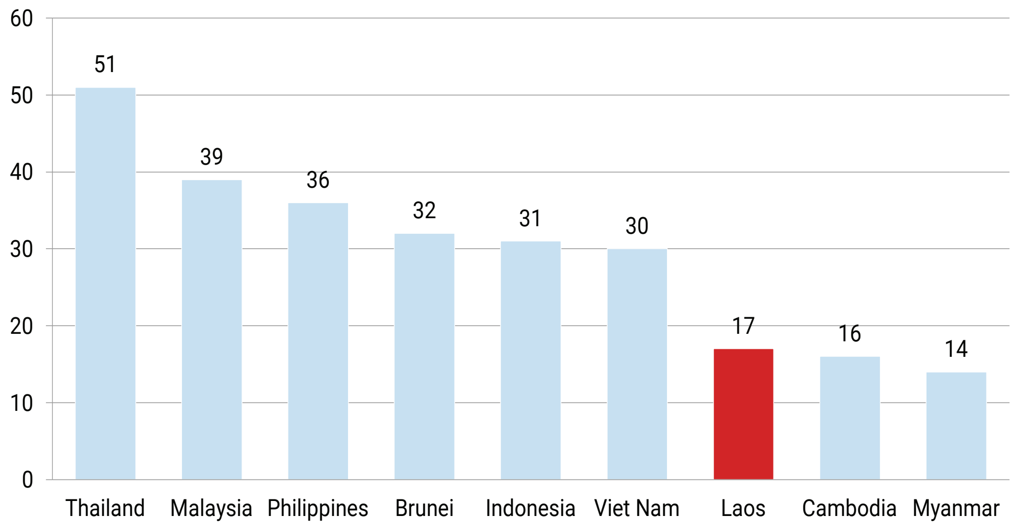
Source: World Bank (Ed.): Doing Business 2018: Reforming to Create Jobs. Washington, DC 2017, p. 151, 153, 167, 172, 181, 198, 204

Time required to start up Businesses (days, 2017)



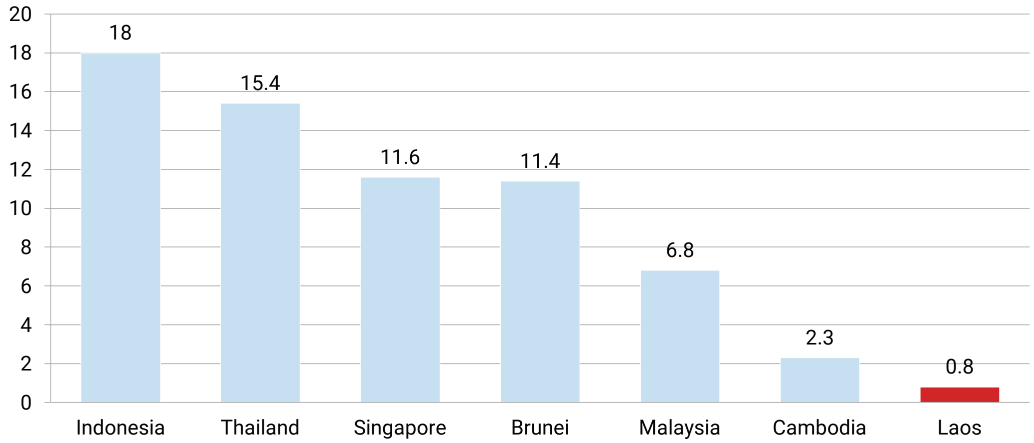
Source: World Bank (Ed.): Doing Business 2018: Reforming to Create Jobs. Washington, DC 2017, p. 151, 153, 167, 172, 181, 198, 204

Gross enrolment rate in tertiary education in %
(most recent year)



Source: http://data.worldbank.org/indicator/SE.TER.ENRR/countries as of December 11th 2017

Enrolment in Technical Vocational Education and Training (TVET) as percentage of total secondary enrolment
(most recent year)



Source: ADB, ILO (Ed.): ASEAN Community 2015: Managing integration for better jobs and shared prosperity. Bangkok 2014, p. 8.

Urgent but not Impossible: How to Improve the Lao PDR's Position in the World Bank's Ease of Doing Business Index by 2020

Executive Summary

It is a stated priority of the Government of the Lao PDR to improve the country's position in the World Bank's Ease of Doing Business Index (from now on, this paper will refer to it as the "Index") from its current position (141) to below 100 by 2020.

The European Chamber of Commerce and Industry in Laos (ECCIL) would like to add its support to the Government's intention and respectfully proposes detailed suggestions as to how this can be achieved.

Due to the timing of the 2020 Index and when the research is done by the World Bank, ECCIL estimates there is about one year from now to have the changes made so that they are embedded and implemented in time to be captured by the 2020 Index.

The Ease of Doing Business Index is an ongoing activity – without ongoing attention to the issues raised by the Index, there is the danger that the country's position will fall back to above 100 very soon.

The Index is never meant to be comprehensive – there is a trade-off between how much the Index includes and its ability to normalize indicators globally across 190 economies.
The Index makes use of standardized case scenarios so as to allow categories to be globally comparable. The Index is built up based on information acquired from specially designed questionnaires to a wide variety of appropriate experts in individual economies or sectors in economies (including freight forwarders, professionals, officials, lawyers and locally-based World Bank staff), information from relevant laws and regulations and other sources.

The Index is made up of 10 categories as follows:

1. ***Starting a Business***
2. ***Dealing with Construction Permits***
3. ***Getting Electricity***
4. ***Registering Property***
5. ***Getting Credit***
6. ***Protecting Minority Investors***
7. ***Paying Taxes***
8. ***Trading Across Borders***
9. ***Enforcing Contracts***
10. ***Resolving Insolvency***

Each category contains several indicators which are normalized under conditions specific to each category, sometimes according to what the World Bank calls "standardized case scenarios" – these are tightly defined scenarios so that they can be fairly and transparently compared across all 190 economies of the Index.

Letting the data do the talking, a "low hanging fruit" strategy was adopted to reduce the ranking of Lao PDR by taking the worst performing categories that rank above 100 as they are easier to change and target indicators within those target categories that do not require seismic changes in order to have maximal effect. ECCIL has refrained from commenting on how to go about legally putting *those changes into effect and leaves that task the Government of Lao PDR.*

There are six categories that rank worse than 100 and this paper will focus on those as well as an additional category, ***Enforcing Contracts****, as it ranks dangerously close to the cut-off point of 100.*

In the table below, the seven categories and their respective indicators selected are listed with their original 2018 (current) score and their proposed (target) score. To understand what these indicators mean will require reading through the relevant sections on each category.

List of Targeted Categories and Proposed Changes to Indicators

Categories	Indicator	Current Score	Target Score	Indicator	Current Score	Target Score
1) Resolving Insolvency	Recovery Rate	0.0	15	Strength of Insolvency	0.0	4.5
2) Protecting Minority Investors	Directors Liability/ Corporate Transparency	1	5	Ease of Shareholder Suits	3	5
3) Starting a Business	Time	67	45	Procedures	8	4
4) Getting Electricity	Time	134	74	Reliability of supply etc.	2	5
	Procedures	6	5			
5) Paying Taxes	Time	362	190	Time VAT refund Comply	0	20
	Payments	35	10	Time VAT refund Obtain	0	40
6) Trading Across Borders	Time to Import (documentary compliance)	216	100	Time to Export (documentary compliance)	216	100
7) Enforcing Contracts	Quality of Judicial Process	5.5	7.5			

First, the paper will work through each of the first six target categories, selecting indicators based on our "low hanging fruit" strategy and suggest realistic changes. The changes involve the reduction in the time and number of steps required for a particular process, use of electronic means and automation for filing or registration and changing some procedural rules. Most importantly, for these changes to be captured in subsequent rounds of World Bank research, they have to be embedded and implemented fully. The new scores in the table above reflect those suggested realistic changes.

Using the Calculator Excel File supplied online by the World Bank, it is possible to calculate the new overall rating for Lao PDR based on those new scores – ***had the Lao PDR instituted those changes in time for the 2018 Index, the country would have achieved an overall ranking of 90. If improvements to the category Enforcing Contracts are included, the country ranking improves to 88.***

The 2018 ranking for each category and the proposed 2020 rankings are set out in the table below:

Comparison of 2018 Category Rankings and Proposed 2020 Rankings		
Categories	**Ranking 2018**	**Ranking 2020 (Proposed)**
1) Resolving Insolvency	168	163
2) Protecting Minority Investors	172	119
3) Starting a Business	164	111
4) Getting Electricity	149	84
5) Paying Taxes	156	66
6) Trading Across Borders	124	82
7) Enforcing Contracts	97	70
Country Aggregate	141	88

The European Chamber of Commerce and Industry in Laos is happy to share its knowledge and expertise in relation to the Ease of Doing Business Index with the Government of the Lao PDR, its officials and other stakeholders. Given the urgency of the task, ECCIL recommends the setting up of a task force at the highest level to drive the required changes so as to achieve the ranking below 100 in the 2020 Index.

Introduction

The European Chamber of Commerce and Industry in Lao PDR (ECCIL) would like to add its support to the Government of Laos' intention of improving the country's rating in the World Bank's Ease of Doing Business Index to below 100 by 2020. In this White Paper, ECCIL respectfully proposes some suggestions as to how this can be achieved.

As an aid for the discussion among officials and stakeholders, in this White Paper ECCIL will present a strategy for achieving the below 100 rating.

This white paper begins with an outline of the rationale behind the index and some of its salient features; what follows will be a very accessible overview of the Ease of Doing Business Index (henceforth referred to as the "Index"), its methodology and how some of the variables and the final rankings are arrived at.

Instead of examining each and every category and every variable within each category, ECCIL will focus only on those categories that fit the "Low Hanging Fruit" strategy – the low hanging fruit are those low scoring categories that are easier to improve without too much disruption. The strategy will be to pick variables and tactics within those categories that will require the least amount of disruption in the legislative and administrative landscape. ECCIL leaves alone those several categories where Lao PDR scores well and concentrates only on those areas where changes are necessary and will reap benefits in improving the rating in the country's favour.

We conclude by providing advice about various categories and indicators that make up the Index and about the shifting nature of the Ease of Doing Business exercise and the danger of merely doing the same as before – as the Lao PDR has recently experienced in the past three years, despite changes in legal and administrative rules, in this time the country's ranking has fallen from 135 to 139 to 141. ECCIL also suggests that if the economy is going to absorb the changes in time for the 2020 Index report, the changes have to be done within the next year. Therefore, the matter is of great urgency and ideally requires a task force at the highest level so that all changes proposed can be implemented and embedded in time for the 2020 report.

The Ease of Doing Business Index - Some Salient Features

The Prime Minister of the Lao PDR has stated the intention of reducing the ranking of the country in the Ease of Doing Business Index to below 100 by 2020. This is possible and this paper sets out below how this can be done.

This is an urgent task. Invariably, the Ease of Doing Business report is published in the closing months of the year before the year on its title – for instance, the 2018 report was published in November 2017. In turn, the 2020 Ease of Doing Business Report will be issued in late 2019 and the investigative work for that report will probably be completed by the World Bank researchers around June 2019.

Because the researchers examine actual practices rather than just what is stated in the various laws or administrative rules, those practices would have to be seen to have been implemented and be embedded in institutions and practices ahead of the research period. Given that it takes some months in any country for changes in practices, administrative rules, decrees and laws to be promulgated and fully implemented, these changes would have to take place at the latest by the end of 2018 to qualify for relevance in the research period in 2019 on which the 2020 report will be based. At the time of writing (November 2017), this gives the Government of Laos just over one year in which to agree, formulate, legislate, complete, promulgate and implement all changes.

It should also be understood that the Ease of Doing Business Index is an ongoing competition and not a once-off activity. The danger is that if Lao PDR were to achieve a ranking better than 100 in 2020 but were to do nothing more in the following years, that ranking below 100 would soon be eroded and the country would fall beyond the 100 position very soon.

For the rest of this paper, the term "Index" will be used to refer to the World Bank's Ease of Doing Business Index. The Index is made up of ten permanent categories – there is sometimes a *guest* category but its findings are not included in the actual final index for that year.

Each category is made up of indicators. Some categories, such as **Resolving Insolvency,** have only two indicators while some, such as **Trading Across Borders**, have as many as eight indicators.

Indicators are sometimes the measurement of some process, such as the amount of time it takes to process documentation when importing goods. Sometimes Indicators are based on sub-indicators – this is especially true of the qualitative indicators where marks are awarded based on certain facts, such as an economy having in place a particular legal practice or facility.

It will be shown later how the value of indicators goes to make up the value of categories and how that is expressed in the ranking of categories and the overall ranking for each economy. For the sake of clarity, this paper will put the names of categories in **Bold** but will underline the names of indicators.

Important Features of the World Bank's Ease of Doing Business Index

In discussions about the Index it is sometimes not made clear that the Index is an ongoing competitive exercise. The reason a country gets a specific rating depends on how well it has performed with respect to other countries – so it is not about how well, objectively speaking, a country has done (although the Index does contain information on that in *Distance to Frontier* statistics – see explanation below).

Another misunderstanding about the Index is that it measures **all** businesses or that it measures the experiences of foreign businesses. Both beliefs are false. The Index does not examine all types of business. In fact, although foreign investors will often include the Index in their research into a potential new host economy, *the Index does not include foreign businesses or foreign investors* in their analysis or data although foreign companies are used for data collection and research for the purposes of compiling the Index.

The Index also leaves out many factors that are crucial to the operating of a business – for instance, the Index is silent on corruption, security, how developed the financial sector is, the size of the market or other features of an economy. Instead, the Index focuses on a set of 10 categories specifically chosen because they can be normalised in such as way that they can be expressed in numbers and compared globally across 190 economies.

To see why this is important, imagine trying to compare the experience of a small enterprise in a remote village with that of a large modern bank in the centre of the capital city. Clearly, setting up a small enterprise that is not a limited liability company is going to be rather different to what a bank must do to set up in the capital.

Therefore, to create a level playing field whereby practices can be compared across every economy, World Bank employs a feature they call "standardized case scenarios." For example, it is not feasible to collect data on businesses in every part of every country participating in the Index. Instead, the Index focuses on scenarios usually in the largest business city in the country and compares those scenarios globally. For instance, in the **Getting Electricity** category, the standardized case scenario involves a warehouse of a certain size in the largest city whereas in the **Resolving Insolvency** category it resorts to a standardized case scenario involving a hotel.

In the same way, the Index cannot cover every kind of the many forms that businesses take, from informal sector participants to fully registered partnerships, joint ventures, privately owned limited liability companies and stock market quoted public corporations. Indeed, the rules and regulations may differ quite markedly in different economies. So, in the category of **Starting a Business**, the World Bank picked as its standardized case scenario the private limited liability company or its legal equivalent for two main reasons; it is the most prevalent form of company worldwide especially for firms with more than one owner and given that potential losses are limited to the capital invested, it is the most likely choice of the new entrepreneur.

The Index does not rely on surveying private companies for a number of reasons – the data they are trying to capture is often not the regular everyday experience of a private company. A company is set up only once and only when there is a serious problem will it consider litigation; it is highly likely that any experience the directors of a company have of setting up or of litigation is out of date. But specialist practitioners, such as lawyers, set up companies on a regular basis; accountants deal with the tax authorities regularly and architects and construction specialists will know exactly how the building codes operate.

For these reasons, the World Bank relies on sending specially designed questionnaires to appropriate local experts, including freight forwarders, government officials and business consultants – last year 13,000 professionals worldwide were involved in researching and providing the data. All the relevant laws and regulations are collected and read and the data is verified. Sometimes visits are paid to the country (last year 30 countries were visited) and locally based World Bank staff will also provide input as required.

Yes, there are limits to this approach, which the World Bank openly acknowledges. Although it allows for greater comparison around the globe of various indicators, use of standardized case scenarios limits the scope of the Index; picking a private limited liability company will not provide any information on the challenges that sole proprietors in the informal sector face and this might be an issue where sole proprietors are the most prevalent form of business organization. But such limitations are inevitable if the methodology is to be transparent, the data comparable across all economies in the index and the compiling of the index can be done on a budget that is compatible with an annual review.

Methodology - the Hard Part

What is provided here is be an overview of the methodology and some more information on how the Index is put together. To gain a good understanding of the rest of this White Paper, it is not essential to read this section. But this section is designed to be readable and does not require specialist knowledge and will provide the non-specialized reader with more insight into the index and its purpose.

Although most who read the Index focus on one number or one set of numbers, namely the ranking of an economy or economies in the Index for a particular year, the Index also contains other information, such as the "Distance to the Frontier" (from here on the Distance to Frontier is referred to as DTF). The DTF score for a category or an economy indicates how much the category or the economy has objectively closed the regulatory gap and improved its performance in a particular year and is very useful as an absolute comparison of an economy's or a category's performance year on year. So if you see an economy has disimproved in one of its category rankings by 5, you can check its DTF score for that category to see whether the disimprovement is as a result of competition or an objective disimprovement in the economy. You can also check the overall DTF score for an economy – these are provided alongside the *Country Rankings* on the Index Calculator Excel file (more about this feature below). In the case of the Lao PDR, while between 2017 and 2018 its overall ranking fell from 139 to 141, its DTF score was almost the same at 53.01 as compared to 53.29.

Each year the Index contains ten categories. They are as follows:

1. **Starting a Business**
2. **Dealing with Construction Permits**
3. **Getting Electricity**
4. **Registering Property**
5. **Getting Credit**
6. **Protecting Minority Investors**
7. **Paying Taxes**
8. **Trading Across Borders**
9. **Enforcing Contracts**
10. **Resolving Insolvency**

As mentioned earlier, each of these categories is analysed according to a number of indicators. Each of these indicators is normalized for easy international comparison; for instance, the category of **Starting a Business** contains several indicators, such as Number of Procedures (required to set up a business), Time (days required to set up a business), Cost (of setting up a business stated as a percentage of income per capita for the relevant economy) and Minimum Capital Requirements (also stated as a percentage of income per capita). In each case, the indicators are normalised under specific conditions, sometimes according to *standardized case scenarios*, so that they can be fairly and transparently compared across each of the 190 economies in the Index.

There are a number of other rules embedded in specific indicators which will be shown later. But for now, lets just say that the normalized indicators for each category are placed on a scale using a mathematical method called linear transformation that incorporates the best and worst outcomes according to the following formula:

(worst – y)/(worst – frontier) where y = the normalised indicator

With some indicators, the *frontier* is defined as the best performance for that indicator in all the economies in the Index for the past five years since 2005 and the worst is the worst performance in the past five years since 2005. Some other indicators are evaluated according to a frontier that is the best possible performance for that indicator, even though no single economy has ever achieved that score. And there are other indicators where, due to certain features of the indicator, the frontier definition is a little different.

For any economy, each indicator in each category can be shown as a DTF score on a scale of 0 to 100 where the frontier = 100. Clearly, the closer the indicator of an economy is to 100 on the DTF scale, the better the performance.

Using simple averaging of the indicators, the DTF score for the category in an economy can be arrived at. In the same way, the aggregate DTF score for the whole economy can be derived based on the simple averaging of the DTF scores for the ten categories.

The ranking of all 190 economies is determined by sorting the aggregate distance from the frontier scores for all the economies, from 1 (New Zealand) to 190 (Somalia).

Methodology - the Easy Part

As mentioned before, to understand the Index and how it works, it is not necessary to completely understand how the methodology works. All that is required is an understanding that the DTF is a number that measures the absolute changes in a category or economy year-on-year and that the ranking measures how a category or an entire economy has performed with respect to the others in the Index.

The use of the Index is made even easier by the following:

- each year the World Bank provides a *Calculator Excel file* in the form of a spreadsheet containing all the indicators for each economy[1]. After downloading the spreadsheet file, it is possible to alter indicators in the spreadsheet to see exactly how changes in a single indicator would have affected the overall ranking for that year or the relevant category ranking. For instance, it is possible to see exactly how a reduction in the Procedures indicator from 8 to 6 in the **Starting a Business** category might affect the category outcome and the overall ranking (it would have changed the category ranking from 164 to 159 and the overall ranking from 141 to 140).

- it is also possible to further examine each indicator for each country in detail to see how it was calculated by referring to the World Bank's *Doing Business website*. One can read about the methodology for each indicator in general but one can also read about how each indicator for each economy is evaluated to see how its numerical value was calculated. Checking through these indicators in the methodology for the country and then running potential improvements through the Excel spreadsheet helps policy makers, advisors and commentators to work out feasible strategies for reducing the overall ranking for a country.

Although it is not absolutely necessary to get the maximum benefit, especially from the later sections of this paper, it makes sense to have access to the Lao PDR data pages in the Doing Business website[2] as well as the *Calculator Excel Spreadsheet*[3] This file is known as the "DB18 DTF Calculator" on the World Bank's Ease of Doing Business website and it calculates all the rankings (both categories and country rankings) for all 190 economies.

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1 All World Bank Ease of Doing Business information, data, Excel files and other information can be found and downloaded from www.doingbusiness.org and following the links.
2 http://www.doingbusiness.org/data/exploreeconomies/lao-pdr
3 The spreadsheet file is known as "DB18 DTF Calculator" and can be downloaded from the following web page http://www.doingbusiness.org/data/distance-to-frontier by clicking on the link "Download Doing Business 2018 distance to frontier calculator."

The Ranking of Lao PDR in the Ease of Doing Business Index

In order to generate an appropriate strategy to improve the ranking of Lao PDR in the Index, this paper will need to examine more closely how the country performed in the Index in this year (2018) and last year (2017). As mentioned earlier, the World Bank publishes the Index in the closing months of the year in which it was done but labels it as that of the following year. The current Index (2018) was worked on during 2017 and published in early November 2017 but it is labelled by convention as the Ease of Doing Business Index for 2018.

The following table contains a list of ranks and DTF scores for Laos for of all categories listed according to rank (worst to best) in 2017.

Comparison of Ranks and DTF Scores 2017-18				
Categories	**Rank 2017**	**Rank 2018**	**DTF 2017**	**DTF 2018**
1) Resolving Insolvency	169	168	0	0
2) Protecting Minority Investors	165	172	35	31.67
3) Starting a Business	160	164	72.42	72.56
4) Getting Electricity	155	149	48.67	52.65
5) Paying Taxes	146	156	56.98	54.18
6) Trading Across Borders	120	124	62.98	62.98
7) Enforcing Contracts	88	97	58.07	55.22
8) Getting Credit	75	77	55	55
9) Registering Property	65	65	68.70	69.55
10) Dealing with Construction Permits	47	40	75.11	75.25
Country Aggregate	139	141	53.29	53.01

From this figure several patterns can be seen:

1. Between 2017 and 2018, the absolute change in performance within each category, measured by the DTF score, is not high and the overall change, the country aggregate, is almost the same.

2. Even though the country aggregate DTF scores are almost identical, the country ranking disimproved. This is mainly because even though not much had changed within Lao PDR with respect to the categories examined by the Index, competition from other countries continued to erode the Lao ranking.

3. There were two apparent anomalies – **Resolving Insolvency** appeared to improve in ranking but actually because Laos received the lowest DTF of zero for the category, it along with a number of other countries tied for the worst category ranking 168 in 2018 and 169 in 2017. Also, although the Lao DTF score for **Dealing with Construction Permits** went up fractionally (from 75.11 to 75.25), the Lao ranking for this category improved by 7. Despite little change within Lao PDR with respect to this category, there was some weakening in the international competition such that Laos went ahead by 7 places.

4. There were only two categories where Lao PDR improved its ranking, namely **Getting Electricity** and **Dealing with Construction Permits**. Without these category improvements, the estimated overall 2018 ranking for Lao PDR would have disimproved to 143 or 144.

5. By setting out the ranking as a table from worst to best, it is clear which categories fall below 100 and which are the worst at above 100. This will inform our strategy as it is always easier to improve where there is greatest room for improvement and least competition.

Strategy for Improving Lao PDR Ranking to below 100

In coming up with a strategy, it was decided to let the data do the talking. Clearly, to improve its rating to below 100, the changes in the indicators brought about by actual changes in policies, laws, administrative rules or practices that would bring the rating for 2020 to at least several ranking points below 100 would have to be demonstrated. Leaving a margin is very important because with each passing year the competition gets a little tougher – such is the competition within the Index, it is anticipated that a country with a ranking of 98 now would probably be worse than 100 in 2020 if the DTF scores of all the categories remained the same for that country's economy. This highlights the Index as an ongoing competition rather than a once-off activity.

Returning to our review of the data so far and our approach of letting the data doing the talking, the best way forward is to seek out indicators where it is easier to make changes, in other words indicators whose improvements do not require seismic changes. Indicators and categories would also be sought where changes in indicators are more likely to have a larger effect than a smaller effect in the ranking. In this latter case, clearly those categories that perform the worst are going to have more room for improvement; besides, at the worse rankings, the competition is always less. If you want to bring the average of all categories to a ranking of 100 or better, it would make sense to tackle those categories that are above 100 rather than try to improve those that are already well below your target figure of 100 where the competition is much higher.

This is the strategy that this paper refers to as "the low hanging fruit" – namely target categories that rank worse than 100 and that are easier to change; target indicators within those categories that do not require major seismic changes in order to have an effect. Ideally, changes would be sought that cause less disruption; in other words, a change in practice is preferable to a change in an administrative rule, a change in administrative rule to a change or introduction of a new decree, a change in or new decree to a change in a law, and so on. However, ECCIL does not set out proposals as to how changes are to be made by the Government; instead, ECCIL merely recommends the changes to be made that are anticipated to be easier and leave it up to the Government of Laos how to put such changes into effect using the appropriate legal means.

There are six areas where Lao PDR ranks well above 100, as set out in the table on the next page.

Targeted Categories	Current Category Ranking (2018)
1) Resolving Insolvency	168
2) Protecting Minority Investors	172
3) Starting a Business	164
4) Getting Electricity	149
5) Paying Taxes	156
6) Trading Across Borders	124

In the next section, each of these six categories will be examined for indicators that cohere with our low hanging fruit approach. The category, **Enforcing Contracts**, will also be briefly examined; although this category is not included in our list of 6, it has disimproved from category rank 88 to category rank 97 and some certainly is required to be sure that it does not fall further. It also has fallen back slightly in its DTF score in the past year.

In certain categories, there are indicators that are segregated along gender lines – for instance, in the category **Starting a Business**, there are two indicators, Procedures (men) and Procedures (women). In Lao PDR, there has been no difference in how men and women are treated in relation to such indicators and therefore the readings for such indicators have been exactly the same. So as to simplify matters in the discussion, all such indicators that have been split into two for purposes of gender testing are treated as one indicator.

Proposed Category Ranking Improvements

In this section each of the target six categories will be examined to see how they might be improved. To avoid complication, each category is treated as a stand-alone and no cross-cutting issues are examined or developed. In each category, low-hanging fruit indicators that can be modified relatively easily are sought and the changes are put through a simulation using the *Calculator Excel File* supplied by the World Bank. Based on the simulation, the effect of the changes on the ranking of the category and the overall ranking can be demonstrated.

After examining all six categories, this paper will go on to look at the category, **Enforcing Contracts**. The reason is that the ranking of this category (97) in 2018 was so close to 100 that it would be likely to fall to worse than 100 in the next year's Index. This paper will propose some changes in this category and will show how this will affect the cumulative overall ranking for Lao PDR. At the end, the overall ranking will be below 100 but a sufficient margin must be left to take into account increased competition in the next two Ease of Doing Business Index Exercises (2019 and 2020).

Resolving Insolvency: This is the most perfect fit for the low-hanging-fruit approach; the ranking for Lao PDR in this category is 168. It is clear that this is the lowest ranking because the DTF score for Laos was zero; 22 other economies also received a DTF score of zero for this category and therefore share the same ranking of 168. Because Laos' DTF is zero, almost any positive changes to the indicators will reap benefits and result in an improvement in the ranking for this category and ultimately for the country ranking.

The methodology for calculating the **Resolving Insolvency** category DTF and by extension the rating is based on two Indicators, the overall Recovery Rate and the calculation of the Strength of Insolvency Framework. This makes it one of the easiest categories to improve.

The overall Recovery Rate indicator is based on several sub-indicators, namely *time* (the amount of time it takes for an insolvency case to be resolved), *cost*, *outcome* (whether piecemeal outcome or possible 'going concern' outcome), and *proceeding* (whether there are any possible proceedings for insolvency cases).

The methodology for this indicator carries a unique condition, which is that whenever a country has not had a legal bankruptcy proceeding in the previous 12 months, the methodology records "*no practice*;" because *no practice* means that creditors are not going to recover assets or money through any judicial process, the methodology stipulates that the recovery rate must to be recorded as zero.

In the case of the other indicator, Strength of Insolvency Framework, Lao PDR scores some points because some legal remedies are available, such as reorganization or access to liquidation proceedings. However, the methodology stipulates that:

"Even if the economy's legal framework includes provisions related to insolvency proceedings (liquidation or reorganization), the economy receives 0 points for the strength of insolvency framework index, if time, cost and outcome indicators are recorded as "*no practice*"."[4]

With both indicators in the category recording zero, Lao PDR is awarded zero points for the category, therefore zero for the DTF score and falls to the lowest possible rating. But drilling down into the sub-indicators shows that Lao PDR would have earned 4.5 points in the Strength of Insolvency Framework indicator under current circumstances if the methodology did not record zero for the Recovery Rate indicator and therefore stipulate zero for both. But the problem is that these points could not be recorded because there was no record of any insolvency cases in the previous 12 months.

It may be possible that there were in fact some insolvency cases during the previous 12 months in Laos that were not found by World Bank researchers because of the lack of a recording mechanism.[5] Therefore, to score any points in this category and achieve any increase in rating will require the introduction of a permanent registry of insolvency cases, including a listing or filing for corporations that have been made bankrupt, struck off, liquidated or placed in insolvency whether by way of court case, through mediation or through the Center for Economic Dispute Resolution. The inclusion of such cases in a newly created permanent accessible registry of insolvency cases would have an immediate effect on the ratings.

By creating a central registry of cases and thereby being able to show that cases have been processed in the previous year and assuming a recovery rate of 15% (a very low rate), Laos would have improved its ranking in the category, **Resolving Insolvency**, from 168 to 163, thereby improved its overall Ease of Doing Business Index rating from 141 to 132.

Starting a Business: The rating for this category for Laos is 164. This is also a very straightforward category where the rating and DTF is based on two variables; Time (the number of days it takes to complete all procedures - currently 67 days) and Procedures (currently 8 in number). Therefore the only way to impact this rating is to reduce either the number of procedures or the number of days it takes to complete the procedures or both.

The following is a list of the procedures involved in Lao PDR (based on the standardized case scenario employed by the World Bank):

1. Application for name reservation and enterprise reservation certificates (there are 6 subcategories of documentation required for this step)
2. Register the articles of association
3. Apply for tax registration certificate (this step requires 12 sets of documents)
4. Company Signage Approval from the Ministry of Information, Culture and Tourism

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4 See the following link: http://www.doingbusiness.org/data/exploreeconomies/lao-pdr#resolving-insolvency

5 This is not a criticism of the World Bank researchers or their contributors. With no evidence of any proceedings, the researchers would have no choice but to record "no practice."

5. Carve a company seal
6. Register Company Seal at Ministry of Public Security
7. Register Workers for Social Security
8. Register for VAT

How other countries get much higher rankings in this category is to simply reduce the number of procedures and the amount of time required for the whole process through a mixture of streamlining the process and incorporating information technology.

Take for example, Singapore. They use 3 steps, as follows:

1. Online registration for business name, company incorporation and tax number. Name reservation is easy because it is automated – it is impossible to reserve a name that is highly similar to that of another business on the IT system. There is no need to register with the tax authority as the system automatically does that. The process usually takes up to an hour.
2. Company seal is not mandatory but many corporations prefer one. It takes several days although an express service is available to complete it in one day.
3. Sign up for employee compensation insurance according the laws of Singapore. The process takes less than one day.

Because the whole process takes less than several days and only requires 3 steps, Singapore has achieved 6 in the ranking for this category in 2018.

In addition to using electronic means, Singapore also integrates its several different government functions or systems when it interacts with business. For instance, registering a business name and incorporating will automatically trigger a tax number for that business. This can be done even when the system is not automated or run on an integrated IT system. So in the case of Lao PDR, there is no reason why Step 1 (Name registration etc.) and Step 2 (articles of association registration) should not be combined. This combined registration should give rise to automatic tax and VAT registration within a few days simply through the automatic forwarding by the registration office of the relevant information to the tax office. Since the standardized case scenario for this category is concerned with limited liability companies with a turnover of at least 100 times the country's income per head only, this is far beyond the level of LAK400 million ($47,000) below which VAT registration is not mandatory.

Company Seal carving and registration should also be integrated. This would then reduce the number of steps to register a business in Lao PDR to the following:

1. One stop registration of company name, articles of association and tax/VAT
2. Company Signage Approval
3. Obtain a company seal (carving and registration)
4. Register workers for social security.

[6] According to a Ministry of Industry and Commerce Notification dated May 19, 2017, the requirement for separate name reservation certificate and enterprise reservation certificate has been removed in favor of the new "Enterprise Registration Application Form." However, the World Bank researchers reported that the separate name reservation and enterprise reservation certificates were still required. It could be that the office the researchers approached was still applying the old system.

It is already possible to check the website of the Enterprise Registration Department to search for an existing business name online and therefore there is no reason that officials at that office cannot check instantaneously whether a particular company name is in use already or not.

If the number of procedures in **Starting a Business** in Laos are reduced to 4, this would have the immediate effect of reducing the category rating to 143 and the overall rating for Laos from 141 to 140.

In turn, if in addition the number of days it takes to register a business are reduced from 67 to 45, this will further improve the category rating to 111 and the overall rating for Laos to 137.

Combining all the changes in these two categories (**Starting a Business** and **Resolving Insolvency**) would move Laos to the new position in the Ease of Doing Business Index of 126.

Protecting Minority Investors: This third category examines what would be the legal situation for minority shareholders of a company if that company were to buy significant assets from another company where one individual is both a majority shareholder and CEO in the purchasing company as well as being the majority shareholder in the selling company.

The category looks at a number of indicators, including Disclosure (whether and to what extent the majority shareholder/CEO has to disclose the conflict of interest under the law), Director's Liability (whether and to what extent shareholders can take action against the CEO), Shareholder Suit Index (ease of taking a legal case against the CEO including access to documentation and repayment of legal expenses if successful), Shareholder Governance, Shareholder's Rights and Corporate Transparency.

Looking at the indicators, the worst performing for Laos are Director Liability (scoring 1 out of a possible 10), Corporate Transparency Index (1 out of 10) followed by Shareholder Suit Index (3 out of 10).

Taking the worst performing indicators first, the reason that Director's Liability does not score higher is that there is very little recourse for a minority shareholder to gain redress when the company has been damaged due to actions by a CEO/majority shareholder in a conflict of interest situation. Although shareholders of 10% or more can sue directly or derivatively for damages, neither the director in conflict nor the other directors can be held liable for the damages, the majority shareholder cannot be made to pay restitution to the company nor pay over profits he made on the other side of the transaction. In addition, only in cases of fraud or bad faith can the transaction be voided by the courts. Nor can the courts imprison, fine or disqualify the conflicted CEO/director in question for his or her actions.

Clearly, the way to score more points in such indicators as Director's Liability is to remedy such legal deficits. This indicator only scores 1 point for allowing shareholders of 10% or more to sue for damages and the Lao PDR currently scores no further points under this Indicator. For instance, if the minority shareholder could hold the director in conflict liable for damages, that would add 2 points to the indicator. If other directors could be held liable for damages, that would add a further 2 points. Another 2 points could be earned if a court could void such a transaction upon successful claim by shareholders and so on.

It is clear what is needed here to improve the Lao PDR's position in the Index, namely changes in the rules and laws regarding conflict of interest by majority shareholders. Simply making all directors in a company liable for supporting transactions that damage the company when there is a conflict of interest would generate 4 points alone.

The Corporate Transparency indicator scores only one point for the rule that members of the company must meet at least once a year. Because there are no requirements in Lao PDR for companies to disclose to shareholders stakes in other companies, details about directors (such as their main employment or other directorships) or compensation of individual managers, the country loses one point for each of these under this indicator. In addition, because there is no requirement for annual audited accounts by an external auditor, nor the distribution of such audited accounts, further potential points are not earned. The same is the case with the lack of requirement for 21 days detailed notice of general meetings of shareholders and the ability of 5% shareholders to put items on the agenda of such meetings.

It would not be difficult to gain 4 additional points under this indicator – simply by requiring companies to let shareholders know about additional stakes, other directorships/employment by directors and compensation of senior managers along with insisting on the provision of 21 days of general meetings with details would be sufficient for 4 additional points, thereby generating 5 points in total under this Indicator.

Although Lao PDR performs slightly better under the Ease of Shareholder Suits indicator (scoring 3 out of 10), this category contains several opportunities for picking up extra points. One of the subcategories where Lao PDR scores zero is: "Can the Plaintiff (shareholder) obtain any documents from the defendant and witnesses at trial?" – because the answer is no, three points are lost. A similar question about categories of documents without specifying the documents also received a negative answer and a zero score. Because direct questioning of witnesses and defendant is not allowed, another point is lost (Laos scores only one point for allowing preapproved questions). Clearly some small changes in court procedures would allow

Lao PDR to score addition points under this Indicator – it should be possible to obtain two points simply by changing the subcategory regarding obtaining documents at trial to a more positive if even conditional one. For the moment lets will assume that this Indicator score can be raised from 3 to a score of 5.

As set out in the previous paragraphs, if the Indicators Director Liability and Corporate Transparency move from scores of 1 to 5 and raise the Ease of Shareholder Suits from 3 to 5, the outcome will be an improvement of the ranking of the **Protecting Minority Investors** category from 172 to 119. On its own, this would substantially improve the overall ranking for Lao PDR from 141 to 133.

Taken in conjunction with the other changes in the categories already discussed (**Resolving Insolvency** and **Starting a Business**), the changes to all three categories (including **Protecting Minority Investors)** would result in an improvement of the overall ranking of the country to 118.

Getting Electricity: the DTF and rating for this category is derived from 4 indicators, Number of Procedures, Time (amount of time it takes from beginning of the first procedure to when electricity is installed and up and running at the business facility), Cost (stated as a percentage of economy's income per capita), and Reliability of Supply and Transparency of Tariff. This latter Indicator is one where Lao PDR can make some additional points without undergoing onerous changes, as shown below.

The Reliability of Supply and Transparency of Tariff Indicator is made up of the following subindicators:

*Duration and Frequency of Outages*_(0-3) – Laos earns one point out of a max of 3. This would require the utility provider to become more efficient in making sure that there were fewer outages.
Mechanisms for Monitoring Outages (0-1): Laos earns zero points because there are no automated tools for monitoring outages
Mechanisms for Restoring Service (0-1): Laos again earns zero points because there are no automated tools for restoring service in the event of an outage.
Regulatory Monitoring (0-1): Because there is no regulator that is independent of the utility to monitor performance and reliability of supply, Laos earns zero points.
Financial Deterrents Aimed at Limiting Outages (0-1): Because the utility does not pay compensation to customers or face a fine by a regulator when outages reach a certain cap, Laos earns zero points for this subindicator.
Communication of Tariffs/Changes (0-1): Here Laos earns the available point because it makes the current tariff available online and makes the changes in tariff available ahead of time.

Out of a maximum of 8 points, Laos manages to earn only two points in the Reliability of Supply and Transparency of Tariff Indicator. But without much disruption, points could be easily picked up through ensuring a) the introduction of automated tools for monitoring outages b) instituting an independent regulator to monitor the utility's performance and reliability of supply and c) instituting a system of fines when outages reach a certain cap. In this way, Laos could easily add another three points to its existing two points, making a total of 5 points, bringing it closer to neighbours like Vietnam and China who both earn 6 points under this indicator.

The next indicator for scrutiny in this category is Time. Clearly, at 134 days, this process takes far too long – putting it in context by comparing with neighbouring countries, Myanmar which has many challenges is already down to 77, Vietnam is at 46 and Thailand at 32 days respectively.

The World Bank provides us with further analysis into the Time Indicator by providing the number of days it takes to run through each procedure in Laos, as follows:

1. Submit application to utility company and await estimate and technical specifications – 37 days
2. Receive site inspection by utility company for preparing technical specifications – 1 day
3. Await preparation and approval of detailed technical design and installation plan – 30 days
4. Await completion of external works by electrical contractor - 60 days
5. Await registration of meter at utility company – 1 day
6. Receive external inspection by utility company and then electricity flow – 7 days

Comparing with neighbouring countries, it is clear that the length of time for some procedures is excessive. In Vietnam the equivalent of procedure 1 takes only 4 days whereas in Myanmar it takes 28 days – in Laos this step takes 37 days. The equivalent of Procedure 4 in Vietnam takes 20 days, in Myanmar 21 days but in Laos 60 days.

The total number of days could easily be halved as follows:

Procedure 1 reduced from 37 to 20 days (possibly by removing the technical specification part and putting that into *Procedure 2*).
Procedure 3 could be reduced from 30 days to 15. The kind of installation called for under this Indicator is straightforward according to the_standardized case scenario employed by the World Bank (standard size industrial building in either the largest or the capital city requiring 3 phase electricity). Besides, since the customer is paying for connection (LAK 3.6 million for this procedure alone), there should be no question that the technical staff should be available to do this work.

Procedure 4 takes 60 days in Laos as compared to 21 days in Myanmar and 20 days in Vietnam. There is no reason why this procedure could not be completed within 30 days.

Adding all the changes in the amount of time proposed in the procedures together, the number of days could be reduced from 134 to 74.

Moving on to the Procedures Indicator, clearly there are too many procedural steps in this category; some it would appear to involve duplication of processes - for instance, technical specifications/detailed technical design appear in all of the first three procedures above. By separating registration of the meter by the utility company, an extra procedure is created – instead, installation of meter could be incorporated in the final procedure, namely external inspection and electricity flow. There is no reason why the customer should have to await registration of the meter when the application for electicity has already been approved and external works completed and paid for. So let us take it that the number of procedures could be reduced easily to 5.[7]

Taken together, the reduction in the number of Procedures (6 to 5), Time (137 to 74) and raising the Reliability of Supply and Transparency of Tariff Indicator score to 5, this will result in an improvement in the category Getting Electricity to 84; on its own, this category improvement in an improvement in the overall Ease of Doing Business ranking for Laos from 141 to 133.

One indicator that has not been examined is the Cost of getting electricity as there is no open access to any of the respective costs in the Lao context. However, it is clear that from the following that costs in Laos are high but also that there is huge variation in this Indicator between economies – for instance, Singapore's charges are only $13,000, Myanmar's are $14,000, Thailand's are $3,800, Vietnam's are about $24,000 while Laos, which aspires to be the "Battery of South East Asia," has charges of $24,380 (all figures are rounded up). Part of the issue is that countries like Laos and Vietnam presumably have to install equipment such
as a transformer or substation for 3 phase supply to a building of the size stipulated in the *standarized case scenario* for the category, **Getting Electricity**.

An additional problem for low income countries such as Laos is that the comparison of Costs used in the Index is not made based on actual costs in a single currency, such as US Dollars, but as a percentage of income per capita. Clearly, those countries with a higher income per capita benefit from this in the Index.

Paying Taxes: There are eight indicators in the **Paying Taxes** category; here they are with their respective values for Lao PDR:

Payments : 35 (number)
Time : 362 (hours)
Total Tax/Contribution Rate (as % of profit) : 26.2%
Time to comply with VAT refund : *No Refund*
Time to obtain VAT refund : *No Refund*
Time to comply with corporate income tax audit : 16 (hours)
Time to complete a corporate income tax audit : 31.7 (weeks)
Post-filing Index : 18.57
The indicator, Payments, simply refers to the

[7] At the time of editing, according to a report in the media, the Minister of Energy and Mines, at a workshop organized by the Department of Energy management and EDL, set the goal of reducing the number of procedures from 6 to 5 and the time from 134 days to 50 days.

number of individual payments of various taxes paid by a business each year. This is high for Laos because VAT and social security contributions are paid monthly – together that generates 24 instances of payments for the average company. Many countries have monthly payments for VAT and other taxes but score better on this indicator – this is because of how the Index measures frequency of payments when electronic payments and filing are used, as the following quotation from the Methodology notes for this category shows:

> "Where full electronic filing and payment is allowed and it is used by the majority of medium-size businesses, the tax is counted as paid once a year even if filings and payments are more frequent."[8]

If Lao PDR were to allow electronic filing and payment for medium-sized businesses, the Payments indicator would be reduced to 10 (Lao companies pay 10 types of tax and, with electronic filing, each would count as being paid once per annum).

The next indicator, Time, refers to the number of hours spend on preparing, filing and paying three major types of tax, VAT (182 hours), Corporate Tax (138 hours) and Labour Taxes (including payroll and social contributions = 42 hours). Time also includes the amount of time spent waiting in line to file documents and pay these taxes.

Clearly, an online system would greatly reduce the amount of time spent on paying taxes. All the filing could be done online while the payment could be made via a bank – a code system could ensure that the tax authorities would know that the tax had indeed been paid on the documents filed online.

With an online system, taxes could be deposited at the bank or paid electronically from the company's bank account into the tax authority's account. Assuming that the taxes are physically deposited at the bank, depositing VAT should take two hours each month. Assuming that it takes about five hours to prepare the documentation per month and an hour each month to electronically file the total hours on VAT per month would then be eight hours and per year would be 96 hours.

According to the type of company selected according to the standardized case scenario used for this category by the World Bank, corporate tax is paid four times per annum. Let's assume that it takes ten hours to calculate corporate tax on each occasion and the same amount of time to deposit the amount in the bank as with VAT plus the same amount of time to file. Altogether, that would amount to 13 hours at four times per annum which would equal 52 hours.

As regards Labour Taxes, the hours are not too high at 42 if it is assumed to take 2 hours to deposit the taxes at the bank and another hour every month to file the taxes, accumulating to 36 hours with a few extra hours to deal with changes in personnel from time to time.

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8 http://www.doingbusiness.org/methodology/paying-taxes

Adding the new hours that electronic filing would allow gives us a new total for the Time indicator of 190 hours.

On their own, these changes will generate a large improvement in the ranking of Lao PDR – in the **Paying Taxes** category, the ranking will improve from 156 to 95. On their own, with no other changes, they would reduce the overall ranking in the Index from 141 to 133.

The Total Tax/Contribution Rate will not be addressed because 26.2% is a very good number - it is on par with many developed countries.

Both indicators, Time to comply with VAT refund and Time to obtain VAT refund, are listed as *No Refund.* According to the World Bank's Ease of Doing Business Methodology:

> "If an economy has a VAT but the ability to claim a refund is restricted to specific categories of taxpayers that do not include the case study company, the economy is assigned a score of 0 on the distance to frontier score for time to comply with VAT refund and time to obtain VAT refund."[9]

The case scenario used by the World Bank in the **Paying Taxes** category involves a company that does not participate in foreign trade. According to the "measure of quality" in the relevant web page covering the **Paying Taxes** category for Lao PDR[10], a VAT refund process for the type of company cited is said not to exist – VAT refunds can only be obtained by "international traders and others," as reported by the World Bank reviewers.

VAT refunds are specifically available in Lao PDR, according to the *Instruction of the Minister of Finance on the Implementation of the Law on VAT of 11 Jan. 2017*. It was probably the case that this instruction was not fully implemented when the World Bank researchers were undertaking their research.

It is very difficult to say now how Lao PDR would perform with respect to the two VAT refund indicators but let us base our estimates on the Thai experience in this area. Under the indicator Time to Comply with VAT Refund, Thailand scores 16 (hours); under the indicator Time to Obtain VAT Refund, Thailand scores 33.2 (weeks). Given that Lao PDR will have little experience with VAT refunds, let us assume that these take a little longer at least in the initial years and estimate Laos to score 20 (hours) under the indicator Time to Comply with VAT Refund and 40 (weeks) under the indicator Time to Obtain VAT Refund.

No further improvements will be sought in this category. The indicators, Time to comply with corporate income tax audit at 16 (hours) and the Time to complete a corporate income tax audit at 31.7 (weeks) are not extraordinarily high although they could do with some improvement. It may well be that electronic filing could be used to improve these indicators – in any case, a well-designed online filing system could screen out at least some of the

[9] http://www.doingbusiness.org/methodology/paying-taxes
[10] http://www.doingbusiness.org/data/exploreeconomies/lao-pdr#paying-taxes

kinds of mistakes that give rise to such audits.

The Post-Filing Index indicator is based on four of the other indicators in the **Paying Taxes** category, Time to comply with VAT refund, Time to obtain VAT refund, Time to comply with corporate income tax audit and Time to complete a corporate income tax audit. In effect, the Post Filing Index is the simple average of the distance-to-frontier scores for each of the four indicators. Thankfully, this rather complex calculation is done for us automatically in the *Calculator Excel File*; the Post Filing Index moves from 18.57 to 40.81 as a result of the improvements made in the Payments, Time and VAT indicators outlined above.

All the changes suggest in this section for the **Paying Taxes** category would reduce the Category index from 156 to 66 and the overall Index for Lao PDR from 141 to 132.

Trading Across Borders: In 2018 Lao PDR has achieved the same DTF in this category as in 2017, which tells us that the situation has not changed. However, because of improvements in other countries, the ranking for this category has disimproved from 120 to 124.

The **Trading Across Borders** category is made up of a number of indicators – here they are with their respective values:

Time to Export (Border Compliance) - 12 hours
Time to Export (Documentary Compliance) – 216 hours
Cost to Export (Border Compliance) - $73
Cost to Export (Documentary Compliance) - $235
Time to Import (Border Compliance) – 14 hours
Time to Import (Documentary Compliance) – 216 hours
Cost to Import (Border Compliance) – $153
Cost to Import (Documentary Compliance) - $115

The standardized case scenario adopted by the World Bank in the category **Trading Across Borders** involves the importation of containerized motor vehicle parts (HS 8708) and the export of copper (HS 74)[11]. The experience with trading across borders in Lao PDR may be rather different with other kinds of products but the World Bank, in order to make clear comparissons between economies, must select just one type of import and export for use as standard measures for the Index.

What is striking about the Lao situation is that it is the opposite of what can be seen in other economies in the region. Taking export indicators, both Thailand and Vietnam have much higher Time to Export Border Compliance indicators (55 and 51 as compared to 12 hours for Laos) whereas their Time to Export (Documentary Compliance) indicators (50 and 11, as compared to 216 hours for Laos) are far lower (the higher Time to Export Border Compliance indicators for Vietnam and Thailand may be due to port congestion in those countries). There is a similar divergence between Laos and Thailand/Vietnam in the

[11] HS 8708 and HS 74 are the harmonized system codes created and maintained by the World Customs Organization (WCO) for "containerized motor vehicle parts" and "copper and articles thereof."

Time to Import indicators.

What is also noticable is that the Lao PDR indicators Costs To Import and Costs to Export score very well and the compliance indicators for import and export are also not bad. What is clearly noticable here is that the Lao DTF score and ranking for the category is being brought down severely by the very poor performance in the documentation compliance indicators – as mentioned earlier, neighbouring countries are able to process documentation in a fraction of the time.

The current Time to Import (Documentary Compliance) and Time to Export (Documentary Compliance) indicator scores are both 216. Using the 2018 DTF and Rating Calculator, let us look at the effect on Lao performance by improving this performance in various stages in this table:

Score for both Time to Import/Export (Documentary Compliance)	DTF	Trading Across Borders Ranking	Overall Ranking
216 hours	62.98	124	141
150	67.91	105	140
100	74.23	82	137
50	80.54	69	133

Because Lao PDR performs reasonably well under the other indicators, it is these two documentary indicators that should be targeted.

Let us take it that that the score for both Time to Import (Documentary Compliance) and Time to Export (Documentary Compliance) will be reduced to 100 each (even though without using electronic means it could be reduced to 50) and calculate the improvement in category ranking as 88 which, on its own, would lead to an improvement in the overall ranking from 141 to 137.

Calculating the Revised Overall Rating for Lao PDR Based on Proposed Changes

If all the proposed changes are inserted into the *Calculator Excel File*, it can see that the final overall ranking for the economy of Lao PDR has been reduced to 90, which is well within the parameters this paper sets out to achieve.

Although this concludes our discussion of our strategy, earlier this White Paper suggested to include a short discussion about the category **Enforcing Contracts**. The rationale behind that was, with a ranking at 97 and no planned improvements, this category would stand a high risk of going over the 100 ranking boundary in the next year or two. It would be yet another case of the category earning the same DTF score and falling further down in the rankings due to competition from other countries.

Enforcing Contracts is based on only three indicators: Time (the amount of time it takes to go through the entire legal process to enforce a contract), Cost (total costs including lawyer fees to run the case expressed as a percentage of the total claim value) and Quality of Judicial Process (an indicator that takes in various aspects of the efficiency and effectiveness of the court and legal processes).

Taking the Cost indicator first, in Laos it can be seen that this is made up of lawyer fees (27.9%), court fees (1.4%) and enforcement fees (2.3%). Clearly, on the state component in such costs, which amounts in total to 3.7%, there is not much room for reduction and any reduction would not be productive in helping to improve the ranking or DTF for the economy.

The Time indicator for Laos may seem high at 443 days but actually this indicator compares very well with those of other countries in the region and even with high income OECD economies (China scores 496, Malaysia 425, Thailand 420, Vietnam 400 and OECD High Income 577).

The area where Lao PDR can make huge improvements is in the Quality of Judicial Process indicator – the Lao score is 5.5 out of a possible 18. Although this score compares well with Myanmar (3) and Cambodia (5), it falls behind Vietnam (6.5) and Thailand (8.5). This year, China scored 15 under this indicator.

Without going into too much detail on the subindicators, it is enough to say that Laos loses all four possible points in the Quality of Judicial Process indicator by having no *court automation* – by this is meant the possibility of filing initial complaints electronically, making court payments electronically and the publishing of judgements.

Laos loses a further four points under the heading *Court Structure and Proceedings* – this is because Lao PDR has no commercial court (a court dedicated to commercial cases), no smalls-claims court or fast-track court for small claims and no random assignment of cases to judges.

Laos loses a further four points under the heading of *Case Management* simply by not having electronic case management tools for use by lawyers and judges and not having certain rules on adjournments. This latter area must be the easiest for Laos to pick up at least a few points.

If Laos were to pick up just two points under the Quality of Judicial Process Indicator (making the score 7.5 instead of 5.5), this would move the category ranking from 97 to 70. Taken in conjunction with all the other improvements in the other six categories, this would lead to an improvement in the overall ranking of Lao PDR to 88.

The Proposed Changes – What Next?

This White Paper has identified what are believed to be the changes that are less likely to be disruptive or seismic in nature but will be productive in the sense of improving Lao PDR's ranking in the Index. As set out in the previous sections, the proposed changes involve the reduction in the time and number of steps required for a particular process, use of electronic means and automation for filing or registration and changing some procedural rules.

But this paper does not identify each and every law, decree, administrative order or change of practice that would have to take place in order to put the various proposed changes into effect. This was specifically done for several reasons:

1. By identifying a change, ECCIL believes that it ought to be left open to the Government of Lao PDR as to how to put that change into effect. These are political considerations that are the business of the Government of Lao PDR.
2. It is also beyond ECCIL's competence to advise in each instance how a change should be put into effect because it would require expertise in Lao law, Civil Service Protocol and other areas.
3. It would have required much more resources in terms of time, input from many more people and would have resulted in a much longer and less accessible paper.

That said, ECCIL is more than happy to share knowledge and expertise with the Government of Laos, its officials and other stakeholders.

Having looked into this matter, ECCIL has become aware of the size of the task and the urgency; setting up a single task force to operate at the highest level to drive these changes would make sense if they are to be put into effect in time for the 2020 publication of the Index. However this should be accomplished and whether our proposals are met with agreement or not, the required changes for improving the ranking of Lao PDR to below 100 will have to be discussed, agreed, incorporated into regulation and implemented within the next calendar year if there is to be a chance of success in reducing the ranking to below 100 in the 2020 Index.

Conclusion

The rationale behind the World Bank's Ease of Doing Business Index is to provide a method of global comparison across countries of some salient features of doing business. Because such widespread comparison requires the normalization of indicators through the use of devices such as standardized case scenarios, there is much that is not captured in such a study. However, a measure of its success is that many countries make significant efforts to improve their standing in the Index and its contents are much sought after by foreign investors even though foreign businesses are never included within the scope of the Index.

The Index is effectively an ongoing competitive activity but it is always possible for economies to check their overall DTF scores or that of specific categories to see whether they are objectively improving. In this White Paper, various tools for the researcher were referred to, including the *Calculator Excel File* and the *Doing Business website*. These were used in the simulation of the effects of the proposed changes in conjunction with the methodology published by the World Bank. Key terms such as Categories, Indicators, Distance to Frontier and other terms were examined and explained.

Strategically, it was decided that ECCIL should avoid targeting those categories where Laos was already scoring below 100. A strategy, called the "low hanging fruit," was utilized, whereby categories were identified that had performed worse (less than 100) and were easier to change. Within the target categories, indicators were sought that could be changed without too much disruption but whose change would contribute most to reducing the category ranking and subsequently the overall ranking for the economy.

Using this strategy, a list of six categories were identified which were thoroughly analysed. Within each category, the relevant indicators were examined and realistic changes were suggested based on how effective the change would be on the overall ranking of the economy. In each category, the search was for indicators and subindicators that could be easily changed in the Lao context.

Each change was then simulated using the World Bank's *Calculator Excel Spreadsheet* and the final ranking was shown to be 90. It was pointed out that competition would worsen that ranking over time if improvements were not continuous because the Index represents an ongoing competition between countries. Therefore, if there are no changes and no subsequent changes in the DTF scores for all categories, this will most likely result in a worsening of the position on the Index.

An additional category was examined, namely **Enforcing Contracts**. This was done because in the last Index the ranking for the category had fallen to 97. It was shown that Laos could pick up two points in the Quality of Judicial Process indicator and that would drive the category ranking to 68 and **the overall ranking of Lao PDR (including all other changes) to 88.**

The proposed changes in this paper included the reduction in the time and number of steps required for a particular process, use of electronic means and automation for filing or registration and changing some procedural rules. In making our proposals, the legal changes were not set out by which these changes ought to be put into effect (whether by changes in laws, administrative rules or decrees etc) as this was beyond the competency and the scope of this White Paper. It would have also made this paper much longer than it is. However, the paper has pointed out that if the changes are to be made in time for the 2020 publication of the Index, there is only one year in which to accomplish everything. ECCIL therefore proposes a single task force to operate at the highest level as a matter of urgency so as to be able set about putting these changes into effect in time for 2020.

Creating the Right Impression: Attracting Quality Foreign Direct Investment to Lao PDR

Introduction

Foreign direct investment continues to play a large role in the development of Lao PDR. It accounts for approximately 75% of all investment in the country and it has allowed the economy to develop its resource base – the energy sector in Laos is a prime example of how foreign investment can help create huge value, employment and increase exports. Foreign investment has brought with it many other benefits, including innovation, expertise and skills to the country as well as creating many linkages with local SMEs and medium sized enterprises that have, in turn, led to their further development.

Many factors are taken into account when a corporation is deciding whether to invest in a foreign country. Each investor will be different in this respect depending on their size, their sector and their experience, whether they are a large multinational or a small operator trying to expand into the market of a neighbouring country. Despite this variety among potential investors, it would be fairly safe to say that there are two general categories of factors that are crucial to a positive outcome in that decision process of any investor as to whether to set up in a new location; these are a)the image or reputation of the target country in the treatment of foreign investors and b)the rules, laws and regulations that foreign companies have to abide by in order to set up in the new country. Every investor will invariably pay attention to these two factors.

The discussion of these two factors is not intended to be exhaustive in this White Paper. Instead, in the case of the reputational/image factor, we will use a single issue to illustrate how something that, in and of itself, might not appear to be of much importance, can, in the court of public opinion abroad, take on a different meaning – the example we will use is the current issue of foreigners no longer being able to register their own personal vehicles (including motorbikes, cars, pickups etc) in the Lao PDR.

The second factor will focus briefly on the new Investment Promotion Law and some recent developments in that connection.

Foreign Investment and Country Image/Reputation

Much of what constitutes a country's image or reputation among international investors is based on hearsay, on stories in the media and on impressions that are based on small amounts of information or impressions that somehow stick in the mind of foreigners. Reputation or image is often something that developing countries do not spend much time and resources on except perhaps when it comes to tourism. The image that is developed for the tourist market may not play any role in the case of foreign direct investment decision makers and their advisors or researchers except perhaps if those decision makers are in the tourism or connected trade.

Most countries appear to take the view that as long as they treat foreign investors fairly and say they are open to foreign investment, they have no reason to worry any further about the subject of image or reputation when it comes to foreign direct investment. Such complacency is risky. The image of a country that relies heavily on foreign investment is something that needs to be constantly worked on for a number of reasons.

First, bad news travels furthest and quickly. This is true of the international media as well as word-of-mouth transmission. No one has to promote bad news as bad news sells itself. Good news, however, usually needs to be promoted.

Second, there is much information both online and in books and other publications that is very much out of date. It is often much easier for foreign investors to find old data about a country that is less flattering rather than finding recent good news unless that country promotes the good news.

Third, there are always areas in developing economies that need to be worked on. For instance, the Government of Lao PDR is committed to reducing the country's ranking to below 100 in the World Bank's Ease of Doing Business Index. It will not just be the place on the index that will be important but the level of improvement that will make for a big news story because a projected large improvement of over 40 places over two years on the index will demonstrate that Lao PDR has collectively put its shoulder to the wheel and is serious about making business easier in the country.

Fourth, it is very easy for a country to accidentally give the wrong impression to foreign investors. Many commentators talk about tax rates being increased or new taxes in an economy having a downward effect on foreign investment or some changes in the law that cause delays or more bureaucracy in importing or exporting that raise costs that may have the same outcome. Sometimes that is the case but there is also the hard-to-pin-down reputational aspect or image of the country in question as being a place where foreign businesses, their investors, their foreign managers and experts feel comfortable living and working.

For those foreigners who currently live in Laos, there is no doubt that Lao PDR is a welcoming country and is seen as a comfortable place for foreigners to live and work. However, our concern here is not with those foreign investors or employees who have already been convinced of the Lao welcome but with those who know nothing about Laos except what they hear through their network of contacts or what they have read in the media or online.

Now imagine the impression that a group of decision-makers might have when they find out that although, until recently, all foreigners living and working in Lao PDR could register vehicles in their own names, now, with certain exceptions such as diplomats, foreigners living in Lao PDR cannot have personal vehicles registered in their own names. All motorbikes or cars/pickups purchased by foreigners must now be registered in the name of their employer.[12]

The immediate concern among potential foreign investors might be that this will create a problem for their foreign experts and managers, that some of these personnel might not want to move to Laos for work because of such restrictions. There will also be a problem with spouses who will want to be mobile and have their own vehicle but may not have employment. And this is where the imagination takes over – the foreigner contemplating a move with family to Laos might think, "if we am not allowed to even register my own vehicle, what other restrictions are there that we have not heard about yet?" It is easy to see how what might appear to be a small issue can create such a bad impression.

The requirement that all foreign owned vehicles must be registered with their employers could also create the impression that somehow Lao PDR just does not trust foreigners to register their own vehicles in their own names. The fact that this is a new change will be troubling as it might be interpreted by potential newcomers as a change in attitude towards foreigners coming to work in Lao PDR even though no such change in attitude might exist.

As potential foreign investors do a little more due diligence and research, they find that the new arrangements regarding vehicle registration create a number of additional issues for foreign investors and foreign employees, as follows:

Some employers may not wish to take on the liability of registration of vehicles purchased by foreign employees on the basis that if the employee is involved in an accident and is uninsured or insufficiently insured, the other party may seek damages from the named person on the registration documents, namely the employer. In addition, the employer is likely to be seen to have deeper pockets which might serve to encourage such cases.

If an employer refuses to register a foreign employee's vehicle, the employee may be forced to seek an arrangement with a Lao citizen. Apart from going against the intention of registration of vehicle ownership, this can create problems when it comes to selling the vehicle at some later date and may lead to other problems, such as if the Lao person

[12] We have not been able to identify any source for this change other than the curtailing of the "private foreigner registration plate," leaving a business plate as the only other option for the vehicle registration office.

in whose name the vehicle is registered dies and the relatives seek to sell the vehicle on the basis that the vehicle was registered to the deceased and therefore must have belonged to the deceased.

In addition to liability, the inability of foreigners to register their own private vehicles is bound to create much confusion when it comes to insurance and company accounts. If the employee is the de facto owner but the employer is the registered owner, who is actually responsible for insuring the vehicle? Who decides what level of insurance cover to purchase? In cases where there is a pay-out following an accident from another insurance company, it is invariably the registered owner who is legally entitled to the payment as far as the insurance company is concerned. It could be the case that the insurance company will refuse to even deal with the de facto foreigner owner but will only discuss the matter with the foreigner's employer who is the registered owner.

The treatment of such vehicles registered in the name of a company but not owned by the company is bound to be troublesome when it comes to company accounts and audits. This is especially troubling for foreign companies or subsidiaries that have to be subject to foreign audits as auditors from abroad will find it very difficult to understand why vehicles are registered in the name of the company even though the company is not the beneficial owner and there is no record of any purchase of the vehicle in the accounts.

In addition, if a foreigner wishes to obtain a car loan, the employer would have to sign up for the loan. It is not clear whether any financial institution would agree to provide a car loan to an individual who is not the registered owner. Again, it is unlikely that an employer is going to readily take on the liability of a loan on an item that it does not own and control and therefore foreigners are unable to legitimately obtain car loans on this basis in Lao PDR.

Under the current system, it is impossible for a foreigner to demonstrate that he or she owns a vehicle in Lao PDR. This can create issues when selling a vehicle as the would-be purchaser may be concerned about paying an individual for a vehicle that is owned by a company. Although it can ultimately be proved that the foreign seller paid for the vehicle and the company agrees to the sale, this may take some time as new managers in the company may not know about the arrangement and there may be delays in the transfer of title. This becomes of great concern to foreign employees who are coming to the end of a long contract and who wish to exit the country without needless delays.

This inability of foreigners to demonstrate ownership creates an additional problem. From January 2018, the government of Thailand will enforce a new rule whereby all Lao company registered vehicles wishing to enter Thailand will have to provide paperwork to prove that they have permission, including a letter from the managing director of the company authorizing the driver to take the vehicle over the border along with an affidavit confirming incorporation and a copy of the attorney's ID card among other requirements. When the owner of the vehicle is a foreigner, he or she will be unable to attest that the vehicle is actually theirs and will have to request this documentation from their employer each time they wish to cross the border with their own vehicle into Thailand.

A country that does not appear to trust foreign employees, managers or experts to register their personal vehicles sends the wrong message to important opinion makers, such as foreign investors and foreign CEOs of international companies as well as foreign advisors and experts who are likely to spend several years in the country. When prospective foreign investors hear that "it is not possible for a foreigner to even register his own vehicle in Laos," this creates a very bad impression, giving rise to the idea among those who do not know the country that Lao PDR might be a difficult to work in or could be less than welcoming in its approach to foreign investors and foreign employees. Such a false impression serves to reverse the efforts by the Government of Lao PDR over recent years in promoting the country as a prime location for foreign direct investment and is far from the reality of the warm and welcoming Lao culture and society. It is therefore time to reverse this change and allow foreigners to register their private vehicles in their own names and show the world that Lao PDR is unambiguously open to foreign investment.

Foreign Investment and the Law

Another important feature for foreign investors when it comes to choosing a location for their projects is the law and institutions they will encounter when they start to set up a business in Lao PDR. Quality foreign investors do not want to invest in locations where there is no law or relatively thin legal framework. Quality foreign investors prefer to invest in locations where there is adequate legal framework that is consistent and straightforward.

The recent Investment Promotion Law (enacted 2017) has been broadly welcomed by the business community, especially the abolishing of the minimum investment in general business, the streamlining of establishment processes and the deemed approvals at line ministerial level that it contains.

However, although the law is being implemented, there are concerns that even with the application of the new law, the length of time it takes to register a business has not changed – last year, the World Bank's Ease of Doing Business Index recorded an average of 67 days to register a business in Laos (see separate briefing on WB Ease of Doing Business).

Such uncertainties and delays create problems for foreign investors especially if they are facing deadlines for finance. Even when the actual investor might be willing to engage, the financial backers of the project may withdraw support in the face of delays or unforeseen problems. Given the Government's commitment to reducing the ranking of Lao PDR in the World Bank's Ease of Doing Business Index to below 100, we expect to see some improvements in this respect.

What is also of special interest to foreign investors will be the new list of "Controlled Activities." These are the business activities that are either closed to foreign investors or are limited in terms of shareholding or minimum size of investment. Until now, the new list of Controlled Activities has not been released, which is creating a certain amount of uncertainty among the investment community. Further delay on the release of this list may stall decisions by foreign investors to invest in Lao PDR.

Laos currently relies very heavily for export earnings on tourism, on extractive activities as well as agriculture and electricity and to a lesser degree on mining. The country currently has to import almost all manufactured goods. To move from this model to one where capital can be injected into sectors that substitute for imports, foster internal linkages between industries and reduce dependence on extractive activities, will require a lot of investment. Given that currently 75% of all investment in Laos is foreign, the main source of that investment required to move to the new model is highly likely to be foreign.

Therefore special care must be taken with the new controlled list so as not to unnecessarily exclude foreign investment from activities that might be strategic in the future development of the Lao economy.

The Investment Promotion Law also includes tax incentives for those enterprises that set up in certain parts of the country or operate in certain sectors and fulfill some other criteria to do with numbers of employees and investment. While these incentives will be welcomed by at least some potential investors, it is felt that some more targeted incentives would be more appropriate – for instance, there are no tax incentives in relation to the provision of training to employees. In fact, there is a concern that certain kinds of employee training will attract a benefit-in-kind taxation of the employee. Invariably, such taxation would have to be borne by the employer, otherwise the employee will not agree to the training if they are to lose a large amount of their income through extra taxation.

This situation is of special interest to both employers, employees and policy makers in Lao PDR because of the well-known skills shortage in the county currently. To help to remedy that, our recommendation would be that employers be encouraged and incentivized through tax-breaks to provide more in-house employee training and that no employee training be subject to benefit-in-kind taxation.

There is one aspect of the Investment Promotion Law that will prove very welcome to future investors in Lao PDR, which is the removal of the registered capital requirements for foreign businesses in general. Although the requirement had been removed from the recent Investment Promotion Law, in practice some foreign investors were still being required to meet a minimum registered capital requirement of LAK 1 billion (approximately USD 125,000). To counter this, the Ministry issued Official Notification (No. 2633/MOIC dated 7 November 2017) to the effect that the minimum registered capital requirement for general investments has been abolished for foreign investors (with the exception of other laws which contain capital requirements in certain special circumstances).

This provides foreign investors with the right degree of certainty with respect to investing in Lao PDR and removes any doubts in the minds of officials as to what the law actually states. But it also carries a clear message to the investing community that when a perceived problem arises, the Government of Laos is prepared to go the extra distance to remedy it. This brings us back to our earlier point in this White Paper, which is that sometimes it is the image or reputation that matters almost as much as the reality underlying it. By issuing this note, Lao PDR has enhanced its reputation as a location where the authorities are open to foreign investment.

The Elusive Features of Public Private Partnership: Why Careful Analysis of Public Private Partnerships is important for Lao PDR

Executive summary

A central feature and source of great confusion in relation to Public Private Partnerships (PPPs) is that there is no generally accepted definition of PPP. This confusion has permeated much that has been written in the media about PPPs and even draft legislation.

A partnership between a public sector entity and a private sector entity, PPP involves the provision of public goods/services that could also be provided via direct provision by government. We argue that PPP lies on a spectrum between direct provision and privatization and illustrate this via a series of examples.

The notion of public goods is problematic to define. After a discussion we take public goods to be those that are in some sense essential to the public and are normally provided by government because the alternative market solution is not optimal.

We argue that definitions and examples of PPP often confuse PPP with other scenarios, such as privatization or concessions. We argue that this is the case with examples drawn from the media and the Internet.

PPPs produce public goods but concessions do not necessarily [?] provide public goods. A concession is merely the case of a private company paying the state for use of a state asset whereas in the case of a PPP the private sector company is either paid by the state in the form of shadow user-fees or other payments or is allowed to collect user fees that otherwise would go to the state.

The issue of risk in relation to PPP is thoroughly analysed – it is shown that PPPs function to reduce the initial enormous demand risk that prevents public goods from having a market solution for their provision. Risks are reallocated under PPP so that the public sector partner can take on demand risk while the private sector takes on the management and financial risks.

Why PPP? Because PPP allows for the injection of innovation and efficiency into the provision of public goods and services; allows for the development of long-term relationships that improve value in projects; allows for sharing and allocation of risk so that it can be taken on by the party that can best manage it, ameliorate it or bear it.

Several recommendations are presented on the best form of PPP governance so that quality private sector partners are going to be attracted to the Lao PDR to bid for PPP projects. These include the setting up of several independent units within government, including the Evaluation Unit to evaluate all potential PPP proposals, a PPP Management Unit to design and bring all approved projects to fruition – once a project comes into operation, this latter *unit should relinquish control to yet another separate and independent unit, the PPP Compliance Unit. In this way, there is lesser chance of conflict of interest and lobbying by outside interests.*

A separate conflict resolution mechanism should be in place that also allows for international mediation.

*Some of the issues that were raised in the White Paper can be seen in the draft **Decree on Public Private Partnerships**. Although part of the definition of PPP in the draft Decree is excellent, the decree contains a confusion of the notions of concessions and PPP in crucial areas; in the case of allocation of risk, this appears to lead to a contradiction between two articles within the decree.*

We offer the following recommendations:

- *Remove ambiguity between PPP and concessions or other forms of public-sector and private sector interaction from all documentation.*
- *Redraft the draft Decree so that it is unambiguously about PPP and nothing else.*
- *The new draft should also clearly delineate and separate out independent units so that evaluation of potential PPPs is kept independent and separate from the design and planning of approved projects until they come to fruition. Once the project comes into fruition, the compliance unit takes over, as discussed earlier.*
- *The reallocation of risk, especially demand risk, should be clearly allowed under the new PPP Decree.*
- *PPP should be reserved for projects whose output is straightforward, quantifiable, measurable and when quality standards can be defined and enforced.*
- *Concessions should be clearly defined and legislated for under a separate law or decree on concessions only.*

Introduction

Public Private Partnerships are often discussed as if they were something recent, only coming into use for the first time in Europe during the 1980s, beginning with what were known as Private Finance Initiatives in the UK. Nothing could be further from the truth.

There is evidence of Public Private Partnerships in place during the Roman times, possibly even earlier. Railway agreements between the state and private entities were fairly common during the 19th century and even the famous Parisian landmark, the Eiffel Tower, is said to be as a result of such a partnership.[13]

So what are these special partnerships, sometimes known as Public Private Partnerships (PPP), sometimes referred to as Private Finance Initiatives (PFI) and even "P3"? For the sake of clarity, from now on we will refer to them exclusively as Public Private Partnerships or PPP for short.

In this White Paper, I will first of all look at some of the issues in defining PPPs. As I will show later, this will be important in the case of Laos - if a proper and finely drafted law on PPP is to be effective, we have to be sure that PPP is not confused with other forms of agreements between the state and private entities, especially state leases or concessions. For this reason, I will spend significant time teasing out the issues so that we can have some clarity as to how best to proceed with PPP in Laos.

As there are many competing views on what PPPs are and how they might be appropriately handled, I will take my cue from what is most appropriate to the Lao situation and will argue that only certain kinds of projects are really conducive to the PPP model in the Lao context.

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[13] https://medium.com/having-some-time/the-eiffel-tower-the-first-project-finance-project-c3e7b4890313

What is PPP?

It may sound strange to a newcomer to the subject of PPP that despite all the legal, economic and other expertise that has been poured into the subject, there is in fact no generally accepted definition of PPP. Some of this discussion is very philosophical and need not detain us here but it is important that the reader be aware of it because of the effect it can have on policy and legal matters, as we will see later.

Instead, there are a number of loose definitions to the effect that PPP involves an agreement between the private and public sectors for the provision of some public good or service – instead of public good, sometimes the term "public asset" or "public infrastructure" is used. But the trouble is that many instances of such partnerships are not accepted by all as examples of PPP and the terms 'public good' and 'public service' and related terms are somewhat problematic, as I will explain later.

First, to get a flavour of what motivates PPP, let us look at some of the different ways in which government might work with the private sector in relation to certain goods and services that the government either provides or, in relation to assets, that the governments owns or controls. At one extreme we have what is known as public provision, where the government or one of its agencies generates and provides goods and services. We see this all the time in many countries in sectors such as education where the government builds the schools and provides the teachers. Of course, when we say that the government builds the schools, we usually mean that the government procures the services of a private contractor who builds the schools. Everything that the government provides has to be procured, to be paid for, whether through direct procurement of goods and services or direct payment of labour or other methods. But for our purposes, the model is still described as direct provision – the government or its agency has the school built and once the school is built, an arm of the government takes it over and runs it.

At the other end of the spectrum, we have what is known as privatization. This is where the government sells off a state asset to one or more private entities and the private sector then provides the goods and services. Good examples of this are utility companies in the UK. Both piped gas and electricity in the UK is now provided by a number of competing private companies but originally all electricity and all gas was provided by state owned utilities.

Typically, in the case of privatization especially where there are sensitive issues to do with competition, environment, equal treatment and pricing, there will be strict legal conditions both in the contracts and in accompanying legislation, too.

Let us look at a couple of relatively simple examples that might pass our loose definition above, that PPP involves an agreement between public and private sectors for provision of a public good, but which we would not want to accept is an instance of PPP. Imagine for the moment that a government wants to sell off a building but wants the building to be preserved to a certain standard for historical reasons because it is a famous national landmark of deep cultural significance. The government might offer the building for auction while disclosing that the building is subject to "listed" or "preserved" status (under listed status or when a preservation order has been issued on a building, very few changes can be made to the building and renovation has to be carried out according to certain standards and in keeping with historical appearances and methods). Normally, we would see this as a real estate transaction, as an instance of privatization. Indeed, the conditions would be the same even if the original owner were to be some private concern or individual as such transactions involving listed or preservation order buildings occur regularly between private parties in jurisdictions where legislation on listed or preservation orders exists.

Yet, such a transaction carries all the hallmarks of the loose definition of PPP, as set out above. It is an agreement between the government and the private sector; there is a public good aspect in that the building has to be kept up to a certain standard as a landmark. But it would be easy to get general assent that this is not an example of PPP, as usually understood. We could easily imagine a situation where the building was originally in private hands and the listed status or preservation order could have been placed on the building anyway. There is no special partnership between the government and the new owner of the building. As we will see later, it also lacks certain key features of PPP.

Imagine now a different scenario; the government needs to acquire a certain moveable asset, such as a vehicle or even an item of machinery. After a procurement process, the best vendor is found, the government pays the vendor for the item and takes possession of it. Again, this is an example of procurement and not an example of PPP because once the deal is finalised there is no ongoing special partnership between the government and the original vendor or manufacturer.

This is important because some instances of PPP can be mistaken as an unusual form of procurement. For instance, if a government were to enter into a PPP agreement whereby a private company would build a road and maintain it for 30 years in exchange for a stream of income, very broadly speaking that could be construed as a form of procurement in the sense that there is a "price" = stream of income over 30 years and "something that is procured" = a road plus 30 years of maintenance. However, procurement departments usually deal with goods and services where the purchase and payment all occur within the same financial year. In the case of longer-term procurement projects, the time involved only covers the construction period although a separate service contract can be procured from the construction company or another party. As we will see later, the bundling of construction and ongoing maintenance is a hallmark of PPP in the case of road-building and similar projects.

On the other hand, we might also say that the school example could be construed as privatization of a kind, whereby the state in effect sells the school to a private entity for a period of 30 years and leases it back on a full repairs and renewals basis. It is well accepted that PPP lies on the spectrum between direct provision on one hand and privatization on the other. But privatization normally involved the selling off of an asset permanently with no conditions of being able to return it later.

Yes, it is possible to stretch examples of PPP definitionally to make them look either more like privatization or more like direct provision – this should not surprise us as PPP lies on the spectrum between privatization and direct provision or procurement. What this does tell us is that PPP requires careful drafting of legislation and PPP agreements.

There is of course more to PPP agreements than the previous several paragraphs reveal and I will discuss this in greater detail later.

One of the issues that was overlooked in these examples is risk, both the identification of risks and how they are to be allocated in the PPP agreement. But what I wanted to draw out here is that it is easy to slip from PPP into other modes of public-private interaction and vice-versa.

PPP and Public Goods

While everyone acknowledges that there is no single unique definition or even a widely accepted definition of PPP, most will agree that there are certain commonalities to be found in PPPs. But again, some of these commonalities might also be controversial.

One of these commonalities with potential for controversy is that a PPP invariably involves a "public good" of some sort. Already this can be troubling as a public good is often taken to be a good that, by its nature, is freely available to all and cannot be withheld from non-payers. Its consumption by individuals does not diminish the consumption of the good by others – in that sense, it is taken by economists to be "nonrivalrous." A typical example of a public good is the air that we breath. My use of air does not impugn on your use of air. As we will see, public goods can be nonrivalrous but only up to a point – there is always going to be a limit.

A public good is also understood to be "non-excludable" by which is meant that it is not possible to prevent individuals from consuming or benefiting from the good when it is available.[14]

Taking my example of the air that we breath, my consumption of the air in our location does not preclude you from enjoying it too. I can even make use of the oxygen in that clean air to run my vehicle or to burn garbage. This might not matter if there are only a few of us at that location or few of us doing this sort of activity. But as more and more of us burn garbage and run vehicles, the nonrivalrous part of the good starts to approach a limit or at least the enjoyment of it by others is diminished.

Governments attempt to preserve and even create public goods. For instance, the government may intervene to ensure that the air is kept clean up to a certain standard – they may legislate against certain activities and for cleaner vehicle emissions. Governments can also create public goods, such as pathways or highways where none existed before.

Although public goods are taken to be non-excludable, there are many examples where they are made to be excludable – for instance, in the case of the provision of a public highway by a government, the authorities may decide to install a toll system so that the users pay whenever they consume the good, in this case use the highway. There is a constant tension in relation to public goods which is that creating them or preserving them costs money. The money must come from somewhere and often it is obtained by making the public good private through making it excludable, such as charging user fees. An additional tension is that if public goods are not charged for, they become congested and rivalrous – charging for usage is often the only way in which the public good as a scarce resource can be made less congested and therefore less rivalrous. An instance of this would be to install toll booths on a road – by charging for use, people think twice before using the road and the traffic is reduced.

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[14] The term 'Public Good' is well-known in Economics and related subject areas. We take our definition from the **Routledge Dictionary of Economics, Donald Rutherford, 2013, pp. 487**.

As we can see, the notion of a public good becomes rather difficult in practice. But this is not the end of it as here are many other instances where the notion of a public good becomes difficult to categorise. While in some countries primary and secondary education is considered a public good, many of those countries also allow private provision of education. There are many countries where primary and secondary education is de facto privately provided (in cases where all pupils have to pay fees and are excluded if they don't, education can be said to be de facto a private good even if much or most of it is provided by state schools that charge fees.)

So much for even trying to define PPP when we have difficulties defining one of the key features of PPP, namely public goods. Rather than getting into some lengthy discussion about excludability or nonrivalry, for the purposes of our discussion about PPP let us simply take a public good as a one that, although the public at large may get great benefit from it, it is not a good that the market is usually or normally in a position or geared up to providing. This can be because of non-excludability but it could also be for other very powerful policy reasons, such as that the market solution would deprive so many people or families. For instance, it is always possible for primary education to be provided via the market but that would mean that a large percentage of children would not receive any basic education at all due to their parents' inability to pay. Having a large section of the population illiterate and without basic education would be seen as the foundation for huge social problems and a brake on economic development. Therefore, in countries that can afford it, government provides at least primary education free of charge.

We can take it that such goods are in effect public goods – public goods are those that are provided by the government because the alternative market solution is not optimal from a policy point of view. It is on these public goods that we can base our ideas for a Public Private Partnership.

Definition of PPP and Its Set of Problems

Given that we accept that there is no standard definition of PPP that is acceptable to all, how can we arrive at a definition that will work for Laos? The problem is that the term "Public Private Partnership" is used in the public sphere for just about any agreement between government and the private sector. This is something that gets a fair amount of discussion in the academic works on the subject:

"In this book, a PPP is defined as an agreement by which the government contracts a private company to build or improve infrastructure works and to subsequently maintain and operate them for an extended period (for example, 30 years) in exchange for a stream of revenues during the life of the contract."[15]

Here is another definition:

"A long-term contract between a private party and a government entity, for providing a public asset or service, in which the private party bears significant risk and management responsibility, and remuneration is linked to performance."[16]

A more hedged definition is as follows:

"[A] collaborative working relationship with external, non-USG partners (such as businesses, financial institutions, entrepreneurs, investors, non-profits, universities, philanthropists, and foundations) in which the goals, structure, and governance, as well as roles and responsibilities, are mutually determined and decision-making is shared. PPPs are distinct from traditional contractual arrangements - such as grants, cooperative agreements, and contracts - in that they are rooted in co-creation, co-design, and co-resource mobilization towards a shared and mutually beneficial objective. Further, PPPs are characterized by jointly defined objectives, and collaborative program design and implementation. Successful partnerships entail: complementary equities; transparency; mutual benefit; shared risks and rewards; and accountability."[17]

While these definitions capture certain key aspects of PPP, they collectively leave the door open for scenarios that we might not wish to call PPP, as the example below will show. This is not to single out any one of the definitions but merely to indicate that PPP denotes a "pernicious and broad category"[18] and probably impossible to define.

Let us look at the following example: many northern cities in the USA that experience significant snow-fall each year offer agreements to contractors for snow clearance. Some of these agreements are fixed-price arrangements – this means that the contractor agrees to clear snow from streets and paths in a certain area for the whole season for a fixed price. If the snowfall that season is light, the contractor gains. If there is a lot of

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15 Engel, Eduardo; Fischer, Ronald D.; Galetovic, Alexander. **The Economics of Public-Private Partnerships: A Basic Guide**, pp. 2, Cambridge University Press. 2014

16 http://ppp.worldbank.org/public-private-partnership/overview/what-are-public-private-partnerships

17 US Department of State: State of Global Partnerships Report 2016, pp. 5 at http://www.gcerf.org/wp-content/uploads/U.S.-Department-of-State-Global-Partnerships-Report-2016.pdf

18 Donahue, J. D. and R. Zeckhauser, **Collaborative Governance: Private Roles for Public Goals in Turbulent Times**. Princeton, NJ: Princeton University Press. 2011, pp. 259.

snow this winter, he loses. The price offered is high enough to attract sufficient coverage for the city. There is one catch, which is that if a contractor fails to perform according to contractual standards, they are penalised financially.

Imagine the following scenario – a larger company approaches a city and offers them the chance to sign an agreement for 10 years to keep the streets clear of snow on the same or better basis than the individual contractors. The contract is long term, the service is public, the private party bears significant risk and management responsibility and remuneration is linked to performance. And yet, we would not want to call this an instance of PPP. But why?

Part of the reason is that it is not really a partnership but merely an instance of the purchase of services or procurement. But what makes it look like a PPP along the lines of the definitions above is that there is a linking of remuneration to performance, the contractor takes on responsibility and risk and the contract is long term, a stream of revenues during the project and the agreement is between a public partner and a private partner.

None of the definitions above address directly the allocation of risk in Public Private Partnerships. We will have more to say about partnership and this allocation of risk and types of risk when we come to distinguish between concessions and PPP later in the paper.

Examples of PPP in Laos

An Internet search, using a standard search engine, for "examples of PPP in Laos" will yield several websites listing the following energy projects[19]:

Project name	Sector	Financial Closure Year	Investment (US Dollar Millions)
Hongsa Coal Plant	Electricity	2010	$3,710
Sinohydro Nam Ou 1-7 HPPs	Electricity	2005	$2,000
Nam Theun II Hydropower Project	Electricity	2005	$1,250
Nam Ngum III HPP	Electricity	2012	$1,200
Xe-Pian Xe-Namnoy HPP	Electricity	2014	$1,042
Kansai Nam Ngiep I HPP	Electricity	2012	$982
Theun Hinboun Hydro Power Plant I	Electricity	1996	$980
Nam Ngiep 1 Hydropower Project	Electricity	2014	$979
Nam Ngiep 2 Hydropower Project	Electricity	2006	$760
Region Oil Xekong IV HPP	Electricity	2012	$600

Reference: https://pppknowledgelab.org/countries/lao-pdr

19 https://pppknowledgelab.org/countries/lao-pdr

In most of these examples, a foreign company or consortium has drawn up an agreement with the Government of Lao PDR to harness an electricity resource, most of which are hydro-electric dams on rivers. Most appear to be of the build-own-transfer model where the private company or consortium builds the plant, owns and controls it for a period of years and then transfers it back to the public sector at the end of the agreement. The revenue appears to be wholly based on Power Purchase Agreement (PPA) and Water Purchase Agreement (WPA) payments.

But are these energy projects really instances of PPP? The fact that the state is so heavily involved on both sides of these transactions might make it appear so. But it is easy to imagine a scenario where the original land rights endowments might have been different. In other countries, it is perfectly possible that the land rights might have been originally owned by a private person or company. Since the state is the ultimate "freeholder" of all land in Laos, any transaction that requires a significant amount of land is going to require a transaction with the state, such as a lease or other agreement. But merely leasing land from the state should not mean that the lessee is now involved in some sort of PPP.

On the other side of the transaction, the electricity is sold at prior-agreed prices to the state-owned electricity utility. However, there are many countries where there is no state-owned monopoly and where electricity is sold or exported without state involvement. Again, selling something to the state does not necessarily mean that one is involved in a PPP. Nor does paying a fee to take over a concession for 25 years constitute a PPP.

PPP, Concession and Leases Granted by the State

The examples provided in the last section are not really PPP; they create too much confusion as to what ought to count as PPP and what is not. Just because a state asset is involved in a project does not make that project an example of PPP. In Lao PDR, almost any project that involves state assets is described in the media and elsewhere as a PPP. But as we have seen, in the case of Laos where the primary owner of freehold is invariably the state, many projects involve what is ultimately a state asset but are definitely not PPP. A farmer who owns a long lease on agricultural land where the lease is granted by the state would be taken to be a PPP at this reckoning. So would any business that leases land directly from the state. To equate all such businesses as PPP would create much confusion and dilute any distinguishing features between PPP on the one hand and ordinary business activity on the other.

The energy examples given in the last section are best looked at as concessions where the state in effect leases a concession to a private sector entity for a period of years. The private sector develops the concession, sells the product - in this case electricity - at the agreed prices, in order to gain its revenue and profit. At the end of the lease period, the private sector entity hands back the concession with the constructed asset to the state.

Concessions do not necessarily provide public goods by any definition and the private entity who contracts for the concession pays for it. PPPs have public goods as an output and the private partner is paid for it either through user fees or payments from the public sector partner.

For a project to qualify as PPP, it must provide a public good as an output. Although we have seen there is some trouble defining public goods, we can fall back on the view that the market on its own does not provide a solution to the production and general distribution of the good or that it is a good that is deemed essential to everyone or to specific sections of society.

PPP and Risk

A key feature of PPP is that it allows the risks to be reallocated. This does not mean that all the risks are going to be allocated to the public partner's side – the risks are transferred according to who is best able to both manage and bear them. Although the public side may be able to bear them best because of their size and power, they may not be best able to manage them all. Therefore, the private partner may take on all the managerial, construction and related risks because the latter is best able to manage them and can insure against them; the public side will frequently take on the demand risks.

A market solution does not readily emerge to supply public goods on its own – this is because demand risks are so high in relation to any putative open market for many goods considered to be public goods, private sector entities on their own will never provide them. Who would try to produce goods when the probability of being paid would be so low because no customer could be excluded?
For that reason, either the government has to directly supply public goods or has to arrange to have them supplied via a PPP. What we see here is that while there is demand for the public good in question, it is not readily captured by the market because the demand risks are so high. Sometimes, through government intervention, a situation is created whereby the market can subsequently respond – for instance, the government can create a situation whereby profit seeking private companies will bid for projects either under some sort of procurement arrangement or a PPP. By creating the PPP or straightforward procurement arrangement, the government has taken away the extraordinary risk on the demand side and allowed the market to respond.

The risk that the government has dealt with is the extraordinary risk of trying to charge for something that is non-exclusive. For instance, no company is going to try to build a road in the hope that the users will pay for it voluntarily. Without government sanctioned tolls which capture 100% of users, shadow tolls or some other government guaranteed payment, the road would just never get built in the first place.

Of course, this is not the end of demand risk. There will always be residual demand risk because no one ever knows in advance how many users there will be at any particular user fee. This is because there has never been any market information or feedback and estimates of demand in such circumstances are often notoriously very far off the mark.

A private partner to a PPP may take on some demand risk to the extent that they may agree to payment in part in the form of user fees (tolls in our example of road users). The private partner may believe that the number of user journeys will be above a certain number and the agreed price per use will yield them sufficient revenue to make up for at least some of their costs plus profit. But that is a risk – the number of users may turn out to be fewer and/or the price per user may have to be reduced in order to attract more users onto the highway.

This is what is known as the demand risk.

It goes without saying that private partners prefer certainty in their streams of revenue rather than risk and will adjust their bid packages according to the demand risk they take on. This is not simply because private sector entities are completely risk averse. Instead, it is because most large PPP projects require significant financing and it is easier to secure financing at attractive rates when the demand risk has been taken on board by the state. Banks will either charge higher rates of interest to cover the higher risk if the private sector partner takes on all the demand risk or they may seek guarantees or they may decide not to support the project at all.

Higher financial costs will be factored into the negotiations between the public and private partners. A public partner may well find that they would be financially better off agreeing to shadow tolls or even to a straightforward payment per annum (subject to other performance indicators) – in other words, the public partner may decide they would be better off absorbing all or most of the demand risk because the bids would be lower. By doing so, this might simplify the PPP deal, making it more transparent and reducing the likelihood of attempts at renegotiation.

And this is what separates out the concession examples from PPP. With many of the examples we discussed earlier, the private company makes a deal with the public utility or government to take on a project where the government provides a concession (e.g. a natural resource or land that the private company pays for using it) and the private company develops it and makes money out of it for a period of years. The revenue from the project is shared and after the contract is completed, either the concession is returned or the terms are renegotiated with the existing partner or another partner.

We can see that this is rather different from the PPP scenario. First, the level of involvement by the public party to the concession contract is much less in the case of the concession. There may be certain features of the concession which require special conditions, such as compensation of displaced people or environmental concerns. Second, the good or service involved is not a public good. From the discussion on public goods, we remember that they are non-rivalrous and non-exclusive at least up to a limit. But we see that the goods produced under a concession are all exclusive and rivalrous.

To see this clearly, let us look at the example of the land concession at the edge of the protected area that is developed into a hotel for use by tourists who want to enjoy the wildlife in the protected area. Clearly, use of the hotel and grounds is exclusive (you will be charged for staying at the hotel and using its facilities). and rivalrous at least in terms of the rooms. Although in the media such concessions are often described as PPP, there is nothing about them to indicate that they are PPP. At the end of the lease, the land and the buildings are handed back or the concession is renegotiated. The public partner has nothing to do with the hotel during the lease as long as the hotel owners and managers obey the rules regarding entry into the wildlife protected area – but then, everyone has to obey these rules.

Taking the hydroelectric projects on rivers cited earlier, they too are also exclusive and rivalrous. The electricity is priced and sold and therefore not available for free – therefore it is exclusive. And use of electricity is also rivalrous. It is also not a case of market ineffectiveness – as we saw earlier, it would always be possible for the market to provide a solution. In fact, some might say that it is indeed the market that provides the solution in perhaps some of these cases if the bids were unsolicited. In that case, it would be the private sector that approached the asset owner (which in Laos happens to be the state) and approached in turn the only electricity purchaser in the state (in Laos that happens to be the state owned utility) and made them an offer.

But the big distinction is that there is no reallocation of risk in any of these energy examples. The private sector entity takes on all the risks of financing, developing and managing the project and gets paid via agreed prices over the agreed period. The state will probably monitor but in a very light way to ensure that the physical plant is not being run down and that there is no untoward damage to the environment but will otherwise remain uninvolved. It is therefore hardly a partnership.

Instead, these examples could simply be seen as a form of privatization. In the Lao PDR, land use rights can only be obtained from the state and therefore privatization will invariably involve leasing or granting of land use rights and land leases. Viewed in this way, these energy examples are all a form of privatization in the form of leased land and rights to build and these rights are returned after the term of the lease – this is what is known as "build – own – transfer." Although the build-own-transfer model has been used in what are called PPP projects, in these energy cases it is clear that they are not on the spectrum between privatization and direct provision where PPP generally resides.

The Allocation of Risk

As I have hinted earlier, key to what makes a project suitable for PPP is the allocation of risk. Let us look at the different types of risk that usually associated with a project that might be the subject of PPP. Because of the nature of risk, there will sometimes be overlap or inter-relationships between risks.

Operations, Performance and Construction Risks: these are the risks that occur because of construction issues, design issues, changes in cost structures to do with construction and maintenance, anything that causes disruption of output or uncertainty about quality of output and so on.

Financial Risks: these risks have to do with anything to do with fluctuations in exchange and interest rates, banking or anything else to do with financing a project.

Political and Policy Risks: these risks have to do with any changes in government, government policy that may have a bearing on the project. If the government were to build an untolled road that provided an alternative to the tolled highway run under a PPP with a private entity that is relying at least in part on user-fees (tolls) for revenue, that would be classed as a political/policy risk.

Demand Risk: in a PPP project, this risk has to do with any uncertainty about the take-up of the output by the public or users. To use our road example, demand risk has to do with the take-up by users of the highway. This will have an immediate bearing if payment for the highway is dependent in part or completely on tolls.

Let us now look at the distribution of these risks among the stakeholders. Until now we have only every looked at two stakeholders, namely the partners – the state (or one of its entities) and the corresponding private sector entity. There is always a third general stakeholder in all of this, namely the users of the project. If a project output is imperfect, it is often the latter who bear the cost – in the case of a highway, there is always a risk that the output will be imperfect and the cost of that will be borne by the users. Of course, PPP will often help to reduce this risk to the users because the PPP bundles both the construction and the maintenance for a long period, thereby creating an incentive for the private sector partner to build a road in such a way that it keeps maintenance costs low. Of course, this only really works well if there is built into the project contract an incentive/penalty system for the private sector partner to maintain the road at a certain standard.

What is actually happening here in this bundling of construction and maintenance is a transference of risk from the state to the private sector partner. Given that the alternative is direct provision, the state could have contracted the private sector entity to build a road and hand it over to the state who would then have to accept the risk of maintenance. As is so often experienced, that risk becomes reality sooner rather than later if the road is not maintained. The state can contract a private sector entity to maintain the road but the latter is probably going to charge more as they will believe that the risk of damage to the road is far higher than if the construction and maintenance were bundled. This is one of the great benefits of PPP.

What we see here is that PPP allows risk to be reallocated in the way that privatization, concession, leasing and direct provision never does. Risks should be allocated in such a way that the project value is maximized. This is an economist's way of saying that risks of all kinds should be allocated so that the value of the output should be maximized in as efficient a way as possible.

Economists like to split risks into exogenous and endogenous or controllable risks. In the last example, the risk of the road falling into disrepair is controllable. And the best party to absorb that risk is the private sector partner through the bundling of construction and maintenance.

Exogenous risks are those that come from outside the partnership and are not within the control of any of the partners. Whether a risk is exogenous is sometimes controversial as it is not always clear whether the public project partner has any input into that risk – for instance, it can be argued that the ministry or the government agency that managed the PPP on behalf of the government does not have any influence over the Central Bank when it comes to setting exchange rates or rates of interest and therefore these are indeed exogenous. But whatever the exogenous risk, it should always be the public partner that should shoulder it. There are a number of reasons for this:

- It removes the incentive for policy-makers to engage in activities that may adversely affect the outcomes of the PPP
- Because some risks are created or controlled by government (such as town planning and other planning permits), they rightly belong to the public partner in a PPP. The incentive for the public partner in a PPP should be that if they behave in a way that affects the outcomes, the residual value of the project will be of higher value.
- Demand risk should always be borne by the party to the PPP that is best able to bear it. As mentioned before, if the private entity takes on this risk, it will be reflected in the higher price required. Even if this is the case, forecasting demand is far from accurate and highly sensitive to changes in government (national and local) policy. What this means is that the private sector partner is not well equipped to manage or even estimate demand risk. By removing demand risk from the private partner, it will make the project more attractive to a larger number of potential private sector bidders. Therefore it is better for demand risk to be allocated to the public partner in most instances. This may not always be the case – the private sector partner may have data and experience from other similar projects in the area that would help them estimate demand a little better than if there were completely new to the region.
- Financial risk is usually taken to be exogenous at least to the private sector partner. But this does not mean that the public partner ought to take on the risks associated with interests rates or exchange rates. The argument for this is based on the fact that other firms in the economy do not get this special treatment. Besides, it is always possible for firms to avail of arrangements with lenders so that interest rates are fixed for the term of the facility or currencies are bought forward.

Why PPP?

Although PPP may change the timing of government payments for a project as compared to direct provision and therefore can have a cash-flow effect, it never actually removes the financial obligation of the public sector. So what is the point of PPP?

Apart from deferring outgoing cash flows for the government, PPP can inject innovation and efficiency into the provision of public goods and services. This becomes possible because of the bundling of construction and operation of the project. Government departments are not usually set up for running commercial activities as they have a different corporate culture and managerial setup whereas the private sector is better able to provide goods and services, in an efficient and innovative manner

PPP allows for the development of long-term relationships that improve value in projects for the government. Strong incentives can be built in during the early stages so that what is constructed is built to last with reduced maintenance and better quality overall.

As we have also seen, PPP allows for the sharing and allocation of risk between the public and private sector partners so that the risk is taken on by the party that can best manage it, ameliorate it or bear it. As mentioned earlier, by taking on demand risk, the government may get a better deal overall through reduced project costs because of lower financial costs faced by the private sector partner. The assumption of demand risk by the public sector partner might also attract potential quality private sector partners who otherwise might not bid due to the risks involved.

Governance and PPP[20]

To attract quality private sector partners to bid for PPP projects, it is very important that the requisite institutional and legal framework is in place. This is especially true in the case of developing countries where potential private sector partners are going to pay particular attention.

Potential private sector partners are going to have a number of concerns but chief among them will be legal stability. Because it is invariably the case for any private sector partner in any project that costs are front-loaded while revenue is back-loaded, before they will risk their funds both the private sector partner and its backers have to be sure that nothing will be done to interfere with the revenue stream during the project. In other words, the rights of the private sector partner should be copper-fastened in legislation and made specific in contracts.

Ideally there should also be a PPP governance structure in place in order to ensure that quality private sector partners are attracted to bid.

Because of the potential for pressure and lobbying that can be placed on officials in relation to PPP, it is suggested that there should be four independent and separate units each separately answerable to the highest level of the state that deal with every aspect of PPP in the economy.

First, there should be a single independent unit, the Evaluation Unit, that evaluates all potential PPPs and all PPP proposals. At the very minimum, an in-depth cost-benefit analysis incorporating all costs and benefits should be completed for every PPP proposal before it is passed as fit for partnership. All aspects of the proposed partnership should be examined by both sides in various stages – preliminary stage, examination of development plan, evaluation of outcomes, evaluation or likelihood of project achieving desired outcomes, evaluation of social plan, evaluation of environmental plan, development of cost benefit analysis document etc. In cases where either the PPP proposed is very large, will affect a large number of people or has some additional feature that make it of national significance, the final decision can be derogated to senior cabinet level but only after all the stages have been passed within the Evaluation Unit.

Another completely separate and independent central unit should be set up to manage PPP activity for the whole economy, the PPP Management Unit. This PPP Management Unit can come up with new ideas for projects but should be involved directly with design and planning for approved projects and bring them to fruition. Within the PPP Management Unit should be a legal department that handles all final drafts of contract, tender and other documents.

However, once a project comes into operation the PPP Management Unit should relinquish control to a separate body, The PPP Compliance Unit that oversees all public investment of this kind. Clearly, this entity should be completely separate from any other private sector or public sector entities involved in PPP.

[20] The ideas in this section are a variation of those contained in E. Engel, R. Fischer and A. Glaetovic, op. cit, Chapter 4.

The PPP Compliance Unit should be independent and have the right to monitor all aspects of the PPP according to the contractual agreements and law. It will monitor both the running of the project to ensure quality and adherence to conditions both contractual and legal and ensure that all conditions are met at the time of handover of the project to the public sector at the end of the contract. Because this unit will be independent, it will not be influenced by the need to promote PPP projects but will have the single mandate, namely to ensure that all contractual arrangements and laws are being adhered to.

Run completely separate from these units will be a conflict resolution mechanism. Conflict resolution needs to be effective, timely and fair but also to be seen by potential PPP partners, including foreign ones, to be effective, timely and fair. Otherwise potential PPP partners will be turned off bidding for projects.

There can be two levels of conflict resolution: one would be a panel of experts, including foreign experts, who review the issues. Their decision should be made based on keeping the net present value of the project to the private partner unchanged.

A second level of conflict resolution can be put in place in specific contracts whereby an international forum can be appealed to resolve the dispute, such as the Singapore Mediation Centre. This is usually only resorted to when all other efforts have failed.

Draft Decree on Public Private Partnerships in Lao PDR

Now that we are in a position to fully understand what a PPP is, how it ought to be handled both from the government side and the private sector side, let us look at certain aspects of the draft Decree on PPPs in Lao PDR. The analysis here is not meant to be exhaustive – the draft Decree is lengthy - and is not meant to be a legal analysis. Instead, we examine some salient features of the draft Decree to see whether they cohere with what we have discussed earlier in relation to PPPs.

The first sections of the draft Decree are concerned with some of the issues that we have discussed earlier. Article 1 talks about PPPs "developing the infrastructure and related services." Article 2 contains the definition of PPP for the purposes of the Decree and begins as follows:

> "
>
> Article 2. Scope
>
> 2.1 A Public Private Partnership is an agreement between the public sector and the private sector for the purpose of delivering a project or a service, conventionally provided by the public sector, to implement a project with a public interest.
>
> "

In our opinion, this is an excellent beginning to the definition (although the second line should probably read "for the purpose of delivery a good/infrastructure or service") It refers to the public good aspects in an erudite way without falling into the traps of having to define what a public good is – this is done by simply putting such goods and services into the category of goods "conventionally provided by the public sector" and referring to the public interest aspect.

The definition continues (the items in square brackets are explanatory not appearing in the original text but defined elsewhere in the draft Decree)

“

2.2 A Public Private Partnership is a contractual arrangement and is characterized as:

1. A contractual arrangement between a Project Executing Agency [public sector partner] and a Project Entity [private sector partner];
2. Concerning the delivery of a public service and infrastructure for which the Project Executing Agency [public sector partner] remains accountable;
3. Where the required service and infrastructure is specified as an output;
4. Where significant risks, meaning at least construction risk in combination with demand risk and/or availability risk, are transferred to the Project Entity [private sector partner] making its private investment and financial returns linked to its performance;
5. Procured through an international competitive Tendering process or competitive conditions;
6. Often wholly or partly financed by the private sector;
7. Possibly involving Government Support and Official Development Assistance

”

Being concerned with a contractual relationship between a public sector entity and a private sector entity for the delivery of a public service and infrastructure, Clauses 1, 2 and 3 of Article 2.2 are clearly concerned with PPP as we understand them. But Clause 4 departs completely from what is generally understood as a PPP by specifying that demand risk must be transferred to the private sector entity for it to be a PPP under this draft Decree. Now the decree appears to be concerned with concessions and not PPP.

Clause 5 could be read either way as either about concessions or PPP as could Clause 6. Clause 7 would appear to be about PPP but the inclusion of the word "possibly" might be troubling as it leaves open the idea that a PPP could exist that was supported by neither ODA nor Government. Clearly, since Governments, whether through ODA or through their own budgets, fund PPP, it is unclear how any other method would exist that would fund such an enterprise.

It would appear that PPP and concessions are being lumped together in this draft Decree. If so, this is likely to cause a number of problems, For instance, further into the draft Decree we find Article 3.1 which lists the principles that the approach to Public Private Partnerships shall adhere to. Clause 7 under that article states as follows:

> "Allocate the risks to the party who is best positioned to control the likelihood of risk event occurrence, manage impact of the risk on the Public Private Partnerships Project, and absorb the risk at the lowest cost."

This is completely in keeping with the allocation of risks in PPP projects and the draft Decree appears to be discussing PPP again. But it certainly appears to contradict Clause 4 in Article 2.2 as discussed above.

If this draft Decree is really supposed to be about concessions, then there need be no discussion about allocation of risks. Otherwise, we could have the private sector entities arguing that, in the case of a concession and according to the law, the public sector entity should take on risks that normally the concessionaire would accept. The trouble is that the government and its agencies are always going to be in a better position to control the likelihood of risk event occurrence and will always be able to absorb the risk better than any private sector entity.

To take an example, the government or its agency could be asked to take on the demand risk in the case of a resort concession at the edge of a game park. The concessionaire could simply build the resort and sit back while the government paid the concessionaire a shadow user fee no matter how few people actually stayed at the resort and used the facilities. That concessionaire would never have to advertise or promote the resort – his revenue would come with a government guarantee!

In addition, if the intention is to take the popular view of PPP and include concessions in the law, then Clause 2 of Article 2.2 is also problematic because it would exclude those kinds of concession projects where the output is not "delivery of public service and infrastructure."

Several other concerns arise in the draft Decree. Although the document does include a "Public Private Partnership Unit," its responsibilities include supervision of the "Project Preparation Facility," identify and propose projects, advise potential private partners, approve feasibility studies and run tendering processes.

There is at least some distinction made with respect to the ongoing management and monitoring of PPP projects, which will be done by the "Project Executing Agency" in question. Also, evaluation will be done by a separate committee even though that will apparently be under the auspices of the Project Executing Agency. But there are too many overlapping processes situated in the one unit with potential for conflict of interest.

There is mention of dispute resolution in the draft Decree. This can either be under the laws of Lao PDR or otherwise depending on the PPP contract. Lao or foreign arbitration is allowed.

Conclusion and Recommendations for the Lao PDR

It is clear that there is some confusion about what actually constitutes a PPP and other forms of private sector interaction with the public sector, such as procurement, privatization and especially concessions. As we saw, this confusion has crept into the media reports and even into the draft Decree on Public Private Partnerships.

We saw how dangerous this confusion can be in relation to mixing up concessions and PPP, for both the proper running of PPP and the effective running of concessions.

We also saw that issues of governance are important when it comes to the effective running of PPPs in an economy and why it is important to keep the various aspects of PPP separate and independent.

Although clearly PPP is about public goods, services and public infrastructure whereas concessions are not, not all public goods should be provided via PPP. Which ones should be left out?

Arguably, only those PPP proposals that rely on outputs that are straightforward, quantifiable, measurable, when quality standards can be defined and enforced. To understand this, let us take the following examples. Imagine if you try to make primary education in a defined location the subject of a PPP. What would be the outputs? Number of children receiving primary education would be an obvious output but there would be many others, such as the number of children achieving accepted numeracy and literacy levels at respective ages and the large number of skills that could be included in the measurement of the output. In addition, there would be the number of contact hours, the classroom size, the range of subjects taught – we can see how complex these outputs are going to be. And when there is complexity, there is room for negotiation and excuse.

Compare this with the following kind of project, the building of an item infrastructure and its ongoing maintenance. Here we can see a much narrower range of outputs; we have the construction completion date, the agreed quality standards with respect to maintenance and so on. Very quickly, we can see what is amenable to straightforward monitoring and what will invariably become a long argument probably with no resolution and therefore open to renegotiation by stealth and potential dispute.

Therefore, especially in a developing context, PPP should only be chosen as an instrument when the outputs are straightforward and clear, such as in the case of certain infrastructure projects.

<u>The recommendations are as follows:</u>

- Remove ambiguity between PPP and concessions or other forms of public-sector and private sector interaction from all documentation.
- Redraft the draft Decree so that it is unambiguously about PPP and nothing else.
- The new draft should also clearly delineate and separate out independent units so that evaluation of potential PPPs is kept independent and separate from the design and planning of approved projects until they come to fruition. Once the project comes into fruition, the compliance unit takes over.
- The reallocation of risk, especially demand risk, should be clearly allowed under the new PPP Decree.
- PPP should be reserved for projects whose output is straightforward, quantifiable, measurable and when quality standards can be defined and enforced.
- Concessions should be clearly defined and legislated for under a separate law or decree which should clearly delineate what separates them from merely leasing land from the state.

The Skills Gap - The Number One Issue for Employers and Many Employees in Lao PDR

Executive summary

Employers find they cannot recruit candidates with the right kind of skills they require for the modern economy.

Candidates for jobs find that their skills are not in demand or they have not managed to get the required skills and therefore have to go to neighbouring countries to get gainful employment. Meanwhile, workers from those neighbouring countries in turn migrate to Laos to take up unfilled skilled positions.

The problem begins with basic or primary education: a number of issues but mainly featuring high drop-out rates mostly resulting from what the World Bank calls "a clear intergenerational transmission of low education attainment from parents to children," especially among the poor in remote areas.

Dropping-out also features significantly at secondary and vocational level and also some of the skills being imparted have not evolved to meet the changing needs of the Lao economy as it has changed and developed.

There are issues about school-places in some remote areas where secondary school provision is low or not provided or even the primary school that do not provide beyond third grade.

Much is being done to alleviate these problems. The Ministry of Education and Sport, in conjunction with development partners, has an ambitious plan, Technical and Vocational Education and Training Development Plan 2016-2020, to place 50,000 students in the 23 TVET[21] institutions. Many development partners are setting up and equipping TVET institutions.

But there are no independent TVET master standards and no independent examination agency – employers lack confidence in a system where the providers of vocational training are also the examiners.

[21] Technical Vocational Education and Training

Recommendations:

The recommendations are as follows:

- *Make use of the Lao Women's Union to manage a program in conjunction with Village Education Development Committees, development partners and others and involving conditional cash transfers to keep children, especially girls, in school longer.*
- *Allow more say by parents and stakeholders in primary schools to make curriculum more relevant and inclusive.*
- *Greater provision of vocational and tertiary education that should reflect the needs of Lao industry and service sectors.*
- *Create a system of TVET Master Standards to be examined by an independent agency.*
- *Removal of in-house training tax barriers and make all in-company training tax deductible.*
- *Make vocational and higher education more accessible through more scholarship/ loans and more flexible access for those who have dropped out earlier in their education. More part-time provision and access for mature students.*
- *Remove skills education from the list of "controlled" businesses and open it up to quality international providers.*

Introduction - Description of the Problem

As Laos grows economically, so too does the demand for skilled workers within the country. But employers are finding it increasingly difficult to find Lao, workers especially for skilled jobs and have had to resort to importing labour from neighbouring countries for even relatively low-level skilled positions.

In contrast, Lao job seekers are finding it increasingly difficult to find work inside the country because they do not possess the skills required by employers. They in turn leave Laos in large numbers to find work in neighbouring countries, especially Thailand, where their unskilled labour is easily absorbed.

There are multiple reasons for this mismatch between the demand and supply of labour in Laos but essentially the type of labour that is in large supply in the country does not match the type of labour that is in demand. The labour supplied is largely unskilled in a labour market that is already flooded with unskilled labour. The labour demanded tends to be low to high skilled.

Much of the excess unskilled labour comes from the agricultural sector or from the urban poor. Some labour is skilled but not of the quality or type that the employer requires or does not have ancillary background education or skills also required for the position. And some labour supplied is skilled but those skills are not in demand in today's growing service and industrial sectors in Laos.

This mismatch problem in Lao PDR begins with basic or primary education. The problem at this level is that too many Lao people do not complete primary school and therefore relatively few acquire any vocational qualification or indeed a university qualification. Not possessing a basic education with skills such as sufficient literacy and numeracy severely restricts any further educational options in the future.

There are high drop-out-rates at primary and at other levels of education. There are many reasons for this. According to the World Bank, Laos "shows a clear intergenerational transmission of low education attainment from parents to children."[22] This culturally-based low valuation of education among the poor makes it all too easy for families to withdraw pupils to work in the household or at least for parents not to enforce attendance at school.

Another factor has to do with where the majority of workers start out. Only about 15% of the labour force is made up of what one would normally call wage earners[23] although that figure is probably rising fairly quickly – the rest of the working population is to be found in the agriculture sector. Most of the workers sourced from the agricultural sector lack the skills and education required for working in the growing services and manufacturing sector in Laos. Many of these will in turn migrate to Thailand and other countries to take up unskilled positions often in undocumented

[22] World Bank Report 2013, **Skills & Knowledge for Greater Growth and Competitiveness in Lao PDR: *A Technical Assessment of the Current Context,*** pp XI Location? Year? [World Bank Report, 2013 – I wrote it this way so that the non-academic reader would realize it in subsequent "op cit"]

[23] ADB, ILO (Ed.): ASEAN Community 2015: Managing integration for better jobs and shared prosperity. Bangkok 2014, p. 66

situations. This leaves them vulnerable to trafficking and extreme exploitation.

Although much effort has been put into expanding and improving both vocational and higher education by Government, bilateral donors and NGOs, these sectors have not yet caught up with the evolving needs of the Lao labour market both in terms of quantity and quality. Education is a protected activity in Laos and is mainly provided either by the government through one of its agencies or in partnership with a private sector investor. More specifically, labour skills development centres and specialized training colleges delivering a specific part of the national curriculum are businesses whose ownership are strictly reserved for Lao citizens. Primary, lower secondary and vocational education provision are “controlled” businesses that need specific government approval before they can be registered. We are not suggesting that educational establishments should be set up in an uncontrolled manner but we are suggesting that opening the market more for quality providers of training and skills would have a beneficial effect on the skills landscape in Lao PDR.

Very little in-house training is provided by employers. Partly this may be because training provided to employees can in some instances be a benefit in kind for tax purposes for the employee; this means that the employee as a recipient of the benefit in kind can be taxed. Invariably, it would be the employer who would have to pay such a tax if they were to make the training mandatory. In some cases it could be that employers might think that the type of training they provide could qualify as benefit-in-kind, even when it does not, and this may feature in their reluctance to provide it. In addition, such is the demand for skills in Laos, anyone who has received in-house training that is in any way transferrable to another firm or industry may be incentivized to move to another better-paid position very soon after completing training – yet another reason for employer reluctance in providing in-house training.

Although many more schools and educational establishments have been built over recent years, there are still gaps in provision. There are reports of children leaving primary school in remote areas because there is no further schooling opportunity. Sometimes there is no secondary school in a remote area or the primary school ends at 3rd grade. Some interesting initiatives have been supported by the World Bank and other development partners under what is called Community-Based Construction.[24] While there are issues to do with quality and safety with this initiative, these can be easily dealt with by involving District Engineers, where possible. It is certainly something that would merit further attention as without basic and primary education provision at the local level, all other educational possibilities are curtailed.

[24] World Bank Report 2016: **Reducing Early Grade Drop-Out and Low Learning Achievement in Lao PDR – Root Causes and Possible Interventions,** pp. 40.

Attempts to Resolve the Problem

A number of NGOs and bilateral donor organizations have tried to improve the labour skills shortage in a number of ways. For instance, the German organization GIZ, is working to change the Technical Vocational Educational and Training (TVET) system from a supply driven to a demand driven system and has been heavily involved in the redesign of the TVET development plan. GIZ has supported up to 2,000 apprenticeships and last year funded 700 students to realize their vocational certificates. They will also fund over 10,000 participants in short courses over the next three years.

There are a number of other smaller organizations that help disadvantaged young people to acquire some valuable experience or qualification especially in the hospitality sector.

Meanwhile, some of the larger organizations, such as the World Bank, have made a number of suggestions with respect to the mismatch of skills and education generally so as to encourage changes in government policy. In conjunction with donors and others the Ministry of Education and Sport has embarked on an ambitious plan, *Technical and Vocational Education and Training Development Plan 2016-2020* to place 50,000 students in the 23 TVET institutions under the Department of Technical Vocational Education at an estimated cost of $185 million (including support from ADB, German, Swiss, Luxembourg and others). This program will also include students who can now take up vocational training despite having earlier dropped out of education.

However, despite the efforts of the various organizations and a commitment by the Government of Laos to improving skills among the Lao population, especially the youth, there remains a sizeable mismatch between skills produced by Lao institutions and those demanded by Employers. One of the issues is that the largely state controlled providers of education are not providing the appropriate curriculum of up-to-date versions of skills that a modern economy requires. Another aspect of the problem is that those providing the skills training are also the same people who evaluating performance of their students – there is no independent body that ensures that those who pass exams, especially the practical exams in vocational skills, have actually reached standards required by employers.

Not having an independent standards agency means that employers can never have the confidence that a candidate, having passed vocational education exams, actually has the skills she or he are supposed to have. The system is too subjective and creates a premium for skills independently examined and acquired abroad.

What Else can be Done to Alleviate the Skilled Labour Shortage?

The Children Who Miss Out on Education

Key to improving skills in Lao PDR and closing the skills gap is improving access to education and skills at all levels. But this starts at the level of basic education – without the basic skills of reading, writing and use of numbers, it is hard to see how a candidate's future skill set can ever be enhanced

As regards access, at first glance the news looks good - the net enrolment rate in Lao primary schools has gone from 65 percent in 1990 to 98 percent in 2014.[23] Although this is a great achievement, it hides other issues, such as that children drop out at a high rate even in basic or primary level. In the same report by the World Bank, we find that especially in remote rural areas, drop-out rates are high and significant numbers start school late (sometimes as old as 9 years) which makes it difficult for them to catch up.

A number of reasons have been put forward for these high drop-out rates and attendance issues. Cost of education can be a factor – for some poor families, the cost of the school uniform and the other small extras may be prohibitive. In some cases, it is the perception that education does not provide an economic return on the effort, costs and opportunity costs involved. What the World Bank refers to as the "clear intergenerational transmission of low education attainment from parents to children"[24] appears to play a large role. And it is this perception by parents that must be changed before any improvement can be achieved in this regard.

There already have been some attempts to address access and drop-out issues in rural areas. Village Education Development Committees (VEDCs) have been set up in rural villages – such committees have between seven and 15 members and and include such personages as the Village Head Man, President of the village's Lao Women's Union and other stakeholders. VEDCs have a number of functions and responsibilities too numerous to mention here. But among them includes implementation of a range of strategies to address access to school and drop-outs, in particular making visits to children's homes and finding ways to encourage and support struggling families.

But more needs to be done. According to the GIZ website, only about 5% of each age group has gone on to complete school in the upper secondary and even before 4th grade about 60% have already dropped out.[25] The World Bank has also addressed the intergenerational transmission of low educational attainment and recommends that these children of low educated parents be targeted with incentives to keep them in school. Citing their success in other countries and in other sectors, the World Bank recommends Conditional Cash Transfers targeted at disadvantaged children to incentivize uneducated parents to agree

[23] World Bank Report 2016, op cit, pp. 7.
[24] World Bank Report 2013, op. cit, pp. xi.
[25] https://www.giz.de/expertise/html/12787.html

to keep their children in formal education for longer. They further advocate that such Conditional Cash Transfers be customized according to the level of poverty of the family and vulnerability of the student (such as girls who are more likely to be taken out of full-time education earlier).

Keeping children in school, especially girls, is probably the toughest part of the skills-gap problem in the country for which there is no single "quick-fix." However, a possible way forward which would include some of the stakeholders mentioned above. For instance, the Lao Women's Union (LMU) is to be found everywhere in Laos, even in rather remote areas and has a lot of experience working with families in difficulties, as they already do with VEDCs. As a mass organization in Lao PDR that has worked with many bilateral and international donors on a number of projects both at local as well as national level, the LMU is probably best placed to run a wide-spread conditional cash transfer program in conjunction with the VEDCs, development partners and others.

Quality Matters Too

Although literacy levels in Laos have improved over the years (according to UNICEF, 72% of the Lao population are now literate[26]), some disturbing trends emerge in the international comparisons. According to the World Bank, "The same proportion of post- graduates in Laos obtained the same scores on the [ETS literacy skills]exam as people with only primary schooling in Vietnam."[27] The depth of reform required in primary and secondary education is beyond the scope of a report such as this. But, in brief, allowing parents more say in the schools, making the curriculum more relevant to the pupils and their post-school lives, changing the curriculum in the teaching colleges to reflect new methods, and making technology more available in education would be a start.

Creation of a System of Independent TVET Master Standards

A frequent complaint by employers in Laos is that those who are in possession of Lao educational certificates that indicate they have certain skills often do not have the relevant skills or at least do not have them to the standard required. Employers are always going to find it hard to trust certificates that are awarded by the same teachers who are delivering a curriculum without any adherence to any independent standard or any involvement by any external independent examiner to ensure quality in the teaching outcomes. One possible mechanism of certification that would both ensure that skills be relevant to employers and that certification be independent would be for Chambers of Commerce to set up and manage an independent TVET qualification certification. For instance, chambers could work with relevant master international TVET instructors (either European or Thai) to arrive at skills profiles with relevant curriculum and standards and use them to examine candidates. Those candidates successful at achieving such independently certified qualifications will be highly valuable to employers and extremely sought after in the Lao marketplace for their high-level appropriate skill-sets.

Removal of In-House Training Barriers

Some forms of in-house training are taxable in Laos as a "benefit in kind" – even though not all training is considered a benefit-in-kind, employers are likely to interpret the training as a benefit in kind even when it is not. The benefit in kind tax rules should be immediately changed so that all in-house training or training provided by employers is no longer taxable in any way.

Moreover, the Government of Laos currently provides incentives to investors mainly in the form of tax-breaks. It would be worthwhile providing tax-breaks to employers who provide quality training to staff, whether that is in-house training or training paid for by the employer but provided by a third-party. This might also engage the private sector into providing such business-to-business training and grow the private education sector along quality lines.

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[26] https://www.unicef.org/infobycountry/laopdr_statistics.html
[27] World Bank Report 2013, ibid., pp. xii

Greater Access to Vocational and Higher Education by Greater Number

Although many organizations, such as GIZ, have striven to increase the provision of vocational education, many candidates continue to be excluded because they do not have the relevant school certificates or finance in order to begin the training. There will also be candidates who may be lacking in certain key parts of his earlier education due to having had to drop-out.

Although this is opening up for candidates for vocational training who have previously dropped out, this should be expanded to include all those who were not able to complete secondary school to be able to have a second chance to get onto the educational ladder again, such as access to university programs for more mature students through "access programs," more part-time tertiary diplomas and access programs for vocational training, literacy and numeracy programs for those wanting to gain access to training. There should be more scholarships, loan schemes and government backed apprenticeships that would allow those without the financial means the ability to be able to acquire relevant skills.

Conclusion

We have seen that although much has already been done by government, development partners and NGOs to enhance education and skills in Lao PDR, much remains to be done too. In some cases, that calls for doing more of the same – building more schools, training and hiring more teachers and enhancing the curriculum. But more than that is required.

Something has to be done to resolve the access and drop-out problems at basic level. Community Based Construction, if managed properly, would help to deal with the absence of classrooms especially in remote areas. And something has to be done to overcome the intergenerational transmission of low educational attainment from parents to children. The good work of Village Education Development Committees can be built on by involving other effective stakeholders, such as the Lao Women's Union in conjunction with donors and development partners, to run programmes involving conditional cash transfers to persuade families to keep their children, especially girls, in school for longer.

Further along the value chain of education, while a number of development organizations in conjunction with the Government of Laos have worked to change the orientation of the technical and vocational education provision from that of a supply orientated one to a demand orientated one and to include students who had earlier dropped out of education, much still remains to be done. Employers would prefer an independent agency to examine to the level of TVET Master Standards as this would guarantee the skills that candidates claim to have acquired.

Very little in the way of in-house training is being provided by private sector companies in Lao PDR, partly due to fears about additional taxation and partly due to fears that staff, once trained, will simply jump to the next job. In order to change this, the tax fear should be removed by specifically removing the benefit-in-kind tax treatment of some forms of training. But equally importantly, in-house training can be fostered further by providing companies who provide their employees with such training with a tax break. In time, when the shortage of skilled staff has been alleviated in the economy, employees will be less likely to jump ship immediately after in-house training.

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