

A photograph of a lush green forest with sunlight filtering through the trees. In the foreground, the backs of two people wearing orange hard hats are visible, suggesting a logging or construction site.

THE TOURISM SECTOR

A close-up photograph of a mossy rock surface, with a person's arm visible on the right side, suggesting a natural or historical site.

November 2017

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1. ACRONYMS

ADB	Asian Development Bank
ERC	Enterprise Registration Certificate
ESIA	Environmental and Social Impact Assessment
ESMMP	Environmental and Social Management and Monitoring Plan
FDI	Foreign Direct Investment
GoL	Government of the Lao PDR
IPC	Investment Promotion and Management Committee
IUCN	International Union for the Conservation of Nature
LNTA	Lao National Tourism Authority
MAF	Ministry of Agriculture and Forestry
MICT	Ministry of Information, Culture, and Tourism
MoIC	Ministry of Industry and Commerce
MoNRE	Ministry of Natural Resources and Environment
MPI	Ministry of Planning and Investment
NA	National Assembly
NEPL	Nam Et – Phou Louey (National Protected Area)
NPA	National Protected Area
NSEDP	National Socio-Economic Development Plan
OSO	One-Stop Office
PPP	Public Private Partnership
TIN	Tax Identification Number
UNWTO	United Nations World Tourism Organization
WCS	Wildlife Conservation Society
WTTC	World Travel and Tourism Council

2. EXECUTIVE SUMMARY

Tourism is a key driver of socio-economic progress through the creation of jobs, export revenues, and infrastructure development. The 8th National Socio-Economic Development Plan 2016-2020 highlights the importance of the sector in enabling the Lao PDR to achieve its Sustainable Development Goals and graduate from LDC status by 2020 reducing country's reliance on extractive industries and focus upon labour-intensive sectors with potential to simultaneously generate foreign currency revenues while improving livelihoods and protecting important natural assets.

International tourist arrivals have grown steadily over the past 5 years, despite a 10% downturn in 2016 driven primarily by a decrease in Thai and Vietnamese day trippers. Nevertheless, tourism still accounts for approximately 5% of GDP, earning \$724 million in 2016. Projections by the World Travel and Tourism Council indicate that the sector is expected to continue to grow marginally slower than the economy at large, reaching \$1 billion, or 4.6% of projected GDP, in 2025. Visitor surveys conducted by the Ministry of Information, Culture, and Tourism reveal that over 80% of visitors are leisure travellers, whose interests are primarily natural and cultural tourism.

Given these growth trends and visitor interests, development partners like the World Bank, ADB, GIZ, Wildlife Conservation Society, and others have devoted significant technical and financial resources to supporting the GoL's efforts to promote sustainable tourism including ecotourism as a means to reduce poverty and natural resource depletion. While these various projects stress the need for technical and financial sustainability, there remain some concerns as to the viability of particularly complex projects if external assistance is withdrawn.

One possible way to ensure the long-term viability of these projects is development of Public Private Partnerships (PPPs), but to date, the Lao PPP Decree is still in draft form with no firm timeline for promulgation. In the absence of a well-articulated or supportive PPP framework, the best opportunities for quasi-PPP investment in the tourism sector remain concessions, which are considered a type of PPP according to the World Bank's work on concessions¹ which is a common form of investment in tourism activities that use significant state property such as river, forest, land etc.



¹ World Bank, An Introduction to Tourism Concessioning: 14 Characteristics of Successful Programs, 2016

Concession agreements with qualified private sector investors could be a profitable alternative to development assistance, with the private sector providing finance and expertise in exchange for development and maintenance of public assets. The current concession framework enables the establishment of quasi-PPPs in line with the World Banks' description noted above, whereby state-owned lands are granted to a concessionaire for development of tourism activities subject to adherence to agreed social and environmental impact assessment and monitoring.

While there is a regulatory framework to support the establishment of concessions, the process can be time-consuming and subject to vagaries affecting many businesses in the country. Inconsistencies in interpretation and implementation of laws and regulations are commonly cited as obstacles to business registration and operation. Furthermore, the devolution of authority from the central to provincial levels ("somsaang") means that procedures and requirements for establishing a business, hiring labour, or paying taxes might vary from province to province. This study presents the general procedures for obtaining a concession, with the caveat that the precise steps and chronology may vary across provinces.

In order to ensure that concession agreements meet the sustainable development goals, efforts should be made to apply lessons learned in successful tourism concessions in the country and globally to create benchmarks or guidelines for new concession applications. These should include community inclusion in development and management of the area, transparency in operations and revenue-sharing amongst stakeholders, and development of products to enable the long-term financial viability of the project.

Despite the immense potential of ecotourism investments and their alignment with the stated objectives of the GoL, a few obstacles to sustainable tourism development and investment remain. These fall into three broad categories: unclear and inconsistent application of regulations, weak local technical and financial capacity, and prohibitive costs to the investor. To facilitate further investment in the sector, steps should be taken to minimize these obstacles and streamline processes.

3. INTRODUCTION



Tourism is a key driver of socio-economic progress through the creation of jobs, export revenues, and infrastructure development. It also has the capacity to support sustainable natural and cultural resource management by incentivizing maintenance and management of these assets. As the sector is largely labour-intensive and not limited to urban areas, tourism also has the potential to positively impact livelihoods of marginalized groups such as ethnic minorities, women, and youth.

The 8th National Socio-Economic Development Plan 2016-2020 highlights the importance of the sector in enabling the Lao PDR to achieve its Sustainable Development Goals and graduate from LDC status by 2020. It states that “Private sector development and infrastructure provision are required in the non-resource sector to create quality employment opportunities, enhance rural development and further reduce poverty.”² It further adds that in order to achieve this, priority should be given to developing “tourism based on the application of natural, cultural and historic inheritance potential in an effective and sustainable manner through participation of the people.”³

These objectives, combined with the green growth and sustainable resource management goals also outlined in the 8th NSEDP, provide the Lao PDR with an opportunity to capitalize on its immense natural beauty and ecological and cultural diversity to create equitable growth. Within this context, this study seeks to address the enabling environment and procedures for investment in the tourism sector in the Lao PDR, with particular reference to Public Private Partnerships (PPPs), concessions and ecotourism.

The report commences with a brief summary of the current economy on Section 1, introduction to the study on Section 2 and tourism’s contribution to income generation and employment, Section 3, as well as trends in tourist arrivals. Section 4 provides an overview of the government agencies responsible for governance of the tourism sector, as well as the current role of PPPs and concessions in development of sustainable tourism projects in the country. It further outlines successful models of ecotourism projects and how they have been applied in a selection of projects around the Lao PDR. The regulatory framework and procedures for establishing an ecotourism concession are discussed in Section 5, before concluding with a consolidation of the findings and to promote sustainable development via concessions (or PPPs).

Data presented was gathered by research and review of documents and primary sources noted in the bibliography, and was clarified and validated via key informant interviews during the months of May and June 2017 with international and Lao tourism experts, business owners, and government officials.

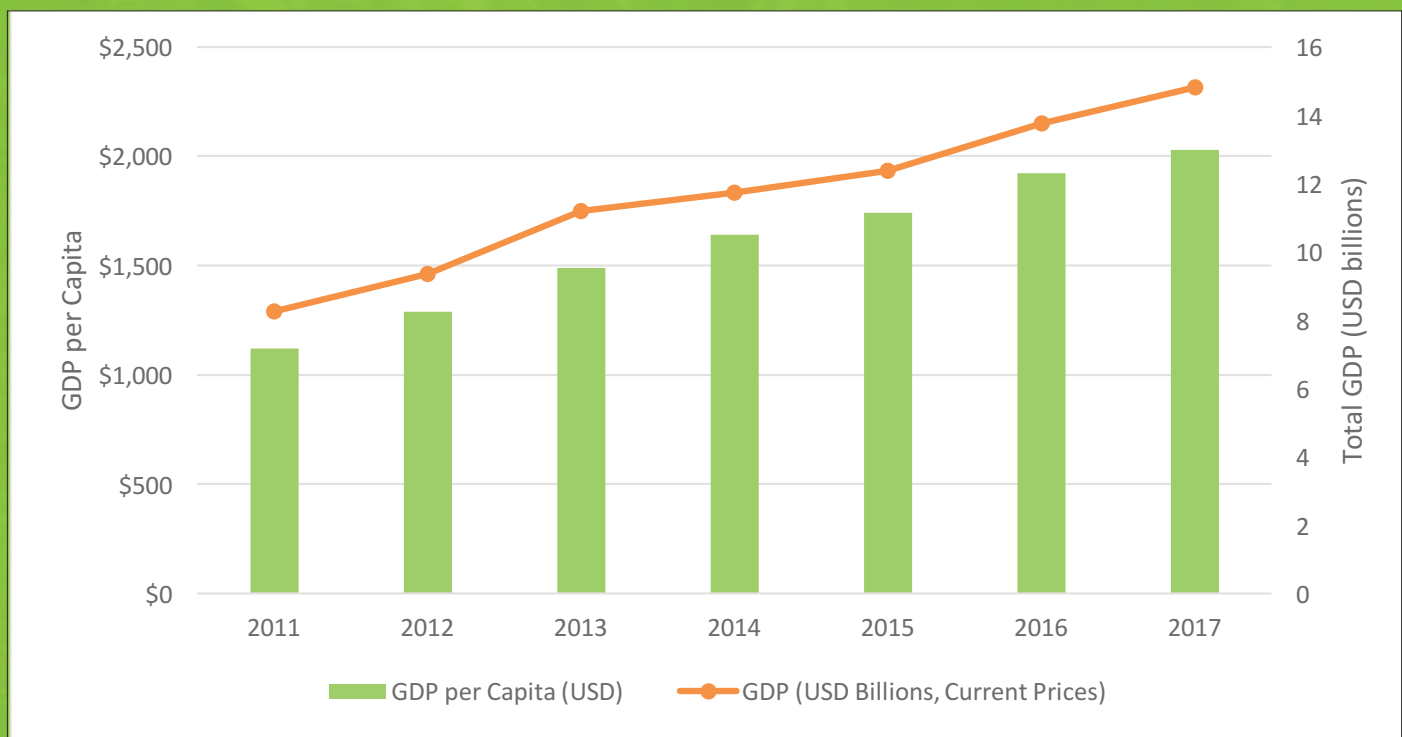
² MPI, 2016. 8th National Socio Economic Development Plan 2016-2020, page 85.

³ Ibid.

4. MACROECONOMIC OVERVIEW

The Lao PDR is a lower-middle income economy with a population of 6.7 million people and per capita GDP of \$1,740. Despite being ranked 139th of 190 countries by the annual World Bank Ease of Doing Business report and a similarly low ranking on public sector corruption by Transparency International⁴, the Lao economy represents one of the fastest growing economies in the East Asia and Pacific region. Throughout the past decade, Lao PDR has seen strong and stable economic growth, with GDP growing by approximately 7% per annum, rising to \$13.2 billion in 2016. In the same period, the country has been slowly moving away from an extractive economy based upon mining and hydropower and has begun to prioritize service sectors such as tourism and logistics, as well as the promotion of small and medium enterprises engaged in manufacturing and trade.

Figure 1: Historical and Predicted GDP and Per capita GDP for Lao PDR 2011-2017



Source: World Bank, 2016-2017 estimates provided by the IMF

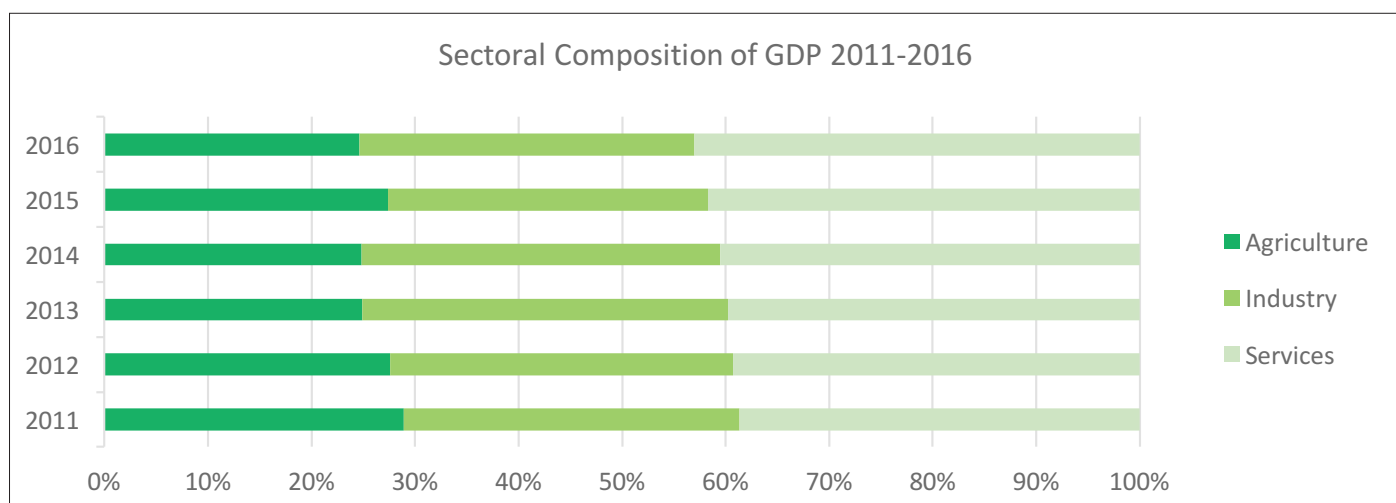
Despite impressive GDP growth, the Lao economy is still over-reliant on the exploitation of natural resources, particularly through mining, hydropower and logging, all of which are associated with significant environmental and social costs. Mining and electricity generated \$ 2.2 billion in export revenues, compared to \$1.3 billion from “other industries” and only 724 million from tourism. Over the past couple years, the tourism sector has dropped from 2nd to 4th in the ranking of revenues generated by exports. Tourism currently represents approximately 23% of all Lao exports and the World Travel and Tourism Council (WTTC) projects that tourism will grow apace with the economy at around 5% per annum, such that the projected export revenue from tourism in 2025 is estimated at roughly \$1 billion (23% of the total projected exports).

⁴ <https://www.transparency.org/country/LAO>



Lao PDR remains one of the most agrarian nations in Asia, with 72% of the employed population (2.5 million people) working in agriculture, many of whom are subsistence farmers⁵. The benefits of increased Foreign Direct Investment (FDI) rarely trickle down to this segment of the population. Despite employing the majority of the workforce, agriculture contributes less than one third of Lao GDP and productivity per worker lags substantially behind its regional neighbours⁶.

Figure 2: Sectoral Composition of GDP 2011-2016



Source: Asia Development Bank

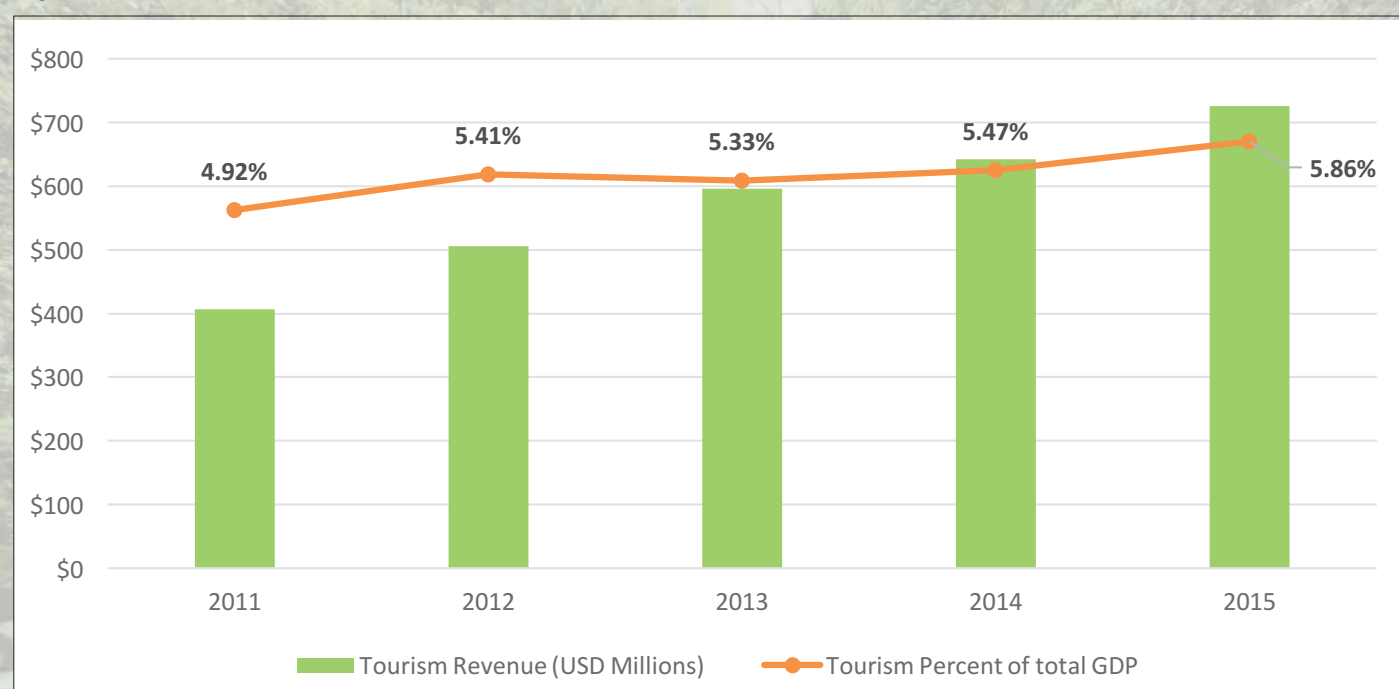
⁵ 4th Lao Population and Housing Census 2015, Lao Statistics Bureau, pgs 80-81.

⁶ The World Bank, Lao Economic Monitor: Challenges in promoting more inclusive growth and shared prosperity. May 2016

4.1 STATISTICS AND ECONOMIC IMPACT OF TOURISM IN THE LAO PDR

According to the UNWTO, tourism accounts for 7% of global exports in goods and services, and over the next decade, tourist arrivals in emerging destinations are expected to grow by around 4.4% per annum compared to only 2.2% annual growth for advanced economies⁷.

Figure 3: Lao Tourism Revenues Percent of Total GDP



Source: World Travel and Tourism Council, Economic Impact 2015 Laos

Over the past five years, tourism has contributed approximately 5% of the Lao PDR's GDP, earning over USD 724 million in 2016⁸. If wider impacts on the economy are factored in, the World Travel and Tourism Council (WTTC) estimates tourism's total contribution⁹ to the Lao GDP is just below 15%. Similarly, the sector directly employs 4.2% of the workforce, supporting an estimated 133,000 jobs in 2015. This figure rises to 407,000 jobs (12.9% of the workforce) when including indirect employment.

The MICT official statistics divide tourist arrivals into two categories: international and regional tourists. Regional tourists are defined as tourists from countries that share a border with the Lao PDR, namely Thailand, China, Vietnam, Myanmar and Cambodia. These tourists may enter the country with valid border passes or passports, and may or may not include an overnight stay in their visit.

While tourist arrivals grew steadily over the past few years, at an average of 12% each year since 2013, arrivals fell by 10% in 2016, driven largely by a significant decrease in Thai and Vietnamese tourist arrivals. In 2016, a total of 4.24 million tourists visited Lao PDR, of which over 3.5 million (84%) were classified as

⁷ World Tourism Organization, 2016. Tourism Highlights, 2016 Edition, UNWTO, Madrid

⁸ 2016 Lao Tourism Statistics, MICT

⁹ The total contribution of tourism includes investment spending, tourism marketing and promotion, aviation, administration, security services, sanitation services, and domestic purchases of goods and services by the sectors dealing directly with tourists - including, for example, purchases of food and cleaning services by hotels, of fuel and catering services by airlines, and IT services by travel agents

regional tourists. The overall number of Thai and Vietnamese tourists combined fell by 16% from last year, due in large part to a significant drop (21%) in Thai and Vietnamese day-trippers. Regardless, Thai and Vietnamese tourists still represent 70% of all tourist arrival into Lao PDR.

The Laotian Times¹⁰ reported that officials in the Tourism Development Department of MICT cited three potential reasons for this drop in Thai and Vietnamese arrivals:

1

Thai promotion of domestic tourism, including tax incentives for money spent during domestic holidays

2

Stricter enforcement of regulations governing foreign workers, especially with regards to Vietnamese workers entering the country on tourist visas to seek work illegally

3

The increased cost of living in the Lao PDR compared to its neighbours

Korean tourists accounted for 25% of the 681,294 international arrivals, with an 80% increase in Korean arrivals since 2014. European tourists comprise 33% of international arrivals and 5.2% of total arrivals, dominated primarily by French and British visitors. Tourists from the Americas represent 13% of international arrivals and 2% of total arrivals. Arrivals from Myanmar, India, and Taiwan showed impressive growth rates at 39%, 50%, and 128% respectively, though the actual number of arrivals from these three countries are insignificant.

MICT undertook a random survey of 2,820 visitors from April-December 2016 to obtain data on demographics and travel preferences¹¹. Just over half of the international tourists surveyed were between the ages of 20-39, with marginally more male visitors than female visitors. The overwhelming majority (80%) of surveyed tourists stated “leisure” as the purpose of their trip, with culture, nature, and food as their primary interests.

Data provided on provinces visited showed dramatic decreases in the percentage of visitors in several provinces. In 2015, approximately 83% of international tourists visited Luang Prabang province, followed by Vientiane Capital (76%) and Champasak (58%); whereas in 2016, these were reported as 74%, 77%, and 6% respectively. Since 2011, Champasak has attracted somewhere between 46-58% of visitors. The dramatic drop to 6% may be in part due to the decreased number of day-trippers coming over to 4,000 Islands or Wat Phou, but the figure seems too low. Likewise, the percentage of tourists visiting Bokeo, Khammouane, and Luang Namtha provinces also dropped well below historic norms, drops that are so completely inconsistent with historical visitor levels that it possibly points to a weakness in the dataset or bias in the sample of visitors surveyed.

Although international tourists accounted for only 16% of all arrivals, they provided 56% of tourism revenue. On average, international tourists stayed 7.5 days in the country and spent approximately US \$76.8 per day. On the other hand, 64% of regional tourists are classified as “day trippers” with daily expenditures of US\$ 12-20. Even those regional tourists who include overnight stays remain on average 3 days in the country, spending US\$ 30-50 per day. Average length of stay and expenditure per person figures also remained largely unchanged from 2015.

While tourist arrivals fell in 2016, revenue generated decreased only marginally. The ADB attributes this to a change in the government’s definition of “tourist” when analysing the statistics, but it could also be in part due to the fact the Thai day-trippers who make up the majority of the decrease in arrivals have a very low average expenditure per person.

¹⁰ <https://www.laotiantimes.com/2017/03/22/laos-sees-10-percent-dip-foreign-tourists-2016/>

¹¹ 2016 Lao Tourism Statistics, MICT, pages24-25

5. TOURISM SECTOR OVERVIEW

5.1 NATIONAL POLICY AND GOVERNANCE

The nature of tourism activities is cross-sectoral and therefore requires coordination and management of a variety of governmental agencies. For the purposes of this study, only the agencies specifically involved in granting licenses for tourism businesses in concessions and NPAs are discussed.

MINISTRY OF INFORMATION, CULTURE AND TOURISM

MICT is the ministry primarily responsible for setting the Tourism Strategy and Ecotourism Strategy, approves applications for tourism business operating licenses such as hotel, entertainment, tour operators etc., manages the Register of National Heritage sites¹². Proposes exemptions to Art 42 of the National Heritage Law to enable foreign and domestic entities to have a concession of national cultural and historic heritage, i.e. operation of a historic site

Provincial and district authorities are charged with implementation of laws and plans, organizing training and capacity-building courses for tourism personnel, and authorizing tourism businesses. However, a number of the specified roles and responsibilities are listed across multiple administrative levels, leaving the question of who is ultimately responsible open to interpretation.



Cr.: Tee11/Shutterstock.com

MINISTRY OF NATURAL RESOURCES AND ENVIRONMENTS

MoNRE was created in 2011 by merging the portfolios of the Water Resource and Environment Administration (WREA) with the departments of the National Land Management Authority (NLMA) and the Forest Conservation within the Ministry of Agriculture and Forestry. The Department of Forest Resource Management (DFRM) was formed within MoNRE in 2012.

In addition to approving Environmental and Social Impact Assessments for proposed investments and monitoring impacts of existing investments, and supervising management of the forestry resource in Lao PDR (transferred from MAF).

MINISTRY OF AGRICULTURE AND FORESTRY

MAF is primarily responsible for regulating and overseeing agricultural activities in the country, such as approving concessions for plantations and commercial agriculture, irrigation, livestock, and provision of extension services. Even though elements of forest management were moved from MAF to MoNRE, MAF retains the Department of Forestry and Department of Forestry Inspection and is responsible for designation and management of NPAs. The logic behind this was to separate the “management” and “oversight” roles in forestry management. MAF is also responsible for defining reserved areas and those that are promoted to include tourism activities and approval of investment proposals in concession of reserved areas.

¹² Though this is MICT’s responsibility, this Register has yet to be made public, and even international experts working closely with MICT have failed to obtain a copy or even clarify who within the ministry is responsible for it.

5.2 PUBLIC PRIVATE PARTNERSHIP IN TOURISM

Public Private Partnerships (PPP) are an increasingly popular tool for public and private sector actors to generate revenue and mitigate a variety of risks while providing essential public services. The term is generally applied to long-term contractual agreements for projects that have been publicly tendered, and where the various risks are allocated to the party best placed to manage them. In many countries, PPPs are supported by specific regulations and procedures that go beyond general investment procedures; however, the World Bank notes that “there is no consistent, international standard for defining PPPs” which can “create confusion” when analysing studies from different countries¹³. The report further notes that in some cases, concessions are considered to be synonymous with PPPs, while in other cases, they might be deemed a form of PPP, depending on the nature of the contractual agreement involved.

Given that international visitors cite “nature” and “culture” as their primary motivations to visit the country, Public Private Partnerships (PPP) could be a useful tool to simultaneously protect these important “public goods” while generating income and livelihood opportunities.

As noted in the section on tourism concessions below, the World Bank described concessions as one form of PPP along “a spectrum”, and as such, the terms “concession” and “PPP” are often used interchangeably. However, PPPs are generally supported by separate legislation and procedures, so it is useful to review the proposed PPP regulations and working definitions of what kinds of projects constitute a PPP.

The ADB defines PPPs as “PPP is a contractual arrangement and is commonly characterised as a long-term arrangement between the public and the private sector for the purpose of providing a public service with risks allocated to the party best able to bear them.”¹⁴ The most common type of PPP involves infrastructure, be it roads, bridges, construction, power or electricity. Successful PPPs rely upon five broad principles that are largely aligned with characteristics of successful tourism concessions:



¹³ International Bank for Reconstruction and Development / The World Bank, Asian Development Bank, and Inter-American Development Bank, 2014. Public Private Partnerships Reference Guide: Version 2.0. Page 20.

¹⁴ MPI-ADB, 2013. Initial Conceptual Framework and Roadmap for Public-Private Partnerships in Lao PDR.

Legal framework:

The conceptual and policy framework for PPP in the Lao PDR remains ill-defined. The Investment Promotion Department within MPI is leading the development of the policy framework for PPP, in conjunction with the ADB, World Bank, and major development partners. The 2015 Decree on Public Private Partnerships has seen at least seven revisions and has yet to be signed, let alone implemented.

The 2016 Investment Promotion Law added a brief new article (Art. 39) addressing PPPs, defining them as a joint investment between the public and private sectors under a joint venture agreement. This is the first main difference between a concession and PPP under Lao law: with a PPP, the government takes an equity stake in the business venture. Whereas, Art. 6.1 of the proposed PPP Decree specifies that the contracting parties can be in the form of a sole company, limited company or public company or groups of companies established under Lao laws.

Open and competitive bidding and procurement:

As of today, accessing to information about the tender of PPP projects has been very limited in the Lao PDR. Currently, there is no centralised platform, neither an electronic source this information is announced systematically. The World Bank PPP Knowledge Lab put the investment in PPPs in the Lao PDR from 1990 to date at just over US\$ 16 billion, spread across 28 projects, all of which are in the energy / hydropower sectors and were “directly negotiated” with the government.¹⁵

The recent conference on PPP in the Tourism Sector (CMLVT)¹⁶ in Vientiane convened experts, government authorities, and practitioners from the region to discuss the role of PPPs in the sector. The participants identified several critical areas in need of improvement to facilitate the successful adoption of PPP frameworks in the Lao PDR, namely legal and institutional framework and capacity and technical knowledge of government authorities.

Other main difficulties highlighted in the working groups are a lack of understanding by government officials on the key principles of PPP regarding risk sharing, no state budget commitment to contribute cash covering government share in the investment, and a general weakness of public expenditure management e.g. procurement, technical monitoring and audit. Feedback from the conference also highlights that relevant stakeholders still do not have a consistent definition and understanding of what constitutes a PPP. In one working group session, a Lao official used Electricite du Laos, a state-owned enterprise, as an example of a PPP. Furthermore, interviews with relevant government authorities indicate that once the decree is finalized and implemented, the primary focus will be upon traditional PPP sectors: energy, infrastructure, education, and health projects. While tourism is not included in this list of public services available for PPPs, tourism - particularly ecotourism - supports the maintenance and development of important public goods, namely natural and cultural heritage.

Assessing the current situation in Lao PDR vis-a-vis the five broad principles mentioned above, is it clear that there is still much work to be done to facilitate the adoption of PPPs. Nevertheless, the existing concession framework is adequate to permit the successful development of tourism projects. In fact, international legal and tourism experts interviewed indicated that it may be better to strengthen and improve the existing concessions framework rather than add the layers of technical and administrative complexity required by a PPP – at least in the short term.

¹⁵ <https://pppknowledgelab.org/countries/lao-pdr>

¹⁶ May 3-5, 2017 hosted at the Landmark Hotel in Vientiane

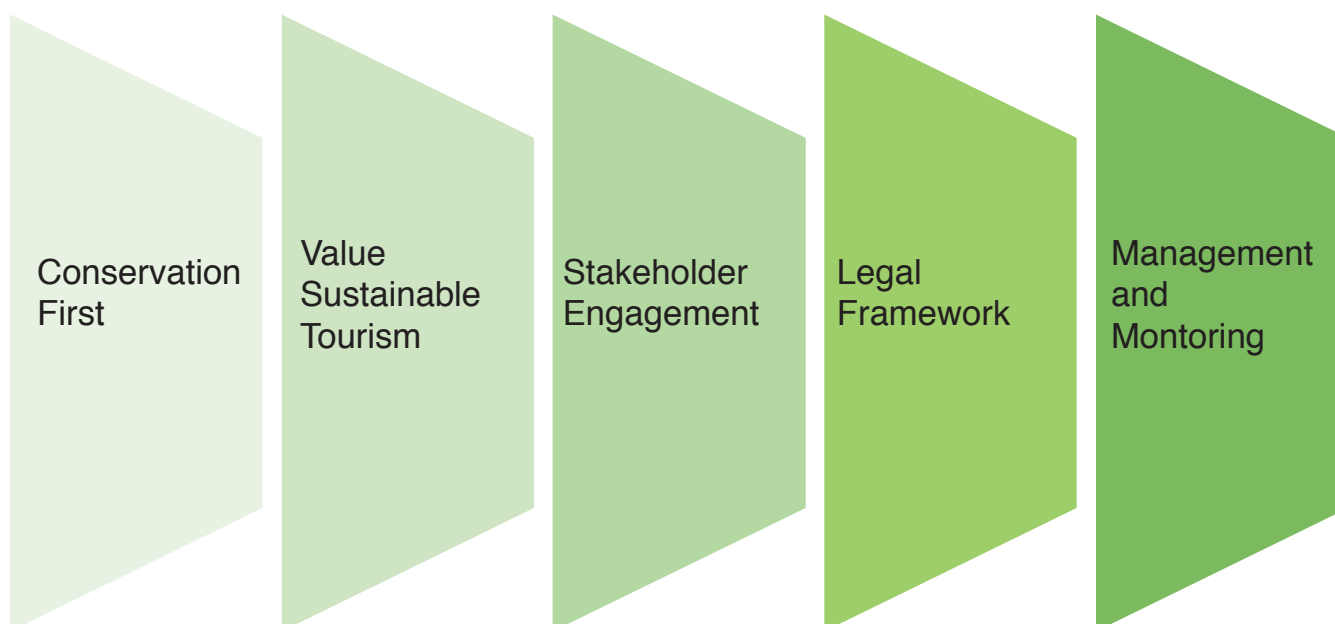
5.3 TOURISM CONCESSIONS

Concessions can be a very useful tool to create environmental and socio-economic benefits from protected natural areas by leveraging private sector expertise and funding. Tourism concessions may follow a number of different models, depending on how management and risk is to be shared amongst parties, but the World Bank highlights 3 common examples:

- **Privately owned and operated** – private sector entity is concessionaire and operator of the products/ services within the concession area
- **JV owned, privately operated** – JV comprised of a private company and a public or quasi-public organization, such as a community trust or NGO, operated by a private company (usually the JV partner)
- **Community-owned, privately managed** – community organization is the concessionaire, subcontracts a private entity to manage the asset

These models are not comprehensive, and given the vast variety of habitats and cultural heritage, a one-size-fits-all approach is not appropriate. It may be more useful to think of concessions along a spectrum, and indeed the World Bank notes that “While usually categorised as a form of Public Private Partnership (PPP), there are a number of different concession models that can be applied within this spectrum.”¹⁷

The same World Bank report outlined 14 characteristics of successful tourism concessions. These characteristics can be distilled into five broad themes:



¹⁷ World Bank, An Introduction to Tourism Concessioning: 14 Characteristics of Successful Programs, 2016



Conservation First acknowledges that some areas may be too environmentally or culturally sensitive for tourism and the IUCN urges national and local authorities to prohibit tourism in those areas. Similarly, some protected areas may not be sufficiently attractive, accessible or safe for tourism – stakeholders should keep all these in mind when considering concessions. Valuing sustainable tourism is more than just valuing the revenues generated, but acknowledging that travellers are increasingly demanding truly sustainable experiences and therefore there is a market imperative to promote sustainability.

Engagement of all stakeholders (government, local authorities, community members, NGOs, donors) throughout project conception, design and implementation is possibly the most critical factor to the success of a project. Communities where stakeholders are actively engaged tend to be more supportive of tourism activities, and those who receive “consistent, tangible benefits from tourism tend to be more welcoming to tourists”¹⁸. Similarly, without a clear and robust legal framework to support the concession agreement, tourism concessions often fail to meet their objectives. Within that framework, the concession agreements should be transparently procured and equitable to each signatory. Once agreed, the true sustainability of any project relies upon careful and regular monitoring and adaptation of management plans.

According to the comprehensive 2012 study¹⁹, approximately 21% (5.5m hectares) of the Lao PDR is currently under concession or lease agreements, just over half of which are granted to contract farming, logging, and hydropower activities. Excluding these three sectors, the remaining 2.1m hectares are granted to mining and other activities. Given the majority of land granted to mining is designated for exploration rather than exploitation and therefore impact on the land is minimal, the study excludes mining exploration concessions in its analysis. Once these concessions are removed, the total area of concessions drops to 1.1m hectares, or 5% of the total land area²⁰. This area is covered by 1,535 concession and 1,107 lease agreements, though almost all leases are smaller than 5 hectares.

Agriculture, forestry (monocrop tree plantations), and mining exploitation account for 91% of the 1.1m hectares under concession, while tourism covers 7% of the conceded areas. Though there are a larger number of domestic investment projects across all sectors, these tend to be ten times smaller in area than FDI projects. Consequently, FDI concessions comprise 72% of the total area under concession. Vietnam and China are the two primary sources of FDI in concessions, accounting for almost half of the area under concession. Tourism concessions account for only 156 of all concession and lease agreements, and investment in the sector is primarily domestic, though the eco-tourism concession in Bokeo (Gibbon Experience) is French investment and in 2012 accounted for a large proportion of the total land areas granted to tourism, i.e. 67,600 hectares of 75,200 hectares devoted to tourism projects. Recent interviews with MPI officials could not confirm if the proportion of domestic vs. foreign-owned tourism concessions has changed since 2012.

¹⁸ Ibid.

¹⁹ Schönweger O., Heinemann A., Epprecht M., Lu J., Thalongsechanh P., 2012: Concessions and Leases in the Lao PDR: Taking Stock of Land Investments. Centre for Development and Environment (CDE), University of Bern, Bern and Vientiane: Geographica Bernensia

²⁰ Given the vast areas excluded in the analysis, the 1.1m hectare figure is considered very conservative

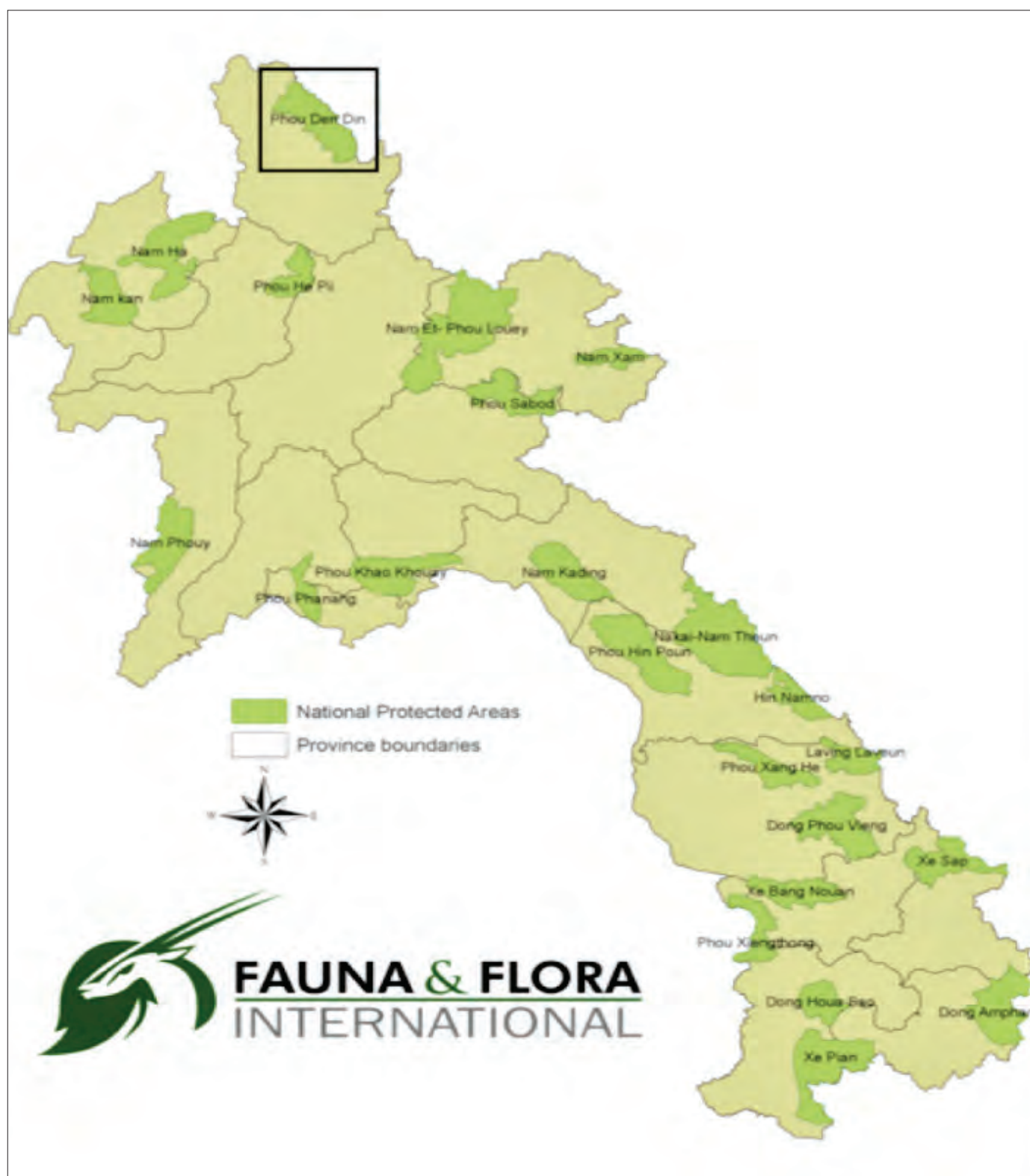
5.4 NATIONAL PROTECTED AREAS AND ECOTOURISM



Covering 236,800 sq. kms, the Lao PDR is one of the smallest countries in SE Asia, and yet is one of the most biologically diverse with rich forest and water resources supporting a variety of ecosystems. These pristine and often dramatic landscapes are one of the primary attractions for tourists each year, but development of extractive industries like mining, logging and hydropower has had a negative impact on these public resources. Forest cover has fallen from 72% of total land area in 1940 to only 40% in 2010. Not only do these forest areas support abundant wildlife, they also support livelihoods of a number of ethnic minorities, and as such the responsible stewardship of these natural resources directly impacts the social and economic development goals of the country.

In response, the government has established a series of National Protected Areas (NPAs) across the country. Formerly designated as National Conservation Biodiversity Areas; 24 National Protected Areas (NPAs) now cover more than 3.8 million hectares, or roughly 17%, of the Lao PDR. There are an additional 57 Provincial Protected Areas and 144 District Protected Areas, accounting for another 1.4 million hectares.

Figure 4: Map of NPAs in the Lao PDR



Source: Lao Biodiversity Association, <https://laobiodiversity.wordpress.com/2015/06/18/gibbon-project/map-of-lao-npas/>

Most of these NPAs are ideal for development of ecotourism, and in fact, the Nam Ha NPA (established 1999) in Luang Namtha province has been recognized by the UNDP as a “best practice” poverty alleviation intervention through ecotourism in 2001.

NPAs are the purview of MAF (formerly under the auspices of MoNRE), and even though they are described as “national”, many are managed primarily by provincial and district authorities. There are NPA Management Units based on site, but sadly most of these are under-funded and lack sufficient technical knowledge to be effectively managed. As such, these areas are not actively monitored or managed. In some cases, NGOs and development partners have offered technical and financial support to management units, creating a quasi-Public Private Partnership that simultaneously raises the capacity of local authorities while achieving conservation and livelihood objectives of the NPA. The sustainability of these kinds of initiatives may suffer if external financial and technical support ends; however, experience from the successful Nam Ha NPA indicates that significant community inclusion and “buy-in” greatly improves the long-term sustainability of ecotourism projects.

The Nam Ha NPA encompasses 222,400 hectares and over 21,000 residents in 57 villages. The project is considered a model of best practices in ecological protection and sustainable livelihoods as it builds upon four main strategies:

- Local stewardship and management of natural resources
- Transparent and institutionalized tourism revenue-sharing schemes, generating public funds for tourism management, village development, and conservation activities
- Inclusion of women and ethnic minorities in planning and management
- Support for diversified village livelihoods, with approximately 1,000 local residents receiving direct or indirect employment from ecotourism activities

While the NPA Management Unit is responsible for overall supervision of the area, individual natural and cultural sites are managed by local communities, generally through individual agreements and concessions approved by the provincial tourism authorities.

At present, there is no comprehensive national inventory of potential tourism development sites available for investment, nor a list of potential local partners / authorities that investors might approach to discuss possible concessions and activities. A full list of NPAs, including surface areas, can be found in Annex 2: List of NPAs in the Lao PDR.

The National Ecotourism Strategy and Action Plan 2005-2010²¹ (NES) produced by the Lao National Tourism Authority (LNTA) defines ecotourism as “Tourism activity in rural and protected areas that minimises negative impacts and is directed towards the conservation of natural and cultural resources, rural socioeconomic development and visitor understanding of, and appreciation for, the places they are visiting.” Apart from defining broad terms and principles, the NES acknowledges that as ecotourism operates cross-sectorally, it is important to coordinate amongst stakeholders, various ministries, and administrative levels. As such, the NES stipulates that an Ecotourism Taskforce within MICT will “address hierarchical relationships between actors such as the Lao National Tourism Administration and the Provincial Tourism Offices and, similarly, between the Ministry of Agriculture and Forestry and their provincial counterparts with responsibility for managing the NPAs.”

In June 2016, MICT hosted the ASEAN Ecotourism Forum in Pakse, attended by Tourism Ministers and delegations from ASEAN countries. The forum resulted in the drafting and acceptance of the Pakse Declaration, a roadmap for the strategic development of ASEAN ecotourism corridors and clusters which are “linked to major intra-ASEAN transportation routes

²¹ The National Ecotourism Strategy is currently being updated by the taskforce within MICT, but there is no information regarding when they expect to disseminate the strategy for feedback.

including overland highways, waterways and inter-islands connection (tourism corridors)". The Declaration further proscribes the following actions (amongst others):

- **ESTABLISH**, where relevant, a regional inventory of ecotourism sites within ASEAN including but not limited to protected areas, national parks, and nature and wildlife reserves;
- **IDENTIFY**, plan and develop sustainably an inter-connected network of ecotourism destinations and sites (ecotourism clusters) across ASEAN Member States, which are linked to major overland roads, waterways, sea or air routes (tourism corridors);

While the ecotourism strategy and commitments to declarations like the one made in Pakse are an important foundation to build upon, the term "ecotourism" is still not well understood and is often applied to any kind of outdoor tourism activity, such as trekking, riding elephants, visiting ethnic villages, even if there are no real conservation efforts involved.

There are, however, several notable examples of successful ecotourism projects in the Lao PDR in addition to the Nam Ha NPA mentioned above. In the Nam Et Phou Louey (NEPL) NPA located across three provinces of north-eastern Lao PDR, Wildlife Conservation Society (WCS) has been providing technical assistance and co-management support to the NEPL Management Unit since 2003. This support encompasses a range of activities and capacity-building, including but not limited to: law enforcement and ranger patrolling, ecotourism development and promotion, outreach activities for community engagement, and monitoring of wildlife, forest cover, and threats. There are no concession agreements in place, but technical assistance provided by WCS is governed by an MOU that is renewable every five years.

The wildlife spotting products at NEPL NPA are designed to create a direct link between conservation and tourism so that the money that tourists pay positively incentivises local people to protect endangered wildlife. The NPA involves local communities in conservation efforts and provides financial incentives to 26 villages (around 2,000 households) around the NPA. Currently around 110 people, mostly former hunters, from 4 villages are directly employed as tourism service providers. The ecotourism unit currently consists of directly employed team members (guides and a tour reservation officer) supported by a WCS ecotourism coordinator and government ecotourism section head. This section directly reports to the NEPL Management Unit²².

Although WCS and its donors are providing substantial technical and financial support to the project, the ecotourism model brief produced by WCS and the NEPL NPA Management Unit²³ outlines their vision for the long-term sustainability of the project. Technical advisors are working closely with local government and village authorities, as well as the NPA Management Unit, to build capacity, raise awareness, and develop eco-sensitive tourism products in the early years of the project. In time, the project can be managed without significant external technical assistance, and the revenues generated from tour and entry fees will be an important source of funds available for the management of the area. Nevertheless, the brief also notes that "managing ecotourism activities in NPAs requires a strong understanding of both tourism business related operations (tour development, operations, sales and marketing, etc.), and of the conservation objectives and values of the protected area (wildlife monitoring, law enforcement)²⁴. Given this, once technical and financial assistance comes to an end, the project might benefit from one of the concession models noted above, specifically the "community-owned, privately managed" model. This would enable the community to retain the stewardship of the area and its natural resources while relying on a private sector partner to provide the necessary tourism business expertise to ensure the area is successfully marketed and provides a positive experience for tourists.

Other successful projects identified by experts in the tourism sector include The Elephant Conservation Center (see case study ANNEX 5), The Gibbon Experience in Bokeo province, which was instrumental in helping achieve NPA status for the Nam Kan NPA, and Nam Kat Yorla Pa resort in Oudomxay, located in the provincial protected area of Nam Kat Forest Reserve.

²² Interview with Janina Bikova, Ecotourism Advisor with Wildlife Conservation Society

²³ Wildlife Conservation Society Laos and Nam Et –Phou Louey NPA, 2017. Ecotourism in Nam Et – Phou Louey NPA. <http://www.namet.org/wp/namnern/eco-tourism-model/>

²⁴ Ibid. Page 6.

6. DOMESTIC AND FOREIGN INVESTMENT IN THE LAO TOURISM SECTOR

6.1 LEGAL FRAMEWORK FOR TOURISM

The tourism sector is primarily governed by the following pieces of legislation:

Table 1: Lao Legislation Relevant to the Tourism Sector

Law on Tourism (amended) <i>No. 32/NA, issued 24 July 2013</i>
Regulation on the Management of Hotels and Guesthouses <i>No.159/PMO, issued 30 July 1997</i>
Regulation on the Establishment and Management of Tourist Service Operators <i>No. 1150/PM, issued 25 October 1993</i>
Other Legislation Relevant to Tourism Activities
Law on National Heritage (amended) <i>No 22/NA, issued 24 Dec 2013</i>
Law on Environmental Protection <i>No 29/NA, issue 18 Dec 2012</i>
Ministerial Instruction on the Process of Environmental and Social Impact Assessment of the Investment Projects and Activities <i>No. 8030/ MONRE, issued 17 Dec 2013</i>
Ministerial Instruction on the Process of Initial Environmental Examination of the Investment Projects and Activities <i>No. 8029/ MONRE issued 17 Dec 2013</i>
Ministerial Agreement on the Endorsement and Promulgation of List of Investment Projects and Activities Requiring for Conducting the Initial Environmental Examination or Environmental and Social Impact Assessment <i>No. 8056/ MONRE issued 17Dec 2013</i>

The Law on Tourism broadly regulates the sector and defines key terminology. The 2013 law replaced the original 2005 law, amending 33 articles and adding 11, though the substance of the law favours broad statements of objectives and principles over details on policy and implementation. While many articles refer to various standards and classifications businesses must meet, there is no reference as to what those standards are or what the compliance procedure might be.

The much older implementing regulations are more detailed, though regulations are in the process of being amended to avoid any conflict with the new tourism law. This was due to be completed in 2015, but as of the time of writing (June 2017), the old regulations are still in effect. MICT officials confirmed that the laws are being re-written, but could not estimate when the new versions might be approved and implemented. In the meantime, MICT officials indicated that they are working with MOIC to streamline the procedures and documents required to establish all types of tourism businesses, but there is no formal written standard applied.

6.2 LEGAL FRAMEWORK FOR INVESTMENT

The primary laws and regulations governing investment in the Lao PDR are outlined in Table 2 below.

Table 2: Lao Legislation Relevant to Investment in Lao PDR

Legislation	Note
Law on Enterprise <i>No. 46/NA, issued 26 Dec 2013</i>	
Law on Investment Promotion <i>No. 02/NA, issued 8 July 2009</i>	
Law on Investment Promotion <i>No. 02/NA, issued 17 Nov 2016</i>	
Decree on the Implementation of the Investment Promotion Law <i>No. 119/ PM, issued 20 Apr 2011</i>	Updated implementing decree to match the 2016 IP Law is not yet available
Decree on State Land Lease or Concession <i>No. 135/PM, issued 25 May 2009</i>	
State's Land Lease and Concession Fees Rate <i>No. 02/OP, issued 18 Nov 2009</i>	
Decree on the Compensation and Resettlement <i>No. 192/PM, issued 07 July 2005</i>	
Notification <i>No. 1328/MOIC.DERM, issued 13 July 2015</i>	Reserved List for Lao Citizens
Notification <i>No. 1327/MOIC.DERM, issued 13 July 2015</i>	Conditional List for Foreign Investors

The Law on Enterprise defines all types of legal investment entities, as well as the roles and responsibilities of each type. The law also outlines procedures for registering various types of enterprises, as well as sets out the different procedures for business types found on the “Negative List” or “controlled businesses”, which is defined as the “list of business activities with high sensitivity, mainly for national security, public order, traditions and environment that are required to have inspection by relevant sectoral agencies prior to the registration of an enterprise”. If a business is on the controlled list, a business registration cannot be authorized without first obtaining approval from the relevant line ministry, thereby increasing approval timelines.

Foreign investment in the Lao PDR is limited by two regulations: The List of Reserved Businesses for Lao Citizens and the List of Conditional Businesses for Foreign Investors. The “Reserved List” includes a range of activities in the following areas: manufacturing, construction, transport, tourism, finance, professional services, education, and health. The “Conditional List” sets forth the economic activities in which foreign participation is subject to equity restrictions and minimum capital. For General Business, the minimum

registered capital requirement for foreign investments sets at 1 billion LAK. At the time of writing this report, the List of Conditional Businesses for Foreign Investors is being reviewed to support the implementation of the Investment Promotion law 2016. Conditions for foreign investment in the activities in the list might be changed.

Table 3: Conditions for Foreign Investors in Tourism General Businesses

ISIC	Business Activity	Min. Registered Capital	Foreign Equity Participation %	Authority
5510	Short term accommodation activities (3-5 star)	1 billion LAK +	60%	MICT

Chapter 1 of the Law on Investment Promotion 2016 outlines three categories of incentives for investors: by sector, by zone, and VAT, duty and other incentives. “Environmental-friendly and sustainable natural, cultural and historical tourism development industry” is one of the nine business sectors granted incentives under Art. 9, as is “protection of environment and bio-diversity, activities promoting rural development and poverty reduction”. Only businesses with investment capital of 1.2billion LAK, or employ at least 30 skilled labourers or 50 employees with a 1-year contract, are eligible for these incentives. SMEs with fewer employees and lower capital will receive “incentives according to relevant laws and regulation.”

Incentive Zones are periodically determined by the government and are categorized in Table 4 below.

Table 4: Investment Incentives by Zone

Zone	Definition	Profit Tax Exemption ²⁵	Concession Royalty Exemption ²⁶
Zone 1	poor, remote with socio-economic infrastructure unfavourable to investment	10 years	10 years
Zone 2	with socio-economic infrastructure favourable to investment	4 years	5 years
Zone 3	Special Economic Zone (SEZ)	shall comply with specific regulation	shall comply with specific regulation

²⁵ Certain sectors are granted an additional exemption. These are listed in section 2,3,5 & 6 of Article 9 and encompass sectors are environmentally-friendly agriculture and handicrafts, preservation of biodiversity and rural poverty reduction activities, schools and vocational facilities, and health facilities. Notably, tourism is not among them (section 4). Investors in these sectors receive an additional 5-yr exemption (Zone 1) or 3-year exemption (Zone 2).

²⁶ As above, the same sectors are granted an additional 5-year or 3-year exemption for operations in their respective Zones.

6.3 GENERAL INVESTMENT PROCEDURES

Investment in the Lao PDR falls into one of three categories: general business, concession, or Special Economic Zone (SEZ)²⁷. The first step for any new business in Lao PDR is to obtain an Enterprise Registration Certificate (ERC). Applications for ERCs are to be submitted via the One Stop Service Offices (OSO) of the Ministry of Industry and Commerce (MOIC) for general businesses and controlled businesses and the Ministry of Planning and Investment (MPI) for concessions.

AREA	DEPARTMENT (One-Stop Service office)	MINISTRY
General business including controlled business registration and licensing	Enterprise Registration and Management Department	Ministry of Industry and Commerce
Concession registration and licensing	Investment Promotion Department	Ministry of Planning and Investment
SEZ registration and licensing	SEZ One-stop Shop Unit (OSU) for an investment in an existing SEZ	Lao National Committee on Special Economic Zones for development of new SEZs

Once the application for an ERC is submitted, the OSO must respond to general business applications within 10 business days. Applications for registration of businesses on the controlled list require an additional three days, as the OSO must seek approval from relevant line ministries. If the line ministry does not provide the OSO with feedback or approval within 8 business days, it is considered implicit approval of the application. Interestingly, Art 80 of the 2016 Investment Promotion Law stipulates that controlled business applications should be submitted to OSO in Ministry of Planning and Investment, which requires 45 days for approval.

ROLES AND RESPONSIBILITIES OF THE MINISTRY OF PLANNING AND INVESTMENT (MPI)

- Explain and advise on the completion of provided standard forms and other documents related to investment matters, provide legal explanations to investors regarding investment matters
- Receive and review applications for investment, make recommendations to the Investment Promotion and Management Committee
- Hold weekly technical meetings to consider investment applications;
- Coordinate with other relevant sector authorities to issue enterprise registration certificates, tax registration certificates, business operating licenses and other permits
- Receive and provide services for visa applications, work permits and residence cards for foreign investors

Once businesses have received the ERC, including tax identification number (TIN) and company seal²⁸, investors must then obtain all necessary operating licenses from the relevant line ministries. For example, hotels and short-term accommodation activities must obtain a business operating license from the provincial office of the Tourism Management Department, MICT. The entire process lasts anywhere from 80-180 days and costs the investor around \$200 in administrative fees.

²⁷ Analysis of investments in SEZs falls outside the scope of this report and are therefore not discussed further.

²⁸ Receipt of these items is facilitated by the OSO

6.4 INVESTMENT IN CONCESSIONS



Concessions are divided into two categories: administrative and commercial²⁹. The nomenclature is somewhat misleading as administrative concessions involve commercial activities such as construction, telecoms, electricity, etc. The primary difference between the two categories is that commercial concessions are expected to pay royalties for the natural resource extracted in addition to concession fees for the conceded area; agriculture, mining and hydropower concessions fall into this category.

Concessions for tourism businesses are covered in Articles 16-19 of the 2009 Decree on State Land Lease or Concession. The section states that local tourism site concessions can be granted by the provincial Land Management Authority with the approval of provincial tourism and district agriculture and forestry officials, and are subject to a maximum duration of 30 years. National level sites, on the other hand, must be approved by the National Land Management Authority with approval from MICT and MAF, and are limited to 30-50 years' duration, though they can be extended on a case-by-case basis.

This allocation of approval authority appears to conflict with Annex 3 of the Decree on the Implementation of the 2009 Investment Promotion Law, which lists “investment (concession) in construction of markets, commercial centres, touristic areas, camps, parks, offices, residence and others which acquire the use of Government land” as a concession activity and specifies that these activities must be approved at a central level. An interview with the Department of Land Management within MoNRE confirmed that concessions of 50 hectares or fewer are approved at the provincial level, whereas large concessions must be approved at the central level. Regardless of size, all concessions inside NPAs must be approved at the central level.

The question of legal hierarchy has been noted in a number of reports on investment in Lao PDR as stumbling block, as in the absence of clear legal hierarchies, inconsistencies in legislation are left to individual interpretations. One recent case in point: TreeTop Explorer, operated by Green Discovery within the area of Don Houa Sao NPA, has been operating under a provincial concession agreement for 5 years, and was only

²⁹ Article 7 of the Decree on State Land Lease or Concession

Table 5: Concession Fees by Type and Zone

Objective of the State's land lease	Annual Fee per hectare (USD)		
	Zone 1	Zone 2	Zone 3
Hydropower plant, electricity distribution station	100	300	500
Thread production Factory, fiber, material and garment	200	300	600
Chemical processing factory, chemical products, plastic products	500	800	1000
Wood processing factory and products derived from woods and rattan	500	1000	2000
Tobacco products processing factory and alcoholic drinks	1,000	2,000	3,000
Activities that serve public interest such as: public garden, school, hospital, children playground and health rehabilitation center	100	300	500
Services of an individual nature such as: bank, supermarket	500	10,000	50,000
Services of an individual nature such as: hotel, resort, entertainment hall	5,000	30,000	70,000
Activities on cash crops	6	10	20
Activities on rubber trees plantation	30	40	50
Establishment of all types of casinos	200,000	400,000	800,000
Service of activities in cultural, natural and historical tourism			
At village level	70	100	200
At District level	100	200	300
At Provincial level	200	300	400
At National level	300	400	500

Source: State's Land Lease and Concession Fees Rate No. 02/OP, issued 18 Nov 2009

recently notified that the company must now obtain central -level approval given its location within an NPA. Concession fee rates are established by Executive Decree, and are payable to finance authorities one year in advance from the date of offering the service/harvesting the crop, and thereafter regularly according to the agreement. Fee rates should increase by 5% for every 5 years of the concession agreement. Applicable concession fees are included in the Investment Agreement signed with the government.

The exact size of the concession (and hence the value of annual fees) is determined during initial discussions and negotiations with local authorities. Anecdotal evidence from investors suggests that this process can be difficult as local authorities are incentivized to maximize the size of the concessions. In one example, the Kingfisher eco-lodge in Xe Pian NPA in Champasak province operates on an area of two hectares, but local authorities urged the investor to agree to a concession area of eight hectares.

Similarly, ecotourism concessions may find that they require a large amount of land to adequately conserve flora and fauna, or to support their income-generating activities. Under the current regulations, these businesses must pay the concession fee for all the land in the concession, even if a large part of it does not generate revenue. This situation has been encountered by the Elephant Conservation Centre as it has expanded its herd of elephants. The animals require substantial areas of forest for herding and natural habitat, but larger herd sizes (a positive environmental outcome) is not linked to larger visitor numbers. To obtain the land necessary to support additional elephants becomes prohibitively expensive.

6.4.1 INVESTMENT PROCEDURES FOR CONCESSIONS



As with general businesses, investments in concessions must first obtain an ERC from the One-Stop Service Office (OSO) within the Ministry of Planning and Investment, for review by the Investment Promotion and Management Committee (IPC). The IPC functions on two administrative levels: central and provincial, with the committee members and responsibilities outlined in Arts. 75-81 of the 2016 Investment Promotion Law. There are some inconsistencies between the 2009 and 2016 Investment Promotion (IP) Laws that make the precise procedure for obtaining a concession license somewhat ambiguous, particularly in the absence of implementation guidelines to accompany the 2016 Investment Promotion Law. What is consistent in the two laws is the stipulation that there must be an initial approval of the investment application submitted to the OSO by the line ministries and the IPC before negotiation of the concession agreement begins.

The 2009 IP Law does not specify timeframes for approval of the investment application, but the 2016 IP law outlines the timelines and procedures for submitting the investment application to the OSO and specifies in Art. 81.1 that the result of an approved application would be the issuance of an “enterprise registration certificate”. Obtaining an ERC for a concession business takes 65 days, as Annex 5.

The primary inconsistency between the two laws regards the documentation required for an investment application. The documentation required by both laws is outlined in Table 6. Confusingly, the ERC is included in the list of documents required to obtain the ERC under the 2016 IP Law. Furthermore, Art. 81 of the 2016 IP Law states that investors should start the data collection for the feasibility study and ESIA after the concession agreement is signed; however, Art. 46 of that same law notes that the feasibility study and ESIA are required documents for the “investment application”. The process map for concessions provided on the website of the Investment Promotion Department of MPI likewise indicates that the feasibility study and ESIA are to be undertaken once the initial investment application is approved³⁰.

³⁰ investlaos.gov.la/index.php/concession-tactical-activities

Table 6: Documentation Required for Investment Applications in Concession Activities

	Documentation Required 2009 IP Law	Documentation Required 2016 IP Law
1	Investment application form	Investment application form
2	Details of background and experience of the investor or company, ID Card, police report, copy of passport	Details of background and experience of the investor or company, ID Card, police report, copy of passport, Enterprise Registration Certificate
3	Business Joint Venture Agreement (if there are two more partners or shareholders of the enterprise)	Business Joint Venture Agreement (if there are two more partners or shareholders of the enterprise)
4		Power of Attorney assigning the representative(s) of the partners or shareholders of the enterprise, (if such individual does not hold the highest position within the company)
5	Basic information about the project or feasibility study and business plan	Feasibility study or business operation plan (sometimes call "Economic-Technical analysis"), stating the main purposes of investment, estimated investment value, project location, operations term, effectiveness of the project, labour requirements, state land lease or concession requirements, economic, technical and financial feasibility, benefit allocation estimations, plans and operation procedures, funding support agreement from the parent company or financial institution, methods of fund mobilization, investment proposal incentives
6		Environmental and social impact assessment (ESIA)
7	Certificate of financial status of the investor	Certificate of financial status or supporting documents from financial institutions or banks, certified two-year financial reports
8		Articles of Association in accordance with the standard form

Source: Art. 46, Law on Investment Promotion, No. 14/NA, issued 17 Nov 2016, and Art.11, Decree on the Implementation of the 2009 Investment Promotion Law, No. 119/ PM issued 20 April, 2011

According to interviews with MPI and MoNRE officials, in practice, the feasibility study and ESIA are expected to be included in the investment application. None of the officials interviewed could confirm the timeframe for approvals or the average time required to negotiate and approve a concession agreement, but their general consensus was that it could take anywhere from 6 months to a year or more.

6.5 ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENTS



The Environmental Protection Law (Arts. 21-22) states that investments must submit either an Initial Environmental Examination (IEE) or Environmental Impact Assessment (currently referred to as “Environmental and Social Impact Assessment, ESIA”). According to the Ministerial Agreement No.8056/MONRE, investment projects and activities are divided into two groups: Group 1 must complete the IEE, while Group 2 must complete an ESIA. Hotels with 80 rooms or fewer and hotel “complexes” of 50 hectares or less are classified as Group 1, whereas larger hotels and complexes are Group 2 and must complete a full ESIA. Of note, all development of “tourism and recreation areas in critically social and environmental aspects” (sic) are subject to an ESIA.

The investor is responsible for commissioning and covering all expenses of the ESIA. The assessment comprises study of data and information obtained from stakeholders (including investment-affected communities) on the physical, biological, and socio-economic impacts of the investment, as well as multiple consultations with MoNRE officials at various administrative levels. An ESIA must also include an Environmental and Social Management and Monitoring Plan (ESMMP) that outlines indicators and timeframes for monitoring activities. The ESMMP is reviewed periodically at various phases of the investment and amended as necessary upon MoNRE’s review.

Prior to conducting the assessment, the investor must create a scope of work and terms of reference as a report “in the designated format and pursuant to the relevant technical guideline with the full assurance of the appropriate Public Involvement”³¹ for review and approval by MoNRE. If upon review of the scoping report MoNRE deems the investment to be “complicated” (without defining what might constitute a “complicated” investment), the approval procedure and timelines varies slightly, as seen in Annex 3.

The entire process to obtain environmental certification can take anywhere from 90 to 120 business days, or roughly 4-6 calendar months; complicated investments may require a year or more. These timeframes exclude the time required for the investor to create the scoping report, conduct the ESIA, and make any revisions stipulated by MoNRE. In addition, the process can be costly for investors. According to the Ordinances of the President of the Republic on Fees and charges No. 003/PO, issued 26 December 2012, the fee for review of an EIA report by the relevant authority is 36 million LAK. This is in addition to the costs that investor must bear for organizing consultation meetings, field visits of officials and external consultants, which can range from \$5,000 to tens of thousands of dollars.

³¹ Section 2.3, Ministerial Instruction No. 8030 /MONRE

7. CONCLUSION



Cr.: NamKat Yor La Pa

With an increasingly open economy and vast natural resources, the Lao PDR is well-placed to develop its tourism sector to improve livelihoods while protecting natural and cultural heritage. Tourism has grown steadily over the past 5 years and is projected to continue this trend over the coming decade. In addition, the country already has a few successful ecotourism projects in place to serve as models of best practice for future investments.

Despite the immense potential of ecotourism investments and their alignment with the stated objectives of the GoL, a few obstacles to sustainable tourism development and investment remain. These can be categorized in three broad categories: regulatory environment, local capacity, and prohibitive costs.

The **regulatory regime** governing investment in the tourism sector suffers from incoherence, inconsistency and lack of transparency. Regulations are implemented and enforced inconsistently across provinces and districts, a fact confirmed by stakeholders and tourism business owners. By way of example, even though some concessionaires have accommodation within their concession, they have not had to obtain a short-term accommodation business operating license. Similarly, clarity and transparency of tax imposition and collection would be welcomed by investors, as many report having to individually “negotiate” their tax bills each year. Furthermore, tax incentives for investment in promoted activities in remote areas are not always granted by provincial and district authorities, particularly those with very limited administration budgets.

Weak technical and financial capacity of local authorities to assess the feasibility and suitability of proposed investments. In some cases, this can lead to local authorities insisting upon larger than necessary concession areas, or defining concession boundaries in a somewhat arbitrary manner, either due to misunderstanding the

objective of the proposed investment or in an attempt to secure higher concession fees. Low capacity also limits the ability of authorities to monitor investment projects, resulting in irregular or absence of monitoring, especially with regards to environmental protection. Officials from MICT, MoNRE and MAF confirmed that once the agreements and operating licenses have been granted, they only inspect investment projects if there has been a complaint made.

Finally, the **costs to the investor** in terms of time and money are a de facto disincentive. Preparing the investment application with a feasibility study can take several months alone, and cost thousands of dollars. Approval of the investment application and subsequent negotiation of the concession agreement generally takes a year or more. Once the time and costs of the ESIA are factored in, an investor could spend 2 years plus anywhere from \$10,000 - \$50,000 without any guarantee of approval or a satisfactory conclusion of negotiations. For many investors, this injects an element of risk into their business planning that might be unacceptable.

With these in mind, there are some concrete steps the government can take to improve investment in this important sector.

- Clarification of the process to obtain a concession, and adequate communication of this process to ministries and investors. At present, it is unclear when or how the 2016 Investment Promotion Law will be implemented, which leaves scope for “case by case” interpretation of the current legal framework
 - Interviews with international experts and business owners revealed that businesses are more encouraged by regulatory clarity and transparency than incentives like tax breaks.
- Provision of a single list of documentation required to submit an application, as well as templates of these documents (particularly the feasibility study and ESIA). The 2009 IP Law (Art. 23) specifies that the OSO of MPI should provide investors with “predefined templates” for these documents, but interviews with authorities and investors revealed that these templates either do not exist or are not consistently provided to investors.
- Revision of concession fees in line with those levied on extractive industries. Mining concessions fees for exploration (no income generation from the land) are significantly lower than exploitation fees. A similar distinction could be made for ecotourism concessions where a large proportion of the land is not income-generating, as in the case of the elephant conservation center.

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Links:

Lists of Lao laws and investment procedures - <http://investlaos.gov.la>

Lao Tourism Statistics - http://www.tourismlaos.org/show.php?Cont_ID=43

ANNEX 2: LIST OF NPAS IN LAO PDR

	Name	Area (ha)	Province
1	Phou Daen Din	222,000	Phongsaly
2	Nam Ha	222,400	Luang Namtha
3	Nam Et ³²	170,000	Houaphan Luang Prabang Xieng Khouang
4	Phou Louey	150,000	
5	Nam Xam	70,000	Houaphan
6	Nam Phouy	191,200	Xayaboury
7	Phou Phanang	70,000	Vientiane
8	Phou Khao Khoay	200,000	Vientiane
9	Nam Kading	169,000	Bolikhamxay
10	Phou Hin Poun	150,000	Khammouane
11	Nakai Nam Theun	353,200	Khammouane Bolikhamxay
12	Hin Nam No	82,000	Khammouane
13	Phou Xang He	109,000	Savannakhet
14	Dong Phou Vieng	197,000	Savannakhet
15	Xesap	133,500	Salavan Sekong
16	Xe Bang Nouan	150,000	Salavan Savannakhet
17	Dong Houa Sao	110,000	Champasak
18	Phou Xieng Thong	120,000	Champasak Salavan
19	Xe Pian	240,000	Champasak Attapeu
20	Dong Amphan	200,000	Attapeu Sekong
21	Nam Kan	136,000	Bokeo
22	Phou Sabot-Phou Chong	149,030	Xieng Khouang
23	Phou Hiphi	87,350	Oudomxay
24	Laving-Laveun	86,000	Savannakhet

³² Nam Et and Phou Louey are conjoined and often referred to as one entity "Nam Et-Phou Louey NPA"

ANNEX 3: STEPS TO OBTAIN ENVIRONMENTAL CERTIFICATION

Step	Task:	Time	Task: Complicated Investments	Time
1	Investor submits scoping report and terms of reference to MoNRE		Investor submits scoping report and terms of reference to MoNRE	
2	MoNRE replies in writing with either approval or required revisions	15 days	MoNRE replies in writing with either approval or required revisions	15 days
3	Investor conducts ESIA		Investor conducts ESIA	
4	Investor submits one copy of the completed ESIA - including signed minutes of every consultation between the investor's representatives and MoNRE officials		Investor submits one copy of the completed ESIA - including signed minutes of every consultation between the investor's representatives and MoNRE officials	
5	MoNRE reviews the ESIA to ensure it is correct and comprehensive, notifies investor of either approval or required revisions	10 days	MoNRE reviews the ESIA to ensure it is correct and comprehensive, notifies investor of either approval or required revisions	10 days
6	If approved, the investor must submit "15 or more" paper and electronic copies of the ESIA to MoNRE for full review		If approved, the investor must submit "15 or more" paper and electronic copies of the ESIA to MoNRE for full review	
7	MoNRE distributes the ESIA to relevant line ministries and stakeholders for comments	5 days	MoNRE appoints a technical expert committee to review the ESIA	20 days
8	Relevant line ministries and stakeholders review and submit comments on the ESIA to MoNRE	50 days	Technical expert committee reviews and submits comments on the ESIA to MoNRE	35 days
9	MoNRE compiles all comments and submits them in writing to the investor for revision of the ESIA into the final version	**	MoNRE compiles all comments and submits them in writing to the investor for revision of the ESIA into the final version	**
10	Investor revises the ESIA and submits the Final ESIA report to MoNRE		Investor revises the ESIA and submits the Final ESIA report to MoNRE	
11	MoNRE responds in writing, with either issuance of the Environmental Compliance Certificate, requests for further amendments to the Final ESIA, or rejection due to "substantial, unavoidable and unremedied social and environmental impacts"	40 days	MoNRE responds in writing, with either issuance of the Environmental Compliance Certificate, requests for further amendments to the Final ESIA, or rejection due to "substantial, unavoidable and unremedied social and environmental impacts"	65 days

Source: Ministerial Instruction No. 8030/ MONRE, issued 17 Dec 2013

** No specific time frame is stipulated for MoNRE to submit the comments to the investor, but the Ministerial Instruction mandates that the entire time for review (steps 7-11) should last no longer than 95 days (120 days for complicated investments), excluding the time it takes for the investor to make revisions.

Investment Promotion Zoning

- Zone I
- Zone II
- Zone III

CHINA

MYANMAR

VIETNAM

THAILAND

CAMBODIA

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Province	Investment Zones		
	Zone 1	Zone 2	Zone 3
Vientiane Capital	Sangthong District	Pakngum District	Chanthaboury District Sikhottabong District Xaysettha District Sisatthanak District Hadsaifong District Nasaithong District Xaythany District
Phongsaly	Nhod Ou District Samphanh District Khua District Mai District	Bounneua District Bountai District	Phongsaly District
Luang Namtha	Long District Nalae District Viengphoukha District	Sing District	Namtha District
Bokeo	Mueang Mueng District Pha Oudom District Paktha District	Tonphueang District	Huoxai District
Oudomxay	La District Namor District Nga District Beng District Pakbeng District	Houn District	Xay District
Houapanh	Viengthong District Xumtay District Viengxay District Xiengkhor District Add District Sopbao District	Houamueang District	Xamneua District
Luang Prabang	Phonxay District Viengkham District Phoukhoun District Pakxeng District Phonthong District	Ngoi District Nambak District Chomphet District Xiengngeun District Nan District	Luangprabang District
Xayaboury	Xayxathan District Xienghon District Boten District	Paklai District Kenthao District Thongmixai District Phieng District Nguen District Hongsa District Khop District	District
Xieng Khouan	Moak District Phaxay District Thathom District	Nonghaed District Kham District	Paek District

Xaysomboun	Houm District Xaysomboun District Muen District Maed District	Hinhub District Kasy District Sanakham District Feuang District	Vangvieng District Keo Oudom District Viengkham District Thoulakhom District Phonhong District
Bolikhamxay	Xaychamphon District Viengthong District Borikhun District	Pakkading District Thaphabad District Khamkherd District	Paksun District
Khammouane	Boulapha District Nakai District Xaybouathong District	Nongbok District Hinboun District Xaybangfai District Mahaxay District Yommalath District	Thakhek District
Savannakhet	Nong District Sepon District Phin District Vilaboury District Thapangthong District Thaphalanxay District Sonboury District Adsaphon District	Outhomphon District Songkhon District Champhonh District Adsaphangthong District Xaybouly District Xayphouthon District	Kaisonphomvihanh District
Salavan	Samouy District Ta Ouy District Tumlan District	Khonphapheng District Khongsedon District Vapee District Laongam District	Salavane District
Sekong	Kalum District Dakchung District	Thateng District	Lamam District
Champasak	Soukhomma District Bachieng District Mounlaphamok District Phatoumphone District	Paksong District Phonthong District Khong District Champasak District	District
Attapeu	Sanamsay District Phouvong District Sanxay District	Xaysetha District	Samakhisay District

Source: Annex 2 - Decree on the Implementation of the Investment Promotion Law No. 119/ PM, issued 20

ANNEX 5: ECO-TOURISM CASE STUDY



Figure 6: Elephant Conservation Center, Xayaboury

Located a 2-hour drive southwest of Luang Prabang, the Elephant Conservation Center spans a 400-hectare area of pristine forest on the edge of Nam Tien lake in the Nam Tien Provincial Protected Area. The ECC was created by Sebastien Duffillot in 2011 to protect and conserve the remaining elephant population in the region which is under threat due to illegal logging, poaching, and loss of natural habitat.

Elephants are deeply important in the culture and history of the Lao PDR, which was also known historically as “The Land of a Million Elephants”. Elephant handlers (mahouts) were traditionally employed by royal courts and as such the profession was highly-esteemed. Even today, mahouts are

well-regarded, but many of them are now working in (illegal) logging, which is dangerous work for both mahouts and elephants. Furthermore, the strenuous work of logging impacts the elephants’ health and reproductive capacity.

Given the cultural and economic value of elephants, the ECC has adopted a holistic and sustainable approach to their conservation that simultaneously addresses the livelihood needs of local communities and the ecological needs of the elephant population. The primary objectives of the ECC are:

- Transition mahouts and elephants into environmentally-friendly ecotourism, with decent incomes for mahouts and healthy habitats and workloads for elephants;
- Encourage elephant health and breeding by creating an elephant nursery and veterinary programs;
- Provide training and education to various stakeholders (mahouts, vets, civil servants, the public);
- Protect ancestral cultures and knowledge and rich tropical ecosystems.

Figure 7: Aerial View of the Elephant Conservation Center



Photo credit: <https://www.elephantconservationcenter.com/faq/>

In addition to the breeding, training, and health facilities for the elephants, the ECC offers a variety of activities for visitors, such as trekking, kayaking, yoga, and of course, observation and interaction with the elephants and mahouts. Importantly, the ECC does not offer elephant riding, which although popular amongst tourists, is considered exploitative.

The ECC follows the privately owned and operated concession model, but with a slight twist: the private limited company is in partnership with the French NGO ElefantAsia, of which owner Sebastien Duffilot is a founder. ElefantAsia has been operating elephant conservation programs in Lao PDR since 2006.

The ECC team undertook four scoping missions in the area between 2008-2010 to seek a possible location, assess accessibility, scout good trekking routes and observe behaviour patterns of the elephants within the area. These trips also served as opportunities for engagement with all stakeholders involved in or affected by the potential project, primarily:

- Province and district authorities;
- Central and provincial MICT officials (in Xayaboury and Vientiane);
- Department of Livestock, MAF;
- Elephant owners;
- People using land in the Nam Tien reservoir.

The information gathered on these trips became the basis of the feasibility study and environmental impact assessment that formed part of the concession application submitted to the Xayaboury provincial authorities. The project proposed to employ local companies and residents during construction and operation, purchase supplies and supplementary fodder from local providers, as well as offer free medical care to elephants owned within the community. In all, the feasibility study estimated the annual contribution to the community through employment and other benefits would amount to over \$100,000. After additional stakeholder consultations and negotiations, as well as an inspection by the Dept. of Land Use Planning, the concession agreement was signed.

ANNEX 6: PROCESS TO OBTAIN CONCESSION FOR TOURISM BUSINESS IN A NPA

Concessions in a NPA must be approved at the central administrative level. As such, the OSO within MPI is agency responsible for overseeing concession applications.

Step	Task	Time	Estimated Costs (USD)
1	Investor submits ERC application to OSO, MPI		~ \$50 <i>for application forms x 6 sets</i>
2	OSO sends the application to relevant sector and local authorities (MICT, MAF, MoNRE) for their comment	2 days	
3	Relevant sector and local authorities review and respond to OSO	30 days	
4	OSO reviews comments and passes to the Investment Promotion and Management Committee (IPC) for in principle approval	30 days	
5	Upon approval by the IPC, the OSO notifies the investor of the in principle approval	3 days	<i>See table below</i>
6	The investor must reply to the OSO's notification of approval in writing regarding the date and time to attend negotiations for the concession agreement	10 days	
7	Negotiation for a concession agreement must take place 30 days from the approval of the IPC, or the investor forfeits the right to invest (the 30 days includes the 10-day response time)	20 days	
8	The OSO negotiates a concession agreement with the investor, with the participation of relevant sector and local authorities	<i>Varies according to project and complexity</i>	<i>Concession fees vary according to concession size</i>
9	OSO submits the concession agreement to the IPC to sign with the investor, the Planning and Investment Sector will represent the Government in such agreement		
10	After signing the concession agreement, the OSO issues an investment license	3 days	
11	Investor make security deposit as provided in the concession agreement		
12	Investor commissions a feasibility study and ESIA according to regulations	<i>Varies according to project and complexity</i>	~\$1,000 - \$50,000 <i>Varies according to project and complexity</i>

Source: Art. 81, Law on Investment Promotion No. 14/NA, issued 17 Nov 2016

Fees for Issuance of ERC		
No.	Registered funds of the enterprise	LAK
1	1 million LAK and less	None
2	1+ million – 10 million LAK	20,000
3	10+ million – 20 million LAK	50,000
4	20+ million – 50 million LAK	100,000
5	50+ million – 100 million LAK	300,000
6	100+ million – 400 million LAK	500,000
7	400+ million – 1 billion LAK	1,000,000
8	1+ billion – 10 billion LAK	2,000,000
9	10+ billion - 20 billion LAK	3,000,000
10	20+ billion LAK	5,000,000

Source: <http://www.investlaos.gov.la/index.php/concession-tactical-activities/licensing-fees-services> “Fees, Expenses on Approval and Other Registrations(based on the President’s Statute on Levies and Service Fees No. 003/President, dated 26/12/2012)”



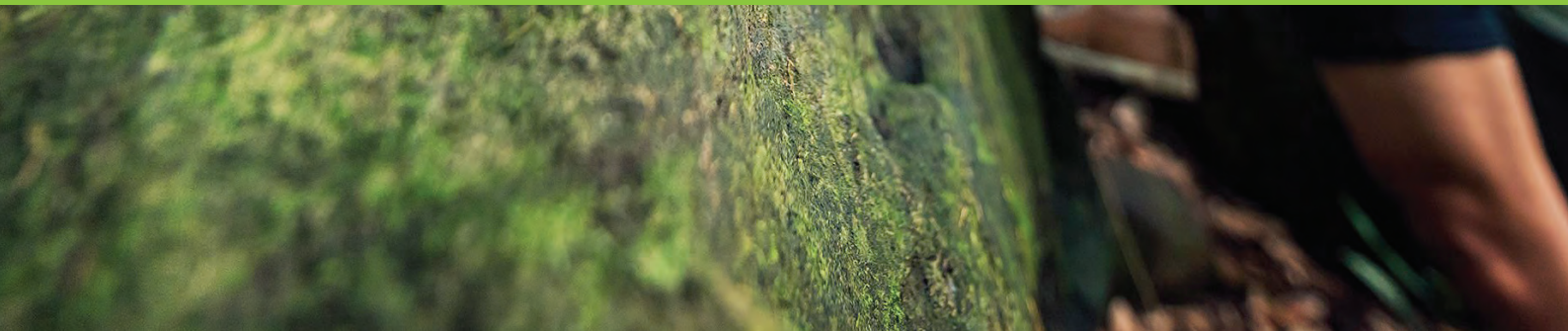
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