

ESTABLISHING A SECURITIES COMPANY IN THE LAO PDR

On 24 May 2010 the Lao Prime Minister's Office issued the Decree on Securities and Securities Exchange (the "**Securities Decree**") - the first legislation in the securities field issued by the Lao PDR since the establishment of the Lao Securities and Exchange Commission ("**SEC**"), and the first of the legislation that will be needed to create an operating stock exchange in the country.

The Securities Decree covers a range of topics, in a broad-brush way:

- Regulating and licensing security business operations;
- Setting the broad requirements for companies listing on the Lao Stock Exchange;
- Establishing and regulating the securities market;
- Setting out the role, duties and structure of the Securities Exchange Committee (which advises the Lao Government on issues in this field) and of the SEC (which advises the Securities Exchange Committee, and acts as administrator and regulator of securities activities and the market).

Further detailed regulations will be needed to implement the Securities Decree, and to flesh out details of the matters it outlines.

In this newsletter we concentrate on what will be the first important topic for companies wanting to be involved in the market as advisors, brokers and underwriters - the licensing of securities companies.

Securities Companies

The Securities Decree provides for the registration of "securities companies" by the SEC. Only registered securities companies can conduct various securities related business activities:

- securities broking;
- securities trading;
- underwriting; and
- financial advisory services.

Can foreign investors incorporate a securities company?

Foreign investors wanting to operate in the securities field have 3 choices. They can:

a) ***establish a branch office;***

However, using a branch has some significant limitations:



- branches cannot offer financial advisory or underwriting services unless specifically permitted by the SEC;
- in most fields, Lao authorities are unfamiliar with branch structures. That may well cause practical problems actually establishing a branch or operating through one;

b) ***establish a representative office;***

A representative office is severely constrained in its permitted activities - it can act as a liaison office for its head office, carry out market studies or assist with technical development of the market, but cannot carry out income generating activity; or

c) ***establish a securities company;***

Some restrictions apply here too but this will be the preferred choice for foreign investors wanting to be active in the market. A foreign-invested securities company:

- must be a joint investment with a domestic investor;
- the foreign investor's share cannot exceed 51% of the total capital (and, under the Investment Promotion Law, it cannot be less than 10%); and
- in practice, the domestic investor is likely to have to be a commercial bank.

What are the fundamental requirements of a Lao securities company?

Briefly, securities companies must be incorporated as a limited company, with 2 or more shareholders.

Securities companies must demonstrate that they have proper office and other facilities to allow them to carry on their business, and a proper business plan. They also need:



a) fully paid up registered capital in the amount specified by the SEC (to date, the amount has not been set, but we understand that it may be approximately US\$12 million); and

b) qualified executives (with experience in the securities business and banking and finance) and other staff holding the Professional Securities Business Certificate (the "PSB Certificate").

The SEC can impose other conditions in a particular case.

All of the requirements for company incorporations under the 2005 Enterprise Law must also be met.

What is needed to register a securities company?



Along with a prescribed application form, and copies of the usual corporate documents for the applicants, the registration application must include:

- a) copies of:
 - certificates on education, experience, and business operation history of the executives; and
 - PSB Certificates held by the executives and staff;
- b) the joint venture agreement between the company's shareholders;
- c) a list of shareholders and their shareholdings, and CV's for major shareholders;
- d) audited financial statement for each company shareholder or a certified bank statement for individual shareholders; and
- e) a three-year business plan.

The SEC can also call for other documents in a particular case.

The application to the SEC must be made at the same time as application for incorporation of the company under the Enterprise Law.

What time frames apply?

The SEC must consider and decide on an application for registration within 60 days of an application.

The securities company will be registered upon approval by the SEC and must start operation within 90 days of registration.

What fees apply?

The Securities Decree requires payment of a fee for the registration of a securities company, but the amount of the fee has yet to be set.

Issues with the Securities Decree

We are seeing interest from foreign investors in establishing securities companies in the Lao PDR. Some inconsistencies (and gaps) in the Securities Decree (and the various areas that still need more specific regulations) make the exact process involved unclear.

Clarifications from the SEC and other authorities will be needed to arrive at a workable establishment process.

However, that is not unusual with the introduction of a wholly new industry into a country, and should not deter investors wanting to be in on the ground floor of the securities industry in the Lao PDR!

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