

Study on State Land Leases and Concessions in Lao PDR

Land Policy Study No. 4 under LLTP II

Gunda Schumann
Pheuipanh Ngaosrivathana
Bouakham Soulivanh
Somboun Kenpraseuth
Khamdeng Onmanivong
Khamthanh Vongphansipraseuth
Chithasone Bounkhong

Sponsored by: Lao-German Land Policy Development Project (German
Contribution to the Lao Land Titling Project II in Lao PDR)



June 2006

This study is part of a series of Land Policy Studies conducted in preparation of a coherent and comprehensive “National Land Policy Statement for Lao PDR” by 2007.

The following studies have already been published in this series:

No. 1: Study on Land Allocation to Individual Households in Rural Areas of Lao PDR; December 2004

Authors: Bouakham Soulivanh, Anothai Chantalasy, Phounsavat Suphida, Florian Lintzmeyer, Florian Rock

No. 2: Study on Land Markets in Urban and Rural Areas of Lao PDR; March 2005

Authors: Bouakham Soulivanh, Anothai Chantalasy, Phounsavat Suphida, Florian Lintzmeyer, Florian Rock

No. 3: Study on Land Tax and Fees Policy in Lao PDR; February 2006

Authors: Simon Keith, Pheuiphanh Ngaosrivathana, Bouakham Soulivanh, Onsy Phimsomphou, Chanh Denuthai

Table of Contents

	Page
LIST OF ACRONYMS	4
EXECUTIVE SUMMARY	5
INTRODUCTION.....	7
OBJECTIVES AND METHODOLOGY	7

PART 1: ANALYSIS OF FINDINGS

SECTION 1: INVESTMENT REGIME.....	9
SECTION 2: REGULATORY FRAMEWORK FOR LEASES AND CONCESSIONS	14
SECTION 3: CONTRACT REGIME.....	24

**PART 2: RECOMMENDATIONS TO TRANSFORM
STATE LAND ASSETS INTO CAPITAL**

SECTION 4: INVESTMENT REGIME.....	33
SECTION 5: CONTRACT MANAGEMENT	35
SECTION 6: PRICE SETTING MECHANISMS	37
SECTION 7: MONITORING INVESTMENTS AND CONTRACT ENFORCEMENT	39
REFERENCES.....	42

PART 3: ANNEXES

Annex 1:	Terms of Reference	48
Annex 2:	Approved Foreign Investment 2000-2005	51
Annex 3:	Selected Revenues from State Assets	52
Annex 4:	Revenues from Timber	55
Annex 5:	Industrial Processing Projects	58
Annex 6:	Concession Fees for Different Sectors	59
Annex 7:	Draft Decree - Building Leasing and Concessions	61
Annex 8:	Hydropower Projects	71
Annex 9:	Mining Projects	74
Annex 10:	Agriculture and Forestry Concessions	79
Annex 11:	Leasing and Concessions - Five Southern Provinces	81
Annex 12:	Model Lease Agreement	88
Annex 13:	Model Cash Flow	96
Annex 14:	Proposals on Leasing and Concession Fee Rates	97
Annex 15:	Contradictory Powers by State Organisations	99

List of Acronyms

ADB	Asian Development Bank
CPI	Committee for Planning and Investment
DDFI	Department of Domestic and Foreign Investment
DGM	Department of Geology and Mining (Ministry of Industry and Handicraft)
DoF	Department of Forestry (Ministry of Agriculture and Forestry)
DoL	Department of Land (Ministry of Finance)
DSA	Department of State Assets (Ministry of Finance)
DoNLUPaD	Department of National Land Use Planning and Development (Prime Minister's Office)
GDP	Gross Domestic Product
GoL	Government of Lao PDR
GTZ	German Technical Cooperation
IPMC	Investment Promotion Management Committee
LD	Legal Department (Ministry of Justice)
LDSC	State Company for Land Development and Services
LLA	Land Leasing Agreement
LNCE	Lao National Committee on Energy
LPA	Lao Plantation Authority
MAF	Ministry of Agriculture and Forestry
MIH	Ministry of Industry and Handicraft
MPH	Ministry of Public Health
MoF	Ministry of Finance
MoJ	Ministry of Justice
MoT	Ministry of Trade and Commerce
MOU	Memorandum of Understanding
OSA	Office of State Assets (Provincial Level)
PAFO	Provincial Agriculture and Forestry Office
PCA	Project Concession Agreement
PDA	Project Development Agreement
PDPI	Provincial Department of Planning and Investment
PLO	Provincial Land Office
PMO	Prime Minister's Office
POC	Provincial Office of Communication
POE	Provincial Office of Environment
POI	Provincial Office of Industry
POT	Provincial Office of Trade
POTax	Provincial Office of Tax
SEZ	Special Economic Zone

An exchange rate of US\$ 1 = 10,000 LAK has been applied in all conversions in this study. In May 2006, the market rate was US\$ 1 = 10,100 LAK

EXECUTIVE SUMMARY

In recent years, Lao PDR has experienced an increased demand for its main national resource, the country's land. Vast areas of agricultural and forest land, rich in natural resources, give Lao PDR a special position compared to its neighbours. Investment in hydropower projects, mainly because of Nam Theun II, rose from US\$ 5.5 million in 2004 to US\$ 1,065 million in 2005, while mining, agriculture, and forestry investments peaked in 2004 accounting for US\$ 312 million, decreasing to US\$ 76 million in 2005.

Very low earnings from state land leases and concessions indicate that GoL has not yet fully developed this income source. In 2004-2005, total revenues from state land assets amounted to US\$ 7.2 representing only 0.24% of GDP.

To benefit from foreign capital inflows to the greatest extent possible, a sound investment regime - regulations on entry, land tenure and contracts, market oriented mechanisms for price setting, and monitoring mechanisms – have to be in place and managed well. Without these, foreign capital inflows will remain low and impede development.

Data and information gathered on the government's investment and monitoring regimes indicate that both need improvement. Regarding entry regulations, the 'one-stop-service' as intended by the Law on Promotion of Foreign Investment, seems not to be designed for investments needing state land because more than three permits are required to start a business. In addition, powers to conclude lease and concession agreements in agriculture and forestry are spread among various state authorities. LDSC and LPA might further exacerbate this problem in future. Furthermore, the allocation of different ceilings (financial investment and land size) for both investment approval and leasing and concession contracts to central or local authorities do not seem to be compatible. Too restrictive ceilings like the rule on permissible land size for leases and concessions induce provinces to exceed their powers.

A comprehensive land inventory is missing. Such an inventory should contain *inter alia* relevant data on existing lease and concession contracts and details on land that could be leased. Instead, bits and pieces of information about state land are with a number of line ministries, departments and divisions at central and local levels. Since these shortcomings slow down investment approvals, investors might have to search for suitable land on their own or to give up their investment plans in Lao PDR altogether.

Model agreements meeting international leasing standards are currently available only for concessions on hydropower. Other contracts for leases and concessions using state land lack clarity and consistency. While 'lease' and 'concession' are not clearly distinguished terms, rights and obligations of both parties seem not always to be balanced. All contracts reviewed lack clear and enforceable clauses on breach of contract, compensation for damage, penalties, termination, and dispute settlement.

Furthermore, concession fee rates, usage charges for natural resources, and royalties set by law are not based on supply and demand. Different approaches applied in the provinces to determine fee rates do not seem to meet market standards. Granting land free-of-charge should be restricted to joint ventures when the land offered constitutes the GoL contribution to the project, but is entirely dispensable in the case of other domestic or foreign investments because the prospect for reasonable profit is deemed to be a sufficient incentive and enterprises should not be subsidised.

DSA and OSA, responsible for contract management, have so far not succeeded in establishing a proper filing, monitoring, and reporting system because there is a lack of communication between central and local levels (including between local divisions and departments). However, efforts to improve reporting procedures from local levels to DSA are under way.

Inspection and monitoring of sites by line ministries and divisions is not conducted on a regular basis, and if so, the information is not being shared with OSA. Therefore, breaches of contractual obligations to develop the land and prevent environmental damage seem to be widespread, however, there are no arbitration or court cases pending.

To increase revenues from state land leases and concessions, the study team makes the following main recommendations:

- Streamline entry regulations on foreign investment (e.g. ceilings for investment approval, powers of state authorities to conclude lease and concession contracts)
- Provide model contracts for leases and concessions that meet international standards (e.g. balancing rights and obligations of contract partners and contain clear and enforceable clauses)
- Use business valuation methods to identify land rental value, and as a preliminary measure, revise legal Decrees setting concession fees, usage charges for natural resources, and royalties on a regular basis (e.g. every three years)
- Improve management of state assets (e.g. the filing, monitoring and reporting system for leases and concessions and establish an IT-based land inventory)
- Decentralise monitoring and enforcement responsibilities by clearly assigning OSA as a coordinating body to monitor and enforce lease and concession contracts - OSA would be assisted by relevant line agencies to strengthen supervision of local divisions responsible for concluding and monitoring contracts to prevent abuse of power

INTRODUCTION

In recent years, Lao PDR has experienced an increased demand for its main national resource, the country's land¹. The country's national heritage² is comprised of vast areas rich in natural resources. Good climate conditions, low population densities, access to important markets in the neighbouring countries, competitive labour and input costs as well as low costs for land leases have attracted a rising number of foreign investors, mainly to develop the hydropower, mining, agriculture, and forestry sectors. In Lao PDR, conditions seem favourable for generating large streams of revenue from using state land as a key factor of production to further develop its emerging market economy.

Very low earnings from state housing and land leases, concessions and business leases, which in 2004-2005 amounted to only 1.8% of total revenues or 0.24% of GDP, indicate that GoL has not yet fully developed this source of income.

This document, the fourth study on relevant land policy issues funded by the Lao-German Land Policy Development Project (part of Land Titling Project II), reviews the background of this dilemma, while presenting options for transforming state land into capital. This study has been conducted by a team of five national consultants from GoL line departments (DSA, DoNLUPaD, DoL, DGM, and LD) supported by two GTZ consultants (one national, one international).

It must be stressed that because of the subject's sensitivity and tight time schedule, the study has certain limitations. In many instances, only limited information and incomplete statistics were provided to the team. Government and local staff obviously tried to present an official version of the main issues which turned out not to be always consistent with the practices on the ground.

The terms of reference for this study are presented in Annex 1.

OBJECTIVES AND METHODOLOGY

The objectives of this study are to provide advice to the Government of Lao PDR to help clarify options and alternatives for leases and concessions, further develop the procedures and review the legal framework, make policy recommendations, and draft sample contracts.

Both GTZ consultants collected data in Vientiane capital between 14 and 24 March 2006 by interviewing government officials, representatives of donor organisations (e.g. World Bank, AusAID, ADB) and private sector companies (e.g. Oxiana Ltd., Nam Theun II) on legal and policy conditions for investment - including leases and concessions, the entry regulations for foreign investors, the conditions, registration and monitoring of contracts, dispute settlement procedures, and issues concerning timber. The consultants also studied relevant legal and policy documents and prepared an outline for the study.

The study team conducted field studies in Champassak, Saravane, Savannakhet, and Khammouane Provinces between 27 March and 6 April 2006.

¹ ART. 2 Law on Land, 04/NA of 21/10/2003.

² ART. 17 Amended Constitution of the Lao People's Democratic Republic No. 25/NA of 06/05/2003.

These southern provinces were selected for their abundance of large areas available for leasing and concession. The field trips gathered oral and written information on investment approval procedures, reviewed various sector lease and concession agreements managed at the provincial level, and assessed policies and regulations affecting the timber business.

Although timber use is not generally subject to a regular leasing or concession agreement, it is closely linked to these contracts. Timber is usually sold by m³ at public auctions or marketed individually. Authorised logging mostly takes place on leased or conceded land and land approved by state authorities for future leases or concessions (e.g. production forest zone and infrastructure zone). It also happens that companies log authorised volumes of timber on the basis of concession contracts. Therefore, research on revenue potential in the timber business deserves attention.

Provincial interviews were conducted with local officials responsible for implementing national policies concerning land (in particular management staff from PAFO and OSA), but also PDPI, DoNLUPaD, PLO, and POT. These line agencies had been sent a questionnaire by DSA in advance. These documents were designed by the GTZ consultants in Vientiane prior to the field trips. In addition, the team visited state and private companies and conducted interviews with the managers responsible for investment decisions.

The team spent approximately two working days in each province where in general, officials from relevant line agencies and company managers provided valuable support and information. However, gathering data on timber and logging was far more difficult.

PART 1: ANALYSIS OF FINDINGS

Section 1: Investment Regime

1.1 Investment and Revenues Involving State Assets

In recent years, foreign investment in Lao PDR involving state land has increased considerably. While investment in hydropower projects rose from US\$ 5.5 million in 2004 to US\$ 1,065 million in 2005 (mainly because of Nam Theun II), mining, agriculture and forestry investments reached a peak in 2004, accounting for US\$ 312 million, decreasing to US\$ 76 million in 2005 (Annex 2).

Overall figures on land leases and concessions have remained relatively low. While total revenues on state assets in 2004-2005 represented 1.8% of the national budget, the proportion of revenues from state land accounted for only 0.24% of GDP.

In particular, while fees for business and residential leasing agreements in 2004-2005 represented 1.8% and 4.1% of total income from state assets respectively³, concession fees for mining, agriculture and forestry accounted for only 0.7%. Within this time period, taxes on natural resources (mining) and royalties (hydropower, tobacco, and gambling) accounted for 5.3% and 8.8% respectively. Revenues on timber represent the largest single source of income from state assets - 17.7% in 2004-2005 (Annex 3 and Annex 4).

Given that selling timber has become a major source of state income that might ultimately hamper sustainable forms of development and is reducing the country's forest coverage, it would be advisable to improve mechanisms that result in increased income for the state from leased land and mineral exploitation.

1.2 Entry Regulations

A major condition for transforming state land assets into capital is to attract investments that need state land.

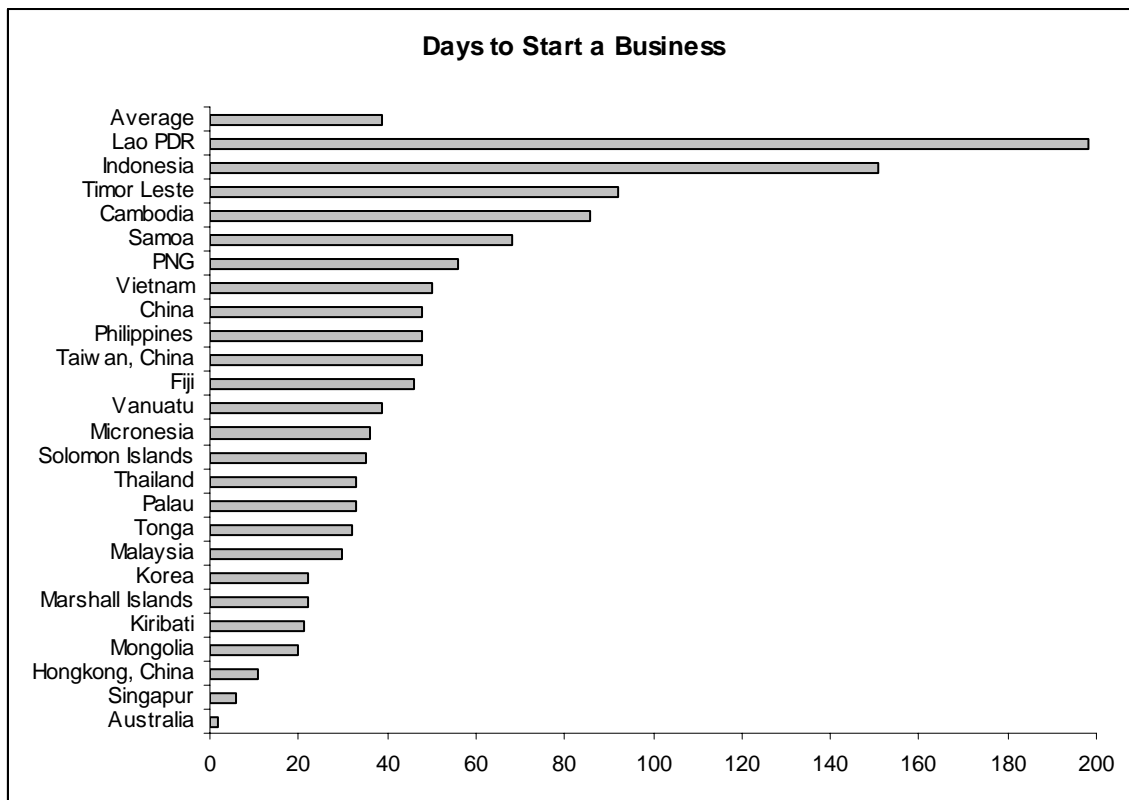
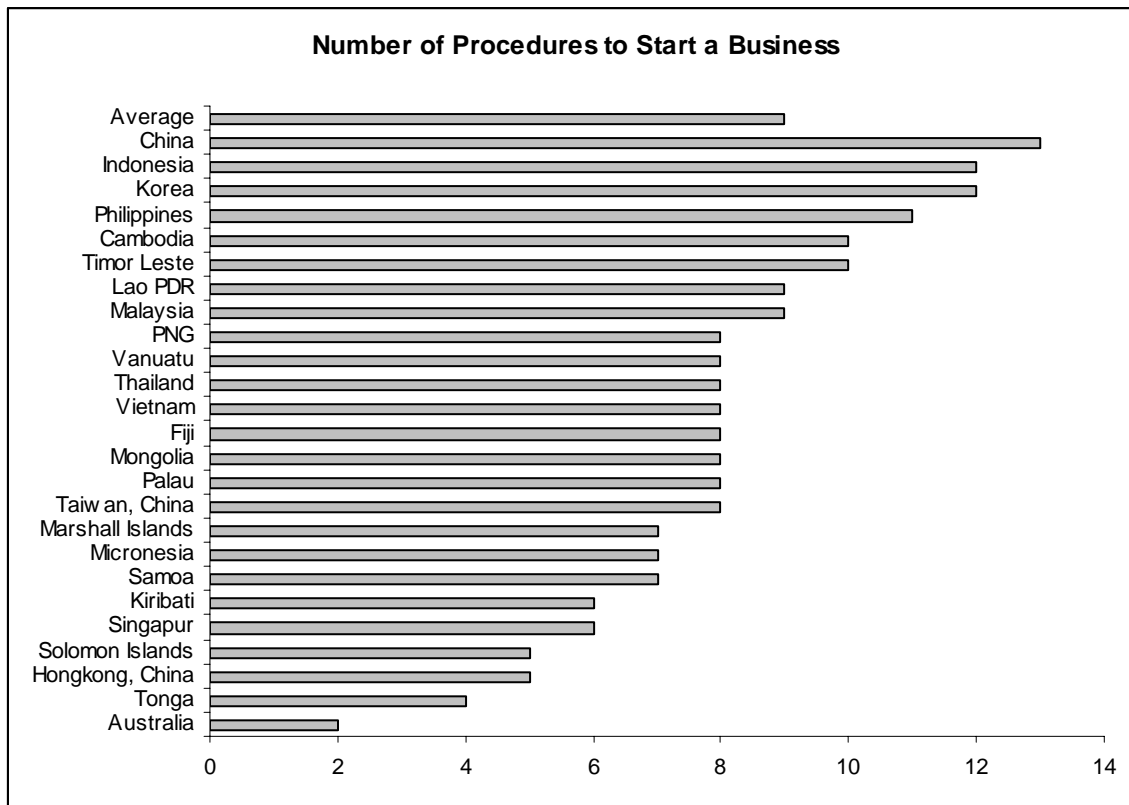
Two important obstacles to developing a favourable investment climate in Lao PDR are the cumbersome investment approval procedures and unclear responsibilities of state authorities. There is a growing consensus that the quality of government regulation on business is a major determinant to prosperity. According to a compilation of benchmarks on business regulations in a recently published report by the World Bank⁴, conditions for starting a business in Lao PDR are among the least attractive in Southeast Asia and the Pacific Region.

³ Total revenues from state assets in fiscal year 2003-2004: US\$ 90,837, 2004-2005: US\$ 106,648.

⁴ World Bank, "*Doing business in 2006*" p. 7 - <http://www.doingbusiness.org>.

Benchmarking – Entry Regulation

East Asia and Pacific Region



Adapted from: World Bank, "Doing Business in 2006"

1.2.1 One-Stop-Service

In recent years, GoL has undertaken efforts to streamline its procedures for approving foreign investment. According to the amended Law on Promotion of Foreign Investment⁵ and its Implementing Decree⁶, GoL has been trying to establish a 'one-stop-service' administered by DDFI.⁷

Following these rules, the investor⁸ (after filing a request with DDFI and receiving initial approval) would receive the necessary documents from the same agency (investment authorisation from IPMC, business registration from MoT, internal tax registration from MoF) and could, dependent on the type of business⁹, start within one or two months. For activities requiring a land or natural resource concession, different rules for investment approval apply; in particular, several agreements have to be negotiated with GoL¹⁰.

1.2.2 Investment Approval Ceilings and Disposal of State Land

Following the GoL policy on decentralisation and deconcentration, foreign investment regulations assign powers to the provinces to authorise foreign investments in certain sectors (e.g. Type 1 investments¹¹) provided that certain financial ceilings are observed. Some large provinces, (e.g. Champassak and Savannakhet), may authorise investments up to US\$ 5 million, whereas smaller ones, like Saravane and Khammouane, can only approve investments up to US\$ 3 million. PDPI is charged with providing a one-stop-service at the local level.

Notwithstanding the confinement of the provinces to negotiate only Type 1 investments, they may according to ARTICLE 14 of the Forestry Law¹² authorise forest land to be used for other purposes. As a general rule, they are entitled to negotiate and conclude land lease and concession contracts with investors since most state land that has not yet been developed commercially, leased or conceded is considered forest land¹³.

The power of provinces to authorise state land leases and concession contracts is quite limited in scope.

⁵ ART. 19 No. 11/NA of 22/10/2004.

⁶ ART. 39 No. 301/PM of 12/10/2005 (Implementing Decree).

⁷ Investment approval procedures as established in the Law on Promotion of Foreign Investments are not directly applicable for logging. The procedure, as laid down in various Decrees (e.g. Order No. 46/PM of 21/11/2005 on management of forestry and timber issues for 2005/2006 is as follows: After the quota for logging timber proposed by MAF have been reviewed, revised and approved by the National Assembly, MAF allocates these quotas to the provinces; the provinces implement and allocate quotas at public auctions to licensed owners of sawmills and factories producing furniture (Saravane, Savannakhet, Khammouane), or directly to domestic and foreign companies that own valid logging licenses received in the past (Champassak).

⁸ Domestic companies are not explicitly covered by the Law on the Promotion of Foreign Investment; however, according to the Implementing Decree (ART. 50), DDFI is also responsible for assessing and authorising domestic investments. It can therefore be assumed that domestic companies have to observe similar application procedures for planned investment activities.

⁹ ART. 40, 41, 43 Implementing Decree.

¹⁰ ART. 25 Implementing Decree.

¹¹ Type 1 investments include agriculture, handicraft and tourism; Type 2 investments lignite and iron mining, and oil and gas drilling, while Type 3 investments involve concessions for state land; ART. 25 of Implementing Decree.

¹² No. 01-96 of 11/11/1996.

¹³ ART. 16 of Forestry Law describes forest types: protected forest, forest reserves, production forests, rehabilitation forests, degraded forests or defoliated land.

They may only lease or concede up to 100 ha of state forest land (districts < 3 ha), while GoL (MAF) has the power to approve up to 10,000 ha. An area exceeding 10,000 ha goes to the National Assembly for approval.

Setting low ceilings for provincial authorities and limiting their authorisation powers to lease or concede state land to such an extent seems to contradict the more liberal ceilings on investment amounts set by the foreign investment regulations. This may confuse investors, hamper decentralisation efforts by GoL, or even induce provinces to exceed their powers.

1.3 Implementing Entry Regulations

Given the less than perfect investment regime regarding entry regulations, the actual implementation of those regulations deserves particular attention. Key actors and experts from line departments, donor organisations and private sector companies described their observations and expressed their opinion on the considerable gap between prescribed rules on investment approval procedures and the actual handling of matters in practice. The following views on investments requiring concessions (Type 3) were expressed in interviews conducted by the GTZ consultants in Vientiane capital.

- There is no one-stop-service for investors, but instead a ‘segregated approval procedure’. Depending on the type of investment planned, investors have to approach several contact points. LNCE (MIH) is responsible for energy, DDFI and DGM for mining, MAF for industrial plantations and DSA takes care of land leasing and concession contracts. Since there are no clear responsibilities between central and provincial levels and no inventory of state land, investors often turn to provincial authorities to search for appropriate land. Very often the investors have to go to the district and village level to identify and negotiate land deal investments.
- The length of time needed for investment approval depends less on the type of investment but more on its size. Companies planning large investments¹⁴ and having political clout enjoy shorter approval procedures (6 months to 2 years). Small and medium sized enterprises might need 3-4 years to get their activities¹⁵ approved.
- Except for the energy sector¹⁶, the line departments have no model contracts for investments involving concessions.
- Timber is the main revenue channel for GoL but companies have in the past found ways to sideline state authorities by sub-leasing or sub-conceding areas to logging companies. In other cases they abandon the land that was originally conceded to them for tree plantations after removing the timber for private profit (Annex 11).

All interviewees shared some critical views on investment and land issues and asked for improvements to the system.

¹⁴ > US\$ 100 million; 10% of all investments in Lao PDR.

¹⁵ Approximately US\$ 2-100 million; 90% of all investments in Lao PDR.

¹⁶ A general investment application form is available at DDFI.

- Rules and regulations established by GoL do not always reach the local level or they are misunderstood by the staff (e.g. the recent directive granting land titles and leases to government officials or ceilings on investment).
- There is a two-stop or three-stop-service - the investor has, besides applying to the local PDPI and other line offices, to contact the village and/or district authorities where the land is located.
- The number of documents needed for investment approval varies between seven in Savannakhet Province and four in Saravane Province.

Savannakhet	Saravane
business license	authorisation for land concession from District Chief
investment authorisation from PDPI	two authorisations for investment from line divisions
business registration license from POT	one land lease agreement signed from District Chief
tax license from POTax	
operation license from POI	
construction license from PDPI	
authorisation from Governor and District Chief	

- Ceilings on investment and permitted length of lease or concession are sometimes misunderstood (e.g. land size varies between 100 and 10,000 ha and contract terms between 20 and 50 years). Time needed for investment approval varies between two and three months in Champassak and six months to one year for small projects and three years for large projects in Savannakhet.
- Ceilings on investment approval (US\$ 3-5 million) and for land lease and concession contracts (province 100 ha, district 3 ha) is not considered reasonable. Local authorities often exceed these limits in their leasing and concession contracts.
- Timber is logged by state forest units except in Champassak where the line division allocates the quota to logging companies that have provincial concessions. Savannakhet and Khammouane cooperate with SUFORD, which holds the 'Smartwood' certificate and is authorised to cut timber under this scheme. All provinces except Champassak sell their MAF allocated timber through public auctions.
- Because of little or no land titling in rural areas, surveys are either conducted by provincial or district authorities on request from the investor at its expense, or by the investor on approval from PAFO.

The persistent lack of a centralised management system for investment at provincial levels serves the investor, but is a disadvantage to state authorities and limits revenue. There is poor communication between government and provincial authorities on details and management responsibilities for large land concession contracts (i.e. Khammouane), which can lead to temporary use of vast areas free of charge!

The lack of a systematic land inventory in rural areas causes severe and costly delays for investors. If there is no suitable state land available or local authorities lack data on state land (which also might be occupied by private individuals), investors may turn to private owners to get land titles, sometimes by-passing legal restrictions. Furthermore, investors are hesitant to pay high fees for conducting surveys (the fee rate is between US\$ 7-15/ha in Champassak) in addition to their other expenses because they usually only get part of the surveyed land. Some officials went as far as proposing that the state should grant less land use rights to private individuals, but instead, develop rural areas by concluding even more lease and concession contracts.

Section 2: Regulatory Framework for Leases and Concessions

2.1 Definition and Application of Leases and Concessions

A legal definition of any distinct features separating lease from concession contracts is not easily detectable. Most laws and regulations dealing with this matter¹⁷ use these terms in a similar way. ART. 49 of the Contract Law¹⁸ merely lists the term “contract for rental of assets”, which has similarities to a lease contract involving houses and buildings. ART. 2 of the Decree on the Implementation of the Law on Land¹⁹ use both terms separately. Pursuant to this definition, a lease contract may be concluded, but not exclusively, between individuals, whereas a concession contract concerns only state land, conceded to an interested party for a particular purpose. In addition, the concession applicant has to pay a concession charge as well as a royalty. ART. 13 of the Law on Land applied the term ‘developed land’ when dealing with leasing agreements²⁰.

Information on leases and concessions provided by central and provincial levels show some additional differences in practice. It can be pointed out that the details presented will not be strictly observed by the state authorities in all cases; rather serving as guidelines.

Leases (state and private land)	Concessions (state land)
developed land	non-developed land
use of land	development of land (infrastructure, exploitation of natural resources)
limited area (measured in m ²)	large area (measured in ha)
fee rate has no ceiling	fee rate has been set by law (low)
construction on leased land	no construction on conceded land
contract length < 30 years	contract length < 50 years
user of building is owner and may keep or sell it after termination of contract, in which case, the state has a priority right to buy the facility	buildings established by concessionaire will not fall under their ownership; after termination of the contract, the buildings need to be returned to the state, however, the investor may lease it if this has been stipulated in the contract ²¹

¹⁷ ART. 13 p. 64f. Law on Land, ART. 9 Law on State Property No.09/NA of 12/10/1992.

¹⁸ No. 02/NA of 10/07/1990.

¹⁹ No. 101/PM of 20/04/2005.

²⁰ Tax law treats lessees and concessionaires alike. Both are exempt from paying land tax during the term of their contract (see ART. 3.8, Ch. I) Decree on the Implementation of Presidential Decree on Land Tax No 150/PM of 22/10/2000.

²¹ But see ART. 66 Law on Land that grants the holder of a concession contract the same rights as a lessee.

Leases and concessions are applied differently depending on the sector²²

Leases	Concessions
service (tourism, markets, transportation)	hydropower
construction for industrial purposes	mining
agricultural plantation	tree plantation ²³

The legal definitions given and the criteria used in practice do not always draw a clear line as to the distinction between leases and concessions. While leasing land for commercial uses on the one hand and providing concessions for hydropower and mining projects on the other seem to be clearly distinguishable. The terms are less clear for agricultural production and tree plantations.

2.2 Institutional Responsibilities

2.2.1 Managing State Assets

According to ART. 9 of the Law on State Property²⁴, GoL centrally manages state assets. Some of its powers have been delegated to MoF, in particular, land registration, issuing regulations on use and management thereof, and nationwide inspection of use and management of state property. While DoL is responsible for land titling and registration, DSA is responsible *inter alia* for setting up an inventory on state land and for managing leasing and concession agreements, including collecting fees and registration of contracts. Line ministries and local offices are responsible for inspection and managing state assets under their control.

2.2.2 Concession Contracts

In general, negotiating and concluding concession contracts seems to be the main responsibility of authorities at central level.

DDFI is responsible for processing and evaluating applications involving large investments and large areas of state land. It chairs weekly meetings of a steering committee made up of line ministries (MIH and MAF), each responsible for a particular economic sector (MIH: mining, hydropower, other industrial branches; MAF: agriculture, forestry, MoF: leases and concessions for land use).

Once the steering committee has delivered a positive evaluation on an investment, it is submitted to the PMO. On approval, DDFI notifies the investor and delivers the basic licenses (investment authorisation, business license and tax registration). However, the investment approval procedure is segregated in cases involving state land, requiring the investor to approach several contact points (line ministries and provincial authorities) to secure and expedite investment approval. A memorandum of understanding and a project development agreement need to be concluded. Because DDFI has no model contracts except for hydropower projects, the investor is required to draft the contracts to be negotiated between the parties.

²² The user of forest and forestry land has to pay the natural resources fee (royalty), the forestry charges, as well as the land lease fee (ART. 57 Forestry Law No.01-96 of 11/10/1996).

²³ See ART. 56f. Forestry Law prescribing leasing or licensing forest land for use.

²⁴ No. 09/NA of 12/10/1992.

MoF has powers to negotiate concession contracts for state land. PMO/DDFI approval is required for contracts valued²⁵ at more than US\$ 10 million. It should be noted, however, that concession contracts have apparently been concluded without participation or knowledge of MoF/DSA.

According to the Law on the Promotion of Foreign Investment, provincial authorities have no power to sign concession contracts on land. However, two legal provisions authorise them to dispose of state land. ART. 14 of the Forestry Law allows conversion of forest land for other purposes up to 100 ha, and ART. 9 of the Electricity Law²⁶ allows provinces to approve hydropower investments up to 2,000 kW, districts and SEZ up to 100 kW, PMO < 50,000 kW, and National Assembly > 50,000 kW.

To the knowledge of the team, provinces do not usually conclude concession contracts. Inconsistent laws containing unclear responsibilities for state authorities are confusing investors and could hamper investment.

2.2.3 Leasing Contracts

While lease agreements are concluded at both central and local levels, it is mostly the provinces which resort to this type of contract when granting land. An exception to this is lease agreements with hydropower companies for the project area (ART. 17 Electricity Law). In this case, the lease agreement is concluded with PMO/DDFI.

With other sectors, for instance activities in agriculture, the state may grant leasing rights²⁷ (ART. 11 Law on Agriculture²⁸). Furthermore, leases are generally available for tree planting on degraded, vacant and defoliated land (ART. 13, 34, 36, 56 Forestry Law). However, the laws do not clearly specify whether PMO/DDFI sign and negotiate these contracts or the line ministry/office (MAF/PAFO).

ART. 25 Law on Promotion of Foreign Investment mentions land concessions, but is silent on the issue of whether a concession or leasing contract has to be concluded in addition to a MOU and a PDA and by whom. MoF may lease state land for residential, industrial and commercial uses. Provinces are authorised to conclude state land leasing contracts up to the permitted land ceilings.

The one-stop-service at provincial level should follow the same model as described above for the DDFI and the line ministries. In Champassak, PDPI is responsible for processing the investment application, evaluating the planned investment, and reporting to the Governor who chairs a steering committee made up of representatives from relevant line offices. DoNLUPaD branch is responsible for land development and use. PAFO checks on land uses and protected areas, while both PLO and PAFO conduct surveys and measurements. POC checks the infrastructure and the site. POI determines the suitability of the land for industrial development, while POE is responsible for assessing the impact on the environment. POT is responsible for investment in tourism and OSA is responsible for preparing the leasing contract and collecting the fees.

²⁵ According to ART. 9 Law on State Property and ART. 10 of Recommendations on the Implementation Decree of State Property Law No. 2085/MoF of 01/10/2004.

²⁶ No. 02-97/NA, 12/4/1997

²⁷ It is unclear whether leasing or concession rights are being granted (or both) at central level.

²⁸ No. 198/NA of 10/10/1998.

In practice, however, the decision-making process provincially is diffused for lack of communication and clear rulings.

2.3 Regulations on Leases and Concessions for Important Economic Sectors

2.3.1 Hydropower

For energy resources, three main contracts between IPMC and the investor are prescribed by law according to ART. 25.3 of the Implementing Decree on Law for Promotion of Foreign Investment.

- Memorandum of understanding (MOU)
- Project development agreement (PDA)
- Project concession agreement (PCA)

Before a concession agreement is signed by the PMO, the investor has *inter alia* to provide a technical feasibility study and an environmental impact evaluation which assess the chances for a successful implementation of the proposed investment (ART. 13 and 14 of the Electricity Law). In particular, they deal with:

- Technical and economic efficiency and profitability prospects
- Social and environmental impact assessments, providing solutions for minimising damage caused by the investment

The contracts eventually negotiated are based on model contracts issued by LNCE. Investors are required to pay a percentage of profits from electricity exports as a natural resource usage charge. Term of performance agreed between the parties is usually 30 years with the possibility of extension (ART. 16 Electricity Law). The Law on Electricity provides for a strict inspection and monitoring regime, consisting of MIH and line office personnel (ART. 42-49), fines for contract violations (ART. 53), and on termination of the agreement, all assets are referred to GoL without compensation (ART. 16).

2.3.2 Mineral Resources

In the mining business, the investor has to conclude two contracts with PMO/DDFI (ART. 25.2 Implementation Decree to Law on Promotion of Foreign Investment and ART. 23 Mining Law)²⁹. DDFI has no model contracts. Draft contracts have to be submitted by the investor to begin negotiations.

- Prospecting and exploration agreement
- Exploitation and processing agreement

To get an operation license, the investor must submit several feasibility studies covering technical, economic, social and environmental aspects, similar to those for hydropower projects (ART. 29-31 Mining Law).

²⁹ No. 04/97 NA of 12/04/1997.

The concession fees for prospecting, exploration, exploitation, and tax on natural resources are established by law. Regulations on the scope of the project are laid down in the decision on mining investment standards³⁰. The term of performance, inspection and monitoring, and relinquishing mining enterprises are similar to the rules for hydropower (ART. 33f. and 48-54). Staff is provided by MIH for inspection and supported by provincial, municipal and special zone facilities. The lack of model contracts puts DDFI in an unfavourable situation, because the draft by the investor sets the basis for negotiations.

2.3.3 Agriculture

Foreign investment in the agricultural sector is explicitly appreciated (ART. 44 Law on Agriculture). Agricultural plantations are permitted provided that regulations and technical standards set by MIH and MPH are observed (ART. 41). Activities in agricultural plantations involving state land require, according to ART. 25.1 of the Implementing Decree on Law for Promotion of Foreign Investment, two agreements with IPMC.

- Memorandum of understanding (MOU)
- Project development agreement (PDA)

According to ART. 11 of the Law on Agriculture³¹ state authorities grant leasing rights for activities in agriculture. It is not clear, however, whether they are to be negotiated and signed by MAF or whether concession contracts have to be concluded by IPMC.

Inspections of agriculture projects are conducted by an Agricultural Activities Inspection Agency consisting of MAF personnel and line divisions at provincial levels (ART. 70-77 Law on Agriculture). The agency observes the implementation of production targets and must follow certain methods of inspection - regular, with advance notice, and emergency - (ART. 76 and 77).

Wrongful acts arising from operating a business without a license or causing deterioration of agricultural land attracts a fine of double the amount of actual damages (ART. 81 Law on Land).

2.3.4 Forestry

Under ART. 13, 34, 36, and 56 of the Forestry Law, planting trees on degraded, vacant and defoliated land is explicitly promoted by GoL by means of granting or extending leases. However, it is not clear which authority is granting the use of land for plantations and whether it is a leasing or concession contract. Use of dense forest land is strictly prohibited (ART. 13).

The state has exclusive ownership on timber (ART. 15). Individuals and companies cutting timber have to pay leasing fees as well as royalties (ART. 57). Provinces issue licenses for logging and companies are subject to strict regulations. Each log must be marked and stamped, be accompanied by removal documents, be removed on a pre-determined road and, finally, has to be declared at the road control point (ART. 26). Similar rules have been established for timber exports (ART. 29).

³⁰ No. 1950/IH of 29/12/2005.

³¹ No. 198/NA of 10/10/1998).

Districts are responsible for the implementation of regulations on logging and wood processing (ART. 62). They evaluate the conversion of forests into areas that can be used for other purposes (ART. 62). Finally, village authorities are responsible for combating 'bad activities' like illegal logging and burning forests (ART. 63.10). To put the burden of fighting illegal logging (seemingly a big business) on the lowest level of state authority raises serious doubts as to GoL's³² effectiveness in combating illegal logging.

2.3.5 Industry

Three joint venture companies, consisting of five foreign investors and GoL are currently operating in the food/beverage and tobacco processing industry (Annex 5). For industrial land except hydropower and mining, no special rules concerning concession and lease contracts apply. As noted previously, industrial state land, as defined in ART. 27 Law on Land³³ is mainly leased by MoF or provincial authorities (Governor/PDPI). SEZ are subject to special fee rates.

2.4 Fee Rates

2.4.1 Concession Fees, Taxes on Natural Resources and Royalties

State land concession fees, taxes on natural resources, and royalties³⁴ are established by several Decisions and Resolutions³⁵ (Annex 6). Royalties on hydropower, which are not within the provincial domain, are considered by local authorities to have been established too low and do not reflect market prices. Two of four provinces visited by the study team established their own regulations. Savannakhet raised rates for agricultural livestock to US\$ 3-9/ha/year and added river concessions for the fishery (US\$ 10 for each fishing lot)³⁶. Champassak raised the fees for tourism to US\$ 15-20³⁷ (Annex 6).

In fact, establishing rates by law is a less appropriate way to generate revenue. This is because fees vary from place to place and over time because of changes in product prices, costs, and technological improvements. They would need frequent revision to capture the benefits when they rise. Since revisions take time, legally set charges would almost certainly lag well behind the market (Annex 7). To collect market level fees, it would be advisable to apply business valuation methods when negotiating with investors.

2.4.2 Leasing Fees

Since fee rates for leased premises are not determined by law, it is left to the state authorities on what basis and by what means they set the price for leasing state land.

³² According to ART. 14.2 of PMO Decree on Management of sustainable production forest No. 59/PM of 22/05/2002, all levels of local administration have the duty and responsibility to apply measures against offenders.

³³ *Inter alia*: Location of workshops, factories including dormitories, industrial areas, industrial zones, industrial estates, industrial technical and scientific research and experimentation institutions or centres, waste-water treatment stations, industrial waste production places.

³⁴ Natural resources refer to charges for mining; royalties include charges for hydropower, timber, tobacco and gambling.

³⁵ Supplementary Decision of PMO No. 34/PMO of 01/12/1992 (concession fees), Resolution No. 47/PMC of Minister Council on State Tax Regime of 26/06/1989 as well as Resolution No. 23/PMC of Minister Council of 18/04/1990.

³⁶ Provincial Regulations of Savannakhet Governor, Document No. 238 of 19/04/2002.

³⁷ Regulation No. 22 of 22/03/2000.

Hydropower projects receive land leases free of charge. The natural resource usage charge is deemed to include leasing fees for using the project area, but this approach has not been set by law.

Furthermore, state companies do not pay rental fees. Both incidences result in reduced state revenues and should be reconsidered. On the other hand it has been reported that fees in the Savannakhet SEZ (managed by central level officials) would be unreasonably high (US\$ 300/m²) when compared to areas outside the zone. High prices for products without comparative advantages could deter investors who might then invest elsewhere.

The provinces set rental fees in several ways and all methods need further improvement.

- through negotiation (Savannakhet)
- by using a valuation information system to determine market value (Champassak)
- by applying its own assessment on a case-by- case basis (Khammouane)
- by public bidding (Saravane)³⁸

2.4.3 Leases and Land Titles for Government Officials and other Entitled Persons

State land has been provided for long term lease to government officials as granted under PM Decree³⁹. These parcels are now going to be transferred to them by land use titles based on ART. 20 of the Implementing Decree for Law on Land. According to a recently issued Directive by PMO⁴⁰, details on the implementation of this transfer include:

- Those benefiting from ART. 20 of the above mentioned Implementing Decree (civil servants, army and police officers or those who merit consideration because of activities undertaken during times of revolution) have to pay land transfer fees as well as the balance for construction land exceeding 800m² per person as provided by ART. 42(Law on Land. The determination of the required payment is subject to a favourable discount rate.
- Those government officials, benefiting from ART. 21 of the Implementing Decree, and who have been authorised to use land for more than ten years, are entitled to buy the land use rights at 30% of its assessed value. Used areas exceeding the permitted area may be purchased by the users at market prices. If that is not possible because of lack of funds, land exceeding 800m² may be sold at public auction or leased. A fee rate has not yet been announced.
- Those persons benefiting from ART. 22 of the Implementing Decree, (close relatives of those who left the country in 1975, and who have been lawfully using the premises for more than ten years), will be entitled to land use rights at market prices proposed by an ad hoc committee on approval by MoF, Mayor, and Provincial Governors. If the interested party cannot buy the land, it will be sold at public auction or leased. A fee rate has not yet been announced.

³⁸ However, Saravane authorities have not yet established written bidding rules for public auctions; usually, the authorities use US\$ 100/plot as starting price for construction land.

³⁹ No. 194/PM of 12/11/1994.

⁴⁰ No. 079/PM of 21/02/2006.

The provincial authorities have chosen different implementation approaches.

- Champassak plans to sell 100 parcels of state land with houses. If an interested party does not have enough money to buy the building, they could choose to purchase the house and lease the land, or both could be rented while at the same time the user continues to pay land tax. The authorities, however, do not have a plan as to how to recover amounts owing from entitled persons, who have already sold buildings to third persons without state⁴¹ permission.
- Khammouane appreciates (to avoid possible social trouble), that reclaiming assets from entitled government officials, who have sold land and houses without a land title – sometimes up to five times! – would not be advisable.
- Saravane does not intend to apply any valuation methods for estimating the sale price or leasing fee, but will instead, enter into negotiations with interested parties on payment of a lump sum.

It deserves attention that all provincial officials interviewed did not know about the recently published Directive - No. 079/PM of 21/02/2006.

Granting state land free of charge, no matter what the reason, should be avoided, as should charging unreasonably high rental fees because neither measure generates stable revenues for the state.

2.5 Managing Revenues from State Lands

DSA and OSA are exclusively responsible for managing revenues derived from state land.

2.5.1 Collecting Fees

After DSA receives information from line departments on amounts due, it issues an order of remittance to the investor for settlement of the annual concession fee payable to the National Treasury. Provincially, OSA does the same on notification from line services; the annual payment is remitted to the provincial branch of the National Treasury. Sometimes, DGM or MAF delegate power to the provinces to collect concession fees under their own management, like mining concession contracts involving limestone, gravel and sand. There is, however, no rule or ceiling applied for delegation of powers from central to provincial levels.

2.5.2 Reporting Requirements and Transferring Revenues

OSA submits weekly reports to DSA on the fees collected. The fees collected provincially are kept in the provincial branch of the National Treasury against the budget line allocated by MoF to the provinces. Surpluses are transferred by the province every three months to the National Treasury. MoF distributes the surplus to poor provinces that have deficits.

⁴¹ See Directive No. 79/PMO No. 4, which strictly prohibits the right to use land and house if the assets are leased.

It has been reported that some provinces do not report properly to DSA and avoid remitting outstanding amounts to the National Treasury, keeping the surplus for their own use. DSA may have problems detecting these violations of budget regulations because communication between central and provincial levels is generally poor and reporting requirements probably lack diligence.

2.6 Strengthening State Land Management

As outlined previously, the ability of administrative authorities to manage state land issues seem to be limited. To tackle the problem, and aiming to increase state revenues, DoNLUPaD has suggested the creation of a new state company, called State Company for Land Development and Services⁴² (LDSC).

2.6.1 State Company for Land Development and Services

Its main tasks are divided between development and service. Development consists mainly of preparing, creating, and identifying new land areas that may be suitable for industrial development, mining exploration, specific economic zones, residential areas for civil servants, and tourism; thereby allocating areas for resettlement of local people as well as expropriating land.

Services include (1) registration of sales, (2) exchange and delivery of land use rights, (3) provision of land for local and foreign investors according to state planning, (4) leasing and concession agreements, and (5) provision of land policy and legal experts for surveying, measurement, and information systems.

Income is generated by providing these services to interested parties. Profits are expected in the third year of operation. To be funded with equity capital amounting to US\$ 500,000 GoL will be the only shareholder of the company. The Board of Directors will include seven line ministries, DoNLUPaD, CPI and the Managing Director of LDSC. LDSC will have four main divisions: (1) administration and accounting, (2) planning and marketing, (3) survey and design, and (4) legal and service.

Efforts by GoL to recentralise land management and open up to market principles to raise state revenues are considerable. However, state land issues rest mainly with DSA, DoL and their subordinate line agencies at local levels. Future responsibilities requiring these departments and divisions to store considerable amounts of information remain unresolved.

Overlapping responsibilities of LDSC and administrative bodies in charge of land seem to be unavoidable, causing unnecessary budget shortfalls. The establishment of a state company would be economically sound only if a clear division of responsibilities avoided overlap or duplication between administrative bodies. In addition, a business evaluation on LDSC proposed costs and revenues is missing and should be urgently prepared.

⁴² Documents on the Establishment of the State Company for Land Development and Services, prepared by: Department of National Land Use Planning and Development (DoNLUPaD), 2005.

2.6.2 Lao Plantation Authority

In January 2006, ADB approved a new Forest Plantations Development Project for Lao PDR, containing a proposal to establish an institutional body called the Lao Plantation Authority” (LPA)⁴³. The Draft Decree on establishing LPA has meanwhile been submitted to GoL for approval. ADB will contribute a US\$ 7 million loan and a US\$ 3 million grant covering part of the total project costs of US\$ 15.35 million.

Besides the establishment of about 9,500 ha of small, but commercial viable livelihood plantations to implement GoL’s policies on improving livelihoods of the rural poor, LPA aims to attract foreign corporations to invest in the pulp, paper and tree plantation sectors. ADB views the country as a main regional pulp producer, predicting 500,000 industrial tree plantations by 2020.

ADB believes the main factors for profitable investment in this subsector are:

- good climate and growing conditions for trees
- vast areas of degraded forestland
- flat or undulating terrain
- low population density
- an existing road infrastructure that is being upgraded
- access to large markets in neighbouring countries
- competitive labour and input costs
- low land lease costs

To attract foreign investors, LPA has been designed as a one-stop-window for private investment in plantations. All the necessary licenses and permits will still be issued by the relevant line authorities; however, LPA will arrange for all approvals and clearances through one-window to facilitate and expedite the entry of investors and minimise their transaction costs.

Furthermore, LPA will be a clearing house for regulating operations ensuring their compliance with the GoL’s financial, environmental, and social laws. Income from a portion of the land prospecting license fees and land rents collected from foreign investors is expected to range from US\$ 20 to US\$ 50/ha/year. The predicted revenue for GoL would be US\$ 12.5 million by 2016 rising to more than US\$ 47.5 million by 2020.

LPA will have five divisions: (1) land survey, (2) livelihood plantations, (3) industrial plantations, (4) finance and human resources, and (5) public relations. The agency will be headed by a part-time Managing Director and the day-to-day functions looked after by a professional full-time Chief Technical Advisor. Reading the ADB document, it may be assumed that LPA will be well structured, professionally managed and financially self-sufficient within a short period of time.

LPA will act independently with officials from all levels supposed to refrain from interfering with its functions and daily operations. The Board of Directors will have representatives of nine line ministries, one Governor, two agencies and an expert on tree plantations.

⁴³ ADB, Model for the Proposed Lao Plantation Authority for the Forest Plantations Development Project, October 2005.

However, some critical issues remain. Past ADB experiences with industrial and livelihood tree plantations give pause. The first industrial tree plantation project sponsored by ADB (1993) was terminated in 2003. It failed because of corruption, weak monitoring, poor environmental practices, and village farmers⁴⁴ lost access to the land.

According to the new project plan, an equity-sharing model will be used instead of loans requiring interim interest payments by local farmers – an amount they could not afford to pay. Nevertheless, the notion of ADB (2005, p.i.) that Lao PDR would have “vast areas of degraded forestland suitable for plantations”, seems to ignore the fact that these areas are used by farmers as a source of income beyond rice production and livestock breeding (Lang/Shoemaker, p. 3).

It should be noted that similar to LDSC, overlapping responsibility between state and LPA authorities should be avoided. There ought to be clear and distinguishable responsibilities before establishing the new State Authority. Furthermore, the term ‘degraded forest land’ ought to be used in a more precise manner. LPA activities should be closely monitored by the Board of Directors to ensure it applies safeguards to protect poor households when issuing permits, implementing business plans, and leasing out degraded forest land.

Section 3: Contract Regime

3.1 Contracts - Purpose and Content

While laws and regulations constitute the backbone for exchanging assets and capital, lease and concession contracts determine the details. As ART. 1 Contract Law⁴⁵ puts it:

“... an agreement between organisations, between organisations and individuals or between individuals, which [agreement] causes civil rights and obligations to arise, to be modified, or to be terminated.”

“... has the purpose and function of establishing asset-based relationships between various economic sectors and the multi-sectoral economy, [in order to] improve and expand asset-based relationships in people’s daily lives and the commodity-currency relationship of the national economic foundation.”

The terms of a contract to determine rights and obligations of the contract partners are set out in ART. 11 Contract Law⁴⁶.

- purpose, price, period of performance, method of settlement, details of delivery
- scope, quantity and quality of contractual obligations
- place of contract performance and obligation of mutual information
- consequences from any breach of contractual obligations and the forum for resolving disputes
- events that may lead to termination of contract before its [natural] expiration

⁴⁴ Chris Lang and Bruce Shoemaker, Creating Poverty in Laos. The Asian Development Bank and industrial tree plantations, A World Rainforest Movement Briefing Paper, April 2006.

⁴⁵ No. 02/NA of 10/07/1990.

⁴⁶ See also ART. 18 of Implementing Decree on Law on Land, No. 101/PM of 20/04/2005.

3.1.1 Special Terms Used in Lease and Concession Contracts

Special terms on rights and obligations of lessees and concessionaires are established by the Law on Land and its Implementing Decree.

3.1.1.1 Duration

According to ART. 13 Law of Land; Lao citizens may lease state land for up to 30 years with the possibility of extension. Foreign investors are permitted a lease or concession contract for state land not exceeding 50 years, in a SEZ up to 75 years. Both contract terms may be extended on a case-by-case basis.

3.1.1.2 Rights and Obligations

The investor may, pursuant to ART. 66 Law on Land, and ART. 19 of its Implementing Decree:

- sell its assets related to the state land lease or concession contract with the state holding a priority right to buy those assets
- use the contract and/or its own assets related to the contract⁴⁷ as collateral - subject to authorisation by the state
- sublease for the rest of contract term - subject to authorisation by the state
- use the contract as equity in a joint venture - subject to authorisation by the state
- gets land tax exemption⁴⁸

Among others, the investor is obliged to: (1) settle the rent or concession fee, (2), use the land according to contractual conditions, and (3) prevent damages to land, environment or people.

3.1.2 Hydropower

Currently there are 34 hydropower companies running 39 projects in Lao PDR (Annex 8). Since hydropower projects usually involve large sums of money (> US\$ 100 million), international consortiums and foreign money lenders, it may be assumed that concession contracts on energy resources comply with international standards. The LNCE model concession agreement⁴⁹ and three reviewed contracts⁵⁰ concluded by GoL and foreign investors confirm this assumption.

As already pointed out, the company has (besides settlement of the resource usage charge (royalties) as a percentage of its annual revenues⁵¹), no obligation to pay an extra leasing or concession fee for using land in the project area. However, a leasing contract is attached to the concession agreement, guaranteeing the lessee access rights to the land.

⁴⁷ Law on Land and its Implementing Decree are not consistent on this issue.

⁴⁸ ART. 3.8, Ch.I of Implementing Decree of Presidential Decree.

⁴⁹ Model contracts "Memorandum of Understanding" (MOU) and "Project Development Agreement" (PDA) have been reviewed by the team, but because of limited time, comments could not be outlined in detail.

⁵⁰ One PDA, one PCA, and one lease agreement.

⁵¹ Nam Theun II: 5.2% (from commencement date to 15th year of operation), 15% (15th to 20th year of operation), and 30% (20th year to termination of the agreement).

In addition, ancillary rights, (e.g. logging and timber removal) are part of the lease agreement or of the principal concession agreement. The contract term is usually for 30 years with the possibility for extension. Furthermore, concession contracts on hydropower usually contain several safeguard clauses protecting the company from losses that might occur during the contract term, entitling them to reduce the resource usage charge. Losses could occur if Lao PDR tax law changes requiring the company to pay higher profit or corporate taxes or in cases of force majeure.

Non-performance of GoL's obligations (default) would entitle the company to terminate the contract and/or claim damages for losses. Furthermore, the contracts contain detailed rules on the settlement of disputes including resort to international arbitration and application of international and foreign law as a supplement to Lao PDR law. In turn, an equity share (ca.10%) and rigid clauses on monitoring and inspection are designed to protect Lao PDR interests.

3.1.3 Mining

Since 1992, 66 foreign joint ventures or domestic companies have operated 122 mining projects. Roughly 50% of all mining companies are owned by foreign investors or are joint ventures (Annex 9). No model concession agreements on mining (prospecting, exploration, exploitation and processing) are available at DGM⁵². The terms of one reviewed contract⁵³ concluded by GoL with a foreign investor for a 30-year term, resemble the structure of the contracts for hydropower. However, the clause on concession fees lacks clarity because it does not contain amounts but only a general reference to a legal source⁵⁴. Taxes on natural resources are as follows:

Mineral	Price at the mining site (US\$/ton)	Tax Rate on natural resources	Tax on natural resources (US\$/ton)
limestone	1.3	2%	0.026
ore	9.00	2%	0.180
lignite	8.00	2%	0.160
gypsum	8.00	2%	0.160
clay	n.a.	n.a.	100 Kip/m ³

Because they lack clarity, rules on termination resulting from breach of contract are detrimental to GoL's interest. Dispute settlement rules refer to economic arbitration and to Lao PDR courts⁵⁵. Three reviewed contracts on mineral prospecting and exploration are based on international standards except dispute settlement rules that lack clarity. Land concession fee rates contained in these contracts are: prospecting phase (US\$ 4-5/ha), exploration phase (US\$ 7-9/ha), and feasibility study⁵⁶ (US\$ 20/ha).

⁵² MoF has been issuing a model "Agreement relating to the concession of the Survey and Exploitation". This model, however, does not contain sufficient clauses as to the obligations of concessionaires; e.g. clauses on cadastre management, environmental protection measures, health and safety inspections, and declaration of production output are missing.

⁵³ Another (amended) concession contract reveals a 10% share for GoL and a royalty rate of 4.0% on revenues (2006). The project area comprises 500 ha for exploration and 125 ha for extraction (mining). The principal contract was, unfortunately, not available for further review.

⁵⁴ Additional Decision No. 34/PM of 01/12/1992.

⁵⁵ This is not usually the case for contracts covering large investments, since they may resort to international arbitration.

⁵⁶ Investor has to conduct feasibility studies on technical, economic, social and environmental aspects of the proposed investment project; see, ART. 30, 31 Mining Law and subchapter 2.3.2.

3.1.4 Agricultural Plantations

Officially, there are 13 companies operating in the plantation sector (Annex 10). It should be noted these apparently do not represent the total number throughout the country, but only those approved by PMO/DDFI and meeting the requirements set by law⁵⁷.

PDA for agricultural plantations	
Fee rate	US\$ 6/year
Land size	10,000 ha
Term	30 (+20) years

While a PDA is usually designed to set rights and obligations of the parties concerning land, the two reviewed PDAs contained other important details of the lease contract. A model contract was not available at DDFI, MAF, DSA or provincially.

LLA for agricultural plantations	
Fee rate	US\$ 10/year + 20% p.a.
Land size	21 ha
Term	30 years

The land lease contract will be signed in this case after the boundaries of the areas are established by survey. The investor is required to conduct the survey under the supervision of MAF⁵⁸. The termination clause granting the investor a right to cancel the agreement for lack of profitability shifts the entrepreneurial risk to GoL. The investor might log the timber, recalculate the chances for profitability and abandon the site. Moreover, the ambiguous clause on default and missing rules on monitoring and inspection could facilitate this “business decision”. A leasing agreement for agricultural plantations concluded at provincial and district levels contained other important clauses.

clauses favourable/unfavourable to province	clauses favourable/unfavourable to investor
(+) penalty clause is 20% of amount due (-) increasing fee rates p.a. lack clarity and are not enforceable (-) dispute settlement, monitoring and inspection, and regulations on timber are missing	(+) 2 years lease exemption after operation start (-) obligation to pay land tax ⁵⁹ (-) prohibition on using land as collateral ⁶⁰ (-) return of assets to lessor after termination of contract (unclear whether buildings owned by lessee have also to be relinquished)

3.1.5 Industrial and Commercial Uses

State Land Lease Agreements for industrial and commercial uses	
Fee rate	US\$ 33 to 5,500/ha
Land size	1.1 to 45 ha
Term	10 to 60 years

The contracts reviewed⁶¹ included both industrial operations and commercial concerns (tourism, markets, transportation). Most contracts contain sufficient clauses on performance regarding scope, term, land size, delivery settlement method, and fees (including annual increases).

⁵⁷ It has been reported that Chinese companies received 20,000 ha from local authorities for planting rubber in Bolikhamsay Province, 20,000 ha in Luang Namtha, 50,000 ha in Sayaboury, as well as in three or four other provinces (e.g. Khammouane, Saravane). Furthermore, domestic investors have supposedly received 25,000 ha in Vientiane provinces. See also Annex 11.

⁵⁸ Procedures on surveys (see chapter 2.2).

⁵⁹ This clause is contradicting the exemption rule for state land leases and concessions according to Art. 3.8, Ch. I of Decree on the Implementation of the Presidential Decree on Land Tax.

⁶⁰ According to Art. 19 Implementing Decree of Law on Land, investors may use the leasing or concession contract as collateral; the contract clause could create confusion about its purpose in regard to the regulation stipulated in Art. 19.

⁶¹ One model state land concession contract, two model state land lease contracts, and seven state land lease contracts in operation.

Some clauses are dispensable and should be deleted (e.g. three warnings issued by DSA or OSA for overdue payments). They merely delay enforcement and minimise revenue. Furthermore, chances of enforcing contractual obligations seem to be rather dim. Clauses on monitoring and inspection, penalties and termination in case of default, and dispute settlement clauses are cumbersome, lack clarity, or are completely missing.

3.1.6 Timber

Since logging contracts are labelled 'sale-purchase of logs' or a 'log-transaction contract', one assumes the timber auction winner gets a sales contract. However, as stipulated in the logging contracts, the winner has to pay a royalty tax, which would more resemble a concession contract (total purchase price US\$ 154-172/m³, including royalty tax of US\$ 63-140/m³). Nevertheless, it is worth mentioning that two of three reviewed contracts⁶² did contain monitoring and inspection clauses.

3.2 Contract Management

According to the rules prescribed in ART. 2 of the Decree on Document Registration⁶³, all documents pertaining to the transfer of property, asset use, and assignment of rights to individuals or legal entities have to be registered to ensure their enforceability and legal standing. Following this principle, all documents concerning lands and houses have to be registered at the Provincial Office for Registration which has jurisdiction over the area where assets are located.

State revenue from registration fees for lease and concession contracts		
Contracts	target 2005-2006	fees collected
leases	US\$ 600,000	US\$ 270,000
concessions	US\$ 300,000	only US\$ 710

Except for agreements over US\$ 5,000 million, an area exceeding 10,000 ha or a mining activity (which are with DSA), all contracts have to be registered by OSA provincially. The registration fee, depending on the contract term (> or < 20 years) is between 1.0% and 1.5%, or 0.3% and 0.5%, respectively.

It seems that monitoring or enforceable concession contracts (or both) are almost non-existent since the investors do not pay the amounts due for lack of inspection and enforcement. Allegedly, all OSA have been registering leasing and concession contracts within their jurisdiction, but there is no proper provincial filing and reporting system. Contracts are tied up in piles and left on the office floor.

A handwritten register book presented by officials of OSA in Savannakhet contained only data related to the contract (e.g. number, name, branch, date, quantity), while land related data (location of plot and size) were not entered on the list.

Land related data collected and filed with PLO in a register book only cover small parcels located within urban areas of nine provinces where the Land Titling Project (LTP II) is operating. So far under LTP II, only 35,000 parcels of state land have been registered. Larger parcels which would be suitable for industrial, commercial or plantation uses are only mapped on a case-by-case basis.

⁶² One model contract, two concluded contracts.

⁶³ No. 52/PM of 13/03/1993.

There does not seem to be any link to the data stored at various provincial line offices. Given the fact that lists containing contractual data currently in use by OSA are designed for administrative purposes only, the public has no access to the registration files. It has, therefore, to be concluded that the present handling of registration of lease and concession contracts cannot contribute much to their enforceability and legal standing.

Furthermore, data on lease and concession contracts have not been reported by OSA to DSA at the central level. Frequently, provinces are not equipped with IT systems. If they are, data on the agreements are not keyed into the computer. DSA has so far only maintained computerised data on the purchase and sale of vehicles. The lack of a proper contract filing system seems to be part of a larger issue, namely the establishment of a systematic state land inventory.

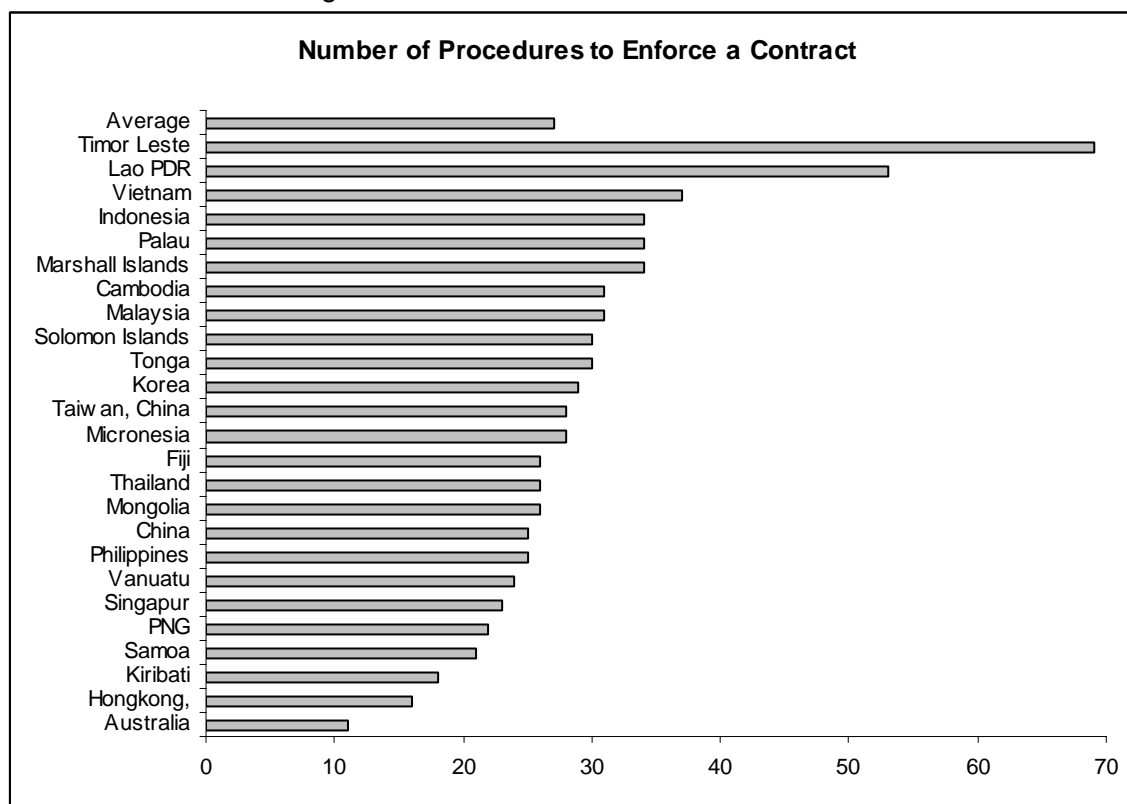
3.3 Monitoring and Enforcement

According to a recent World Bank report⁶⁴, efficient contract enforcement is one of the key indicators on business regulations, encouraging businesses to engage with new borrowers or customers.

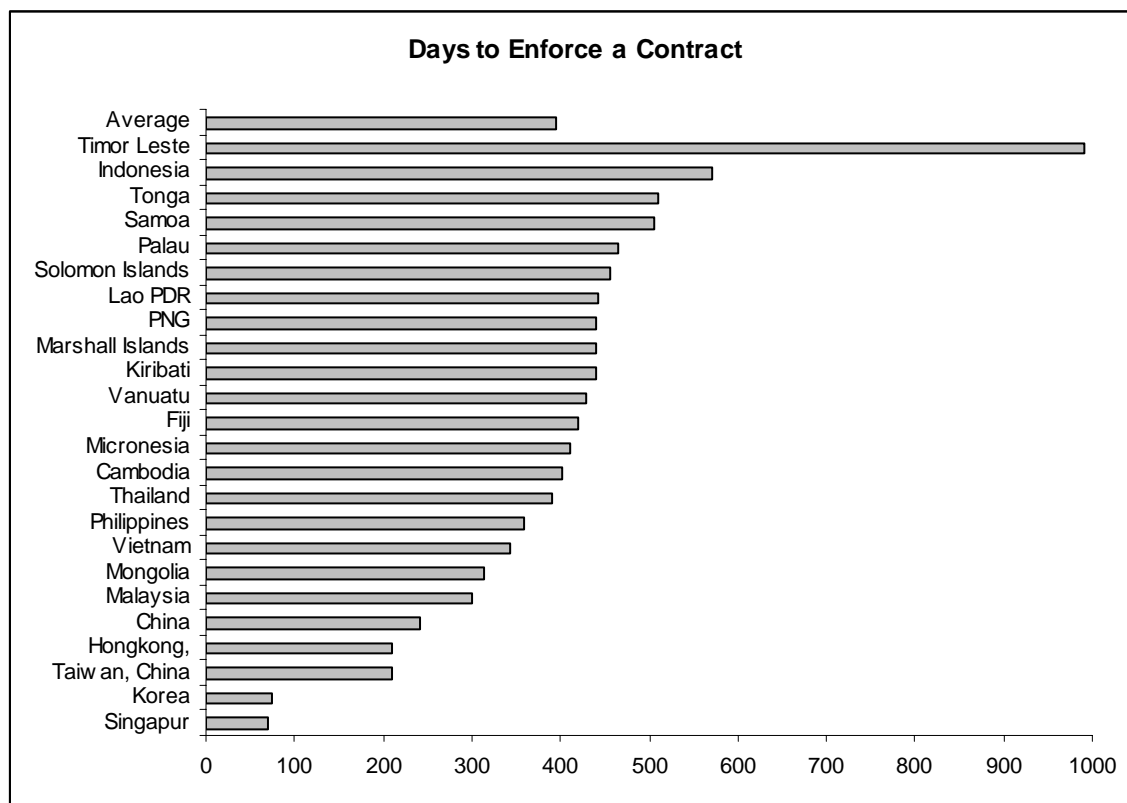
The graph below presents contract enforcement in Lao PDR below standard compared to other countries in East Asia and the Pacific Region.

Benchmarking – Contract Enforcement

East Asia and Pacific Region



⁶⁴ World Bank, Doing Business in 2006 Report



Adapted from: World Bank, "Doing Business in 2006", p.29

3.3.1 Monitoring

Since the provision for the establishment of a National Land Management Authority - NLMA (ART. 78 Law on Land), responsible for land granting, leasing, conceding and registering, has not yet been implemented, inspection of state land assets subject to leasing and concession contracts is left to the relevant ministries and line divisions at central and local levels (MoF, MIH, MAF).

Inspection rules⁶⁵, power of authorities to take action in case of irregularities⁶⁶, and the obligation of foreign investors to submit a report to central and local authorities for monitoring and evaluation⁶⁷ have been established. OSA are being equipped with monitoring sheets to track concession and rental fees, taxes on natural resources as well as royalty payments. However, there remains insufficient monitoring at all levels.

Tree plantations may serve as an example. According to information provided by experts and provincial residents, foreign pulp and paper industry investors (from Thailand, Malaysia, India, China, Vietnam, India, and Japan) frequently abandon vast areas of land leased or conceded (up to 50,000 ha), either immediately after having removed the timber or if the plantation failed. It also happens that companies stop projects and hand over the areas allocated to them to other companies with plantation projects. Furthermore, cases of overlapping allocations of state land for different investments have already been reported. In all these cases, effective monitoring seems to be far beyond the current capacity of local PAFO staff (Annex 11).

⁶⁵ regular, on advanced notice, and emergency

⁶⁶ ART. 79 Law on Land.

⁶⁷ ART. 57 and Annex 6 of Implementation Decree to Law on the Promotion of Foreign Investment.

3.3.1.1 Constraints on Effective Monitoring

Communication and coordination: Provincial authorities do not always receive copies of concession contracts from the central level. Without knowledge about the contract partner and their contractual obligations they are not able to monitor payments or contractually agreed land use or identify trespassers. At the same time, DDFI, DSA and other line departments at central level apparently do not have precise figures as to the number and investment value, land size leased or conceded by the provinces to foreign and domestic companies.

Staff: At central level, there are a limited number of monitoring staff. Between 2000 and 2005, four DDFI staff had to monitor 626 projects totalling US\$ 2,790,577,842 (Annex 2). Only recently has DDFI undertaken efforts to establish a more efficient monitoring system by starting an awareness campaign for investors about the monitoring and evaluation form as an appropriate measure for keeping privileges. DGM, responsible for monitoring 66 mining companies running 122 projects (Annex 9), employs not more than 10 monitoring staff with few professional skills because of budget constraints.

The provincial divisions face similar problems⁶⁸. Staff may also lack motivation, the time to check contracts, and to undertake field enquiries. Saravane has seven forest units, each with three officials that join the logging companies at sawmills. In Savannakhet, forest units and villagers recheck the marked timber at sawmills. Villagers who cooperate with forest units receive financial benefits⁶⁹. The poorer provinces may lack funding for setting up and operating inspection units.

Equipment: Sometimes, provinces do not have means to monitor implementation of contract obligations. Cases have been reported that gypsum, extracted for export, is not controlled for lack of truck scales and road inspection.

Geographic constraints: Vast areas, long distances, difficult geography, poor infrastructure, few control posts, and lack of appropriate vehicles help offenders to get away with contract violations and/or timber trafficking.

3.3.1.2 Actions by Provincial Authorities

According to reports from provincial authorities, only four cases of non-compliance have been reported in Champassak (two non-payments and two non-development of land), two in Saravane (non-payment) and one in Khammouane (non-development of land). No action has been taken so far because GoL has not responded to proposals from local authorities to either impose a penalty (5% of remaining leasing/concession fee) or terminate the contracts.

⁶⁸ Savannakhet, e.g. can only provide for an ad hoc-unit for inspection purposes, consisting of 5-7 staff of different line offices.

⁶⁹ This does not always seem to be the case, see Benjamin H. Hodgson, Village forestry and certification in Lao PDR: status and analysis, WWF Lao Program, December 2004.

In the case of illegal logging, all provinces visited say timber will be seized (in Saravane by the military)⁷⁰ and sold at public auctions. In Savannakhet, seven suspects have been brought to trial. In Saravane, three cases of illegal logging have been detected, amounting to approximately 100 m³ (ca. US\$ 15,000).

3.3.2 Dispute Settlement

According to Art. 34 of the Contract Law, economic disputes are to be settled by an arbitration panel administered by MoJ⁷¹. Concession contracts covering large investments (e.g. hydropower), have specific dispute settlement clauses according to international law. Other contracts reviewed have dispute settlement clauses in line with the rules set by the Contract Law. Some lack clarity, while others do not contain these clauses at all. In light of the monitoring record at all levels, it may be assumed that arbitration or court cases would be few in number.

In 2004/2005, twelve cases were heard and resolved by the arbitration panel. Currently, there are about 30 cases pending, some involving foreign investors. None are dealing with state land leasing or concession contracts. In 2004, there was one judgment rendered by a Lao PDR court in Pakxe on a case involving a residential lease⁷².

⁷⁰ Champassak: 147,580 m³ in 2004/2005.

⁷¹ See, ART. 80, 81 Law on Land, ART. 27-31 of its Implementing Decree and ART. 25 Law on State Property, which have deviating provisions, thereby lacking clarity.

⁷² See, Verdict No. 48/ of the primary civil court judiciary of the Champassak Provincial People's Court of 30/09/2004 (1st instance).

PART 2: RECOMMENDATIONS TO TRANSFORM STATE LAND ASSETS INTO CAPITAL

The abundant natural resources of Lao PDR could become the key factor for generating revenues, further developing its emerging market economy. For example, gold and copper production is expected to account for more than one-third of export earnings in 2006, becoming the single-most important source of GDP growth⁷³.

To achieve the potential of sustainable development, large amounts of foreign capital will be needed. To attract foreign capital, a sound investment regime – regulations on entry, land tenure and contracts and market oriented mechanisms for setting prices – has to be in place and well managed. Furthermore, regulations establishing the investment regime need to be monitored. Without monitoring, the country will not benefit from foreign capital inflows. The following need to be addressed:

- Management of state assets – in particular contract management – do not meet standards of proficiency and responsibilities are split among to many authorities.
- The legal framework on investment and land use lack clarity and consistency.
- Monitoring and enforcement of contractual obligations are rarely practiced.
- Price setting mechanisms are not in compliance with market rules.

Section 4: Investment Regime

The top priority for transforming state assets into capital is to improve the transparency and efficiency of the investment regime on land use.

4.1 Entry Regulations

Since more than three permits from DDFI are still required⁷⁴, the one-stop-service as intended by the Law on Promotion of Foreign Investment has not worked for investments requiring state land. This is in addition to other legal and administrative issues a company must be in compliance before beginning operations.

4.1.1 Scattered Responsibilities of State Authorities⁷⁵

The use of different approval ceilings for investment and land size - and lease or concession contracts to central or local authorities - do not appear compatible. For example, an investment of US\$ 4.9 million involving state land would generally require larger land areas than 100 ha. Corporations intending to invest large sums into a project requiring state land would have to apply at the central level (DDFI and line ministries), which contradicts GoL's efforts of decentralisation.

Approval procedures are likely to be slow because an enquiry starts with local line divisions to determine if appropriate land is available before an authorisation can be granted. To expedite approval procedures, investors might do this investigation on their own.

⁷³ World Bank, From Resource Potential to Growth and Poverty Eradication – The Lao Mining Sector – Vientiane, Presentation, 30 September, 2005, p.4.

⁷⁴ E.g. business license by line Ministry or line Office at provincial level, see ART. 29 Law on Land.

⁷⁵ See table on contradictory powers given to state organisations in Annex 15.

Powers to conclude lease and concession agreements for agricultural and forestry land do not seem to be clearly set because of deviating provisions established in the Law on Agriculture and Law on Forestry. Thus, it is not clear whether MAF and its provincial offices can conclude leasing and concession contracts on their own or whether these powers lay with DDFI/PDPI and MoF/DSA/OSA.

4.1.2 State Land Inventory

Once local authorities are approached for land, line divisions are required to provide relevant data. At this point, management of state assets - in particular a comprehensive state land inventory - becomes a crucial issue. It has been reported that OSA is responsible for setting up an inventory of state land and determining land for leases and concessions. However, these data may have already been collected by PLO and other offices (PDPI, PAFO, POI) in line with their specific responsibilities (land titling registration, issuing business licenses, supervising surveys, and inspection activities). Lack of communication between line divisions' means data may be collected and stored in more than one place.

Furthermore, provincial inventories of state land are not reported to DSA. Therefore, DSA cannot keep track of registered and unregistered plots across the country. In fact, bits and pieces of information about state land are held by number of Ministries, Departments, and Divisions at central and local levels. Since communication between divisions seem poor, neither OSA nor PLO or other offices have developed any standard procedures that might be necessary before signing lease and concession agreements.

However, as a first step, DSA has recently provided OSA and other relevant line offices a revised form sheet to establish an inventory of state land lease and concession contracts. The offices are supposed to fill the form (date, type, duration, fee rate, mode of payment, location and land size), and give this to DSA.

DoNLUPaD has recently started to collect data on leases and concessions in all provinces for their own state land inventory. The data are obviously to be gathered for use by the future LDSC.

RECOMMENDATIONS:

1. Provincial ceilings limiting the size of state land for leasing and concession agreements should be removed completely. Financial ceilings (< US\$ 5 - leases and < US\$ 3 million - concessions⁷⁶) are sufficient to clarify central and local responsibilities. To accomplish this, no further ceiling on land size is required. This will:

- expedite investment approval procedures
- comply with the policy of decentralising responsibilities involving state land
- create incentives for local authorities to participate in promoting investments

2. Ceilings for investment volumes should not be accompanied by regulations containing ceilings on production output (Law on Electricity). Accordingly, the latter should be abolished.

⁷⁶ US\$ 5 million: Savannakhet, Champassak, Luang Prabang, Vientiane province); US\$ 3 million: all other provinces.

3. Responsibilities to conclude lease and concession contracts for land use should be clearly set by law (DDFI/PDPI, MoF/OSA). Deviating regulations in other laws (Law on Agriculture, Law on Forestry) should be removed.

4. Responsibilities of DSA and DoL and the respective local line offices should be merged. Meanwhile, DSA and OSA ought to develop standard procedures for consultation with line divisions before entering a lease or concession agreement concerning registered and non-registered or developed and non-developed land. They should get support for this from all other relevant ministries and offices.

First steps:

- To avoid overlap of tasks and responsibilities by several administrative bodies (DSA, DoNLUPaD) all data collection, storage and management of state property should be limited to DSA/MoF as set out in ART. 9 State Property Law.
- DSA should request other relevant line ministries, departments and offices (DDFI, DoNLUPaD, MIH/POI, MAF/PAFO, DoL/POL, OSA) to submit data on registered and non-registered land gathered in the course of their specialised surveys or inspection activities (land titling, issuing investment authorisations and business licenses, concluded lease and concession contracts), that would be useful for the establishment of a land inventory (size and locations of plots, contract related data) to be established by DSA.
- OSA should conduct joint boundary survey and measurement activities with PLO in areas suitable for leases or concessions that are currently without a land certificate or title. PLO would record the data in the land registration book.
- OSA should conduct surveys on natural resources with the Geology Division of POI and record information on existing minerals.

Second step:

- GoL/PMO/MoF should, with international assistance, establish a computerised state land inventory, thereby centralising all land related data with DSA.

Section 5: Contract Management

5.1 Contract Formats

Model contracts on state land (MOU, PDA, and PCA) that meet international standards are currently available only for concessions on hydropower issued by LNCE. The standard format for mining concessions issued by MoF does not meet this standard.

The three remaining model contracts on concessions used by DSA and the provinces are not uniform and lack clarity and consistency. Some clauses are unfavourable to GoL⁷⁷. Some are too restrictive⁷⁸ or confusing to the investor⁷⁹. In particular, they lack clear and enforceable provisions on liabilities for breach of contract, compensation for damage, penalties, termination, and dispute settlement.

⁷⁷ For example, early contract termination by investor for lack of profitability.

⁷⁸ Prohibition to sub-lease or sub-concede. Obligation to pay land tax would even violate ART. 3.8, Ch. I, Decree on the Implementation of Presidential Decree on Land Tax.

⁷⁹ Prohibition to use state land as collateral could be confused with the prohibition to use the contract as collateral, as mentioned in subchapter 3.1.2. This last act, however, is explicitly permitted by ART. 19 of the Implementing Decree to Law of Land.

Contracts which forbid surface changes or soil removal, unlike concessions for hydropower and mining, are sometimes called lease agreements and sometimes concession agreements. Despite the fact that there are certain features that distinguish leases and concessions, there is no clear boundary drawn between these two contracts.

To use the term concession for both soil cultivation and soil removal, say by mining companies, pose problems because these activities do not have much in common. It would be easier to abolish concessions for land use and instead reserve that label for natural resource exploitation only. In practice, it is not useful to use different contracts for the same type investment since it confuses investors. Varying obligations concerning land use could be set during contract negotiations. Labels are unnecessary.

RECOMMENDATIONS:

1. The use of lease and concession contracts for granting rights to use state land (without exploiting natural resources like hydropower and minerals) for businesses should be:

- clarified and established by law, or be replaced by using just leases, since general practice does not draw clear boundaries between leases and concession that do not change the surface or soil (e.g. agricultural and tree plantations).
- contracts should contain clauses that are not negotiable (e.g. default, termination, damages, dispute settlement) and clauses that are negotiable (e.g. fees and term)

A proposed model lease agreement for businesses is presented in Annex 12.

5.2 Contract Registration

Provinces do not yet maintain a proper filing system for lease and concession contracts. OSA contract lists do not contain relevant land related data.

RECOMMENDATIONS:

1. To enhance the legal standing of lease and concession agreements and strengthen administrative capacities on the management of state assets, the following steps should be taken by local OSA, DSA, line ministries, departments and offices, as well as DDFI and GoL in general:

First steps:

- create safe and sufficient storage space for contract copies and separate the types of contracts; putting appropriate tags on them for storage at different places
- DSA: request other relevant line Ministries, Departments and Offices (DDFI, DoNLUPaD, MIH/POI, MAF/PAFO, DoL/POL, OSA) to submit data on registered and non-registered land gathered by them and fill in the form issued by DSA aimed at creating a state land database to combine all relevant data concerning the signed lease and concession contracts
- DSA: request the reporting of these data by all relevant administrative bodies within a reasonable time (two months) after receiving the form issued by DSA
- OSA: check data recorded by PLO in the land titling registration system
- OSA: compare the actual area of land with land survey maps from PLO
- OSA: check registration of concluded contracts involving titled plots with PLO regarding state land

Second steps:

- establish a regularly updated data information system by requesting all relevant administrative bodies, including DDFI, MAF, MIH, LDSC and LPA, to submit data on lease and concession contracts as well as on land to DSA, which in turn, would provide relevant summaries and analyses of information to these administrative agencies on a quarterly basis
- create a computerised database for centralised gathering, storage and maintenance of data concerning leases and concessions to be managed by DSA (as part of the larger state land inventory database)

Section 6: Price Setting Mechanisms

Land values, whether measured by the purchase price or rental prices should reflect the potential economic returns that can be generated from using the land. To promote the highest growth rate for the Lao economy, it is important that land be used for the most economically beneficial purpose and that the government or landowner obtains the highest possible price or rent. Agriculture and forest land give different returns according to the relative values of the harvest. Crops like coffee, cocoa, tea, and rubber, generally have a higher value than timber and should pay higher rents than tree plantations.

If agriculture and forest land is offered on a first come first served basis without an assessment of the potential land uses, there is a strong likelihood that the land will not be put to the most economically appropriate use, resulting in higher potential rents being lost for many years. Leasing fee rates have not been established uniformly, leaving provinces to apply different mechanisms, usually unconnected to market related criteria. Prices are low, leaving it to the investors to negotiate favourable rates. Sometimes, they even get land free of charge (e.g. OJI Paper leased 50,000 ha for a tree plantation with GoL holding a 15% equity share in the joint venture).

Setting concession fees and royalties by legal Decree seems to be a less appropriate way to generate market level revenue since rents vary and legal revisions would almost certainly lag well behind the market.

6.1 Business Valuation Method

In business terms, the land rental value is part of the 'net present value' of a particular project. Companies plan profitable investments by looking at current and future costs and revenues of a given project. The main criteria determining land rental values are:

- infrastructure (transportation costs, and hence cost of materials and price obtained for products, which will be reflected in the purchase price of land)
- site quality including soils and topography or volume and quality of minerals (average yield/exploitation)
- type of crop or mineral (cost and revenue)

The rental value of land used for an investment would be the earning surplus generated from crops (e.g. eucalyptus, coffee, rubber) after paying all the costs including labour, materials purchase, capital costs, any risk premium, and a reasonable profit.

To determine rental values of land for different sectors, economic data on yield, investment costs, and commodity prices on the world markets would have to be

collected. A model cash flow for eucalyptus plantations including a rental fee of US\$ 20/ha/year is presented in Annex 13.

6.2 Realisation of Rental, Concession and Royalty Fees

6.2.1 Auction or Bidding Procedure

An effective way to determine appropriate rental, concession and royalty fees would be the establishment of a public auction or bidding procedure because market prices are determined by supply and demand, including land⁸⁰. Rules on bidding for the procurement of goods, construction, maintenance and services have already been enacted⁸¹, as have rules on auctions for the sale of timber^{82 83}.

To prepare for auctions, authorities must identify land that would be best suited for leases or concessions. The starting or reserve price should be determined in advance by the government agency responsible for negotiating the lease by looking at, among other things, the available infrastructure, soil quality, and quality of minerals present.

By developing a pro forma statement, a clear value of the land being auctioned⁸⁴ would become available. The results would provide a good indicator of the land's worth. The investor offering the highest rent above the reserve price would be invited to negotiate for the lease, unless other criteria like technical competence needed to be considered.

6.2.2 Individual Negotiations

Fee rates may also be set by individual negotiations on leasing, concession or royalty fee rates with potential investors. To establish a business oriented fee rate, the investor would need to present a business plan including a pro forma statement on costs, revenues, and cash flow for the particular project being planned.

RECOMMENDATIONS:

First step:

- Update decrees that set concession fees, usage charges and royalties every three years. A rental fee rate of US\$ 20/ha/year for tree plantations could serve as an orientation for other sectors. A preliminary proposal on fees for leasing and concession agreements is presented in Annex 14.

⁸⁰ See document on LDSC in the annex on Vietnamese experiences on auctioning land use rights and infrastructure projects.

⁸¹ PMO Decree No. 03/PM of 09/01/2004.

⁸² Order of Prime Minister on the Management and Control of Forestry and Timber Business in 2005-2006, No. 46/PM of 21/11/2005).

⁸³ Middle prices (i.e. starting prices) for timber are oriented towards world market prices (1m³ = US\$ 165), adjusted by volumes and quality of wood.

⁸⁴ Comparative methods, e.g. looking at fee rates for leases, concessions or royalties of neighbouring countries and adjusting domestic rates accordingly seem to be a reasonable method. However, to systematically identify fee rates abroad would impose practical difficulties because of confidentiality requirements of privately negotiated agreements.

Second steps:

- As a basis for identifying appropriate rents, concession fees and royalties for the exploitation of natural resources, line ministries should establish monitoring units to collect and assess data on investment costs, yields and volume of exploited minerals per ha, and world market prices for commodities⁸⁵. Applying business methods is advisable because fees established by Decree may become outdated and not reflect price variations. The negotiating skills of state officials have to be strengthened. Showing more confidence in dealings with investors would increase the negotiating power of state authorities.
- To gather data for calculating rent, concession fees and royalties, request business plans from investors before entering negotiations. Item 10.2 on the general investment application form (designed to identify the estimated cash flow for the first three years of operation), would to be supplemented by details of the particular sector. An example is presented in Annex 13.
- Introduce public auctions or bidding procedures for state land leases and concession contracts.
- Free land should not be used as an investment incentive. Equity shares for GoL can only compensate for lost revenue if the investment is successful, and different accounting principles used by corporations vary, making dividends less secure. Rental and concession fees, subject to regular reviews and increases by the lessor, are collected annually and are a more reliable source of revenue.
- GoL should focus on rental and concession fees because they guarantee annual revenues for state land. Royalties on the other hand, represent a certain percentage of production output that can vary over time, giving investors the opportunity to offset them against corporate tax obligations.

Section 7: Monitoring Investments and Contract Enforcement

Ineffective monitoring at all levels is a result of poor communication between central and local levels. Centrally, line ministries and departments do not seem to agree on the MoF/DSA responsibilities as the central monitoring agency (ART. 9 State Property Law). Sometimes DoNLUPaD is considered the proper monitoring body while DSA should merely collect the fees. To maximise its earnings from leases, concessions, and royalties, GoL must monitor investments.

For example, a mining company would be subject to cadastre management (a public register showing the ownership details and land value for the purpose of taxation) and have plans showing future expenditures and details on relinquishment at the end of the contract period. The company would also be subject to health and safety inspections, have to demonstrate environmental measures undertaken and be responsible to fairly disclose production outputs.

⁸⁵ See, Bloomberg Publishers, www.advfn.com for oil, gold, metals and softs (coffee, etc.)

A tree plantation should be obliged to conduct surveys, provide a management plan for removing timber, how it will conduct road maintenance, observe codes of practice on planting and harvesting, and arrange insurance coverage for fire and other environmental hazards. After detecting a breach of contract or other cause limiting contractual performance, both parties should have resort to the courts or to arbitration panels to determine compensation.

RECOMMENDATIONS:

1. Monitoring authority

- DSA/OSA should be confirmed and supported by GoL as being responsible for overall management and monitoring of state assets as established by law (ART. 9 State Property Law).

2. Decentralisation

- Shift monitoring and enforcement activities for lease and concession contracts (except hydropower) to OSA as a coordinating body assisted by line divisions (PDPI, PAFO, POI, POT), to increase speed and overall efficiency, pursue the policy of decentralising responsibilities concerning state land, and create incentives for local authorities to keep generating revenues from investments.

Decentralisation would require:

- improved communication between central and local levels
- clear internal rules on procedures and with legal assistance, authorisation of OSA to enforce and settle disputes by arbitration or through the courts
- effective supervising mechanisms by DSA to prevent abuse of power by provinces or officials who exceed their powers or neglect their responsibilities (e.g. reporting systems, control visits, imposing sanctions – as decreed by PMO –
- train staff for monitoring and evaluating contract obligations and requirements listed in Annex 6 of the Implementation Decree of the Law on Promotion of Foreign Investment, and (OSA, PDPI, DoNLUPaD, Cabinet of Governor, PAFO, POI, POT)

3. Monitoring activities

Responsibilities of OSA:

- report monthly monitoring activities to DSA
- monitor payments and other contractual obligations of lessee/concessionaire
- use an IT system for a centralised reporting mechanism on leases and concessions

Responsibilities of other line offices:

- establish reasonable, comprehensible responsibilities at provincial level for combating illegal logging, upgrade inspection units, establish close cooperation with villagers by providing benefits to villagers who report incidents
- strengthen administrative capacities⁸⁶ locally to match investor skills by training inspection units and properly equipping them to conduct regular monitoring

⁸⁶ LNCE and its staff are not being addressed in this context. Their monitors are sufficiently skilled and trained.

- provide weekly reports on inspection results on lease and concession contracts to OSA
 - offer financial incentives to provincial staff in addition to their base salary
4. Enforcing contractual obligations and dispute settlement
- streamline laws on dispute settlement by deleting contradictory or unclear phrasing
 - streamline civil procedures for dispute settlement by involving arbitration panels, provincial and federal courts at appropriate stages
 - develop uniform internal procedures for dispute settlement panels and courts that serve the interests of both state authorities and the investor
 - in case of default by lessee/concessionaire, strengthen OSA ability to take action - by imposing fines, terminating the contract, and lodging claims with arbitration panels or the courts

References

PUBLICATIONS AND DOCUMENTS COLLECTED AND USED FOR THE STUDY ON STATE LAND LEASE AND CONCESSION (JUNE 2006)

I. PUBLICATIONS AND PRESENTATIONS

ADB, Model for the Proposed Lao Plantation Authority for the Forest Plantations Development Project, October 2005.

Documents on the Establishment of the State Company for Land Development and Services, prepared by: Department of National Land Use Planning and Development (DoNLUPaD), 2005.

Chris Lang and Bruce Shoemaker, Creating Poverty in Laos. The Asian Development Bank and industrial tree plantations, A World Rainforest Movement Briefing Paper, April 2006.

World Bank, “*Doing Business in 2006*”, <http://www.doingbusiness.org>

World Bank, From Resource Potential to Growth and Poverty Eradication – The Lao Mining Sector – Presentation, Vientiane, 30 September

II. LAWS, RULES AND REGULATIONS

Rank	Title	Lao	Original in English	English	
				Typed translation	Hand- written translation
1	Constitution as amended on 28 May 2003	x		x	
2	Tax Law, No. 04/NA, on 19 May 2005	x		x	
3	Law on the Promotion of Foreign Investments, No. 11/NA, on 22 October 2004	x		x	
4	Law on State Assets, No. 09/NA, on 12 October 2004	x		x	
5	Land Law, No. 04/NA, on 21 October 2003	x		x	
6	Law on Local Administration, No. 47/NA, on 21 October 2003.	x		x	
7	Law on Processing Industry, No. 01/99/NA, on 3 April 1999	x			
8	Law on Agriculture, No. 198/NA, on 10 October 1998	x		x	
9	Law on Mining, No. 04/97/NA, on 12 April 1997	x		x	
10	Law on Electricity, No. 02/97/NA, on 12 April 1997	x		x	
11	Forestry Law, No. 01/96/NA, on 11 October 1996	x		x	
12	Additional Resolution of the Prime Ministers No. 34/PM, on 1st December 1992	x		x	
13	Resolution of the Council of Ministers, No. 23/PMC, on 18 April 1990	x			x
14	Resolution of the Council of Ministers on State Tax System, No. 47/PMC, on 26 June 1989	x		x	
15	Draft of the Prime Minister's Decree on State Land Lease and Concession, 2006	x		x	
16	Decree of the Prime Minister on the Implementation of the Law on the Promotion of Foreign Investment, No. 301/PM, on 12 October 2005	x		x	
17	Decree on the Implementation of the Land Law, No. 101/PM, on 20 April 2005	x		x	
18	Decree of the Prime Minister on the Implementation of the Law on Mining, No. 209/PM, on 30 October 2002	x			
19	Decree on Implementation of the Law on Electricity, no. 157/PM, on 23 September 2002	x			
20	Decree of the Prime Minister on the Sustainable Management of the Production Forest, No. 59/PM, on 22 May 2002	x			
21	Decree of the Prime Minister no. 194/PM, on 12 November 1994, on transforming of the land use right, and the transforming of the State ownership regarding houses, vehicles, and household equipments for the State officials	x		x	
22	Decree on Document Registration, No. 52/PM, on 13 March 1993	x		x	

23	Order of the Prime Minister on Forest and Forest Business Management for the Year 2005-2006, No. 46/PM, on 21 November 2005	x			
24	Instruction of the Prime Minister Regarding the Policies to Building the Province to Become the Strategic Unit, the District as Budget-Planning Unit and the Village as the Implementation unit, No. 01/PM, on 11 March 2000.	x		x	
25	Directive of the Minister of the Prime Minister's Office on the Implementation of the Prime Minister's Decree on the Implementation of Land Law No. 101/PM, No. 079/PMO, on 21 February 2006	x		x	
26	Ministerial Direction of the Minister of Finance on Auction Rules to Purchase with the State Timber and Forest Products At Yard II, No. 2298/MoF, on 29 October 2004	x			
27	Ministerial Direction of the Minister of Finance on Auction to Purchase with the State Timber and Timber Resources (Timber, Medicinal Wood, Bamboos, and Non-Timber Products), Particularly Trees, Areas of Project Construction, Etc., No. 2297/MoF, on 29 October 2004	x			
28	Ministerial Direction of the Minister of Finance on the Implementation of the Law on State Assets, no. 2085/MoF, on 1 October 2004	x		x	
29	Ministerial Direction on the Organization for the Implementation of the Presidential Decree on Land Tax, No. 1665/MoF, on 6 November 2000	x		x	
30	Directive of the Minister of Finance on the Implementation of the State Budget Plan for 2005-2006, No. 2372/MoF, on 7 November 2005	x		x	
31	Technical Explanation Report. Presentation of the Amendments Brought to the Presidential Decree on Land Tax No. 03/OPR, of 12 May 2000, and Decree No. 150/PM, of 22/10/2000.	x		x	
32	Ministerial Direction on Fees for First Registration, No. 1562/MoF, on 26 October 1998	x			
33	Ministerial Direction on the Fee Rate of Issuing Land Title, No. 2232/MoF, on 27 November 1997	x		x	
34	Decision of the Minister of Industry and handicrafts on Mining Investment Standards, No. 1950/IH, on 29 December 2005	x		x	
35	Directive on the Implementation of the Ministerial Direction on the Fees for Land Title Issuance and Surveying, No. 266/DLM, on 2 January 1998	x			

III. OTHER NATIONAL LEVEL DOCUMENTS

Rank	Title	Lao	Original In English	English	
				Typed translation	Hand-written translation
36	Department for Promotion and Management of the Domestic and Foreign Investment, 2006, Foreign Investments in Lao PDR		x		
37	Department for Promotion and Management of the Domestic and Foreign Investment, 2006, Hydropower Projects	x		x	
38	Department for Promotion and Management of the Domestic and Foreign Investment, 2006, Agricultural Projects	x		x	
39	Department for Promotion and Management of the Domestic and Foreign Investment, 2006, Industrial Projects	x		x	
40	Department of State Assets, 2006, State Asset Revenues 1994-2005	x		x	
41	Department of State Assets, 2006, Revenues from Timbers 2002,2003,2004,2005, and 2006	x		x	
42	Department of State Assets, 2006, Summary of State Land and Housing Lease	x		x	
43	Department of State Assets, Standard form for authorisation to utilise State-owned land/housing	x		x	
44	Department of State Assets, Standard form on Agreement Relating to the Concession of the Survey and Exploitation	x		x	
45	Department of State Assets, Standard form for lease of State-owned land/housing	x		x	
46	Department of Geology and Mining, 2006, Mining Projects	x		x	
47	Potash Mineral Prospecting and Exploration Agreement in Vientiane Province, 2006, February		x		
48	Zinc Mineral Prospecting and Exploration Agreement in Vangvieng, Kasi District, Vientiane Province, Lao PDR, 2005, 9 December		x		
49	Bauxite Reconnaissance, Prospecting, and Exploration Agreement in Nong Eu, Pakxong District, Chmapassak Province, 2005, October		x		
50	Draft on Rubber Plantation at Ou Tay, Yod Ou District, Phongsali Province, 2006	x			
51	Lease Agreement on Development of an International Five Star Hotel Done Chan, 2004, 3 June		x		

STATE LAND LEASES & CONCESSIONS

52	Hydropower Concession Agreement Signed by Lao PDR		x		
53	Hydropower Concession Agreement Signed by Lao PDR		x		
54	Draft of Standard MOU on Hydroelectric Power Project		x		
55	GTZ, Study on Land Tax and Fee Registration, March 2006	x	x		
56	Government of Lao PDR, 2006, Annual Round Table Process Information Meeting, 19 January		x		
57	Official Gazette, Ministry of Finance, 2004, 2005		x		
58	Asian Bank for Development, 2005, Model for the Proposed Lao Plantation Authority for the Forest Plantations Development Project. October		x		
59	Notice of the Minister of Finance, No. 2480/MoF, on 8 November 2005, on Land-based Revenues, 2004-2005, 2005-2006, in 18 provinces and Vientiane CC.	x			x
60	World Bank, 2005, From Resource Potential to Growth and Poverty Eradication. The Lao Mining Sector. 30 September.		x		
61	GTZ, 2005, Study on Land Markets in Urban and Rural areas of Lao PDR, March	x	x		
62	Documents on the Establishment of the State Company for Land Development and Services. 2005. DoNLUPaD	x	x		
63	GTZ, 2004, Study on Land Allocation to Individual Households in Rural areas of Lao PDR, December	x	x		
64	Benjamin H. Hogson, 2004, Village Forestry and Certification in Lao PDR: Status and Analysis. WWF Lao Program, December.		x		
65	Center-Province Relations: Lao PDR, Prachi Mishra (IMF)		x		
66	World Bank Project Appraisal Document		x		
67	Medium Term Implementation Framework for the Decentralisation Strategy of the Lao PDR Government System, 2003 (GPAR)		x		
68	Lao PDR Economic Monitor, 2005, (World Bank)		x		
69	Technical Assistance, 1999, Report of Seminar on Management of State Land, Report No. A12.		x		
70	Summary of the Implementation of the Budget for 2004-2005 and Budget Plan for 2005-2006		x		
71	Available statistics on State land in four southern provinces (Champassak, Khammouane, Saravane, and Savannakhet, May 2006		x		
72	Comments of Mr. Khamtan Vongphansipraseut on the Draft of Department of State Assets	x		x	
73	Analysis of Mr. Khamtan Vongphansipraseut on the Steps toward Mining Concession	x		x	
74	Analysis of Mr. Khamtan Vongphansipraseut on Hydropower and Mining Concession Contracts	x		x	
75	Comments of Mrs. Boukham Soulivann on the Draft of Department of State Assets	x		x	
76	Comments of Mrs. Boukham Soulivann on the State Enterprise on Land Development and Service	x		x	
77	Comments of Mrs. Chittason Bounkhong on the Draft of Department of State Assets	x		x	
78	Analysis of Mrs. Chittason Bounkhong on Differences and Similarities Between Lease and Concession	x		x	
79	Analysis of Mrs. Chittason Bounkhong on Legal Framework regarding State Land Lease and Concession	x		x	
80	Analysis by Mr. Khamdeng Oonmanivong on Registration of Transactions	x		x	
81	Database on State land by Mr. Khamdeng Oonmanivong	x		x	

IV. PROVINCIAL DOCUMENTS

Rank	Title	Lao	Original In English	English	
				Typed translation	Hand- written translation
CHAMPASSAK PROVINCE					
82	Minute of a meeting with line services on 31 March 2006		x		
83	Short summary of the State land/housing managed by the province, 27 March 2006 (1 page)	x		x	
84	Synthesis of state land/housing in the province, 27 March 2006 (2 pages)	x		x	
85	Personal interviews on 28 and 30 March 2006		x		
86	Standard form of State land concession agreement	x		x	
87	List of private sectors involving in State land/housing leases and concessions	x		x	
88	Lease contract monitoring table (Form)	x		x	
89	Monthly summary of rental fee (Form)	x		x	
90	Table for monitoring mining exploration (form)	x		x	

STATE LAND LEASES & CONCESSIONS

91	Table for monitoring payments for concession fee and tax on natural resources (form)	x		x	
92	Table for monitoring the submission of commission fee and tax on natural resources to the State budget (form)	x		x	
93	Resolution of the Party committee meeting on the province's finance-budget tasks, 13 December 2005	x		x	
94	Report from the head of the province's Finance Division submitted to the finance meeting of the province's Party committee, 12-13 December 2005	x		x	
95	Standard form of the authorisation for utilisation of the State-owned land and housing	x		x	
96	Verdict of the People's Court on 9 September 2004 regarding the expulsion of a tenant from the State land/housing	x		x	
97	Rules on tendering of timber from the State	x		x	
98	Notice for tender of seized timber	x		x	
99	Notice N. 773, on 12 May 2005, on proposing price of timber and the allotment of timbers exploited from the log yard II	x		x	
100	Request to participate in the bids for purchasing seized wood from the Government	x		x	
101	Table for calculating wood price at the log yard II of Khong District, Champassak province	x		x	
102	List of timber under quota in 2005-2006	x		x	
SARAVANE PROVINCE					
103	Lease agreement for State land/housing, No. 343, on 4 September 2001	x		x	
104	Summary of State-owned land allowed for rent and concession in Saravane province, No. 11, on 16 November 2005	x		x	
105	Summary of area of State-owned land in Saravane province, No. 11, on 16 November 2005	x		x	
106	Record book of State land/housing used in the province, 2003-2004	x		x	
107	Agreement on cement factory project	x		x	
108	Agreement on cassava plantation in Lao Ngam District	x		x	
109	Notice of the Minister of agriculture and Forestry to Saravane province on the plan for reforestation, logging, and gathering of non-timber products in 2004-2005	x		x	
110	Contract on sale/purchase of logs at log-yard II, in 2005-2006	x		x	
111	Notice of the Minister of agriculture and Forestry to the Saravane Governor, on the hand-over of a logging plan for falling trees, and branches for the year 2005-2006, 10 March 2006	x		x	
112	Regulation for log dealing tender, 2005-2006	x		x	
113	Summary of revenues from timber sale in 2004-2005	x		x	
SAVANNAKHET PROVINCE					
114	Minute of the meeting with GTZ consultants, on 4 April 2006	x		x	
115	Summary of the situation on State land/housing in the province, 31 March 2006	x		x	
116	State land lease agreement between the Office of State Asset and Saylattan Wood Processing Factory, on 11 June 2004	x		x	
117	State land lease agreement for bus station, on 24 July 2001	x		x	
118	State land lease agreement with PVC Inter Plastic, on 29 April 2004	x		x	
119	State land lease agreement with Km2 Market, on July 1993	x		x	
120	State land lease agreement with Kolao, on 17 December 1996	x		x	
121	Agreement amending the mineral exploration and production agreement signed by the Government of the Lao PDR, 30 November 2004	x		x	
122	Payment notice No. 1952, on 6 October 2005, regarding the concession fee for gypsum mining at Sibounheuang village, Champhone District	x		x	
123	Payment notice No. 1953, on 6 October 2005, regarding the concession fee for gypsum mining at Soklom village, Champhone District	x		x	
124	Payment notice No. 489, on 6 October 2005, regarding the concession fee for gravel mining at Alouai-mai village, Phin District	x		x	
125	One page of balance sheet of Gypsum Exploitation Company from January to March 2006	x		x	
126	Standard form of State land concession agreement	x		x	
127	Provisional regulation by the Governor of Savannakhet, No. 238, on 19 April 2002, on delegating responsibilities in the management of State budget revenues among the province, districts, and villages	x		x	
128	Notice No. 96, on 16 March 2005, on bids for timber purchasing intended to wood processing companies and domestic as well as international import-export businessmen operating timber business	x		x	
129	Bidding regulation for sale of timber, in 2004-2005, on 16 March 2005	x		x	
130	Report of the Bidding Committee, on 15 March 2005, to Deputy	x		x	

STATE LAND LEASES & CONCESSIONS

	Governor on the result of bids on timber sale (quota 2004-2005)				
131	Notice No. 114, on 28 March 2005, announcing the list of bidding winners in three log yards of Dongsithouan Production Forest	x		x	
132	Log transaction contract No. 122, on 31 March 2005	x		x	
133	Summary report on timber quota for 2004-2005	x		x	
KHAMMOUANE PROVINCE					
134	Written answers to GTZ consultants queries faxed by Department of State Assets	x		x	
135	Payment notice No. 2352, on 30 November 2005, regarding the plumb exploration in Nongseun village, Hinboun District	x		x	
136	Payment notice No. 1957, on 2005, regarding gypsum exploration in Tung village, Sebangfai District	x		x	
137	List of companies leasing State land/housing in Thakhek, Hinboun, and Nongbok, on 1 February 2005	x		x	
138	Summary of concession fee during 2004-2005, on 23 August 2005	x		x	
139	Summary of concession fee payment in 2004-2005, 23 August 2005	x		x	
140	Regulation No. 03, on 20 January 2005, set by the Province's Bidding Committee regarding conditions to enter in the bids	x		x	
141	Notice No. 15, on 16 March 2005, on bidding timber at log-yard II	x		x	
142	Quotation for timber bidding, on 24 March 2005	x		x	
143	Minute of the meeting on the opening of bidding envelopes, on 24 March 2005	x		x	
144	Result of the bidding, on 24 March 2005	x		x	
145	Contract for purchase of logs at yard II	x		x	
146	Ministry of Agriculture and Forests to the province regarding plan for forest plantation, logging, and harvesting of non-timber products, No. 322, on 21 October 2004	x		x	

PART 3

ANNEXES

Annex 1

TERMS OF REFERENCE

for a Study on State Land Leases and Concessions in Lao PDR

Background:

Article 3 of the 2003 revised Lao land law permits resident aliens, foreigners and their organizations to gain access to land through lease or concession arrangements. Chapter 3 (Rights and Obligations of The Land User), Section 2 (Rights and Obligations of Resident Aliens, Stateless Persons and Foreigners Relating To Land Lease or Concession) goes into much greater detail, spelling out the time periods of these leases and concessions and the rights and obligations of resident aliens, stateless persons, and foreigners relating to land leases or concessions.

There have been extensive discussions within government over the differences between leases and concessions. The government is unclear about which of the two alternatives offers the best mechanism to promote foreign investment, derive the largest benefit to the state, yet ensure that the land is being properly utilized and damage to the environment is minimized.

In recent months the Government of Lao PDR has formally adopted a policy of exploring new ways and means of transforming land assets into capital. A State Enterprise for Land Development and Services was officially set up in December 2005 in order to further develop the investment in state land, to enter into public-private partnerships and joint ventures for land development and to increase state revenue from state land units in general. The creation of the new state enterprise could also have an impact on how state land leases and concessions are allocated and managed in future and overlaps with the responsibilities of the existing Department of State Assets seem unavoidable.

Different countries have used land leases and concessions as a mechanism to provide access to state land for foreign investors while retaining some control over the land. However, the Lao PDR has not yet made a clear policy decision on which option or combination of the two mechanisms it wishes to pursue.

At the same time, the demand for land leases and land concessions especially by foreign investment companies is increasing rapidly. After forest resources and hydropower, foreign investment is increasingly focussing on mining concessions and agricultural land concessions, such as rubber, coffee, tea plantations and livestock farms. Land which is still available in Lao PDR due to the relatively small population numbers, therefore has become a commodity at the center of the interest of investment firms from countries such as China, Thailand and Vietnam.

On the other hand, from the limited information available on lease and concession agreements of the past, it seems that the Government of Lao PDR has not yet developed this source of revenue to its full capacity. There are still several problems pertaining to the contractual agreements signed by the responsible institutions. Some cases of non-payment of lease or concession fees as well as tax evasion have been reported.

The Department of State Assets and Management (DSA) has recently drafted a Prime Minister's decree on the rates for state land leases and housing. This draft is currently under review by a specific working group set up by the Minister of Finance. A final version of the decree will be presented to the Government for endorsement at the end of February or early March 2006. First results of the study on land leases and concessions could,

provided the timing can be maintained, contribute to the on-going refinement of the legal framework and the policy leading state land lease and concession activities.

Objective:

The objective of this consultancy is to provide assistance and advice to the Government of Lao PDR to clarify options and alternatives for leases and concessions, develop the procedures and review the legal framework for acquiring leases and concessions, make policy recommendations and draft sample contract documents.

Timing:

The study on state land leases and concessions in Lao PDR will commence in March 2006 and must be concluded before the end of May 2006. The preparation of the study will require the research team to work together over a total period of up to 9 weeks, in two phases. The exact time periods of these two working phases will be decided between the German Teamleader of LPDP, the supervising committee and the team of consultants.

Team Composition:

The study team will consist of a total of 5 full-time members and some part-time contributions:

1 international consultant with specific experiences in land leases and concessions, with a MSc. or corresponding degree in land management, geography or law;

4 national full-time consultants representing

a) the Department of State Assets and Management (DSA),

b) the Department of Land (DoL) (both under the Ministry of Finance),

c) the Department of Forestry (DoF) (under the Ministry of Agriculture and Forestry) and
d) the Department of National Land Use Planning and Development (DoNLUPAD) (under the Prime Minister's Office).

The representative of DSA will take a leading role and be in charge of coordinating work among the Lao team members.

Furthermore, representatives of the Ministry of Justice (MoJ) and the Ministry of Industry and Handicraft (MIH) will be involved in the study on a part-time basis.

The study team will be provided office accommodation within the Department of State Assets and will report to a steering group supervising the elaboration of the study. GTZ will provide transport to the provinces and within Vientiane by car, including a driver.

Apart from working in Vientiane Municipality and Province, the team will visit at least 3 provinces to investigate land leases and concessions in rural and urban areas.

Payment of Consultancy Fees:

GTZ will pay the consultancy fees, per diems, accommodation and up to two return tickets in economy class for the international consultant from his/her country of residence to Vientiane/Lao PDR. The national consultants will be paid consultancy fees, daily subsistence allowances and accommodation by GTZ according to the regulations set by the organisation in accordance with the Department of International Cooperation – Ministry of Foreign Affairs. GTZ will also cover all expenses in connection with the presentation of the results of the study and its publication.

Travel costs for all team members to one neighboring country will be provided by GTZ.

Specific Tasks and Scope:

- Analyse the present legal framework governing leases and concessions of land in Lao PDR; study legal texts, literature and available documents on land leases and concessions
- Assess the draft sub-decree prepared by the Department of State Assets Management under the Ministry of Finance concerning state land leases and concessions
- Investigate terms and conditions of present lease agreements for state lands and property
- Investigate terms and conditions of present land concession agreements
- Assess the current situation and potential problems of lessees and concessionaires to use titles and lease or concession agreements as collateral for access to credit
- Identify the possible development of a secondary market for state land leases and sub-leasing in land concession areas
- Analyse the situation concerning state land provided to Government officers for long-term leases (Decree No. 194) and the recent decision on land transfer to some of these individuals (draft directive by the Prime Minister on the implementation of Art. 20,21 and 22 of the implementation decree to the Land Law)
- Meet with government officials at all line agencies concerned to identify policy issues related to lease and concession arrangements
- Visit one neighbouring country (Vietnam or Cambodia) to assess the experience with land leases and concessions and identify appropriate literature reviewing other country experiences
- Draft a set of standard contracts to be used for state land leases and land concessions in future
- Develop various options concerning the transformation of state land assets into capital and outline the procedures and regulations required
- Propose a system for future institutional responsibilities with regards to land leases and concession, taking into consideration the policy of the Government of Lao PDR on decentralisation and deconcentration.

Expected Outputs:

The following outputs are to be provided by the study team:

- ❖ An outline of the methodology of research and a tentative workplan for the overall study at the end of the first week of mission; this outline is to be submitted to the German Teamleader of LPDP and the steering committee
- ❖ A draft structure of the report at the beginning of the second part of the mission
- ❖ A first presentation of findings and recommendations to LPDP and the Steering Committee and a draft report
- ❖ A second presentation to the National Land Policy Committee (NLPC) and representatives of other relevant line agencies (to be conducted during the last week of the mission)
- ❖ A final report, including some of the comments made during the presentations. The final report will be prepared simultaneously in English and Lao language. A GTZ employed translator will assist the team with the necessary translations.

Remark:

These Terms of Reference refer to the tasks and outputs of the entire team. The individual sharing of tasks and responsibilities is left to the team members.

Annex 2

Approved Foreign Investment 2000-2005

	Year	2001		2002		2003		2004		2005		2000-2005	
	Sectors	Projects	Value of Investment (US \$)	Projects	Value of Investment (US\$)	Projects	Value of Investment (US\$)	Projects	Value of Investment (US\$)	Projects	Value of Investment (US\$)	Projects	Value of Investment (US\$)
1	Agriculture	13	18,616,250	6	13,988,000	16	17,321,800	19	75,704,017	21	17,352,240	75	142,982,307
2	Banking	7	5,096,000					1	10,000,000	0	5,000,000	8	20,096,000
3	Construction	2	350,000	5	13,948,000	3	3,247,751	7	9,991,123	3	1,550,000	20	29,086,874
4	Consultancies	3	520,332	3	553,332	4	620,000	4	1,900,700	1	200,000	15	3,794,364
5	Electricity Generation			1	360,000,000	6	85,800,000	6	5,500,000	10	1,065,250,000	23	1,516,550,000
6	Garment	4	4,150,000	3	4,400,000	9	2,770,000	3	3,100,000	1	300,000	20	14,760,000
7	Hotel & Restaurant	2	245,000	5	1,135,000	11	48,795,314	8	7,000,000	10	13,109,200	36	70,284,514
8	Industry & Handicraft	12	3,090,570	17	59,938,067	45	80,805,248	37	35,375,470	19	14,596,280	130	193,805,635
9	Mining	2	8,900,000	1	500,000	25	20,728,679	24	312,109,743	39	93,538,625	91	435,777,038
10	Services	14	10,451,560	20	16,511,100	33	60,297,610	23	17,479,069	20	20,865,477	110	125,604,816
11	Telecom			1	12,940,000			2	27,000,000			3	39,940,000
12	Trading			15	4,710,594	21	140,098,410	19	19,000,000	11	7,855,000	66	171,664,004
13	Wood Industry	5	2,678,000	3	3,373,000	5	5,502,327	8	8,988,669	8	5,690,294	29	26,232,290
Total:		64	54,097,712	80	492,037,093	178	465,987,139	161	533,148,782	143	1,245,307,116	626	2,790,577,842

Source: Department for Promotion and Management of Domestic and Foreign Investment (DDFI), Committee for Planning and Investment, 2006

Annex 3

SELECTED REVENUES FROM STATE ASSETS (in million Kip)

Year/ Institutional Responsibility in collection	I. TOTAL Revenues from State Assets	II. Sub-total of 1+2+3+ 4+5+6	II:I %	1. Tax on Natural Resources	2. Housing Leases	3. Business Leases	4. Concessions	5. Royalty	6. Timber
1994-1995									
Total	21,540	6,600	30.64	576	931	4,696	397		
DSA	16,735	5,031	30.06	28		4,696	307		
OSA	4,805	1,569	32.65	548	931		90		
1995-1996									
Total	27,225	4,937	18.13	700	1,157	2,684	396		
DSA	22,046	2,742	12.44		299	2,130	313		
OSA	5,179	2,195	42.38	700	858	554	83		
1996-1997									
Total	49,841	7,112	14.27	1,275	1,799	3,771	267		
DSA	43,295	3,890	8.98	10	224	3,504	152		
OSA	6,546	3,222	49.22	1,265	1,575	267	115		

Year/ Institutional Responsibility in collection	I. TOTAL Revenues from State Assets	II. Sub-total of 1+2+3+ 4+5+6	II:I %	1. Tax on Natural Resources	2. Housing Leases	3. Business Leases	4. Concessions	5. Royalty	6. Timber
1997-1998									
Total	65,882	16,353	24.82	1,997	5,095	4,512	262	4,487	
DSA	55,485	11,428	20.60		2,780	3,916	245	4,487	
OSA	10,397	5,125	49.29	1,997	2,315	596	217		
1998-1999									
Total	232,959	39,752	17.06	6,529	7,571	7,263	1,016	17,373	
DSA	204,689	26,534	12.96		2,851	5,877	433	17,373	
OSA	28,270	13,218	46.76	6,529	4,720	1,386	583		
1999-2000									
Total	413,440	53,254	12.88	14,085	8,366	6,850	1,608	22,345	
DSA	351,358	28,765	8.19		1,687	5,375	481	21,222	
OSA	62,082	24,589	39.61	14,085	6,679	1,575	1,127	1,123	
2000-2001									
Total	591,227	114,139	19.31	22,505	10,082	28,850	1,333	51,369	
DSA	508,537	79,556	15.64	94	2,121	26,958	395	49,988	
OSA	82,690	34,583	41.82	22,411	7,961	1,892	938	1,381	
2001-2002									
Total	967,252	433,715	44.84	17,078	13,705	8,716	1,590	46,502	346,124
DSA	536,150	314,895	58.73	808	2,751	7,049	173	44,795	259,319
OSA	431,102	118,819	27.56	16,270	10,954	1,667	1,417	1,707	86,804

Year/ Institutional Responsibility in collection	I. TOTAL Revenues from State Assets	II. Sub-total of 1+2+3+ 4+5+6	II:I %	1. Tax on Natural Resources	2. Housing Leases	3. Business Leases	4. Concessions	5. Royalty	6. Timber
2002-2003									
Total	837,172	301,056	35.96	22,722	20,385	15,244	3,036	44,998	194,671
DSA	551,469	230,855	41.86		5,457	12,905	1,199	44,112	167,182
OSA	285,703	70,201	24.57	22,722	14,928	2,339	1,837	886	27,489
2003-2004									
Total	908,371	321,273	35.37	32,382	16,099	11,692	4,423	31,643	225,034
DSA	540,248	253,850	46.99		3,783	9,920	1,209	31,203	207,735
OSA	368,123	68,052	18.49	32,382	12,316	1,772	3,214	440	17,928
2004-2005									
Total	1,066,485	413,608	38.78	94,799	44,232	20,025	8,081	57,105	189,366
DSA	699,083	217,909	31.17	9,085	23,394	17,681	1,073	56,544	110,132
OSA	367,401	195,698	53.27	85,714	20,838	2,344	7,008	561	79,233

Source: Department of State Assets, Ministry of Finance, 2006

Notes:

1. The figures are based on monthly reports.
2. Tax on Natural Resources: mining output, timber
3. Royalties: revenues collected from hydropower, tobacco, and gambling.
4. Total includes items others than those recorded in the table, such as sale of state assets.
5. Total from 1994 to 2001 does not include revenues from timber, since figures are not available. From 2001 to 2004, the total includes revenues from timber.
6. In 2004-2005, state asset revenues are representing 1.8 % of GDP, and state assets based on revenues from land are roughly about 0.24 % of GDP.

Annex 4

**REVENUES FROM TIMBER
(INCOMPLETE)
2004-2005 and 2005-2006
In LAK**

Items	2004-2005		2005-2006	
	Target figure	Actual figure	Target figure	Actual figures from 7 months
Total 1+2	150,000,000	189,366,556,418	150,000,000	67,073,515,121
1. Government Quota	150,000,000	109,132,753,428	150,000,000	16,389,915,039
a. Quota for 2004-2005	150,000,000	89,600,738,226	150,000,000	9,931,158,164
b. Quota from previous year(s)		20,532,015,202		6,458,756,875
2. Timber of the provinces		79,233,802,990		50,683,600,082

Source: Department of State Assets, Ministry of Finance, 2006

**REVENUES FROM TIMBER
2003-2004**

	Total 1 + 2	1. Govern- ment Quotas	a. Quota for 2003-2004	b. Quota from previous years	2. Revenues from timber sale by provinces
TOTAL	225,034,620,595	207,735,820,997	159,880,929,749	47,854,891,248	17,298,799,598
DSA	3,145,378,343	3,145,378,343	3,145,378,343	0	
Provinces	221,889,242,252	204,590,442,654	156,735,551,406	47,854,891,248	17,298,799,598
Vientiane Municipality	406,039,785	406,039,785	406,039,785	0	0
Phongsaly	485,807,500	485,807,500	485,807,500	0	0
Luang Namtha	1,627,521,954	1,624,304,154	1,362,515,663	261,788,491	3,217,800
Oudomxay	1,877,841,025	1,255,341,631	928,667,636	326,673,995	622,499,394
Bokeo	540,447,564	540,447,564	540,447,564	0	0
Luang Prabang	929,015,500	929,015,500	929,015,500	0	0
Sayabouli	3,761,047,289	3,761,047,289	765,918,826	2,995,128,463	0
Xieng-Khouang	8,822,021,720	7,092,140,430	7,092,140,430	0	1,729,881,290
Huaphan	2,122,239,746	1,160,240,456	1,068,406,356	91,834,100	961,999,020
Vientiane	11,168,981,432	11,168,981,432	10,493,959,432	675,022,000	0
Bolikhamxay	17,848,986,492	17,848,986,492	15,409,491,772	2,439,494,720	0
Khammouane	57,152,128,250	57,152,128,250	47,167,252,450	9,984,875,800	0
Savannakhet	33,798,607,540	33,798,607,540	33,796,849,850	1,757,690	0
Saravane	3,356,498,064	0	0	0	3,356,498,064
Champassak	59,059,117,841	54,468,183,449	35,128,190,586	19,339,992,863	4,590,934,392
Sekong	7,291,304,253	7,291,304,253	0	7,291,304,253	0
Attapeu	6,737,416,835	4,890,395,862	619,431,389	4,270,964,473	1,847,020,973
Saysomboun	4,904,219,732	717,471,067	541,416,667	176,054,400	4,186,748,665

**REVENUES FROM TIMBER
2002-2003**

	Total 1 + 2	1. Govern- ment Quotas	a.Quota for 2002-2003	b.Quota from previous year	2. Revenues from timber sale by provinces
TOTAL	194,671,813,488	167,182,470,172	142,287,648,911	24,894,821,261	27,489,343,316
DSA	0	0			
Provinces	194,671,813,488	167,182,470,172	142,287,648,911	24,894,821,261	27,489,343,316
Vientiane Municipality	485,605,600	485,605,600		485,605,600	
Phongsaly	962,348,000	962,348,000	743,092,000	219,256,000	
Luang Namtha	1,101,105,436	1,101,105,436	20,210,511	1,080,894,925	
Oudomsay	1,006,325,416	1,006,325,416	870,847,600	135,477,816	
Bokeo	1,651,211,144	350,418,296	58,314,720	292,103,576	1,300,792,848
Luang Prabang	0	0			
Sayabouli	824,355,104	824,355,104	824,355,104		
Xieng- Khouang	6,472,020,020	6,038,482,020	6,038,482,020		433,538,000
Huaphan	2,653,670,621	2,653,670,621	1,469,437,431	1,090,714,820	93,518,370
Vientiane	17,275,691,676	16,981,814,676	16,115,434,219	866,380,457	293,877,000
Bolikhamxay	14,669,595,204	9,710,988,096	9,623,284,470	87,703,626	4,958,607,108
Khammouane	69,779,348,500	52,997,547,000	44,717,292,760	8,280,254,240	16,781,801,500
Savannakhet	6,368,687,940	6,368,687,940	5,937,826,122	430,861,818	
Saravane	9,601,224,344	9,601,224,344	9,601,224,344		
Champassak	24,000,557,055	20,498,844,565	18,632,069,240	1,866,775,325	3,501,712,490
Sekong	16,352,278,097	16,352,278,097	15,432,727,370	919,550,727	
Attapeu	17,031,259,331	16,905,763,331	11,965,738,000	4,940,025,331	125,496,000
Saysomboun	4,436,530,000	4,436,530,000	237,313,000	4,199,217,000	

REVENUES FROM TIMBERS
2001-2002

	Total 1 + 2	1. Central level Quotas	a. Timber of gov. (Quota: 300,000 m3)	b. Timber of gov. (Quota: 100,000 m3)	c. Timber Years 1999- 2000- 2001	2. Provincial level quotas
TOTAL	346,124,828,877	259,319,894,878	102,980,468,717	31,564,457,960	124,774,968,201	86,804,933,999
DSA	1,551,183,612	1,551,183,612	1,551,183,612			
Prov.	344,573,645,265	257,768,711,266	101,429,285,105	31,564,457,960	124,774,968,201	86,804,933,999
Vientiane Municipality	563,301,000	563,301,000	563,301,100			
Phongsaly	1,567,500,000	1,567,500,000	1,567,500,000			
Luang Namtha	86,500,000	0				86,500,000
Oudomsay	866,943,480	866,943,480	866,943,480			
Bokeo	2,213,010,646	0				2,213,010,646
Luang Prabang	0	0				
Sayabouli	0	0				
Xieng-Khouang	872,733,900	0				872,733,900
Huaphan	972,934,500	972,934,50 0	972,934,500			
Vientiane	15,071,002,810	7,570,213,594	7,570,213,594			7,500,789,216
Bolikhamxay	6,144,294,776	5,470,266,776	5,470,266,776	280,958,957		674,028,000
Khammouane	167,059,513,752	145,806,096,516	21,045,114,300	19,248,380,500	105,512,601,716	21,253,417,236
Savannakhet	23,205,084,456	7,957,493,299	7,957,493,299			
Saravane	28,246,170,374	12,407,916,112	12,407,916,112			
Champassak	42,382,456,180	23,772,245,013	23,772,245,013	12,035,118,503		
Sekong	9,267,496,670	9,267,496,670	9,267,496,670			
Attapeu	36,956,767,182	32,448,368,767	32,448,368,767			
Saysomboun	9,097,935,539	9,097,935,539	9,097,935,539			

Source: Department of State Assets, Ministry of Finance, 2006

Annex 5

INDUSTRIAL PROCESSING PROJECTS

No.	Name of company	Headquarter	Production	Share holding		Capital (US\$ Million)	Registered capital (US\$ Million)	Type of agreement and duration
				Lao Gov.	Foreign investors			
1	Lao Soft Drink (Loxley Public 30% ITD Special 30% PS Seumsouk 10%)	Capital	Soft drink	30%	70%	3.4	3.4	*JV signed 5/8/1993 *20 years
2	Lao Tobacco Ltd. (ST 19%)	Capital	Cigarettes	47%	53%	10.6	10.6	*JV signed on 23/11/2001 *25 years
3	Beer Lao Company (Investors: TCC International 25% Carlsberg 25%)	Capital	Beer	50%	50%	24	20	*MA signed 28/1/2002 *20 years

Source: Department for Promotion and Management of Domestic and Foreign Investment (DDFI), Committee for Planning and Investment, 2006

Notes:

- (1) JV: Joint venture
- (2) MA: Master Agreement
- (3) PDA: Project Development Agreement
- (4) Data on two factories are missing (Saravane cement factory under construction, and factory operating in Vangvieng, Vientiane).
- (5) Hydropower is listed under: "Electricity projects".

Annex 6

CONCESSION FEES FOR DIFFERENT ECONOMIC SECTORS, ESTABLISHED BY LAW; FEE RATES APPLIED IN SOME PROVINCES in \$/ha/year

Sequence, see DSA draft of 26 May 2006	Purpose Of Concession	Resolution 47/PMC of Minister Council on State Tax Regime of 26/6/89	Additional Resolution 34/PM of 1/12/1992	Regulation 22 of 22/3/2000 on Collecting Revenues and the Division of Tasks in the Management regarding Revenues and Expenditures of the Budget between Province, Districts, and Villages, issued by the Governor of Champassak	Regulation 238 of 19/4/2002 on Delegating Responsibilities in the Management of State Budget Revenues between Province, Districts, and Villages, issued by the Governor of Savannakhet.	Applied fees in some provinces
MINING						
	Prospection					40/km ² , Sky Telecom; 50/km ² , China Int'l Alumina Development
1	Exploration	0.5-1.0	0.5-1.0	0.5-1.0	0.5-1.0	1, Oxiana, Savannakhet 1, Keobualapha, Khammouane 70/km ² , Sky Telecom; 90/km ² , China Int'l Alumina Development
2	Analysis					200/km ² , Sky Telecom, China Int'l Alumina Development
3	Exploitation	3-12	3-12	3-12	3-12	
	Gold, precious metal					50, Oxiana, Savannakhet
	Industrial min.					11, Dong Hen 41, Gypsum, Khammouane
	Sand					100, Khammouane
AGRICULTURE						
4	Agriculture & livestock	2-9		2-9	3-9	

11	Crop growing					
	Cassava					10
	Sugarcane					6
FORESTRY						
5	Forest exploitation	1-7 (NA)		1-7 (NA)		30 to 140
7	Tree plantation				1-7	
	Rubber					12 Darlac, Savannakhet
INDUSTRY						
9	Industry			5-12	5-12	385 – 862/m ² : Saylattana, PVC Inter Plastic, Savannakhet
	Construction	3-10			3-10	
TOURISM AND SERVICE						
13	Tourism	5-20			5-20	33, Tadlo, Saravane; 0.55/m ² , Five Star Hotel, Vientiane capital
	Markets					120, Dao Heuang market, Pakse

Source: Compiled by Lao-German Land Policy Development Project (GTZ), June 2006

Annex 7

(Unofficial Translation)

Lao People's Democratic Republic Peace Independence Democracy Unity Prosperity

Prime Minister's Office

No:...../PMOs
Vientiane, Dated:/2005

DRAFT Decree On State Land and Building Leasing and Concession

- Pursuant to the Government Law of the Lao PDR No: 02/NA, dated: 06/05/2003;
- Pursuant to the Amended Land Law No: 04/NA, dated: 21/10/2003;
- Pursuant to the State Property Law No: 09/NA, dated: 12/10/2002;
- Pursuant to the Proposition of the Minister of Ministry of Finance No:.....date:....

The Prime Minister of the Lao PDR Issues the Decree:

Chapter 1 General Provision

Article 1: Objective

This decree lays down the regulations for the State land lease, concession and constructions to ensure the unified use and management of the state property through out the country, at the same time, it is to focus on the development of state land and constructions as well as to promote investment and generate revenue for the state budget.

Article 2: Purposes of state land lease, concession and constructions

Purposes of state land lease, concession and constructions are allocated to Lao citizen, foreigner, stateless person, government officials, organisation, state-enterprise and Embassy or International organisations to rent as specified in the article 13 of this decree.

Article 3: State land zoning and land categorisation and constructions

Division of state land zone and types and constructions:

1. Zone division:

Plain, plateau and mountain zones comprise of:

- township zone;
- municipality area;
- Sub-urban area;
- Rural area;
- Specific economic zones;
- Special economic zones;

2. Land categories:

- Construction land;
- Agricultural land;
- Forestry land;
- Water area land;

- Industrialised land;
- Communication land.

3. Types of state constructions:

- Buildings or concrete mansion;
- Wooden houses,
- Miscellaneous construction

Article 4: State land and other state buildings for rent

The lands for leasing and concession are the lands specified in the article 2 of this decree, whose purposes are to use as living places, agricultural-forestry, industry-handicraft, trade, tourism and services which are already developed and not developed.

The government's buildings which are for rent are houses, building, and office buildings that the government allowed to be leased, plant, company, commercial and service activities and other government's belongings located in the leased land.

Article 5: State land and buildings which are not for lease or concession

State land and buildings which are not for lease or concession are:

- Cultural land and land for national defence and public security;
- Land and houses for high ranking officials from grade 1 to grade 5 specified in the article 2 of the Prime Minister's Decree No: 173/PM, dated: 11/11/1993 pertaining to the determination of civil servant's executive positions of the Lao PDR;
- State land, buildings, temples, archaeological artefacts, as well as the land and houses included in the decree No: 194/PM, protection forest of water sources, National conservation park, lands that the state preserved in the urban, land and houses of the national heroes, retired officials with outstanding contribution to the national revolution prior to 1975 as well as the disabled officials resulted in the national defence and security. Land and boarding house, or dormitory and other relevant cases as specified in the law.

Chapter 2

Leasing/Concession of State Land and Buildings

Article 6: Duration for leasing-concession of state land and buildings:

There are two types for the leasing-concession duration of state land and buildings:

- 6.1 Short-term leasing
- 6.2 Long-term leasing

Article 7: Types of state land and buildings with short-term leasing

Types of state land and buildings with short-term leasing are the land and buildings which are used as living places, commercial and industrialised areas which the government already has the plan to use or pending for leasing negotiation or land and buildings with many families living together.

Article 8: Identification time limit for short-term leasing

Time limit for short-term leasing is not more than 5 years and can be extended based on the agreement of the state property management sector.

Article 9: Rational for short-term leasing

- Lessees are strictly prohibited to change the surfaces of land and building conditions except mentioned in the contract between the state property management and lessees;
- Lessees are strictly prohibited to use the leasing contract as loan guaranty.
- Lessees are not allowed the third person to lease.

Article 10: State land and buildings for long-term leasing and concession

State land and buildings for long-term leasing and concession are the land and buildings which are used as living places, the construction land which are not yet developed, commercial, industrialised, specific and special economic zones which are required to have infrastructure and development.

Article 11: Identification of time limit for long-term leasing and concession

11.1 Permission of the Lao citizen to long-term land leasing is not more than 30 years. However, it can be extended based on the agreement of National Land Management Authority or Provincial/Vientiane Capital Land Management Authority specified in the article 13 of the newly updated Land Law as well as article 18 of the implementation decree of the Land Law No: 101/PM, dated: 20/04/2005.

11.2 Permission of land leasing or concession by alien residents, stateless persons and their organisations is not more than 30 years. However, it can be extended based on the agreement of National Land Management Authority or Provincial/Vientiane Capital Land Management Authority as specified in their scope of rights and duties. Land leasing and concession by alien residents invested in the Lao PDR are, at maximum point, not more than 50 years. And it can be extended based on the approval of the government through the proposition of National Land Management Authority.

Land leasing or concession of the specific and special economic zones should not be, at maximum point, more than 75 years based on the agreement of the government through the approval of the National Assembly as specified in the article 65 of the newly updated Land Law as well as article 18 of the implementation decree of the Land Law No: 101/PM, dated: 20/04/2005.

11.3 Permission for the Embassy and international organisations, at maximum point, should not more than 99 years.

Article 12: Rational for long-term leasing-concession

The leasing or concession contracts of state land and building should determine purposes, leasing fee or concession charge, time limit for actual lease and concession as well as the measures for the violators. Besides this, the lessees or concession taker can perform the long-term contract as follow:

- To use the land or building according to its purposes specified in the leasing contract or concession;
- Land and building can be developed as specified in the leasing or concession contracts;
- Inherit (continue) of leasing or concession contracts of land or building based on its valid duration;
- Able to let other people to lease the right to use the state land and building, but it must be agreed by the concerned sectors and this sub-contract should not be lasted more than the duration of original contract;
- Able to bring the personal assets embedded to land leasing or concession as the bank loan guaranty or other financial institutions legally implement in the Lao PDR, but for unmoveable assets, it must be agreed by Ministry of Finance;

- Able to sell personal assets embedded to land leasing or concession. But the state is in the top priority to buy such assets;
- Able to use the land leasing or concession contracts to capital share with other people but it must be agreed by the National Land Management Authority or the Provincial, Vientiane Capital and Special Zone Land Management Authority as specified in the Land Law;
- Perform based on the current reality which must be accepted as specified in the law;
- Strictly prohibit to violate others' rights and benefits;
- Do not cause any damage to soil quality, and do not cause any negative impacts to ecological environment or society.

Chapter 3

Identification of Leasing Fee, Places for Business, Commercial, Service and Tourism Activities

Article 13: Basis for the calculation of state land and house leasing is to calculate as follows:

- The cost of state land and building lease is equivalent to the cost of land lease plus the cost of building lease;
- In which, the cost of land lease is equivalent to the total land area multiplied by the unit price of the sale of right to use based on the periodical price valuation (m2 or square metre) multiplied by the rate of leasing;
The cost of building lease is equivalent to the existing cost of the building multiplied by the rate of leasing. (The existing cost of building is calculated by the recommendation of the implementation of State Property Law No: 2085/MoF, dated: 01/10/2004). For the unit price of the sale of right to use the land outside of the project area, it must base on the real price in the market place.

Article 14: Identification of construction land lease

Construction Land Area	Land Leasing Rate (%) of the land and building cost per year			
	Land for living places	Factory construction land or industrialized zone	Commercial and service lands	Abandoned land (Undeveloped land)
I. <u>Municipalities or Towns within the central or provincial</u>				
1. District Centre	4	2	5	5
2. Surrounding Centre District	3	2	4	4
3. Suburb	1	1	3	3
4. District Extension Zone	1.5	2	2	2
II. <u>District Area under District Administrative</u>				
1. District Centre	3	2	4	4
2. Surrounding Centre District	2	1.5	3	3
3. Suburb	0.5	0.5	1	2
4. District Extension Zone	1	1	1	1
III. <u>Municipality Area</u>				
1. Municipality Centre	2	1	2	2
2. Municipality Extension Zone	1	0.5	1	1
IV. <u>Rural Area</u>				
1. Villages in the plain area	1	1	2	2
2. Villages in the upland area	0.5	0.5	1	1
3. Villages in the mountainous area	0.5	0.4	1	0.5

In case of renting the room in the market which the government already developed it must be bid in public which consider the high cost as the priority. It determines the unit price in square metre after agreement from the concerned sectors.

Article 15: Identification of the cost of land and building leasing for civil servants and retired officials as accommodation

Order	Types of Lessees	Rate of Leasing
1	Civil Officials	1 % of the minimum base salary per month
2	Retired Officials	0.5 % of the minimum base salary per month

Identification of the rate of leasing for the civil servants and retired officials who use the land and buildings for the purpose of business operation, it must be based on the Article 13 of this decree.

Chapter 4

Determination of Concession of Land Area for Industry and Agriculture

Article 16: Concession of land area for industrialized and agricultural purposes is determined as follows:

Order	Purpose of Concession	Concession Rate for a Hectare per Year					
		Plain area		Upland area		Mountainous Area	
		Town area	Rural area	Town area	Rural area	Town area	Rural area
1	Mineral surveys	0.5\$	0.5\$	0.5\$	0.4\$	0.4\$	0.3\$
2	Mineral analysis	5\$	5\$	4\$	4\$	4\$	3.8\$
3	Mineral mining	6\$	6\$	6\$	5\$	5\$	4\$
4	Agriculture & livestock	1\$	1\$	1\$	1\$	1\$	0.5\$
5	Forestry exploitation	300\$	300\$	250\$	250\$	200\$	200\$
6	Forestry Plantation	2\$	1\$	1\$	0.8\$	0.8\$	0.5\$
7	Industry	100\$	70\$	60\$	60\$	50\$	40\$
8	Industry in the river area	1\$	1\$	0.8\$	0.7\$	0.5\$	0.5\$
9	Crop growing	6\$	6\$	5\$	5\$	4\$	4\$
10	Livestock in the river area	2\$	2\$	1\$	1\$	1\$	1\$
11	Tourism	50\$	50\$	40\$	40\$	30\$	30\$

In case of land leasing for the purpose of telecommunication station, it is charged 0.5\$ per square metre. While in the case of livestock farm or industrial factory that is government construction investment it is subject to bid in public or by means of price comparison on the basis of state bidding regulation.

Article 17: Land lease or concession charge in the special or specific economic zones

17.1 For land lease or concession in the special economic zone (Savan-Seno), it is subject to follow the Decree No: 177/PM, dated: 13/11/2003 pertaining to the management regulation and the promotional investment policy of the Special Economic Zone Savan-Seno.

17.2 Concerning the Specific Economic Zone of the Border Trading Area of Boten, Luang Namtha Province, it is subject to follow the Decree No: 162/PM, dated: 11/02/2002, pertaining to the border trading area of Boten, Luang Namtha Province.

Land leasing or concession charge of other special and specific economic zones should follow those respective specific regulations and rules.

Article 18: State Land and Building Leasing Valuation

State land and building leasing valuation it is designated to the National Land Management Authority to take charge of studying and determining the leasing fee of each land category in each area. For various state buildings it is designated to Ministry of Finance to take charge of studying and determining the leasing fee of each building with collaboration with concerned sectors.

Article 19: Payment of the lease or concession

Payment of land or building lease is to be made in advance based on the period of each contract or the agreement of the two parties. Lessees of state land and building concession can perform with any activities of the concession agreement specified in the article 11 of this decree with the approval of concerned sectors and it must be registered as the rule with the competent authority.

Chapter 5 Management and Monitoring

Article 20: Lease Management and Monitoring

Management and collection of state land and building's fee are designated to the Finance Sector to be in charge as specified in the article 11 of the implementation decree of the Land Law. However, for the state buildings under the direct management and use of ministries, ministry-equivalent agency, local government and other organisations under state budget, for collection of the leasing and concession of such things are assigned to the concerned sectors and then transfer to the state budget based on the Budget Law with the Transferring Order from the concerned sectors. It is strictly prohibited to illegally use this budget.

Article 21: Termination of Leasing Contract

In case of the lessees of state land and building use the land and building for other purposes which are not specified in the contracts, do not pay the leasing fee and violate other rules and regulations specified in the contract, the contract will be terminated and lessees must be responsible for any damages to state property.

Article 22: Conflict Resolution

Conflict resolution for the state land and building lease is assigned to the lesser and lessee to initially mediate. If the mediation is not worked, both parties can propose to the Economic Imitation Authority to mediate or sue to the People's Court to get legal judgement.

Chapter 6 Benefits for the Good Performer and Measures for the Violator

Article 23: Benefits for the Good Performer

Individuals, juristic entities or organisations leasing the state land and building who strictly and legally follow the signed contracts, this law as well as this decree, they will have the priority to extend the lease and will get various benefits as specified in the law.

Article 24: Measures for the Violator

Individuals, juristic entities or organisations leasing the state land and building, if any violation to the signed contract is found, the lessee will be given feedback for reconsideration or resolve it. If do not follow or resolve such activity

according to the notice of the concerned sectors, the contracts will be terminated and re-compensate to all damages specified in the article 20 of this decree. In case of not following the signed contract and it is found to be the penal matters, not only the contract will be terminated but also the lessee will be proceeded with the criminal case based on the seriousness of each case as specified in the law.

Chapter 7

Final Provision

Article 25: Implementation

Ministry of Finance, other ministries and organisations, as well as provinces and Vientiane Capital are acknowledged to this decree and strictly implement it.

Article 26: Effectiveness

This decree enters into force once it is signed, any rules or regulations previously issued in the areas of state land building lease contravene this decree, shall be cancelled.

Prime Minister of the Lao PDR

Comments by the Study Team on the Draft Decree on State Land and Building Leases and Concessions (DSA), 2006

Art. 1 The purpose of the – overdue – Draft Decree is, „...to ensure the unified use and management of state property throughout the country, ... to focus on the development of state land and constructions,.. to promote investment and generate revenue for the state budget.“

Art. 2 State land lease, including buildings, as well as concessions are available to Lao citizens as well as foreigners and legal entities.

Art. 3 The article is containing definitions on “zone division“, “land categories“, and types of state construction“. Concerning zone division, the terms “specific economic zone“ and “special economic zone“ are not clearly distinguishable and need clarification.

Art. 4 The reference in this article to Art. 2 seems to be wrong, since Art. 3, not 2, is specifying land suitable for leasing and concession purposes. Furthermore, reference is being made to developed as well as not developed land suitable for leasing and concession purposes.

Art. 5 The article points out which areas of land as well as buildings would not be available for leases and concessions, including

- land and houses for high ranking officials specified in PM Decree, No. 173/PM of 11/11/1993
- land and houses included in Decree No. 194/PM of 12/11/1994
- retired officials from national defense and security.

It seems to be obvious that the use of land and buildings by government officials free of charge is not serving one main purpose of this Draft Decree, namely, to generate revenue for the state. In addition, financial privileges granted by GoL to privileged persons is not in line with Art. 35 of the Constitution of Lao PDR¹ that guarantees all Lao citizens equal rights before the law.

Art. 6

- While the headline is containing „leasing-concession“ [contracts], the following text merely mentions „leasing“. It may be necessary to explain the terms „leasing“ and „concession“ in regard to their distinctive features, if there are any.
- It should be considered that the introduction of new terms in a Decree, altering rights and obligations of users in regard to higher ranking legal sources, like the Law on Land, is not consistent with constitutional requirements.
- Art. 6 should be deleted and used as a heading for Art. 7-12.

Art. 7 and 8

- The provision, stating that residential housing for many families should be restricted to coverage only by short term leasing contracts is needing further explanation.
- Why is there no „short-term concession“?

Art. 9

¹ No. 25/NA of 05/05/2003.

- The heading is not compatible with the following text; it should read instead: „Restrictions on short-term leasing rights“.
- Prohibition of using leasing contracts as loan guarantee is not consistent with Art. 19 of the Implementing Decree to LoL, *ibid.*

Art. 10 The main purpose of long-term leasing and concession contracts seems mainly to be developed land. How do „living places“ fit into this context?

Art. 11.2

- Instead of using „resident aliens“, the term „foreigners“, used in Art. 54 Law on Land, *ibid.*, seems to be preferable since it does not require a resident license by the foreign lessee.
- The time limit for (long-term) leasing and concession contracts have already been established in the Law on Land and its Implementing Decree, *ibid.*; a reference to these legal sources would be sufficient at this point.

Art. 12

- For reasons of compatibility, the heading should be changed into „Rights of holders of leasing or concession contracts“.
- Similarly, points 1-5 and 7 are merely repeating the rights of lessees already established in the Law on Land and its Implementing Decree, *ibid.* A reference to those regulations would, therefore, be sufficient.
- Point 6 is an important aspect and will be appreciated by investors.
- Point 8 needs further explanation; it could probably be deleted.

Art. 13

- The calculation method used in point 2 could need further explanation; an example would be helpful.
- What is meant by „project area“?
- How is the „real price in the market place“ being identified?

Art. 14

- What is the basis of „land and building cost per year“ ? Is this term equal to the sales price for purchasing a land use right?
- What are the components of the „land leasing rate? What is the basic reference? Which method has been used to determine different rates for different zones?
- Why has been public bidding applied only in cases of land already developed?

Art. 15 Rather low leasing rates for government officials would need further explanation. Why has, e.g., the location of land and house not being taken into consideration?

Art. 16

- Proposed concession fee rates for industrial and agricultural purposes seem to be rather low, compared with market prices worldwide. Further explanation seems to be required.
- Public bidding for livestock farms or factories owned by GoL is being appreciated. [Its extension to other sectors or activities should be considered.]

Art. 19 The reference to Art. 11 is only geared towards long-term leases and concessions. What about rights and obligations of lessees holding a short-term lease contract?

Art. 20 Administrative rules for financial flows should be more precisely phrased in order to be effective.

Art. 21 It would be advisable to add specific monitoring requirements in this Decree. Otherwise, the provision would not have any effect in case of default by the lessee.

Art. 22 This provision is being appreciated, since it increases clarity of dispute settlement procedures. It would be advisable to add special rules for initial mediation within administrative levels.

Art. 23 This provision is containing little legal substance. Its implementation cannot be realized by legal means and seems to be, therefore, obsolete.

Art. 24 Again, this provision is lacking precision and therefore unpracticable. Its implementation would meet hard challenges. Furthermore, the reference to Art. 20 is misleading and should be changed to Art. 21.

Annex 8

HYDRO-POWER PROJECTS

I. PROJECTS IN OPERATION						
No	Plant name	Location	Installed capacity (MW)	Average energy/year (GWh)	Commissioning	Status
1	Nam Ngum 1	Vientiane	150	998	1971,1978,1984	Operating
2	Selabam	Champassak	5	24	1970, 1993	Operating
3	Nam Dong	Luangprabang	1	5	1970	Operating
4	Sexet 1	Saravane	45	180	1991	Operating
5	Nam Phao	Bolikhamsay	1.6	7	1995	Operating
6	Nam Ko	Oudomsay	1.5	6.5	1997	Operating
7	Theun-Hinboun	Bolikhamsay	210	1,620	1998	Operating
8	Houay Ho	Attapeu	150	617	1999	Operating
9	Nam Leuk	Bolikhamsay	60	230	2000	Operating

II. PROJECTS WITH MEMORANDUM OF UNDERSTANDING (MOU) SIGNED								
No.	Project name	Location	Investors	Installed Capacity (MW)	Capital US\$ Million	Share Holding		Remarks
						Lao Gov.	Foreign	
10	Nam Sim Nam Moua	Huaphan	Energy Development (Norway)	5	5	25%	75%	*MOU signed 14/2/2003 for 1 year. *Extended for 6 months on 29/7/2004. *Extended for 12 months on 14/7/2005
11	Nam Theun 3	Bolikhamsay	Theun Hinboun	237	388	30%	70%	*MOU signed on 5/3/2004 for 3 years
12	Nam Hao	Huaphan	Nice Engineering (Thailand)	5.1	5	25%	75%	MOU signed on 19/8/2004 for 18 months
13	Sekatom	Champassak	Kansai Electric (Japan)	57	100			*MOU signed 30/9/2004 for 18 months
14	Nam Ngiv/Nam Ngiep 3A	Xiengkhouang	SIS Consultant (Lao)	20	20	25%	75%	*MOU signed 12/10/2004 for 18 months
15	Nam Hai	Sayabouli	Kobei (Japanese-Lao)	2.5	3	25%	75%	*MOU signed 7/4/2005 for 18 months
16	Nam Ou 8	Phongsali	Sino-Hydro (China)	640	700	25%	75%	*MOU signed for 18 months
17	Tadsalaen	Savannakhet	SIC Manufacture	3.2	5	25%	75%	*MOU signed 22/7/2005 for 12 months
18	Se Bang Nouan	Saravane	Sithat Bridge-Road Construction (Lao)	80	100	25%	75%	*MOU signed 26/8/2005 for 18 months
19	Se La Nong 2	Saravane	JRC Service (Japan)	40	60	25%	75%	*MOU signed 22/9/2005 for 18 months
20	Huay Champi	Champassak	Champassak Construction (Lao)	2	4	25%	75%	*MOU signed 29/9/2005 for 18 months
21	Nam Kong 1	Attapeu	Region Oil (Russia)	238	240	25%	75%	*MOU signed 22/12/2005 for 18 months

No.	Project name	Location	Investors	Installed Capacity (MW)	Capital US\$ Million	Share Holding		Remarks
						Lao Gov.	Foreign	
22	Nam Kong 3	Attapeu	Region Oil (Russia)	35	40	25%	75%	*MOU signed 22/12/2005 for 18 months
23	Sekong 5	Sekong	Region Oil (Russia)	300	310	25%	75%	*MOU signed 22/12/2005 for 18 months
24	Sekong 4	Sekong	Region Oil (Russia)	470	600	25%	75%	*MOU signed 9/3/2006 for 18 months
25	Sekaman 1	Attapeu	Viet-Lao Power	468	520	30%	70%	*MOU signed 17/3/2006 for 18 months
26	Don Sa Hong	Champassak	Mega First (Malaysia)	240	380	25%	75%	*MOU signed 23/3/2006 for 18 months
27	Huay Katan	Champassak	ITEL (Japan)	33	40	25%	75%	*MOU signed 4/5/2006 for 18 months
28	Se Neua	Khammouan	Phonsak Bridge-Road Construction (Lao)	40	45	25%	75%	*MOU signed 16/5/2006 for 18 months

III. PROJECTS WITH PROJECT DEVELOPMENT AGREEMENT (PDA) SIGNED

No.	Project name	Location	Investors	Installed Capacity (MW)	Capital US\$ Million	Share Holding		Remarks
						Lao Gov.	Foreign	
29	Nam Theun 1	Bolikhamsay	Gamuda (Malaysia)	424	500	20%	80%	*MOU signed 26/5/2004 for 18 months. *PDA signed 28/1/2004 for 18 months
30	Hongsai Lignite (Lignite power generated)	Sayabouli	Thai-Lao Power (Thailand)	720	850		100%	*PDA signed 22/7/1994
31	Nam Mo	Xiengkhouang	Mahavong Group	125	150	25%	75%	*PDA signed 18/11/1999 *PDA extended for 1 year on 18/5/2001 *PDA extended for 1 year on 18/5/2003 *PDA extended for 6 months on 16/12/2004 *Lao Gov. considering cancelling the project as the purchase agreement of electricity by Vietnam will not actualise.
32	Nam Ngum 3	Saysomboun	MDX (Thailand) Mitsui, EPDC (Japan) Lao PDR	460	630	23%	77%	*PDA signed 15/11/1997 for 18 months *PDA extended for the 6 th time for 1 year.

No.	Project name	Location	Investors	Installed Capacity (MW)	Capital US\$ Million	Share Holding		Remarks
						Lao Gov.	Foreign	
33	Nam Ngum 5	Xiengkhouang	Sino Hydro (China)	100	168	20%	80%	*PDA signed 24/2/2006 for 18 months
34	Nam Ngiep 1	Bolikhamsay	Kansai Electric Power Nipon Koie(Japan)	260	400	30%	70%	*PDA signed 27/4/2006 for 18 months
35	Nam Lik 1 and 2	Vientiane	China International Water & Electricity	100	173.64	20%	80%	*PDA signed 5/5/2006 for 18 months

IV. PROJECTS WITH CONCESSION AGREEMENT (CA) SIGNED

No.	Project name	Location	Investors	Installed Capacity (MW)	Capital US\$ Million	Share Holding		Remarks
						Lao Gov.	Foreign	
36	Nam Ngum 2	Saysomboun	Nam Ngum 2 Hydropower And Southeast Asia Energy	615	800	25%	75%	*CA signed 14/3/2006 for 32 years
37	Nam Theun 2	Bolikhamsay/ Khammouane	Nam Theun 2 Hydropower Cie: *EDL (Lao) 25% *EDF (France) 35% *Italia-Thai (Thailand) 15% *EGAT (Thailand) 25%	900	1,100	25%	75%	*CA signed on 3/10/2002 for 25 years
38	Sekaman 3	Sekong	Viet-Lao Power Investment Development	250	278	15%	85%	*CA signed 4/1/2006 for 30 years
39	Nam Yon	Bokeo	Nam Yon Hydropower	2.4	2.6		100%	*CA signed 3/3/2006 for 50 years

Source: DDFI (2006)

Annex 9

MINING PROJECTS (1992-2005)

I. FOREIGN/JOINT VENTURE COMPANIES (1992-2005: 33 Companies and 55 projects)

No. Co.	No. projects	Co. Name	Nationality	Mineral	MOU	Ministry Authorization	Concession Authorization	Investment Amount			Concession location	Concession Area (hectares)		
								\$	B	K		Province	Prospection	Survey
1	1	Hongsa Lignite	Lao-Thai	Lignite	29/5/92	8/5/93	8/5/93	3,200,000			Sayabouli		6000	
2	2	Viengphoukha Coal exploitation	Thai (Private)	Lignite	31/3/93	13/11/03	25/11/03		125 million		Luang Namtha			800
3	3	Lane Xang Minaral	Australia (Private)	Gold	15/6/93	15/06/01	19/3/02	300 Million			Savannakhet		191,843	
	4	Lane Xang Minaral		Gold	15/6/93	29/1/03	10/2/03				Savannakhet			2,851
4	5	Kolao	Lao-Korea	Plumb	27/10/94	5/12/02	12/2/03	6,600,000			Khammouan		1,856.50	
	6	Kolao												143.50
5	7	VSK	Thai	Lime stone	17/3/95	17/8/00	21/9/00	856,200			Khammouan			15
6	8	Lao/Chinese Mineral Industry	Lao-Chinese	Gold	27/2/98	29/8/03	17/11/03	1,857,000			Bolikhamstay		797.20	
	9				4/7/03				Bolikhamstay			299.10		
7	10	Bohae Industry	Korea	Precious stones	26/10/98	7/6/02	17/6/02	487,951			Bokeo			27.59
8	11	Lao Cement	Lao-Chinese	Lime-stone	17/11/98	29/11/02	10/12/02	855,000			Vientiane			4.50
	12			Clay		1/9/04	6/9/04	27,182.62					5.25	
	13			Sand		27/03/03	25/4/03	143,005					9	
	14			Lignite		21/12/04	11/1/05	114,278					175	
9	15	Phadaeng Industry	Thai (Private)	Zinc	30/5/00	2/9/04	20/12/05	299,310			Vientiane			200
10	16	Chung Yang EC Yunnan	PR China (Private)	Limstone	28/2/02	2/4/02			16 million		Saravane		500	
	17			Clay		2/4/02							100	
	18			Lignite		2/4/02							1,000	
	19			Sand		11/5/05	1/7/05		2,256					0.6
11	20	Phubia Mining	Australia	Australia	4/4/02	25/6/03	27/10/03	5,000,000			Saysomboun		263,700	
12	21	Lao-Chinese Mineral Development	PR China	Copper	24/9/02	10/6/04	11/6/04	6,489,100			Luang Namtha			425
	22			Copper	5/4/04	6/5/04	27/5/04	391,00			Saysomboun	1,200		
	23			Antimony	8/5/04	23/11/04	13/12/04	506,514			Luang Namtha		450	
	24			Copper	13/6/05						Champoassak	59,000		

13	25	Hua Ching International Business Group	Lao-Chinese	Gold	28/2/03	12/2/04	19/5/04	307,501			Luang Prabang		500	
14	26	Yusi Songlong	PR China	Copper	28/3/03	4/4/03	23/5/03	20,000			Phongsali		2,000	
15	27	Lao-Chinese Plumb Mining	Lao-Chinese	Plumb	20/2/04	29/3/04	9/4/04	42,300			Bolikhamstay	4,800		
16	28	Hanoi Construction	Vietnam	Gold	4/4/03	28/4/04	7/6/04	74,200			Saysomboun		250	
17	29	Daolao	Lao-Russia	Gold	9/6/03	14/7/03	2/9/03	62,500			Vientiane		504	
	30							62,500			Vientiane		1,121	
	31							62,500			Vientiane		581	
	32							62,500			Vientiane		1,211	
18	33	Mineral Development (COECO) => MIDICO	Vietnam	Gypsum	15/1/04	23/11/04	7/12/04	1,262,490			Khammouan			18.83
	34			Plumb	12/8/05	15/9/05					Bolikhamstay	5,600		
	35			Zinc	12/8/05	15/9/05					Huaphan	1,600		
19	36	Sanmou Oudomsay Mineral	PR China (Private)	Copper	17/3/04	19/1/05	24/1/05	324,000			Oudomsay	1,800		
	37			Antimony	5/7/04	14/5/04		500,000			Louang Namtha		200	
	38			Copper	23/2/05	5/4/05	10/6/05	260,966			Oudomsay	1,750		
	39							1,120,188			Oudomsay	8,950		
	40							450,356			Phongsali	14,000		
20	41	Lao-Chien Xinhua Mineral	PR China (Private)	Gold	17/3/04	13/12/04	28/12/04	129,000			Capital		300	
21	42	Viet-Lao Cooperation	Vietnam	Gypsum	6/4/04	29/12/04	12/4/05	3,576,000			Khammouan			700
22	43	Louthing Construction Muang Lanxang	PR China (Private)	Lignite	28/4/04	5/4/05	12/5/05	446,495			Phongsali		3,000	
23	44	Lao-Russian Cooperation	Lao-Russian	Plumb	2/7/04	18/8/04	28/9/04	22,000			Khammouan		5,800	
24	45	Argonaut	Australia (Private)	Gold	22/10/04	8/10/04	30/12/04	200,000			Capital	30,020		
25	46	Sekong River Mining	Lao-Australia	Gold	22/10/04	6/10/04	9/3/05	200,000			Sekong	77,700		
26	47	Lao Industrial Aluminium	PR China (Private)	Bauxite	23/10/04	23/11/04	23/9/05	56,557.6			Sekong	2,500		
27	48	Lao-Chinese Salt	Chinese State Enterprise	Salt	29/11/04	22/3/05	5/5/05	15,600,000			Capital			7.800
28	49	Phuyuan Mineral	Canada	Copper	13/12/04	19/4/05	26/4/05	782,973			Xienkhuang	2,200		
29	50	Chemistry SR Vietnam	Vietnam	Salt	27/12/04						Khammouan	1,000		
30	51	Lao-Yuansin Mineral Development	PR China (Private)	Zinc	20/1/05	26/1/05	28/2/05	30,000			Oudomsay	2,000		
	52			Copper				35,030			Phongsali	2,000		
31	53	Sila Khammouan	Thai (Private)	Limes tone		11/3/05	24/3/05	1,691			Khammouan		50	
32	54	COMICO	Vietnam	Iron	6/4/05	22/4/05	13/7/05	26,659			Huaphan	3,600		
33	55	Khing Huangdao Sinthe	PR China	Iron	7/4/05	4/5/05	6/7/05	21,600			Saysomboun	800		

II. LOCAL COMPANIES

No. Co.	No. projects	Co. Name	Nationality	Mineral	MOU	Ministry Authorization	Concession Authorization	Investment Amount			Concession location	Concession Area (hectares)		
								\$	B	K		Prospection	Survey	Mining
1	1	Gypsum Mining	State Enterprise	Gypsum		9/12/97					Savannakhet		460	
	2					18/11/98	2/6/00			596,791,197	Savannakhet			188
2	3	Development KKOH & Service	State Enterprise	Red clay		7/12/98	13/1/00	675			Vientiane			1.50
	4			White clay		7/12/98	13/1/00	1,325			Vientiane			1.50
	5			Anthracite		7/8/01	22/10/01	650,741			Vientiane			20
	6			Limestone		7/9/01	7/12/01	1,131,597			Vientiane			9
	7			Limestone		5/2/03	10/2/03	3,784,200			Vientiane			18
	8			Anthracite		5/4/05	17/6/05	31,343			Vientiane		10	
3	9	Veunkham Salt Production	Lao private	Salt		18/11/99	8/12/99			94,567,760	Capital			10
4	10	Barium Mining	State Enterprise	Barium		10/11/00	7/2/01			226,790,000	Vientiane			10
	11					11/9/03	27/10/03			363,212,000	Vientiane			10
	12					11/9/03	27/10/03			364,661,000	Vientiane			10
5	13	Bokeo Mining	Lao private	Precious stones	23/8/99	13/6/03	11/7/03	17,847			Bokeo		36	
	14							42,635			Bokeo		86	
	15						13/8/04	328,497			Bokeo		28	
	16							5,642			Bokeo		11.38	
	17						11/7/03	6,311			Bokeo		12.73	
	18							5,612			Bokeo		11.32	
	19					15/7/04	13/8/04	328,497			Bokeo			7.81
6	20	Khamkeut Mining	Lao private	Gold	9/4/00	9/4/03	21/5/03	18,080			Bolikhamstay		600	
7	21	Phetthong kham Mineral	Lao private	Bauxite		7/6/01	26/6/01	135,944			Vientiane			21
8	22	Lao International Trading & Service	State Enterprise	Precious stones		12/7/04	22/3/02	25,877			Bokeo		632.5	
	23					21/11/02	2/1/03	7,082,850			Bokeo			39.27
	24					12/7/04	22/3/02	17,656			Bokeo		70	
	25					12/7/04	14/6/02	65,548			Bokeo		75	
	26					12/7/04	13/6/02				Bokeo		35	
	27					20/5/03					Attapeu		84.8	
	28					22/5/03					Attapeu		161.79	
	29					22/5/03					Attapeu		36.65	
9	30	Bolikhamstay Iodine	Lao private	Salt		24/5/02	14/2/03			50	Bolikhamstay		20	

		Production								million			
10	31	Sitthisay Saysana	Lao private	Gold	25/7/02	21/11/02					Sekong		27
11	32	Keobualapha Plumb	Lao private	Plumb	20/9/02	25/10/04	24/11/04	45,500			Kham-mouan		325
12	33	Nongseun Chaleun Phathana	Lao private	Plumb	20/9/02	19/2/04	15/8/05		526,960		Kham-mouan		460
	34										Kham-mouan		50
13	35	First Pacific Mining	Lao private	Plumb	4/2/03	7/2/03	21/2/03	2,000,000			Vientiane	80,000	2,000
	36			Plumb	22/12/03	6/1/04	23/3/04	760,000					
	37			Coal	17/7/04	5/4/05	7/6/05					8,400	
	38			Coal	17/7/04	2/8/04	7/6/05	137,000				29,400	
14	39	Savan Gypsum	Lao private	Gypsum	3/4/03	12/12/04	4/4/05	2,400,000			Savanna-khet		436
15	40	Vientiane Commercial	Lao private	Gold	10/4/03	8/10/03	17/11/03	246,861			Capital		385
16	41	Lao Development Construction	Lao private	Barium		15/5/03	2/7/03	80,253			Vientiane		25
17	42	Saysomboun Gold Development	Lao private	Gold	31/7/03	14/8/03	5/12/03	97,085			Saysom-boun		564
18	43	Bolikhamsay Shareholding Gold Mining	Lao private	Gold	26/12/03	6/1/04	9/4/04	85,000			Bolikhamsay		2,808
	44				26/12/03	6/1/04	9/4/04	85,000			Bolikhamsay		5,860
19	45	Singphufa	Lao private	Barium	22/1/04	11/2/04	3/3/04		171,000		Vientiane		350
	46					11/2/04	3/3/04	250,000			Vientiane		100
20	47	Construction and Production Promotion	Lao private	Plumb	20/2/04	6/5/04		150,000			Bolikhamsay	1,340	
21	48	Chanthakhone Mineral Mining	Lao private	Plumb	3/3/04	17/1/05	18/2/05	253,750			Bolikhamsay		1,496
22	49	Sayavong Mineral Mining	Lao private	Plumb	18/6/04	3/8/04	29/11/04	20,500			Khammouan	500	
23	50	Army Mineral Mining	Lao Army	Gold	8/4/04	26/04/04	3/6/04	140,000			Bolikhamsay	9,800	
	51				7/1/05	25/1/05	16/6/05	364,000			Vientiane	27,600	
24	52	SV Trading	Lao private	Plumb	12/5/04	4/6/04					Khammouan		220
25	53	Lao Cement Industry	Lao private	Coal	18/6/04	5/7/04	10/9/04	58,500			Sekong		2,000
	54			Coal							Khammouan		1,200
	55			Sand		17/9/04	20/9/04	17,603			Khammouan		240
	56			Gypsum		23/2/05	9/3/05	200,000			Khammouan		200
	57			Clay		5/7/04	10/9/04	14,478			Khammouan		140
26	58	Inthavong Mining	Lao private	Barium		27/9/04	30/9/04			306,808,200	Vientiane		25
27	59	Orngkham Precious Stones Mining	Lao private	Plumb	12/11/04	13/12/04	28/1/05	100,680			Huaphan	6,400	
28	60	CMP Import-Export	Lao private	Copper	29/12/04	10/1/05	24/2/05	22,000			Oudomsay	1,600	
	61				29/12/04	10/1/05	24/2/05	22,000			Oudomsay	1,600	
29	62	Phialat Gold	Lao private	Gold		28/4/04	4/6/04			1,567million	Capital		16

		Panning											
30	63	Sahabolisat Lao	Lao private	Gold		7/12/04	6/5/05	5,000,000			Attapeu	15,000	
	64	Service		Bauxite	25/2/05	22/3/05		5,000,000			Champassak	13,800	
31	65	Sengchan Mineral Mining	Lao private	Gypsum	13/1/05	17/2/05		500,000			?	500	
32	66	Olavan Barium	Lao private	Barium	1/4/05	25/5/05	1/6/05	298,477			Vientiane		21
33	67	Magnum Fertilizer Factory	Lao private	Gypsum	8/4/05	11/7/05	8/9/05	3,000			Khammouan		50

TOTAL: 66 FOREIGN AND LOCAL COMPANIES WITH 122 PROJECTS
LOCAL INVESTORS (1997-2005): 33 COMPANIES WITH 67 PROJECTS

Source: Department of Geology and Mining, Ministry of Industry and Handicraft, 2006

Annex 10

AGRICULTURAL AND FORESTRY CONCESSION

No	Name of Company	Plantation	Location	Area (ha)	Shareholders		Capital (total) US\$ Million	Registered capital US\$ Million	Type of contracts and duration
					Lao Gov.	Foreign Investor			
1	United Plymill and Sawmill ACE Plywood SDN	Extraction of submerged wood in Nam Ngum Dam basin	Vientiane			100%	10		*MA signed 4/6/1992 *10 years *Ended
2	Lan Xang Forest Resources (HIPA)	Integrated Wood industry		600,000	23%	77%	80	10	*CA signed 9/11/1994 *Not operating *Government is revising to decrease the area from 600,000 to 10,000 hectares
3	Lao-Malysian Plantation Development	Palm oil	Bolikhamsay	3,500	5%	95%	12	1	*MA signed on 29/1/1999 *30 years. *Cancelled as did not operate *Contract cancelled
4	BGA Lao Plantation Forestry (Now OJI, Japan)	Eucalyptus and Acacia		50,000	15%	85%	49	1.4	*CA signed 10/12/1999 *Shares bought by OJI *50 years
5	Citiland Resources	Palm oil	Khammouane	3,500		100%	11	1	*MOU signed for 6 months on 7/9/2004
6	Darclac Rubber (Vietnam)	Rubber	Champassak Saravane, Sekong, Attapeu	10,000		100%	6	30	*CA signed on 19/11/2004 *50 years
7	Vietnam General Rubber Another name: Viet-Lao Joint Stock Co. Ltd)	Rubber	Champassak	10,000		100%	22	7	*CA signed 18/1/2005 *50 years
8	Hu Phu Co SLV (Vietnam)	Cassava	Saravane	2,500		100%	2.2	2.2	*PDA signed on 24/10/2005 *30 years
9	Henna Tianguan (China)	Cassava	Khammouane	5,000		100%	2.2	2.2	*PDA signed on 25/10/05 *30 years
10	Tenghui Trade (China)	Cassava	Khammouane			100%	6	6	
11	Grasim (India)	Eucalyptus and wood pulp factory	Khammouane Savannakhet	50,000		100%	350	125	*PDA signed on 16/3/2006 *75 years
12	Savanna-khet Sugar Factory (Khonken Sugar, and Ban Pong Inter, Thailand)	Sugar	Savannakhet			100%	12	5	*PDA signed on 17/3/06 *30 years

13	Sugarcane Plantation and factory (Midphon Sugar, Thailand)	Sugar	Savannakhet			100%	22.5	6.7	
----	--	-------	-------------	--	--	------	------	-----	--

Source: Department for Promotion and Management of Domestic and Foreign Investment, Committee for Planning and Investment, 2006

Notes:

(1) MA: Master Agreement

(2) PDA: Project Development Agreement

(3) CA: Concession Agreement

(4) Sugar cane plantation is officially listed by FIMC under "INDUSTRIAL PROCESSING".

(5) In the original table, there is no reference made to the areas; data on land (ha) has been added, based on interviews given by an official from FIMC (DDFI).

Annex 11

Data on Land Leasing and Concession Holdings in 5 Provinces of Southern Laos (March 2006)

Province	Investors (Name, Head Office)	Concession Area Involved, Location, Species	Actual Management/ Planting Activities To Date	Comments
Bolik-hamxai	A. Leuan Fat Hong	-eucalyptus, perhaps other spp. Districts: -Thaphaba -Pakkading -Paksan -Borikhan	-stopped planting 2 years ago	-low MAI and plantation problems noted -suggested they were allocated a poor concession area -stopped planting eucalyptus in 1997[?- conflicting info] -also involved in plywood production and furniture manufacture in Vientiane province, former partner of BHKP -may have received funding from ADB ITPP (?)
	B. Lao Malaysian Plantation Development Co. Ltd. (partner in Malaysia: Polamaju Sdn. Bhd.)	-oil palm -total concession is 3,000 hectares -Pakkading District, at villages: -Ban Nai-ieng -Ban Na-In -Ban Korn Song -Ban Keng Luang	-planted to date 858 hectares (some 132,000 seedlings) -in 2005 had a fire on 300 hectares, no company rep's on hand to handle situation	-lack of budget noted, planting discontinued, poor relations with the PAFO -one issue may be the suggestion that the PAFO prepared/surveyed 110 ha., but the company planted 858 ha. (needs confirmation) -suggestion was that the PAFO on the verge of revoking their concession -field trip in March 2006 revealed complete plantation failure—timber removed
	C. ADB ITPP	-various species, largely eucalyptus -esp. Thaphabhat District	-planted 3,340 ha. to date -some plantations coming on line	-suggest may want to visit Ban Phonsee, approx. 2km distance from the PAFO, has lots of ADB supported plantations -poor coordination between the ADB project and PAFO noted, but conflicting accounts of how 'successful' it had been
	D. China-Taiwan Company	-concession: 1,000 ha. -Pakkading and Paksan Districts	-516 ha., in process of preparation	-informant unsure of whether they received ADB \$ -the PAFO has no information on this company, apparently they have 'disappeared'

	E. Eaglewood holdings	Districts- Thaphabhat Pakkading Borlekan	close to the Mekong -Pakkading District	-involves officials and govt staff from the province, (+ local farmers?)
	F. Malaysian Co.: para-rubberwood project (dis-continued)	-1,200 hectares, 600,000 seedlings -Pakkading District -coconut -concession area 5,000 ha. -Pakkading District	-nothing planted	-project abandoned in favour of project G below
	G. Lao World Group (Peter Chan) -along with partners from Thailand ('Thai Wood Group')- the latter have coconut plantations in Chonburi	- Pakkading district	-5,000 hectares	-Vientiane MAF gives the plantation area, PAFO locates and surveys -field trip in March 2006 revealed heavy natural forest logging and burning in the project area, high rates of large log removals, coconut seedlings poorly tended and likely not salvageable, raises serious questions of the intent of the project (logging or plantations)
	H. Smallholder Para-Rubber plantations			-small areas, of 1-2 ha./farmer -not a lot of information available, but Thai traders had come looking for producers

Province	Investors (Name, Head Office)	Concession Area Involved, Location, Species	Actual Management/ Planting Activities To Date	Comments
Khamm- ouane	A. BGA Company (now Oji-Lao Plantation Forest Company)	-eucalyptus and acacia -concession area 150,000 ha. -net plantation target 50,000 ha.	-by 2004 approximately 1,440 ha. of eucalyptus had been planted -target planting for 2005-06 season is 4,000 ha. -afterwards 7,000 ha. per year up to total target	-flagship plantation forestry investment in Laos -hardwood chips and logs exported via Vinh to Oji's operations in Japan/China
	B. Malaysian- Chinese Company (apparently same one as "B" from Borik, or "F" (?))	oil palm -asked for 50,000 ha. -province allotted them a concession area 10,000 ha., with possibility for more -received 3,500 ha., near the Vietnam border -Ngommalat District	-contract cancelled due to inactivity -after removal, they came back again in 2004, requesting land again -but again no movement on any planting	-some of their land has been allocated to below project (?) -officials went on a visit to Malaysia to see their oil palm areas, 2-3 years ago -since then nothing has happened with actual planting -so they gave their land to company C below...
	C. VTS Company	-Hinboun District -total area from B. has been allocated to C (= 10,000 ha. @ Hinboun D.)	-actual planting, 3 hectares (2,000 seedlings) of <i>Polinear spp.</i>	-involves Vinaythong Souphanouvong, the son of Lao leader Souphanouvong, and a Bulgarian investor, Mr. Tudo
	D. PT Company	-para rubber -Xe Bang Fai District		
	E. Unnamed 'Vietnam/Chinese company'	-para-rubber investment		-PAFO had no further information on this company, informant had just 'heard about it'
	F. Asia-Tech (Thailand)	-Nam Pakan District -requested 50,000 ha.	-said to have planted between 500 ha.-2,000 ha., in scattered areas in the late 1990s -some of the area apparently now flooded	-I believe they are a Thai company, went out of business during the Asian Financial Crisis -I believe they planted eucalyptus -BGA may have taken over part of their allocated area
	G. ADB ITPP			-conflicting reports on the efficacy in Khammouane, some good, some bad
	H. Aditya Birla Group (see also under	-eucalyptus planting for Rayon pulp -agreed project, 50,000 ha. in		

	Savannakhet)	Savannakhet and Khammouane locations:		
--	--------------	---------------------------------------	--	--

Province	Investors (Name, Head Office)	Concession Area Involved, Location, Species	Actual Management/ Planting Activities To Date	Comments
Savan-nakhet	A. ADB ITPP	-mostly eucalyptus	-planted 1,900 ha., via smallholders	-low MAI noted, various problems with the project
	B. Sayo A Company (AA- or Advance Agro) -head office Bangkok, pulp mills in Prachinburi	-initially requested 200,000 ha. for eucalyptus plantations -province mapped 12,000 ha., with option for more -2 districts: Adsaphan-thong District & Outhomphorn District	-completed a survey of a 186 hectare area in Adsapangthong District	-by February 2006 this project had stalled -PAFES suggested they could not allocate more than 100 ha. to the company without approvals from Committee for Planning and Cooperation and MAF Vientiane -appears that this land has been transferred to Grasim (see below)
	C. Phoenix Pulp and Paper -head office & pulp mills in Khon Kaen	-eucalyptus -12,000 ha. concession, net plantable area 10,000 ha. -location: Atsaporn District (8,000 hectares) & Atsapangthong District (4,000 hectares) -environmental survey conducted October 2004, by members of MAF, NAFRI, PAFES and DAFES	-no clearing or planting activities to date, land areas passed on to Grasim company? (see below)	
	D. Siam Forestry (Siam Cement Group) (Thailand) [note Siam Cement purchased Phoenix	-completed a survey of 200 hectares , just off Route 9 in Atsapangthong District	-problem with local land ownership claims	-PAFES and DAFES are 'suspicious' of Thai companies

	Pulp in 2004]			
	E. An unnamed Thai Rubber Company	-requested 10,000 ha.	-‘in process of surveying’	-land rental fee noted at \$2.90/ha/yr., starting the year of harvest
	F. Grasim India Co. (Aditya Birla Group)	-seeking 50,000 hectares in Savannakhet, and 20,000 hectares in Khammouane, plus a factory site of 450 hectares -signed agreement in Vientiane for an integrated plantations and a pulp mill project, March 20, 2006	In Savannakhet are surveying four districts: Xaybouly, Outomporn, Atsaporn (4,000 ha.), and Phalanxai -in Feb 2006 PAFES was out surveying land in Phalanxai -18,000 ha. had been surveyed in Savan. by Feb. 2006 - have a document which states that in November 2005, Sayo AA Co. transferred their surveyed parcels (4,000 ha. in Atsapangthong; 8,000 ha. in Atsaporn Districts = 12,000 hectares), to the Grasim project	PAFES Savannakhet suggested they were afraid this company would destroy the forest: “Our staff have no ability to control this company, it is beyond the ability of the Lao technique” -DAFES in Atsapangthong District suggested Grasim would not be allowed to plant eucalyptus in Phalanxai District because of the presence of wild elephants in the area
	G. IOI Company	-requested 100,000 ha. in Borik, Khamm. & Savan.	-rubber	-PAFO just received a fax from MAF on this company in August 2004, but company did not appear for planned meeting
	H. Forest Industry 2020 Co. Ltd.	-requested 10,000 ha. in 5 provinces	-total investment said to be \$7 million	-PAFO received a fax from MAF on this company, Sept. 2004 -they ended up never coming to the meeting
	I. “Ban Pong International” Company (Thailand)	-said to be seeking land for a 50,000 ha. sugar cane planting operation, at km 81 along Route 9 -Feb. 2006 were surveying land		
				PAFO Savannakhet Director noted about 6-7 plantation companies in total who have spoken to this office about developing plantation areas, mostly from Thailand

Province	Investors (Name, Head Office)	Concession Area Involved, Location, Species	Actual Management/ Planting Activities To Date	Comments
Saravane	A. Vietnam Rubber Corp. (Dak Lak)	-total area is 20,000 ha., rubber -Year 1 province will supply 500 ha.	Locations: -Lao Ngam District -Phonesedone District -Bapi District -the location is close to Road 13, between Route 20	- "First year target is 500 hectares, but to get the land is difficult, because the land is owned by the local people"
	B. ADB ITTP	In Phase 1 they planted in 3 districts: -Salavan District -Lao Ngam District -Kongsedone District		-“they just do the planting, no protection, so it is not effective with eucalyptus” -“no companies come to buy the products, and now the ADB wants the money back, but the people cannot pay”
	C. ‘Lao-French Businessman’	-requested 600 ha. -oil palm		-“he already clears the land, and was waiting for the seedlings, but then he did not have anymore budget, and he also had no experience with planting techniques...the extension service also has no experience with oil palm, so they cannot predict the benefits from this project...” -“the seedlings were shipped from Thailand, at a high expense”

Province	Investors (Name, Head Office)	Concession Area Involved, Location, Species	Actual Management/ Planting Activities To Date	Comments
Cham-passak	A. Vietnam Rubber Corp.	From <i>Vientiane Times</i> :- total area in Champassak to be 13,000 ha. for rubber: 10,000 from VNRC, 3,000 from 'another investor'	-locations: Bachieng District, land is being cleared	-land rental fees said to be \$3/ha./yr.
	B. Saha Company (Vietnam)	-suggestion of area allocated -- 2,000 ha.	-BaChieng District, land is now being cleared	
	C. Thai Company, owned by Mr. Sombat, from Bangkok; partnered with a Lao firm: 'Union of Dao Them Doung' (or, "Full Star"). Thai company- may be from Ubon Ratchathani	-requested land 2,400 hectares -para-rubber production	-Year 1 Champassak to provide 700 ha.	
	D. Other sawmills planting trees in Champassak 1.National Asia Co. 2.Santhephad Sawmill 3. Khamhoung Sawmill 4.Thamhou Sawmill	1.--147 hectares 2.--144 hectares 3.—109 hectares 4.—118 hectares --all located in Phathouphone District		"All of these companies are just beginning their surveys in these areas, but they all want lots of land."
	E. ADB ITPP	--Phatouphone District --Sanasomboun District --Phonethong District --Khong District	-total planting in Champassak 809 hectares	PAFO-"this project is not effective, people do not like the project because of the low return from the wood, and now they cannot pay back to the ADB" "...because Phase 1 was not effective, local people are not interested to join. Local people are more interested in rubber and teak."

Source: personal communication, May 2006

Annex 12

Model State Land Lease Agreement [for business purposes*]

Village, District, Province, Vientiane capital

Agreement made and entered into by and between [MoF/DSA; POM/CPMI;
Governor of Province [...]; District Chief of District [...] of Province [...]
(hereinafter referred to as LESSOR)

and _____

with an address of and also known as (hereinafter referred to as LESSEE)

1. Definitions *[non-negotiable]*

As used herein, the following terms shall have the following meanings:

- a) „LESSEE“ shall include the LESSEE, its agents, employees, invitees, guests, family and contractors
- b) „LESSOR“ shall include [MoF/DSA; POM/CPMI; Governor of Province[...]; District Chief of District [...] of Province...], its officers, employees, contractors and agents.
- c) „LAND“ shall mean the area of land specifically described in Paragraph 2 of this Lease Agreement.

2. Lease to use and occupy Land for [...] purposes *[negotiable]*

2.1 The LESSOR hereby leases exclusive rights to enter upon the Land for the purposes of [*e.g., establishing plantation of perennial tree crops; construction and maintenance of a hotel, ...*], but for no other purpose. LESSEE will not engage in any other [*e.g., recreational, industrial, mining, commercial,...*] activities on the Land, will not conduct or allow any illegal activities, and will not engage in any use of the Land not specified herein.

2.2 The lease includes approximately ... m²/ha of land located in the Village of [...], District [...], Province [...], identified as tax map numbers #, #, and #.
A map describing the location of the land is attached hereto.

*This Model Lease Agreement does not cover concession contracts on mining.

2.3 The leased Land may be extended up to[...]m²/ha only upon written agreement between both Parties.

2.4 The Land may be legally posted by the LESSEE in the LESSEE'S name as it appears on Page One of this Lease Agreement.

2.5 LESSEE is entitled to use this Lease Agreement as capital share or collateral for the agreed term, but not exceeding it.

3. Cadastral Survey *[negotiable]*
- for contracts covering non developed land -

LESSEE will submit to LESSOR the time schedule for the area to be surveyed within [30] days after signing this Agreement. The proposed time schedule may comprise, but not exceed, [90] days after submission of the plan. LESSEE will conduct a detailed survey of the area within the given time frame. When conducting the survey, LESSEE will closely co-operate with LESSOR [or MAF and Division ... at ...Province].

All costs of the survey have to be borne by LESSEE.

Upon termination of the survey, LESSEE will file a report for LESSOR [or MAF] within [20] days in order to determine the exact boundaries of the area to be developed.

4. Term of Lease *[negotiable]*

This Lease Agreement is commencing on ... *[insert date]*. This Lease shall be for a term of [...] years and will be renewable for further terms of [...] years thereafter, unless terminated by either Party as set forth in Paragraph 6 thereof.

5. Rental charges *[negotiable]*

5.1 LESSEE shall pay to LESSOR the [annual or monthly] rental of [US \$ or Kip] ... upon execution of this Lease Agreement.

5.2 If LESSEE is failing to pay the rental charges at the agreed time, LESSOR may charge a penalty equal to [20]% the [annual or monthly] amount due. If rental payment is overdue for more than two instalments, LESSOR may terminate the contract

5.2 Rental charges will be reviewed every three years by LESSOR. Failure to reach an agreement on the adjustment of rental charges after this period may cause for termination of this Lease Agreement by either Party under clause 6 below.

6. Termination *[not negotiable]*

This Lease Agreement may be terminated by the LESSOR or LESSEE at any time upon ... [days or months] prior written notice. If the LESSOR terminates the Lease under this subparagraph, LESSOR shall pay LESSEE a *pro rata* refund of prepaid rental.

7. Termination upon Default *[not negotiable]*

7.1 Both Parties may terminate this Lease Agreement at any time due to default according to subparagraph 7.2 below. Upon termination for cause, LESSEE forfeits the right to any refund whatsoever of the rental paid.

7.2 If a Party breaches any material obligation required to be performed by it under this Lease Agreement and fails to rectify such breach within [60] days after receipt of a notice („Notice of Default“) from the other Party, specifying such breach and requiring the breach to be rectified, then that Party shall be in default under this Agreement (a „Default“).

7.3 The defaulting Party is liable for damages so as to put the other Party in the same position in which it would have been if it had not concluded this Agreement. The Party claiming damages shall provide to the defaulting Party all information reasonably necessary for it to properly verifying the amount requested.

8. Force Majeure *[not negotiable]*

8.1 Any failure by LESSEE to carry out any of its obligations under this Lease Agreement shall not be deemed a breach of contract or default, if such failure is caused by force majeure, provided that the Party affected has taken all appropriate precaution, due care and reasonable alternative measures with the objective of avoiding such failure and of carrying out its obligations under this Lease Agreement. Force majeure shall include, inter alia, war, insurrection, civil disturbance, blockade, sabotage, embargo, strike and other labour conflicts, riot, epidemic, earthquake, storm, and flood having a major effect on the operation of the Enterprise for a period of more than 6 months simultaneously.

8.2 The Party, whose ability to perform its obligations is affected by force majeure, shall notify the other Party in writing as soon as possible, stating the cause, and the Parties shall endeavour to do all reasonable acts within their power to remove such cause.

9. Transfers and Assignments *[negotiable]*

9.1 LESSEE shall not transfer, assign or otherwise encumber this Lease Agreement or any rights arising hereunder without the written consent of the LESSOR. Areas not needed any longer for leasing purposes shall be returned to LESSOR. LESSEE agrees in advance to adjust clauses 2 and 5 accordingly.

9.2 Upon written approval of assignment by LESSOR, LESSEE will be required to pay an administrative processing fee of [20] per cent ([20]%) of the [annual or monthly] rental.]

9.3 LESSOR may transfer or assign this Lease Agreement at any time for any reason.

10. Restricted use of the Land *[not negotiable]*

10.1 LESSEE may not cut, use and remove any timber, trees, wood or other forest products on the leased property, subject to the terms of a Management Plan approved by LESSOR and shall take all reasonable precautions to prevent unauthorized persons from doing so. LESSEE may use dead wood without value as timber (e.g., tree tops clearly abandoned after a timber cutting) for fuel or heating purposes on the leased property.

10.2 - *applicable only for forestry and agricultural uses -*

LESSEE shall not install a cable or chain across any road, trail or elsewhere on the Land. LESSEE may construct a gate provided the gate is constructed to LESSOR'S specifications. LESSEE agrees to provide LESSOR with the combination or key to all locked gates.

10.3 - *applicable only for forestry and agricultural uses –*

LESSEE agrees that no nails, spikes or metal objects will be driven into any trees or timber on the premises for any purpose whatsoever. LESSEE may use dead and low quality trees for posting purposes provided that aluminium nails or small wire staples are used.

10.3 - *applicable only for forestry and agricultural uses, not for industrial or hotel construction purposes! -*

LESSEE shall not interfere with any logging or other forestry operations on adjacent land by, for example blocking roads with vehicles or causing damage to roads by driving over them during adverse climatic conditions.

10.4 - *applicable only for forestry and agricultural uses, not for industrial or hotel construction purposes -*

LESSEE shall not construct or establish any buildings or structures on the Land. LESSEE is responsible for tree stands located upon the property at the inception of this Lease Agreement and must retain any that are within [5] metres on either side of any watercourse. LESSEE shall *[insert contractual activity]* on all other Land. Any unauthorized buildings or structures shall be removed at the LESSEE'S expense. The foregoing notwithstanding, LESSEE may place the following temporary items on the property leased: *[e.g., shelter, shed, store]*. LESSEE is responsible for compliance with laws applicable to such installations, and shall remove them from the premises no later than the expiration of the term of this Lease Agreement restoring any area disturbed to its natural condition as far as practical.

10.5 - *applicable for leases not involving agricultural or forestry land -*

LESSEE shall not log any timber or forest products. Failure to do so may be cause for termination of this Lease Agreement under subparagraph 7.1 above.

10.6 – *applicable for construction purposes only* –

LESSOR is not liable for any difficulties arising out of LESSEE'S unsuccessful attempts to receive construction permits and all other licenses and authorizations required for LESSEE'S investment. It is the sole responsibility of LESSEE to take care of its own investment project. Failure to successfully use the land for construction purposes does not entitle LESSEE to terminate the Lease Agreement without observing the agreed period on notice termination laid down in clause 6 above.

10.7

LESSEE shall follow all technical guidelines and Codes of Practice for [e.g., *plantations: establishment, management and harvesting; construction: planning, erecting, maintenance*] prescribed by LESSOR and as added to or modified from time to time. Failure to do so may be cause for termination of this Lease Agreement under sub-paragraph 7.1 above.

11. Road maintenance *[not negotiable]*

- *for lease agreements using large areas of land, mainly for agricultural and forestry purposes* -

LESSEE understands that the roads on the Land exist primarily for [e.g., *management, logging, and... purposes*]. LESSOR is not responsible for maintaining the roads and does not guarantee the roads will be in passable or safe condition.

12. Easements protected *[not negotiable]*

LESSEE shall conduct its operations on the leased premises in such a manner as not to interfere with, interrupt, damage or destroy any gas, electricity or water transmission lines, well lines or other facilities located on the leased premises belonging to LESSOR or others, or any other easements or right-of-way which LESSOR or other persons may have or which hereafter may obtain through or across the leased premises.

13. LESSOR'S reserved rights *[not negotiable]*

LESSOR reserves all areas of land mineral rights on the Land, and this Lease Agreement shall not in any way affect the right of LESSOR, its agents, employees, or assignees to enter upon the Land at any and all times, for any other purpose including, but not limited to, road construction, pipeline and well maintenance and the like.

14. Fire protection *[not negotiable]*

LESSEE shall use precaution to protect [*construction: the buildings and/or improvements; tree plantation, agriculture: timber, trees, wood and other forest products*] on the Land from fire. LESSEE shall use reasonable effort to

extinguish any fire that occurs on the Land. In the event of a fire on the Land, LESSEE shall notify LESSOR and other appropriate public authorities as soon as possible. LESSEE shall be liable to LESSOR for any damages incurred by LESSOR as a result of any fire caused by LESSEE'S negligence.

15. Compliance with Laws *[not negotiable]*

LESSEE shall comply with all applicable laws, regulations and ordinances regulating the use of the Land including environmental protection standards.

16. Liability and Indemnity *[not negotiable]*

16.1 LESSEE agrees to defend, indemnify and hold harmless LESSOR, its officers and agents, from all damages, including attorney fees, arising out of the actions of LESSEE or the presence of anyone upon the property because of this Lease Agreement. This indemnity shall not cover occurrences arising out of the sole negligence of LESSOR and of its officers and agents.

16.2 LESSEE shall be liable for all damages caused by LESSEE to the Land, roads, the LESSOR'S property and its operations.

17. Notices and Payment *[not negotiable]*

17.1 Any notice required to be given hereunder shall be either mailed, certified mail return requested to be given, or personally delivered to LESSEE or LESSOR at their respective addresses listed on Page One of this Lease Agreement. Notice shall be deemed given on the day it is received.

17.2 Payment of fees shall be made by check to the order of [MoF/DSA; POM/CPMI; Governor of Province [...]; District Chief of District [...] of Province [...], and shall be delivered to or mailed by regular first class mail to the LESSOR'S address set forth on Page One of this Lease Agreement or as provided on the billing invoice.

18. Insurance *[not negotiable]*

18.1 Within [2] months of signing this Lease Agreement [alternatively: of delivery of the Land], LESSEE shall forward to LESSOR a copy of a liability insurance policy covering the Land according to subparagraph 17.1.

18.2 The LESSEE'S „[...] Insurance policy shall name LESSOR as an „additional insured“ for the purpose of coverage and not for the purpose of the payment of premiums.

18.3 – *applicable only for lease agreements covering large areas of land –*

LESSEE warrants that all motor vehicles owned, leased and used by LESSEE, its guest, members, agents and employees on the leased premises will be covered by liability insurance.

19. Registration fee *[not negotiable]*

Upon signing this Agreement, LESSEE will submit a copy to the State Registration Office and pay the registration fee due.

20. Transfer *[not negotiable]*

Upon date of termination, LESSEE shall transfer and assign to LESSOR or its designee, free of charge, buildings and structures, machinery and equipment, and all the rights to use the Land.

[Alternatively: Upon termination, LESSEE may sell the buildings and structures erected by it, provided that they have been offered first to LESSOR for purchase or lease.]

21. Entire Agreement *[not negotiable]*

This Lease Agreement supersedes all prior oral and written agreements between the parties with respect to the subject matter thereof. Any modification or addition to this Lease Agreement shall be in writing and duly executed by the Parties hereto.

22. Governing Law and Arbitration *[not negotiable]*

22.1 Governing Law

This Lease Agreement shall be governed by the Laws of Lao PDR.

22.1a - for leasing agreements covering large areas of land: -

If the laws of Lao PDR are found to be silent on the issues in question, then for the purposes of interpreting and supplementing the terms and conditions of this Lease Agreement, general principles of English law shall apply.]

22.2 Arbitration

The Parties shall use their best effort to amicably settle any dispute, controversy or claim between them arising under or in connection with this Agreement, including any question regarding its existence, validity, termination or interpretation.

The Parties shall meet promptly at a convenient location upon request of one Party in an effort to settle such dispute, controversy or claim amicably by discussion, and their unanimous settlement shall be binding upon the Parties.

If the Party so requested does not agree, the requesting Party has the right to lodge a claim with the panel on economic arbitration or with the courts.

23. Miscellaneous *[not negotiable]*

All of the above respective covenants, obligations, representations, warranties and indemnities of the Parties hereto shall be binding upon the heirs, successors, executors, administrators and assigns of the Parties hereto and shall continue in full force and effect for the duration of this Lease Agreement and, where applicable, shall survive the termination of this Lease Agreement.

IM WITNESS THEREOF, the Parties have executed this Lease Agreement this _____ Day of _____, _____ with the intent to be legally bound.

[MoF/DSA; POM/CPMI; Governor of Province [...]; District Chief of District [...] of Province [...]

(position)

LESSEE

WITNESSES:

Annex 13

LPA - One Hectare Model Cash Flow for Yield Class 16 (US \$)

Year	Labour	Land	Seedlings Costs \$/ha	Materials Costs \$/ha	Extension	Total	Revenue US \$/ha	Cash Flow
1	345	20	93	115	30	603	0	-603
2	98	20			30	148	0	-148
3	46	20			30	96	0	-96
4	0	20			0	20	0	-20
5	0	20			0	20	0	-20
6	0	20			0	20	0	-20
7	0	20			0	20	0	-20
8	244	20			10	274	1.728	1.454
9	98	20			0	118	0	-118
10	46	20			0	66	0	-66
11	0	20			0	20	0	-20
12	0	20			0	20	0	-20
13	0	20			0	20	0	-20
14	0	20			0	20	0	-20
15	0	20			0	20	0	-20
16	331	20			0	351	2.246	1.895
17	98	20			0	118	0	-118
18	46	20			0	66	0	-66
19	0	20			0	20	0	-20
20	0	20			0	20	0	-20
21	0	20			0	20	0	-20
22	0	20			0	20	0	-20
23	0	20			0	20	0	-20
24	64	20			0	84	1.728	1.644
Total	1.416	480	93	115	100	2.204	5.702	3.498
IRR 1st rotation								14%
NPV @10%								314

Source: ADB (2005)

Annex 14

PROPOSALS ON LAND CONCESSION AND LEASING FEE RATES

in US \$/ha/year

No.	PURPOSE OF CONCESSION	DSA DRAFT DECREE ON LAND LEASE & CONCESSION Dated 26 March 2006						TEAM	FEE RATES ADB/ ASIA	PROPOSALS BY PROVINCES
		Plain		Upland		Mountain				
		Ur- ban	Ru- ral	Ur- ban	Ru- ral	Ur- ban	Ru- ral			
MINING										
	Prospection							2-4		
1	Exploration	0.5	0.5	0.5	0.4	0.4	0.3	20-25		
2	Analysis/Feasibility study	10	9	8	7	7	6	20		
3	Exploitation	60	50	50	45	45	40			5-10, Khammouane 30, Savannakhet
	Precious stones							600-700		
	Gold, precious metal							80-100		Increase value of shares, Savannakhet
	Industrial minerals							30-50		
	Sand							Bidding		
AGRICULTURE										
4	Agriculture & livestock	5	4	4	3.5	3.5	3	3 to 5		
11	Crop growing	6	6	5	5	4	4	20 for Boloven Plateau; 6 for other locations		20 with 3 years exemption, Champassak
	Coffee							30	30 (ADB)	
	Plants harming soil (cassava)							10		
	Sugarcane							6		
FORESTRY										
5	Forest exploitation	300	300	250	250	200	200			
6	Tree plantation in general	5	4	3	3	2.5	2			
7	Industrial tree plantation	12	11	11	10.5	10	8	20	20-50 (ADB) 70 (China) 0-40 (Vietnam) 30 (Malaysia) 30 (Indonesia)	20, Khammouane 20, Champassak
	Rubber							30	30 (ADB)	2 after 2-7 years exemption (Champass.)
	Eucalyptus								20 on degraded land	
	Agar wood							20 to 30		

8	Medicinal tree plantation	12	11	10	9	8	6			
INDUSTRY										
9	Industry	100	70	60	60	50	40			15 (Champass.)
	Construction, factories							200 to 2,000		
10	River industry	1	1	0.8	0.7	0.5	0.5			
WATER RESOURCES										
12	Aquatic farm	2	2	1	1	1	1			
TOURISM AND SERVICE										
13	Tourism	50	50	40	40	30	30	5,00 to 10,000		
	Market							Bidding		

NB: The sequence originates from the DSA draft, while the rows without numbering have been added by the team.

Annex 15

SYNOPTIC TABLE ON CONTRADICTIONARY POWERS GIVEN TO STATE ORGANIZATIONS AT VARIOUS LEVELS ON AUTHORIZING INVESTMENTS THAT DIRECTLY OR INDIRECTLY INVOLVE STATE LAND CONCESSIONS

	Laws/ Decrees	National Assembly	Government	Ministries/ Particular Organization at central level	Provinces	Districts
1	Prime Minister's Decree No. 301/PM, 12 Oct. 2005, on the Implementation of Law on Promotion of Foreign Investment (Articles 52, 53)		>US\$ 20 million and investments of type 3 (telecommunication, land, mineral, hydropower concession)	*IPMC< US\$ 20 million of investments types 1,2, and 3 **IPMC President signs investment > US\$ 10 million ***IPMC Deputy President signs investment <US\$ 10 million	*Local IPMC (Capital, Savannakhet, Champassak, Luang Prabang) for investment type 1 < US\$ 5 million **Local IPMC of other provinces for investment type 1 < US\$ 3 million	
2	Prime Minister's Decree 101/PM, 20 April 2005, on the Implementation of Land Law (Article 16 on Change in land use purpose)		>10,000 hectares on proposal by NLMA, relevant services and administrative authorities, with the approval of the National Assembly	NLMA on proposal of relevant services, and agreed upon by administrative authority, and approved by the Government >100 hectares and <10,000 hectares	Administrative authorities on proposal of local LMO and relevant services >3 hectares and <100 hectares	Administrative authorities on proposal of local LMO and relevant services < 3 hectares
3	Ministerial Direction of the Minister of Finance no. 2085/MoF, 1 Oct. 2004, on Implementation of Law on State Assets (Article 10 on Transfer, lease, concession particularly of State land...)		>100 billion kip	MOF<100 billion kip	Finance Division <10 billion kip	Finance Unit has no right to lease, grant concession...

	Laws/ Decrees	National Assembly	Government	Ministries/ Particular Organization at central level	Provinces	Districts
4	Agriculture Law, 10 Sep. 1998 (Articles 70, 71, and 72)			Ministry of Agriculture and Forestry "studies and comments on applications seeking to conduct large scale or significant agri-business."	Provinces' Agriculture and Forestry Divisions "study and comment on applications seeking to conduct agri-business within their areas of responsibility."	"District Agriculture and Forestry Bureaus allocates land within their areas of responsibility."
5	Electricity Law, 12 April 1997 (Article 9 "Size of business")	>50,000 KW on proposal by Government	2,000 to 10,000KW		100 to 2,000KW decided by provincial authority with approval of Ministry of Industry and Handicrafts. (Article 20 of the same law exempts investors to have to ask for concession if the business is less than 2,000 KW)	<100KW decided by district administrative authority with approval of province
6	Forestry Law on 11 October 1996 (Article 16 Transformation of forest land to use for some other purpose. This article is used as legal basis for land concession purporting to tree plantation or agri-business. This Article 16 contravenes Article 15 of the same law which "absolutely prohibited from using dense or reed natural forests for planting their trees which forests can themselves grow as natural forests.")		Government >10,000 hectares with approval of National Assembly	Ministry of Agriculture and Forestry >100 hectares and <10,000 hectares, with approval of Government	Provincial/ Capital authorities >3 hectares and <100 hectares with approval of Ministry of agriculture and Forestry	District authorities < 3 hectares with approval of provincial Agricultural and Forestry Division

Source: Compiled by Lao-German Land Policy Development Project (GTZ), June 2006

Notes:

IPMC = Investment Promotion and Management Committee, replacing FIMC

NLMA=National Land Management Authority not yet established at the time of the writing.

LMO= Local branch of NLMA