

Poverty- Environment Initiative (PEI) Lao PDR  
Issues Brief 01-2011:

**Investment management in South-East Asia –  
lessons for Lao PDR \***



*A series of issues briefs by the Poverty-Environment Initiative of Lao PDR address poverty and environment issues in the current development and national planning processes. The purpose of the briefs is to provide evidence-based information and practical policy recommendations to support transformation of the Lao economy towards a sustainable pro-poor development path.*

**Key findings of this brief:**

*1. Investment management in Lao PDR would benefit from more detailed regulations and guidelines:*

- *sector-specific Environmental Impact Assessment (EIA) guidelines*
- *procedures for handling stakeholder complaints*
- *rules for calculating compensation for land requisition.*

*2. Lack of technical skills and resource capacity of officials involved in EIAs, land allocation and investment monitoring must be addressed.*

*3. Improving the land registry and accelerating land title issuance should be a priority, given the importance of agriculture and natural resources to the economy of Lao PDR.*

**BRIEF** Lao PDR has experienced strong economic growth since 2004, primarily driven by increasing inflows of Foreign Direct Investment (FDI). This increase is likely to continue for the foreseeable future as FDI is key to the Government of Lao PDR's broad economic plan. Hence, sound investment management is of critical importance to ensure that current and future investments in Lao PDR are socially and environmentally sustainable.

A literature review of the investment management situation in Vietnam, Thailand and Malaysia was carried out in 2010 to provide input into the National Investment Strategy<sup>1</sup> that was being developed by the Investment Promotion Department, Ministry of Planning and Investment of Lao PDR. The review examined regional experiences with managing investments and demonstrates how problems similar to those faced by Lao PDR have been addressed by these nations and highlights lessons that can be derived.

The National Investment Strategy focuses directly on the mandate of the Investment Promotion Department (IPD). In addition, this brief highlights three key areas of investment management outside of IPD's scope to complement the action plan of the investment strategy. These areas are nevertheless critical to ensuring that investments generate maximum benefits for the country:

- 1) Environmental Impact Assessment (EIA)
- 2) EIA stakeholder consultation and public disclosure
- 3) Land use, allocation and planning

Each chapter begins with a brief analysis of the context in Lao PDR, followed by discussion of the regional experiences. Recommendations that can guide the further strengthening of investment management in Lao PDR are provided at the end of each chapter.

<sup>1</sup> The National Investment Strategy is developed with support of the Poverty-Environment Initiative of Lao PDR. The objective of the Strategy is to "increase the proportion of quality investments into Lao PDR that reduce poverty, enhance development of human capital and have least impact on the environment".

# 1. Environmental Impact Assessments (EIAs)

## 1.1. Situation analysis in Lao PDR

EIAs have been a part of the investment approval process in Lao PDR since 2002. However, the EIA process was only prescribed and implemented in 2010 following approval of the *Decree on Environmental Impact Assessment* (“the Decree” from here on). The EIA process is overseen by the central Water, Resources and Environment Administration (WREA).

The Decree requires either Initial Environmental Examinations (IEEs) or full-scale EIAs, depending on the type and/or size of project proposed. IEEs and EIAs cover both environmental and social impacts of investment projects. The principal difference between the two assessments is that EIAs must include an Environmental Management and Monitoring Plan (EMMP) and Social Management and Monitoring Plan (SMMP).

WREA is responsible for the final approval of IEEs/EIAs and issuance of the Environmental Compliance Certificate, without which the project cannot commence. Local administrations and sector agencies are involved in the approval process to various degrees.

The investor is responsible for undertaking and financing most of the EIA tasks. This includes conducting IEE/EIA studies, organising dissemination and consultation meetings, developing and implementing EMMPs and SMMPs, and providing government officials with vehicles and equipment for project monitoring.

## 1.2. Regional experience

### Sector-specific EIA guidelines

Vietnam and Malaysia have developed sector-specific guidelines for EIA preparation and content to be followed by the investor. The guidelines cover sectors such as tourism, hydropower, mining and others<sup>2</sup>.

### EIA approval process by the government

EIA approval periods for Vietnam, Thailand and Malaysia are 60 days, 75 days and 84 days, respectively. The approval period for an IEE equivalent in Malaysia (“preliminary EIA”) is 35 days<sup>3</sup>. Lao PDR therefore has a longer period for government approval than its neighbours (50 days for IEEs and 95 to 120 days for EIAs).

In Vietnam, Thailand and Malaysia, the approval of the EIA report must precede the signing of the project agreement. In Lao PDR, the EIA process begins after signing of the initial project memorandum of understanding, but before the agreement.

### Use of expert panels for EIA review

In Thailand, Malaysia and Vietnam, every EIA must be reviewed by a panel of experts. In Lao PDR, such panels are used only in reviews of EIAs for “complicated” projects<sup>4</sup>.

In Thailand and Malaysia, the panel has the authority to reject the project. In Vietnam and Lao PDR, the panel can only make recommendations on the EIA to the relevant government body (WREA, in case of Lao PDR), which makes the final decision on the approval.

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<sup>2</sup> World Bank 2006; DOE 2010a.

<sup>3</sup> DOE 2011, World Bank 2006.

<sup>4</sup> Investment projects with ‘substantial impacts on the environment and society, including impacts beyond the border or accumulative impact on other investment projects, and in which complicated technology is applied’ (Lao PDR 2010:8).

In Lao PDR, the findings of the expert panel must be kept confidential.

Thailand maintains five permanent expert panels covering industry, water resources, mining, public works and housing sectors<sup>5</sup>. In Malaysia, the Department of Environment (DOE) maintains a list of experts who may be called upon to sit as panel members; the panels are appointed in an ad hoc manner by the Director General of Environmental Quality<sup>6</sup>. In Vietnam, the panel is picked by the central or provincial government (depending on the scale and nature of the project), with at least 50 percent of the members to have 'professional knowledge of the environment and of other sectors related to the contents of the project'<sup>7</sup>. In Lao PDR, the panels are appointed by WREA, and must consist of experts in the relevant scientific field with no direct or indirect interest in the project.

#### Capacity constraints

Vietnam, Thailand and Lao PDR suffer from lack of finances, equipment and technical training for government officials responsible for reviewing EIAs and monitoring investor compliance. The EIA process in Malaysia, on the other hand, is more affected by a lack baseline data on environmental quality<sup>8</sup>.

### **1.3. Recommendations for Lao PDR**

- Lao PDR needs to develop sector-specific IEE and EIA guidelines, in addition to the general guidelines. It also needs to clarify methodological differences between IEE and EIA assessments, which are currently not clear<sup>9</sup>.
- The period for EIA approval should be shortened over time, as more advanced in-country experience and expertise are accumulated.
- The timing of the EIA approval within the overall investment approval process should be clarified. Reviewing the EIA after the signing of the project agreement limits the power and utility of the EIA findings. The upcoming Decree on Investment Promotion should clarify this matter.
- Greater independence and transparency in the expert panel review process is needed. The panel should have the right to reject the EIA, and its findings should be made public. Inclusion of the private sector and non - governmental organisations in the process should be made mandatory. The use of the expert panel should be extended to all EIAs.
- The lack of technical and resource capacity for government officials involved in the EIA process should be addressed. EIA monitoring and technical training of officials are currently co-funded through EMMP and SMMP budgets provided by the investor. The investor is also responsible for providing officials with equipment and vehicles. This over-dependence on investor funding may lead to potential conflicts of interest. Therefore, alternative sources of public funding must be pursued.

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<sup>5</sup> World Bank 2006:63.

<sup>6</sup> DOE 2011.

<sup>7</sup> NASRV 2005:12.

<sup>8</sup> World Bank 2006; Marzuki 2009; Memon 2002.

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<sup>9</sup> In Thailand, for example, the law specifies that while IEEs can rely solely on secondary data, EIAs require field data and probability forecasts using mathematical models.

## 2. EIA stakeholder consultation and public disclosure

### 2.1. Situation analysis in Lao PDR

#### Identifying stakeholders

Two groups of stakeholders must be consulted during project approval and implementation – “project affected people” and general “stakeholders”<sup>10</sup>. These groups appear to have identical rights and obligations under the Decree (described below).

#### Stakeholder consultation

The investor must organise village hearings to publicise the project development plan and the likely environmental and social impacts of the project. The investor must also organise consultation meetings at village, district and provincial levels to publicise draft and final IEE/EIA reports, EMMPs and SMMPs. Stakeholder opinions must be collected, and reports and plans revised in accordance with resolutions of the meetings. Minutes of each meeting must be kept and submitted together with the final IEE/EIA report.

Stakeholders also have the right to participate in discussions on compensation, migration and resettlement of project affected people.

#### Dispute resolution

Disputes between the investor and stakeholders are to be resolved by mutual negotiation, where possible. Parties can also refer the dispute to the relevant government agency or a Lao court. Stakeholders can also make written proposals to local administrations or WREA on solving social and environmental problems caused by the project.

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<sup>10</sup> Project affected people are individuals or organisations residing in areas directly affected by the investment (via legal requisition of lands or real estate, changes in land categorisation and impacts on environmental systems). Stakeholders are any other individuals or organisations that ‘are involved in or are likely to be affected by the investment project’ (Lao PDR 2010).

#### Information disclosure

The investor and government agencies must facilitate stakeholder access to information on project activities with likely environmental or social impact, and on implementation of preventive and mitigation measures. This includes dissemination of the project development plan, IEE/EIA reports (including EMMPs and SMMPs), monitoring reports by WREA and local administrations, and so forth.

For projects requiring an EIA, investors must also build information centres in relevant districts.

### 2.2. Regional experience

#### Identifying stakeholders

In Vietnam, local communities are represented by the people’s committee of the relevant commune, ward or township, and through other “representatives”<sup>11</sup>.

Malaysia’s laws and relevant guidance do not define stakeholders, instead simply referring to “the public” and “affected community”<sup>12</sup>.

Thailand’s EIA process does not require a public consultation<sup>13</sup>. In 2003, a special committee proposed identifying 20 groups of stakeholders and four levels of participation during the EIA process:

- 1) Informed (via public disclosure);
- 2) Consulted (via public hearing);
- 3) Involved in decision-making (public committee); and
- 4) Voted (public consensus).

The level of consultation and participation for each type of stakeholder varied depending on the step in the EIA process, the nature of the project and their needs. However, it appears that proposed changes were not implemented<sup>14</sup>.

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<sup>11</sup> These are not defined in the law (NASRV 2005:11).

<sup>12</sup> Laws of Malaysia 2001; DOE 2010b.

<sup>13</sup> A 2007 revision of Thailand’s Constitution (Article 67) made a public hearing process mandatory for approval of large industrial projects. Relevant guidelines have apparently been issued.

<sup>14</sup> World Bank 2006:63-64.

### Stakeholder consultation

EIA reports in Vietnam must contain opinions of the people's committee of the commune, ward or township (depending on the scale of the project) and "representatives of local communities". Stakeholders may also send petitions or recommendations for environmental protection to the project appraisal body, which must consider them prior to making its decision. However, there is no guidance on how public consultations should be conducted<sup>15</sup>.

In Malaysia, reports of detailed EIAs must be displayed to the public and affected community for comment. Reports are displayed at all offices of the DOE, and public and university libraries. The executive summaries of EIA reports are posted on DOE website. The length of the public comment period is 30 days, with written comments to be forwarded to the Director General of DOE. Notably, preliminary EIA reports do not require a public consultation<sup>16</sup>. Between 1988 and 1999, 95 percent of all EIA reports submitted to DOE were preliminary, and hence not subject to public scrutiny

### Dispute resolution

In Vietnam, any party can initiate a "dialogue", a complaint or a legal proceeding against the investor on the environmental impacts of a project. A written notice must be sent to the investor, who then has five working days to reply. A state environmental protection body can then request a formal "dialogue" if the matter is unresolved. The dialogue must be chaired by the people's committee or the environmental protection body. Opinions expressed and agreements reached must be recorded as minutes, which then serve as a basis for monitoring compliance with agreements reached<sup>17</sup>.

### Information disclosure

In Vietnam, the following information must be made public (unless classified as State secrets):

- EIA reports;
- Decisions approving EIA reports and implementation plans;
- Information on discharge sources and wastes harmful to human health and the environment;
- Results of state investigations in incidents of environmental pollution.

## **2.3. Recommendations for Lao PDR**

### Identifying stakeholders

- Relevant groups of stakeholders should be categorised in the Decree (local communities, local businesses, International NGOs, etc).
- The level of consultation and participation for each group should also be identified, pending on the scope of the project.

### Stakeholder consultation

- A clear regulatory requirement for all stakeholders to be invited to participate in dissemination and consultation meetings is needed. A requirement for minimum attendance levels (e.g. 50 percent of adults in the village) should be considered.
- Meetings should have a balance of appropriate interests. No single interest category should dominate decision-making. Evidence of consensus being reached should be provided.
- Views of all relevant parties in meetings should be documented and considered in an open and transparent way. Evidence of subsequent changes to relevant documents should be provided.
- Procedures to be followed during discussions on compensation, migration and resettlement of project affected people should be developed.

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<sup>15</sup> NASRV 2005:11-12.

<sup>16</sup> Marzuki 2009:130.

<sup>17</sup> NASRV 2005:51-52.

- EIA reports should be subject to a formal national consultation process. Evidence that comments received were discussed, and changes made as a result should be provided.

#### Dispute resolution

- Clear procedures to be followed by local administrations and WREA in handling disputes and complaints should be developed.
- A mechanism for collecting and addressing public complaints should be established, with clear procedures and responsibilities (monitoring, investigation, compliance checks).

#### Information disclosure

- The mechanisms for public dissemination of relevant documents should be clearly set out (e.g. posting on the internet, making free hard copies available at government offices).
- The functions of information centres maintained by the investor should be clarified.

### **3. Land use, allocation and planning**

#### **3.1. Situation analysis in Lao PDR**

##### Land ownership and management

All land is owned by the State. Land use, allocation and planning are prescribed in the *Land Law 1997* (amended in 2003). Implementation of the Land Law is overseen by national, provincial, city, district and municipal Land Management Authorities (LMAs).

LMAs are responsible for:

- Allocating land use rights to domestic and foreign entities (including temporary land certificates, land titles, land leases and concessions)
- Undertaking land surveys, land classification and land use planning
- Maintaining a land registry
- Overseeing legal compliance of land users
- Resolving land disputes

##### Land registration and titling

Land registration and consequent issuance of land titles are undertaken by district and municipal LMAs, with approval from provincial and city LMAs.

Land registration can be initiated by the government or the public. It involves mapping of land parcels and recording relevant data (name of land user, land category, boundaries, area, etc) in the land register book.

A land title is the only document which is considered as evidence for “permanent” land use rights<sup>18</sup>. Land titles can be terminated by State land requisition<sup>19</sup> for public purposes.

<sup>18</sup> LMAs can also issue temporary (3-year) land certificates for use of agricultural and forest land. If the land was used in accordance with government objectives and regulations during the three year period, the user gains the right to apply for a land title.

<sup>19</sup> Involuntary acquisition of land use rights by the State which includes consequent compensation paid to existing users.



## Rights of foreign investors

Foreign investors can receive land leases and land concessions from the State. They can also lease registered land from Lao citizens, with approval from the National Land Management Authority (NLMA).

Leases and concessions to foreign investors have a 30 year limit, but may be extended with NLMA approval. For projects exceeding 10,000 hectares, National Assembly approval is required.

## Identified problems

The following flaws in the land use and allocation process have been identified via a literature review and stakeholder consultations:

- An inadequate land registry, due to lack of up-to-date maps and land use data
- A lack of land titling at household and individual levels<sup>20</sup>, resulting in disputes and uncertainty for investors and local communities
- A lack of clear and enforced boundaries of villages, concessions, protection forests and upland, leading to disputes and infringement of existing land use rights
- A lack of a physical surveillance system to monitor land use (primarily due to lack of financial resources and staff capacity at provincial and district levels)
- A lack of clear division of responsibility between different government agencies responsible for land management, including between different levels of LMAs and other agencies<sup>21</sup>

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<sup>20</sup> Since 1991, the Lao government has been implementing a land use planning and land allocation (LUP/LA) process. LUP/LA allocates formal land use rights for agricultural production to individual households. However, the process appears to suffer from a lack a standardised methodology, and lack of resources and staff capacity of implementing and monitoring district authorities. By 2006, LUP/LA coverage extended to less than half of total target villages Manivong & Sophathilath 2009).

<sup>21</sup> Gebbie et al 2008; Manivong and Sophathilath 2009; Pommier 2009; Shi 2008.

## **3.2 Regional experience**

### Land ownership and management

All land in Vietnam is State-owned. Thailand and Malaysia permit private land ownership.

### Land registration and titling

Vietnam has a well-established land use registry. Provincial registries and encumbrances are paper-based, but the government intends to computerise all registries by around 2011<sup>22</sup>.

In Vietnam, similar to Lao PDR, land titles can be terminated by State requisition of land for public purposes (termed “land recovery”). Concerns have been raised by land users over the low compensation paid for the recovered land, as administrative price of land can range anywhere between 10 and 100 percent of market value. Other concerns include inappropriate resettlement policies, loss of income and weak participatory approaches during the recovery process<sup>23</sup>.

In Thailand, issuance of land titles was accelerated by the Thailand Land Titling Project (TLTP, 1984-2004). Coordinated by AusAID and the World Bank, the project provided training in cadastral surveying and mapping, title deeds issuance, land valuation and information technology to the staff of the Department of Lands (DOL). It also provided overseas training on adjudication, registration and land information systems, and local training on information and communication technologies and computerised methods of market-based valuation<sup>24</sup>.

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<sup>22</sup> UNCTAD 2008:72.

<sup>23</sup> ADB et al 2010:47-49.

<sup>24</sup> Bowman 2004.

### Rights of foreign investors

In Thailand, foreign investors are allowed to own land in industrial estates and industrial zones only. Foreigners can lease property for commercial or industrial purposes for up to 50 years, renewable<sup>25</sup>.

Malaysia allows foreigner investors to purchase agricultural, residential, commercial or industrial land; permission from the government is not required for the latter. Purchase of residential or commercial real estate must be made through the formation of a Malaysian company that has 70 percent ownership by Malaysian citizens<sup>26</sup>.

### **3.3 Recommendations for Lao PDR**

#### Improve land registry and training

- Improving the land registry should be a top priority, given the importance of agriculture and natural resources to the economy. Improved training of provincial and district LMA staff in cadastral surveying and mapping, along with equipment and financial resources to undertake such work is required.
- Improved training of LMA staff in land title issuance is needed and the lack of financial resources and staff capacity to monitor land use needs to be addressed. Public funds and donor assistance – both financial and technical – should be sought to this end.
- In addition to the technical activities, political will is needed to improve and empower LMAs' capacity to enforce land boundaries.

### Land use planning and land allocation

The following lessons from the Thailand Land Titling Project are useful in addressing the shortcomings of Lao PDR's ongoing land use planning and land allocation process:

- A commitment to land reform at the government and community levels is required
- The land titling process should be transparent and actively involve village officials
- Adequate reward for government field staff is important in improving the quality of their work and avoiding corruption
- Land data should be effectively shared among government agencies<sup>27</sup>

#### The Land Law would benefit from the following changes:

- A clear description of division of responsibilities between different government agencies
- Clear procedures on how compensation for land requisition is to be calculated. The law currently states that the level of compensation is to be determined by 'a committee consisting of the representatives of concerned parties'; there is a need for guidelines on the formation and operation of such a committee.

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<sup>25</sup> WTO 2006:21-22.

<sup>26</sup> National Association of Realtors 2011.

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<sup>27</sup> Bowman 2004.



## **Poverty-Environment Initiative (PEI) Lao PDR Issues briefs**

### **Past publications:**

*01/2010: Poverty reduction and environmental management: Joint development goals for sustainable growth*

*02/2010: Poverty-Environment Indicators for monitoring and evaluation sustainable growth goals*

*03/2010: Investments and women's economic empowerment*

*04/2010: Economic, social and environmental impacts of investments in plantations*

*05/2010: Investments in biofuels*

*06/2010: Investments in hydropower*

*07/2010: Investments and sustainability in the forestry sector*

*08/2010: Economic, social and environmental impacts of investments in mining*

### **Download and more information about PEI Lao:**

[www.unpei.org/programmes/country\\_profiles/lao-pdr.asp](http://www.unpei.org/programmes/country_profiles/lao-pdr.asp)

### **What is PEI?**

The United Nations Development Programme (UNDP) and the United Nations Environment Programme (UNEP) support the Poverty-Environment Initiative (PEI), a program that aims to mainstream poverty and environmental issues into national level planning and development processes.

The objective of PEI in Lao PDR is to ensure that the country's rapid economic growth generates inclusive and sustainable development.

PEI supports the strengthening of institutional capacity in national development planning and private investment management, the development of guidelines for social and environmental impact assessments, and the generation of evidence-based research on the social and environmental costs of land use decisions.

The project is coordinated by the Ministry of Planning and Investment with project components managed by Department of Planning, Investment Promotion Department, National Economic Research Institute of Ministry of Planning and Investment and Department of Environmental and Social Impact Assessment of the Water Resources and Environment Administration.

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The views expressed in this publication are those of the authors and do not necessarily reflect the view of the Ministry of Planning and Investment of Lao PDR.

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