

ANNEX 3

SCHEDULE OF RESERVATIONS AND NON-CONFORMING MEASURES FOR INVESTMENT

LAO PDR

LIST A

EXPLANATORY NOTES

1. This List A sets out, pursuant to Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment), Lao PDR's existing measures that are not subject to some or all of the obligations imposed by:
 - (a) Article 3 (National Treatment) of Chapter 11 (Investment);
 - (b) Article 5 (Senior Management and Boards of Directors) of Chapter 11 (Investment); or
 - (c) Article 6 (Prohibition of Performance Requirements) of Chapter 11 (Investment).
2. Each entry in this List A sets out the following elements:
 - (a) **Sector** refers to the sector or sectors for which the entry is made;
 - (b) **Subsector** refers to the specific subsector for which the entry is made;
 - (c) **Industry Classification** refers to the activities covered by the entry according to:
 - (i) International Standard Industrial Classification (ISIC) Revision 3 for manufacturing, agriculture, fishery, forestry, mining and quarrying;
 - (ii) If the entry does not exactly conform to the ISIC, Lao PDR specified the coverage of the entry, as necessary and appropriate;
 - (d) **Level of Government** indicates the level of government maintaining the listed measures;
 - (e) **Obligations Concerned** specifies the obligations referred to in Paragraph 1 that, pursuant to Article on Reservations, do not apply to the listed measures;
 - (f) **Description** sets out the non-conforming measure for which the entry is made; and
 - (g) **Source of Measure** means the laws, regulations or other measures that are the source of the non-conforming measure for which the entry is made. A measure cited in the Source of Measure element:

- (i) means the measure as amended, continued or renewed as of the date of entry into force of the Second Protocol, and
- (ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure.

3. This List A and List B pursuant to Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment) follow the negative list with two-list approach as follows:

- (a) this List A sets out commitments in relation to existing non-conforming measures which are subject to standstill obligations but not subject to ratchet mechanism; and
- (b) List B sets out policy flexibility in relation to measures in sectors, subsectors and activities.

4. Lao PDR may maintain any non-conforming measures other than those set out in this List A provided that the non-conforming measures are in effect on the date of entry into force of the Second Protocol.

5. In the interpretation of an entry, all elements of an entry shall be considered. The Description element shall prevail over all the other elements.

6. These Explanatory Notes shall form part of the Lao PDR's Schedule of Reservations and Non-Conforming Measures for Investment.

1.	Sector	:	Business Sectors Relating to Hazardous Chemicals Type I
	Subsector	:	Hazardous Chemicals Type I
	Industry Classification	:	-
	Level of Government	:	Central
	Obligations Concerned	:	National Treatment
	Description	:	The Government of Lao PDR prohibits business activities using Hazardous Chemicals Type I, except for the activities relating to research, technology development, protection and prevention of danger which may arise against health, life, property or environment and the use of national defence and public security activities, provided that such activities are approved by the Government of Lao PDR.
	Source of Measure	:	<i>Law on the Chemicals Management</i> (No. 07/NA, dated 10 November 2016), Article 10

2.	Sector	:	Central Bank Currency Issuance
	Subsector	:	Paper money, money printing inks, money printing machinery and coin smelting equipment
	Industry Classification	:	-
	Level of Government	:	Central
	Obligations Concerned	:	National Treatment
	Description	:	According to the <i>Law on the Bank of Lao PDR</i> , Article 24 states that the Bank of Lao PDR has the sole right to issue notes and coins (including paper money, money printing inks, money printing machinery and coin smelting equipment) with the approval of the Government of Lao PDR.
	Source of Measure	:	<i>Law on the Bank of Lao PDR</i> (No. 05/NA, dated 14 October 1999), Article 24

3.	Sector	:	Manufacturing Sectors
	Subsector	:	Weaving of textile Needlework
	Industry Classification	:	ISIC 1312, 1321
	Level of Government	:	Central
	Obligations Concerned	:	National Treatment
	Description	:	Investments in weaving of textile with unique ethnic designs by hand, not including industrial textiles and clothes manufacturing, are reserved for citizens of Lao PDR. Investments in needlework with unique ethnic design by hand, not including industrial textiles and clothes manufacturing, are reserved for citizens of Lao PDR.
	Source of Measure	:	<i>Notification on the List of Types of Businesses Reserved for Citizens of Lao PDR (No. 1328/MOIC.DERM, dated 13 July 2015)</i>

4.	Sector	:	Manufacturing Sectors
	Subsector	:	Manufacturing of other products of wood Manufacture of articles of cork, straws, and plaiting materials
	Industry Classification	:	ISIC 1629
	Level of Government	:	Central
	Obligations Concerned	:	National Treatment
	Description	:	Investments in small wood processing factories and businesses of manufacturing carved wood and wicker with unique ethnic sculpture are reserved for citizens of Lao PDR.
	Source of Measure	:	<i>Notification on the List of Types of Businesses Reserved for Citizens of Lao PDR (No. 1328/MOIC.DERM, dated 13 July 2015)</i>

5.	Sector	:	Manufacturing Sectors
	Subsector	:	Manufacturing of porcelain and ceramic products
	Industry Classification	:	ISIC 2393
	Level of Government	:	Central
	Obligations Concerned	:	National Treatment
	Description	:	Investments in businesses relating to local handicraft porcelain and ceramic products with unique ethnic design are reserved for citizens of Lao PDR.
	Source of Measure	:	<i>Notification on the List of Types of Businesses Reserved for Citizens of Lao PDR (No. 1328/MOIC.DERM, dated 13 July 2015)</i>

6.	Sector	:	Manufacturing Sectors
	Subsector	:	Manufacturing of jewellery and related articles Manufacture of imitation jewellery and related articles
	Industry Classification	:	ISIC 3211, 3212
	Level of Government	:	Central
	Obligations Concerned	:	National Treatment
	Description	:	Investments in businesses of production of local handicraft jewellery products and related articles with unique ethnic designs are reserved for citizens of Lao PDR.
	Source of Measure	:	<i>Notification on the List of Types of Businesses Reserved for Citizens of Lao PDR (No. 1328/MOIC.DERM, dated 13 July 2015)</i>

7.	Sector	:	Forestry Sectors
	Subsector	:	Exploitation of timber and non-timber forest products of national forest (NTFPs) Forestry, logging and related activities
	Industry Classification	:	ISIC 0200, 0220
	Level of Government	:	Central
	Obligations Concerned	:	National Treatment Prohibition on Performance Requirements
	Description	:	Investments in exploitation of timber and non-timber forest products of national forests are reserved for domestic investors. Forestry, logging and related activities are subject to specific approval by the Government of Lao PDR.
	Source of Measure	:	<ul style="list-style-type: none"> - <i>Forestry Law</i> (No. 06/NA, dated 24 December 2007), Article 49; - <i>Prime Minister's Order Regarding the Increase of Strictness in Forest Management and Logging Business in 2007-2008</i> (No. 30/PM, dated 17 August 2007)

8.	Sector	:	Mining Sectors
	Subsector	:	Mining of Uranium and Thorium Ores (Radioactive Mineral)
	Industry Classification	:	ISIC 0721
	Level of Government	:	Central
	Obligations Concerned	:	National Treatment
	Description	:	The Government of Lao PDR defines reserved areas and protects some mineral resource areas in accordance with the national social-economic development plan for exploration, planning development and mining operations, in support of the national interest and the sustainability of natural resources.
	Source of Measure	:	<i>Law on Minerals</i> (No.02/NA, dated 20 December 2011), Article 10

9.	Sector	:	Fishery Sectors
	Subsector	:	Commercial ornamental fisheries
	Industry Classification	:	-
	Level of Government	:	Central
	Obligations Concerned	:	National Treatment
	Description	:	Any foreign individual or organisation with the aim of engaging in commercial ornamental fisheries such as aquaculture, breeding, propagation, and import shall seek approval of the relevant authorities in accordance with the <i>Law on Investment Promotion</i> .
	Source of Measure	:	<ul style="list-style-type: none"> - <i>Law on Fishery</i> (No. 03/NA, dated 9 July 2009), Article 31 - <i>Law on Investment Promotion</i> (No. 14/NA, dated 17 November 2016)

10. Sector	:	Agriculture Sectors
Subsector	:	Guano (Bat Dung)
Industry Classification	:	-
Level of Government	:	Central
Obligations Concerned	:	National Treatment Prohibition of Performance Requirements
Description	:	Investments in Guano (Bat Dung) businesses are reserved for domestic investors.
Source of Measure	:	<ul style="list-style-type: none"> - <i>Order of the Minister of Agriculture and Forestry</i> (No. 2050/MAF99, dated 20 December 1999), regarding prohibition of Guano excavation for export - <i>Order of the Minister of Agriculture and Forestry</i> (No. 613/MAF99, dated 8 July 2005), regarding utilisation and management of Guano in Lao PDR

LIST B
EXPLANATORY NOTES

1. This List B sets out, pursuant to Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment), the specific sectors, subsectors or activities for which Lao PDR may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:

- (a) Article 3 (National Treatment) of Chapter 11 (Investment);
- (b) Article 5 (Senior Management and Boards of Directors) of Chapter 11 (Investment); or
- (c) Article 6 (Prohibition of Performance Requirements) of Chapter 11 (Investment).

2. Each entry in this List B sets out the following elements:

- (a) **Sector** refers to the sector or sectors for which the entry is made;
- (b) **Subsector** refers to the specific sector for which the entry is made;
- (c) **Industry Classification** refers to the activities covered by the entry according to:
 - (i) International Standard Industrial Classification (ISIC) Revision 3 for manufacturing, agriculture, fishery, forestry, mining and quarrying;
 - (ii) If the entry does not exactly conform to the ISIC, Lao PDR specified the coverage of the entry, as necessary and appropriate;
- (d) **Level of Government** indicates the level of government maintaining the listed measures;
- (e) **Obligations Concerned** specifies the obligations referred to in Paragraph 1 that, pursuant to Article 13 (Reservations and Non-Conforming Measures), do not apply to the sectors, subsectors or activities listed in the entry;
- (f) **Description** sets out the sector, subsector or activities covered by the entry; and
- (g) **Existing Measures** identifies, for transparency purposes, a non-exhaustive list of existing measures that apply to the sectors, subsectors or activities covered by the entry.

3. List A and this List B pursuant to Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment) follow the negative list with two-list approach as follows:

- (a) List A sets out commitments in relation to existing non-conforming measures which are subject to standstill obligations but not subject to ratchet mechanism; and
- (b) this List B sets out policy flexibility in relation to measures in sectors, subsectors and activities.

4. In accordance with Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment), the Articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the sectors, subsectors and activities identified in the Description element of that entry.

5. In the interpretation of an entry, all elements of an entry shall be considered. The Description element shall prevail over all other elements.

6. These Explanatory Notes shall form part of the Lao PDR's Schedule of Reservations and Non-Conforming Measures for Investment.

1.	Sector	:	All Sectors
	Subsector	:	-
	Industry Classification	:	-
	Level of Government	:	Central
	Obligations Concerned	:	National Treatment
	Description	:	In the case of joint ventures between domestic and foreign investors, the foreign investor is required to contribute at least 10 per cent of the total capital. ¹
	Existing Measures	:	<i>Law on Investment Promotion</i> (No. 14/NA, dated 17 November 2016), Articles 26 to 31

¹ For the purposes of this entry:

- (a) a wholly domestic or foreign-owned investment is an investment entirely owned by either domestic or foreign investors, and can be either a single investor or group of investors in the enterprise or project in Lao PDR;
- (b) business cooperation by contract is a joint business arrangement between domestic and foreign juridical persons including public and private parties through a business cooperation contract according to the laws and regulations of Lao PDR for a certain period of time without need to establish a new legal entity or branch in Lao PDR;
- (c) a joint venture between a state-owned enterprise and a private enterprise is a partnership between a state-owned enterprise and a private enterprise in order to operate business, have co-ownership, and establish a new entity under the laws and regulations of Lao PDR;
- (d) a public private partnership business is a joint-venture investment between a public authority and a private party under a joint-venture contract to implement a project of new construction, improvement of infrastructure, or provide a service to the public.

2.	Sector	:	Concession Investment
	Subsector	:	-
	Industry Classification	:	-
	Level of Government	:	Central
	Obligations Concerned	:	National Treatment
	Description	:	<p>The registered capital of concession businesses shall not be less than 30 per cent of the total capital.</p> <p>For general businesses, the registered capital shall comply with the <i>Law on Enterprise</i>.</p>
	Existing Measures	:	<ul style="list-style-type: none"> - <i>Law on Investment Promotion</i> (No. 14/NA, dated 17 November 2016), Articles 51 and 52 - <i>Law on Enterprise</i> (No. 46/NA, dated 26 December 2013)

3.	Sector	:	All Sectors
	Subsector	:	-
	Industry Classification	:	-
	Level of Government	:	Central
	Obligations Concerned	:	National Treatment
	Description	:	Foreign employees shall not exceed 15 per cent for technical experts undertaking physical work and 25 per cent for technical experts undertaking mental work of the total number of Lao workers in the enterprise. Working permission shall be obtained from the Ministry of Labour and Social Welfare.
	Existing Measures	:	<i>Labour Law</i> (No. 43/NA, dated 24 December 2013), Article 68

4.	Sector	:	All Sectors
	Subsector	:	-
	Industry Classification	:	-
	Level of Government	:	Central
	Obligations Concerned	:	National Treatment
	Description	:	<p>Term of investment licences</p> <p>General business:</p> <p>The investment in general business has unlimited term of investment except for a business where the term has been determined in accordance with the laws and regulations of relevant authorities.</p> <p>Concession investment:</p> <p>The term of investment in concession business depends on the type, size, investment value, and conditions of the concession activities based on relevant laws and regulations; it shall not exceed 55 years, but may be extended with the approval of the Government of Lao PDR or provincial authorities.</p>
	Existing Measures	:	<i>Law on Investment Promotion</i> (No. 14/NA, dated 17 November 2016), Articles 40 and 42

5.	Sector	:	Manufacturing
	Subsector	:	Manufacture of other food products n.e.c.
	Industry Classification	:	ISIC 1079
	Level of Government	:	Central
	Obligations Concerned	:	National Treatment Senior Management and Board of Directors
	Description	:	A foreign investor is allowed to establish a joint venture on the following conditions: <ul style="list-style-type: none"> (a) a domestic investor must be the owner and hold the joint venture's licence; (b) the registered capital of the joint venture must be at least one billion Kip; and (c) the foreign investor shall hold not more than 20 per cent of total shares of the joint venture.
	Existing Measures	:	<i>Notification on the List of Types of Businesses Subject to Conditions for Foreign Investors (No. 1327/MOIC.DERM, dated 13 July 2015)</i>

6.	Sector	:	Manufacturing
	Subsector	:	Manufacture of pharmaceutical, medicinal chemical and botanical products
	Industry Classification	:	ISIC 2100
	Level of Government	:	Central
	Obligations Concerned	:	National Treatment Senior Management and Board of Directors
	Description	:	<p>A foreign investor is allowed to establish a joint venture on the following conditions:</p> <ul style="list-style-type: none"> (a) a domestic investor must be the owner and hold the joint venture's licence; (b) the registered capital of the joint venture must be at least one billion Kip; and (c) the foreign investor shall hold not more than 49 per cent of total shares of the joint venture.
	Existing Measures	:	<i>Notification on the List of Types of Businesses Subject to Conditions for Foreign Investors (No. 1327/MOIC.DERM, dated 13 July 2015)</i>

7.	Sector	: Agriculture
	Subsector	: -
	Industry Classification	: -
	Level of Government	: Central and Provincial
	Obligations Concerned	: National Treatment
	Description	<p>: An investor wishing to invest in agriculture activities with a government land concession, shall obtain an approval for primary data collection of land and project from the relevant competent authorities, following procedures as stipulated in relevant laws and regulations. Following the completion of primary data collection, the investor shall obtain an investment approval from relevant competent authorities, and sign a Memorandum of Understanding with the Government of Lao PDR.</p> <p>Provincial competent authorities shall consider a request for:</p> <ul style="list-style-type: none"> (a) a project with degraded forestland up to 150 hectares and with a lease or concession period not more than 30 years, which may be extended on a case by case basis; and (b) a project with barren forestland up to 500 hectares and with a lease or concession period not more than 30 years, which may be extended on a case by case basis. <p>Central competent authorities shall consider a request for:</p> <ul style="list-style-type: none"> (a) a project with degraded forestland between 151 and 15,000 hectares and with a lease or concession period more than 30 years, but not exceeding 40 years, which may be extended on a case by case basis; and (b) a project with barren forestland between 501 and 30,000 hectares and with a lease or concession period more than 40 years, but not exceeding 60 years, which may be extended on a case by case basis.

Existing Measures

: *Decree on the Lease or Concession of Government Lands* (No. 135/PM, dated 25 May 2009), Articles 28 and 29

8.	Sector	:	Agriculture
	Subsector	:	Pesticide
	Industry Classification	:	-
	Level of Government	:	Central
	Obligations Concerned	:	National Treatment
	Description	:	Investments in pesticide businesses are reserved for citizens of Lao PDR.
	Existing Measures	:	<i>Regulation on Management and Usage of Pesticide</i> (No. 0886/MAF, dated 10 March 2000)

9.	Sector	:	Fishery
	Subsector	:	-
	Industry Classification	:	-
	Level of Government	:	Central
	Obligations Concerned	:	National Treatment
	Description	:	The Government of Lao PDR reserves the right to adopt or maintain any measure with respect to an investor or investment in any activity related to fishery including operation of capture fisheries in Mekong River and its tributary and reservoirs, except for the commercial aquaculture of fish and other aquatic fauna for trade and distribution which shall be licensed and registered in accordance with the <i>Law on Investment Promotion</i> .
	Existing Measures	:	<ul style="list-style-type: none"> - <i>Law on Fishery</i> (No. 03/NA, dated 09 July 2009), Article 30 - <i>Law on Investment Promotion</i> (No. 14/NA, dated 17 November 2016)

10. Sector	:	Mining
Subsector	:	Mining
Industry Classification	:	-
Level of Government	:	Central
Obligations Concerned	:	National Treatment
Description	:	<p>The following licences issued by the Government of Lao PDR shall be obtained:</p> <p>(a) licence for prospecting and exploration; and</p> <p>(b) licence for exploitation and processing.</p>
Existing Measures	:	<i>Law on Minerals</i> (No.02/NA, dated 20 December 2011), Article 32

11. Sector	:	Mining
Subsector	:	-
Industry Classification	:	-
Level of Government	:	Central
Obligations Concerned	:	Prohibition of Performance Requirements
Description	:	The Government of Lao PDR reserves the right to adopt or maintain any measure with respect to an investor or investment related to requirements to supply exclusively from Lao PDR of products that such investment produces to a specific regional market or to the world market.
Existing Measures	:	<i>Law on Minerals</i> (No.02/NA, dated 20 December 2011)

12. Sector	:	Mining
Subsector	:	Oil and Natural Gas
Industry Classification	:	ISIC 0620
Level of Government	:	Central
Obligations Concerned	:	National Treatment
Description	:	A licence issued by the Government of Lao PDR on oil and natural gas shall be obtained and production sharing contract with an investor must be used.
Existing Measures	:	<i>Law on Minerals</i> (No.02/NA, dated 20 December 2011), Article 32

13. Sector	:	All sectors
Subsector	:	-
Industry Classification	:	-
Level of Government	:	Central
Obligations Concerned	:	Prohibition on Performance Requirements
Description	:	The Government of Lao PDR reserves the right to adopt or maintain any measure with respect to an investor or investment in activities related to royalty and technology transfers.
Existing Measures	:	-

14. Sector	:	All sectors
Subsector	:	-
Industry Classification	:	-
Level of Government	:	All levels
Obligations Concerned	:	National Treatment Prohibition of Performance Requirements Senior Management and Board of Directors
Description	:	The Government of Lao PDR reserves the right to adopt or maintain any measure with respect to any sectors not identified in this Schedule and new sectors or industries. Any sector classified in the ISIC Code Version 3 as at the date of entry into force of the Second Protocol shall not be considered a new sector or industry for the purposes of this entry.
Existing Measures	:	-