

ANTI-MONEY-LAUNDERING MEASURES IN LAOS

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I. INTRODUCTION AND OVERVIEW

The State Inspection and Anti-Corruption Authority of the Lao PDR (SIAA), which was established on 16 February 1982, is a ministerial level government agency mandated to conduct inspections, prevent and combat corruption, handle corruption complaints within its scope of rights, duties and supervise such work throughout the country. Corruption continues to pose negative effects on national development as it corrodes the scarcely limited government funds desperately needed for development. Corruption is found in public and private sectors alike, such as in development projects (infrastructure), violation of financial rules, leakages in revenue collection, etc. The most commonly found forms of corruption include an abuse of power, bribery, embezzlement, cheating and falsification of standards in constructions, design and calculations.

To fulfil the Target No. 16.5 (Substantially reduce corruption and bribery in all forms) of the UN's Sustainable Development Goals (the 2030 Sustainable Development Agenda), Laos has put in place institutional and legal frameworks to prevent and combat corruption. Among others, some of the recent developments are as follows:

A. The Law on Anti-Corruption (ACL)

The ACL lays out principles, regulations and measures, prohibitions for preventing and combating corruption in order that the properties of the state, collectives, society or the legitimate rights and interests of the citizens are not damaged, misappropriated or swindled, to subject offenders to legal proceedings and protect those who are innocent, aiming to make state organizations transparent, strong and capable of conducting inspections at all times.

B. The Law on State Inspection (LSI, 2017)

The SIAA also exercises its powers and functions based on the LSI which was enacted to detect the strengths and weaknesses, violations of the laws in the performance of duties by public officials, persons, legal persons or organizations; and to come up with preventive, countering and corrective measures, aiming to strengthen the effectiveness in public administration.

C. The National Anti-Corruption Strategy towards 2020 no. 02/PM, dated 4 Dec 2012

Pursuant to Resolution No. 2 (2012), the State Inspection and Anti-Corruption Authority has formulated and enacted the National Anti-Corruption Strategy. The National Anti-Corruption Strategy provides for measures to reduce corruption incidences and ensure that state property and that of collectives and individuals are not embezzled directly or indirectly. It stresses the need to provide anti-corruption education, to revise and enforce all related legislation, and/or promote the development of other sub-law legislation as necessary. It encourages state organizations to enhance

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transparency in public administration by way of defining clear division of responsibilities to avoid overlapping of mandates; strengthening and streamlining work procedures and removing outdated bureaucratic red-tape; encouraging and supporting full public participation.

D. The Decree on Thriftiness and Anti-Extravagance no. 78/G, dated 10 Mar 2015

This decree defines general principles and measures for the management and use of state budget, source of funds, state properties and official working time so they are utilized efficiently in order to accumulate funds towards national development. It also encourages people of all walks of life to be careful in their spending, use of personal assets, national resources, vehicles, equipment and time, etc.

E. Decree on the Early Monitoring and Inspecting of Government Investment Projects no. 01/G, dated 6 Jan 2015

This decree defines principles, regulations and measures for monitoring, inspecting government investment projects at the early stage in order to prevent violations of laws, regulations and other acts of corruption in order that the government investment projects are executed in a transparent, thrifty and highly effective manner. The inspection is carried out in three stages such as at the project initiation stage, during the actual implementing stage and at the completion and before the hand-over of the project.

II. ANTI-CORRUPTION BEST PRACTICES

Laos is firmly committed to eradicating corruption and has stepped up a series of actions ranging from public education, training, monitoring, inspecting, investigating, prosecuting and punishing offenders. More specifically, based on the Decree on the Thriftiness and Anti-Extravagance, in 2016 the government withdrew luxury cars used by top leaders, sold them through auctions and provided them with cheaper models. Also, in support of this decree, the National Savings Policy no. 09, dated 19 May 2017, temporarily halts government agencies from purchasing new vehicles for administrative purposes starting from 2018 onwards. This immediately and resolutely stops unapproved projects. It further regulates that between 2017-2020, no new office is allowed to be built. The order strongly encourages all government agencies to take necessary steps to comply with the national savings policy, including in the use of electricity, water, office supplies, work time, furniture, and so on.

The Decree on Monitoring and Inspecting of Government Investment Projects at the early stage has empowered competent authorities to regularly monitor projects – to learn first-hand about the progress of the projects starting from initiation to closure. This particular decree has put a complete stop to the implementation of unapproved projects, which contributed significantly to reducing public debts. Since 2016, there have been a number of projects on the monitoring list, including the Laos-China Railway Project etc.

III. LEGAL FRAMEWORKS AND BEST PRACTICES RELATING TO AML

The following are effective measures to identify and trace the concealed proceeds of corruption:

A. Effective Use of Reporting Requirements (Financial Institutions, Designated Non-financial Businesses and Professions (DNFBPs))

In accordance with the Law on Anti-Money-Laundering and Counter Financing of Terrorism (AML/CFT No. 50/NA, 21 Jul 2014), art. 18, reporting entities and DNFBPs are now required to fulfil the following rights and obligations, inter alia:

Sub-para 2. Implementing Know Your Customer measures;

Sub-para 3. Enhancing Customer Due Diligence measures;

Sub-para 5. Gathering detailed information on customers;

Sub-para 6. Gathering information about customer's transactions;

Sub-para 9. Collecting data on wire transfer;

Sub-para 10. Maintaining records;

Sub-para 13. Reporting suspicious transactions, etc.

B. Border Control Measures against Cash Couriers and Bulk Cash Smugglers

In accordance with the Law on AML/CFT law, article 33 and 34, any person who carries cash, precious metals or any bearer of negotiable instruments in or out of the Lao PDR with the value exceeding the threshold set periodically by the Bank of the Lao PDR, must declare them to the customs officers at border checkpoints; then the customs officers shall further report it to the AMLIO. The threshold currently is set at 100,000,000 million LAK or about 12,500 USD. In case of non-declaration or underreporting or false declaration of cash, precious metal and bearer negotiable instruments relating to ML/FT and detected by customs officer, such items will be seized immediately; AMLIO is to be informed, and an investigation shall be initiated to determine the origins of such items.

C. Availability and Use of Disclosure of Assets

In line with the AC law, ever since the first Decree on the Asset and Income Declaration was enacted in 2013, Laos has completed two rounds of asset declarations. The subjects of asset declaration are all levels of public officials. Whereas, objects of declaration, include among others, land, houses, inheritance, vehicles, industrial machines, precious metals, bonds, gold, share certificates, payable debts and receivable debts, whose value amounts to 20 million LAK and above. Objects of declaration also include salary and other income.

The following are effective measures to freeze, confiscate and recover the concealed proceeds of corruption:

D. Offence of Illicit Enrichment

Although Lao PDR has not criminalized illicit enrichment or adopted clear legal provisions in this regard, there is an inspection mechanism that allows competent authorities to conduct inspection/investigations based on public complaints/claims when a public official appears to be

unusually rich or there is strong indication/evidence that he/she has acquired wealth or properties which cannot be reasonably explained.

E. Availability and Use of Administrative Seizure and Availability and Use of Non-conviction-based Confiscation

Art 10 (Rights and Duties of the Agency Responsible for Asset and Income Declaration) defines that such agency has the right (Sub-para 5) to request the revocation of the right to possession and use by an individual of the assets gained unlawfully following an investigation by competent authorities. Under Sub-para 6, the agency has the right to request competent authorities to issue seizure or freezing orders of assets and income obtained illicitly.

IV. INVESTIGATION, PROSECUTION, NATIONAL AND INTERNATIONAL COOPERATION

A. Investigation and Prosecution

As an investigative body, SIAA Laos is empowered to investigate corruption cases. Upon inspection and/or investigation, if sufficient evidence of a corruption offence is found, with the value of damage amounting to 5 million LAK, the SIAA shall finalize the investigation findings and submit case files to the Prosecutor's Office for prosecution. SIAA investigators perform their functions based on Art. 41 of the Law on Anti-Corruption (ACL 2012) and the Criminal Procedure Law (CPL), which include among others the right to receive and record complaints, reports of acts of corruption; request the decision-making authority to issue summonses, order arrest and detention, order seizure or freezing of assets, etc. Other rights include the right to seize and maintain seized items relating to corruption, the right to, alone or with other authorities, conduct household and vehicle searches, and the right to make arrests based on the order issued by the Head of Office of the Prosecutors or Head of People's Court. The procedures for investigation consist of: 1. Issuing an order to open an investigation, 2. Carrying out the investigation and 3. Preparing case files to submit to the Prosecutors' Office who shall then prosecute the accused in open court. The President of the SIAA is mandated to issue an order to open or not to open an investigation.

B. Sample Case: Corruption by Public Officials/State Enterprise Employees

The task force team composed mainly of SIAA investigators has recently concluded its investigations and submitted the case files to the Prosecutors' Office, which were subsequently adjudicated by the Vientiane People's Court in October 2019. The case is about corrupt practices by 12 former officials and employees of the Savings Deposit Institution (Lao Post Office), Ministry of Post, Telecom and Communications. They were charged with corruption, such as cheating, collusion, abuse of power and position to take state properties. Each of the convicts have received different prison terms, fines and civil liabilities based on the amount of losses or damages one's act has caused. For example, only four of them combined have already cost the government more than 4.5 billion LAK, or approximately 500,000 USD, while only 50 per cent of the corrupt money has been recovered to date. The court has initially sentenced these four defendants up to 9 years' imprisonment and fined them in the amount of one per cent of the stolen assets. The corruption has led to the suspension of service by the institution. The convicts have the legal right to appeal against the court judgments.

C. National and International Cooperation

1. National Coordination

In terms of inter-agency cooperation for the purpose of information exchange and coordination, SIAA has concluded MOUs with the Anti-Money-Laundering Office (AMLIO, BOL), State Audit Organization (SAO), while cooperation agreements with other law enforcement agencies are being developed. Very often when investigating corruption cases, the SIAA President appoints a taskforce team comprising investigators not only from SIAA, but also other relevant authorities such as anti-corruption officers of line ministries and provinces, police, prosecutors, AMLIO, Bank of the Lao PDR, Ministry of Finance, etc.

2. International Cooperation

In areas of international cooperation, Laos has maintained bilateral cooperation based on MOUs with all five neighbouring countries, namely Viet Nam, China, Cambodia, Thailand and Myanmar. The purpose is to strengthen cooperation in the prevention of and fight against corruption, including in anti-money-laundering cooperation, by way of exchange of information for preliminary fact-finding, investigation based on voluntary or upon request, best practices sharing to promote mutual understanding and strengthen cooperation between anti-corruption agencies.

At the multilateral level, Laos has continued to actively participate in SEA-PAC, a group established in 2004 that consists of all anti-corruption agencies from the Southeast Asia region, and the second review cycle of the Review Mechanism of the United Nations Convention against Corruption on Chapters II and V. More precisely, in 2016-2017, Laos, together with Uganda, successfully completed reviewing Burkina Faso's implementation of UNCAC. From 2017-2018, Laos completed its self-assessment, and we are currently reviewing the Draft Executive Summary submitted by the Secretariat of the Review Mechanism. In fact, according to the UNODC, Laos is one of the first countries in the region that completed the second review cycle.

All of the above-described engagement and partnerships have provided us with ideas to come up with specific ways and tools to deal with corruption in various fields as reflected in the enactment of corruption prevention legislation. Although in the past few years, there have not been any requests for mutual legal assistance for the purpose of identification, tracing, freezing, seizure, confiscation and recovery of proceeds of corruption from the Southeast Asia region, nor from other regions, Laos has never refused a request for MLA from any requesting state.