

PRELIMINARY IMPACT ASSESSMENT (PIA)

Note: Due to the Government and National Assembly's urgent request to amend the Enterprise Law, it was not possible to undertake all of the required research and analysis or to complete some parts of the PIA.

The Preliminary Impact Assessment (PIA) is the first stage in assessing the potential impacts of a regulatory proposal on business, government and community and helps in identifying whether a Regulatory Impact Statement (RIS) is required.

A PIA is to be completed for all regulatory proposals under the agreed scope of the RIA system. Initially, the Regulatory Impact Assessment (RIA) system will apply to proposed laws and decrees that impact business only. Other proposed regulations (including via other instruments such as decisions, orders, instructions and notices, or that impact individuals/community or government but not business) may be subject to the RIA system at the discretion of Ministry staff and may be required more generally at a later date.

Under the initial scope, a RIS will then be prepared where the PIA assessment finds that the regulatory proposal is likely to impose a significant impact on business.

For regulatory proposals assessed as likely not imposing significant impacts on business, the PIA provides the information to complete the Regulatory Assessment Summary (RAS) which accompanies the proposal to decision makers for approval.

Name of the Legislation	Amended Enterprise Law - Enterprise registration process
Ministry	Ministry of Industry and Commerce
Department	Department of Enterprise Registration Management
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Type of Regulatory Instrument	Law

SUMMARY OF REGULATORY REQUIREMENTS

A regulatory requirement is an action or piece of information required of a business, government office or community member (individual) by the regulatory proposal.

In Total	#
Number of regulatory requirements added by this regulatory proposal	3
Number of regulatory requirements eliminated by this regulatory proposal (where revising an existing regulation)	-4
Net Change	-1

BACKGROUND	
Background information	<p>This Preliminary Impact Assessment (PIA) has been prepared by the Department of Enterprise Registration Management (DERM) in the Ministry of Industry and Commerce (MOIC) on the Enterprise Law 2005 (No. 11/NA), specifically Part 2, Sections 1 and 2, which focus on enterprise registration.</p> <p>This PIA is not a Government decision; it presents issues identified with the enterprise registration process and options considered to resolve these issues, including the potential impacts (costs and benefits) of such actions.</p>
SECTION 1 – NEED FOR GOVERNMENT ACTION	
<p>1.1 Describe the problem/s;</p> <p>1.2 Give evidence of the problem/s;</p> <p>1.3 Need for Government action or intervention</p>	<p>The enterprise registration process must be clear, simple, efficient and transparent to ensure that businesses can operate quickly, to increase the competitiveness of Lao businesses, and to encourage investment in Lao PDR.</p> <p>There have been issues identified in the enterprise registration process that are reducing the efficiency of the business environment in Laos. Specifically, these are:</p> <ol style="list-style-type: none"> <p>1) Delays are experienced starting a business due to the requirement for a company seal</p> <p>Currently, investors are required to apply for and receive a company seal from the Ministry of Public Security (MOPS) after receiving enterprise registration, but prior to commencing operations. Investors have been uncertain about this process, including which authority is responsible, what is required and the timeframes for completion. In addition, the IFC/World Bank's 'Ease of Doing Business' Report 2014 estimates that the time and cost of undertaking this step is 45 days and 120,000 kip, imposing a substantial cost and delay to starting a business.</p> <p>The Lao Government seeks to address this issue in order to improve the enterprise registration process, by making it more transparent, faster, easier and cheaper for investors.</p> <p>2) Enterprise certificates are being issued without the tax number</p> <p>Under the Investment Promotion Law 2009, enterprise registration certificates are required to contain investment approval, promotion policies, tax license and business authorization issued by concerned sectors. Despite this information being required, the tax number is not being included, causing delays and additional costs to registering a business. For example, businesses have advised that due to the tax number not being included, they have to separately go to the Tax Department in the Ministry of Finance (MOF), complete another form, pay another fee and wait for the revised enterprise registration certificate. It is estimated that this causes delays of 1-2 weeks.</p> <p>The Lao Government seeks to address this issue in order to improve the enterprise registration process, by making it more transparent, faster, easier and cheaper for investors.</p> <p>3) Investors and MOIC officials have a lack of information on other Ministries' policies for establishing a business on the negative list</p> <p>Investors currently have a lack of information about the approval process of controlled businesses, including the required information, and the time and costs involved. This lack of necessary information is causing some uncertainty for investors and DERM officials, as well as delays for some investors. In some cases, information from DERM and the relevant sector is not harmonised.</p>

	<p>DERM is seeking to provide both businesses applying for registration and potential investors with better information, to increase transparency, reduce delays and improve the registration process.</p> <p>4) There is confusion about which enterprises are required to register as a business with MOIC Under the Investment Promotion Law, only investors in general business activities are required to register at MOIC. Investors in concession activities are to register through the Ministry of Planning and Investment and investors in special and specific economic zones are to register with that particular zone authority. In addition, some very small businesses, “petty traders”, are not required to register as an enterprise at all under the Enterprise Law. It is not clear in the Law, which businesses should come to MOIC to register their enterprise.</p> <p>The Government seeks to clarify which businesses are required to register at MOIC, so that businesses don’t waste time and which very small enterprises, “petty traders”, are exempt, in order to support the growth of micro businesses in Laos.</p> <p>5) Businesses are commencing operations without meeting specific standards/ requirements of certain sectors Under the Enterprise Law, an enterprise is entitled to do all business as identified in the registration certificate without proceeding for any further permission or verification by the relevant sectoral agencies except for activities stipulated in the Negative List. Some sectors have advised that not all businesses are meeting the necessary requirements and standards under the relevant laws concerning the operation of such a business. For example, factories have to get approval to start operating from Industry Department. Not having the necessary approval from the relevant authorities poses risks to investors, workers, consumers, the community and the environment.</p> <p>The Government wants to ensure that all businesses operate according to the laws and regulations of the country, reducing any risks from unsafe practices, while making it easy to start a business.</p> <p>6) There is a lack of detail on changing from an unlimited liability enterprise to a limited liability enterprise Under the current Enterprise Law, there is no detail on whether an enterprise with unlimited liability (individual enterprise and ordinary partnership) can change to being an enterprise with limited liability, and the conditions on such a change. Businesses and DERM officials have been unsure whether this change is permitted and how the debt of the enterprise is to be managed. This lack of detail is potentially limiting the growth of some small businesses, when they are not approved to change the form of enterprise, and where the change is approved, potentially putting creditors at a disadvantage</p> <p>There is a need to clarify how an unlimited enterprise can change to a limited enterprise and the conditions on the existing debt, to avoid confusion, to allow businesses to grow and to protect creditors and investors.</p>
SECTION 2 – POLICY OBJECTIVE	
2.1 Objective of the Government action	<p>The objective of Government action is to ensure that the enterprise registration process is clear, transparent, fast and efficient, to minimise unnecessary delays and costs to business and unnecessary costs to Government, and to support growth of the private sector.</p> <p>In particular, the Government seeks to:</p> <ul style="list-style-type: none"> • Streamline the enterprise registration process; • Clarify areas of the law that are causing confusion for investors and MOIC officials; • Ensure flexibility for businesses to change the form of enterprise;

	<ul style="list-style-type: none"> • Provide more information for potential investors, registered businesses and MOIC officials on the requirements for establishing an enterprise and commencing operations; and • Support growth of small-scale (micro) businesses.
SECTION 3 - OPTIONS ANALYSIS	
3.1 Other jurisdictions	The enterprise registration processes in China, Japan, and Thailand were considered and informed the development of options.
3.2 Non/semi regulatory options and regulatory options	<p>Options considered to address these issues and achieve the policy objective are:</p> <ol style="list-style-type: none"> 1) Delays are experienced starting a business due to the requirement for a company seal <ul style="list-style-type: none"> • Take no action • Make the company seal optional • Remove/abolish the company seal • Introduce a maximum timeframe for issuing company seals e.g. 5 days • Allow private companies to produce the seal and have the Ministry of Public Security approve it • Allow private companies to produce the seal and have MOIC approve it 2) Enterprise certificates are being issued without the tax number <ul style="list-style-type: none"> • Take no action • Combine the enterprise registration and tax registration application forms • Make the tax number the same as the enterprise number • MOIC sends the enterprise certificate to the MOF to include the tax number and then the investor collects the certificate from the MOF • MOF periodically provides MOIC with a list of tax numbers for inclusion in the enterprise registration certificate • MOIC requests a tax number from MOF once an application is lodged and MOF sends the number for inclusion within 10 days 3) Investors and MOIC officials have a lack of information on other Ministries' policies for establishing a business on the negative list <ul style="list-style-type: none"> • Take no action • Write a letter to the ministries seeking information from ministries on their policies each year • Require line ministries to provide information to MOIC in the law • MOIC is required to publish information on the requirements for establishing different types of businesses 4) There is confusion about which enterprises are required to register as a business with MOIC <ul style="list-style-type: none"> • Take no action • Provide training/support for provincial MOIC officials and education for the private sector on which businesses are required to register • Provide a definition of a "petty trader" in the law, following the existing definition in the MOIC notification • Provide a definition of a "petty trader" in the law using 12,000,000 kip annual income as the threshold to match the exemption from lump-sum tax in the Tax Law • Specify in the Enterprise Law, that only investors wishing to invest in general business activities are required to register the enterprise with MOIC. Applications for investment in concession activities and special and specific economic zones shall follow the relevant laws for those activities.

	<ul style="list-style-type: none"> State in the law that some business are not required to register and provide more detail in specific regulations <p>5) Businesses are commencing operations without meeting specific standards/ requirements of certain sectors</p> <ul style="list-style-type: none"> Take no action Amend the Enterprise Law to clarify that businesses must meet the minimum requirements/standards as provided under relevant laws before operation Amend the Enterprise Law to require businesses to gain approval from the relevant sector before operation <p>6) There is a lack of detail on changing from an unlimited liability enterprise to a limited liability enterprise</p> <ul style="list-style-type: none"> Take no action Unlimited liability enterprises can not change to a limited liability enterprise Unlimited liability enterprises are required to clear all debt before being able to change to a limited liability enterprise Unlimited liability enterprises can change to a limited liability enterprise, but only with a letter from creditors with no objection of the change
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SECTION 4 – ASSESSING IMPACTS OF POLICY OPTIONS

1) Delays are experienced starting a business due to the requirement for a company seal

Option	Positive impacts	Negative impacts
1. Take no action	- Officials already understand and are familiar with the process involved	- Businesses will still be required to obtain a company seal from MOPS when registering their enterprise – costing 120,000 kip and taking up to 45 days. - The process for registration will still require many steps and take a long time compared to other countries, reducing the competitiveness of the Lao economy.
2. Make the company seal optional	- Some business from other countries already have company seal - Some business don't want/need company seal - Enterprise registration is faster if businesses don't need to do this step	- Potentially reduced revenue for MOPS
3. Remove/abolish the company seal	- Reduce the time and cost for businesses starting a business - Reduce the cost, time and resources needed to make the company seal	- Companies that want a company seal cannot get one
4. Introduce a maximum timeframe for issuing company seals e.g. 5 days	- Makes the enterprise registration process easier and faster for business - Increased understanding for business and government on timeframes	- MOPS may not be able to issue within these timeframes due to capacity
5. Allow private companies to produce the seal and have the Ministry of Public Security approve it	- Can reduce the steps and time for investors and officials in registration process - Business may be able to produce the company seal cheaper	- Reduced revenue for the MOPS

6. Allow private companies to produce the seal and have MOIC approve it	<ul style="list-style-type: none"> - Can reduce the steps and time for investors and officials in registration process - Only one Ministry is involved in the registration process 	<ul style="list-style-type: none"> - Maybe need more staff/new division in MOIC
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2) Enterprise certificates are being issued without the tax number

Option	Positive impacts	Negative impacts
1. Take no action		<ul style="list-style-type: none"> - Takes a long time and many steps, multiple forms - Investors have to go to multiple ministries
2. Combine the enterprise registration and tax registration application forms	<ul style="list-style-type: none"> - Less steps for the investors - Investors only need to complete one single form, which will reduce the time taken, and make the application easier for investors 	<ul style="list-style-type: none"> - Will need to train and inform MOIC staff on the new form - MOIC has to send the form to MOF to complete the tax approval, which will increase costs
3. Make the tax number the same as the enterprise number	<ul style="list-style-type: none"> - Makes the enterprise and tax registration process faster, easier, and simpler - This would create one system between MOF and MOIC 	<ul style="list-style-type: none"> - Enterprise number is 10 digits, tax number is 12 digits, so would need to align the two numbering systems
4. MOIC sends the enterprise certificate to MOF to include the tax number and then the investor collects the certificate from MOF	<ul style="list-style-type: none"> - Can reduce time, number of steps involved 	<ul style="list-style-type: none"> - Businesses still have to go to multiple locations - MOIC will have costs to send the certificates to MOF
5. MOF periodically provides MOIC with a list of tax numbers for inclusion in the enterprise registration certificate	<ul style="list-style-type: none"> - The process is faster for investors and government and reduces costs for investors - Investors only have to go to one location 	<ul style="list-style-type: none"> - MOF has less control over tax registration, possibility that some enterprises will not be registered for tax
6. MOIC requests a tax number from MOF once an application is lodged and MOF sends the number for inclusion within 10 days	<ul style="list-style-type: none"> - This option can make the enterprise registration process faster and easier for investors, reducing the costs to register a business - Investors only have to go to one location - Increased certainty of time to register 	<ul style="list-style-type: none"> - MOIC will have costs to send the applications to MOF

3) Investors and MOIC officials have a lack of information on other Ministries' policies for establishing a business on the negative list

Option	Positive impacts	Negative impacts
1. Take no action		<ul style="list-style-type: none"> - Investors will continue to be uncertain about the requirements for some particular types of applications - Inconsistent information will be provided to investors from MOIC officials - There will continue to be a number of incorrect applications, resulting in delays to investors and taking up government resources

2. Write a letter to the ministries seeking information from ministries on their policies each year	- MOIC can obtain the information and better inform investors, reducing inconsistent information and delays	- Previous experience shows that line ministries may not provide the information
3. Require ministries to provide information to MOIC in the law	- MOIC can obtain the information and better inform investors, reducing inconsistent information and delays - Requiring the information in the law ensures that ministries have to provide the information	
4. MOIC is required to publish information on the requirements for establishing different types of businesses	- Increased information for investors, resulting in fewer incorrect applications and less delays in receiving approval for registering a business - MOIC officials are better informed and can provide better information to investors - Makes the registration process easier and more transparent	- Having to publish the information would have an impact on DERM's budget

4) There is confusion about which enterprises are required to register as a business with MOIC

Option	Positive impacts	Negative impacts
1. Take no action		- Some business and officials will still be unclear about which business have to register at MOIC - Some investors will apply for enterprise registration from MOIC when it is not needed, and then have to reapply through MPI or SEZs - Some micro businesses may be directed to register when they are not required
2. Provide training/support for provincial MOIC officials and undertake education with the private sector on which businesses are required to register	- Better understanding and a more consistent application of the law - Fewer incorrect decisions/unnecessary applications	- It will take a lot of time and money to inform all of these businesses and officials
3. Provide a definition of a "petty trader" in the law using the existing definition in the MOIC notification	- Better understanding and clearer for MOIC officials and small businesses - Less time and money spent by business and government doing and reviewing unnecessary applications	- This definition may not be fair for other small businesses which don't fit the exemption
4. Provide a definition of a "petty trader" in the law using 12,000,000 kip annual income as the threshold to match the exemption from lump-sum tax in the Tax Law	- Better understanding and clearer for MOIC officials and small businesses - Less time and money spent by business and government doing and reviewing unnecessary applications - Aligns the enterprise and tax registration systems – all businesses who are registered have to pay tax, and all businesses who are required to pay tax are registered	- Will need to inform MOIC officials of the new definition - May be difficult to estimate which businesses have annual income of less than 12,000,000 kip

5. Specify in the Enterprise Law, that only investors wishing to invest in general business activities are required to register the enterprise with MOIC. Applications for investment in concession activities and special and specific economic zones shall follow the relevant laws and regulations.	<ul style="list-style-type: none"> - Better understanding and clearer for MOIC officials and investors in concession activities and special and specific economic zones - Less time and money spent by business and government doing and reviewing unnecessary applications - Will align the Enterprise Law with the Investment Promotion Law 	
6. Amend the law to state that some business are not required to register as an enterprise with MOIC and provide more detail of which businesses in specific regulations	<ul style="list-style-type: none"> - Provides flexibility to give more detail on which businesses are not required to register with MOIC 	<ul style="list-style-type: none"> - The lack of detail in the law could still be confusing to investors and officials about which enterprises are not required to register

5) Businesses are commencing operations without meeting specific standards/ requirements of certain sectors

Option	Positive impacts	Negative impacts
1. Take no action	<ul style="list-style-type: none"> - No additional requirements are placed on businesses 	<ul style="list-style-type: none"> - Some businesses will continue to operate without meeting these standards/requirements – posing potential risks to investors, workers, consumers, the community and the environment
2. Amend the Enterprise Law to require businesses to gain approval from the relevant sector before operation	<ul style="list-style-type: none"> - Reduces the risk of unsafe practices etc. from standards/requirements not being met 	<ul style="list-style-type: none"> - Slows down enterprises from operating - Increases compliance costs (more time, steps and cost) from having to obtain multiple permissions
3. Amend the Enterprise Law to clarify that businesses must meet the minimum requirements/standards as provided under relevant laws before operation	<ul style="list-style-type: none"> - No additional requirements are placed on businesses - Makes it clear to the investors that there are requirements of the relevant sector that must be met – reducing the risk of unsafe practices etc. from standards/requirements not being met 	

6) There is a lack of detail on changing from an unlimited liability enterprise to a limited liability enterprise

Option	Positive impacts	Negative impacts
1. Take no action		<ul style="list-style-type: none"> - Some businesses and officials will still be unclear about whether unlimited liability enterprises can change to limited liability and the conditions on the change – causing delays from having to seek clarification - Some businesses may be disallowed the change, restricting growth

		- Some creditors may not have a claim on some assets if an unlimited liability enterprise changes to limited status
2. Unlimited liability enterprises can not change to a limited liability enterprise	<ul style="list-style-type: none"> - This would make it clear for businesses and officials about whether unlimited liability enterprises can change to limited liability - Reduced time spent seeking clarification - This will protect creditors from losing their rights to claim assets of the unlimited liability enterprise 	<ul style="list-style-type: none"> - Disallowing businesses to change to a limited liability enterprise could restrict growth - Businesses would be forced to close their business operations and re-establish a new limited liability enterprise, which would be time consuming and costly, and the enterprise name could not be used for 3 years
3. Unlimited liability enterprises are required to clear all debt before being able to change to a limited liability enterprise	<ul style="list-style-type: none"> - This would make it clear for businesses and officials that unlimited liability enterprises can change to limited liability - Reduced time spent seeking clarification - This would allow businesses to change type, rather than having to completely shut down and re-establish as a new enterprise - This will protect creditors from losing their rights to claim assets of the unlimited liability enterprise as the debt is paid in full 	- Making a businesses pay off all its debt to change to a limited liability partnership or company could restrict growth, as some businesses may not have the cash flow to be able to pay these debts in full
4. Unlimited liability enterprises can change to a limited liability enterprise, but only with a letter from creditors with no objection of the change	<ul style="list-style-type: none"> - This would make it clear for businesses and officials that unlimited liability enterprises can change to limited liability and the conditions of the change - Reduced time spent seeking clarification - This would allow businesses to change type more simply, rather than having to completely shut down and re-establish as a new enterprise or pay off all the debt - This will protect creditors as they will have the right to object/agree with the change 	- Some businesses (particularly small businesses) may have difficulty obtaining the letter of approval from the creditor

SECTION 5 – PROPOSAL	
5.1 Summary of preferred option;	1) Delays are experienced starting a business due to the requirement for a company seal The recommended option is to amend the law to clarify that the Ministry of Public Security is the responsible authority for company seals, and to introduce a maximum timeframe of 5 days for issuing company seals. This will allow flexibility for investors to suit their individual circumstances, while reducing the length of the enterprise registration process, and increase competitiveness.
5.3 Reasons for being the preferred option	2) Enterprise certificates are being issued without the tax number The recommended option is for MOIC to request a tax number from the Tax Department once an application is lodged and the Tax Department send the number for inclusion within 10 days. This will reduce the time and cost to apply for enterprise registration and tax registration from having to complete fewer documents and only attending one location,

	<p>making the overall enterprise registration process faster and easier. These options will increase competitiveness and reduce compliance cost for potential investors.</p> <p>3) Investors and MOIC officials have a lack of information on other Ministries' policies for establishing a business on the negative list The recommended options are to amend the law to require ministries to provide information to MOIC on the requirements for approving enterprise registration, including documentation, registered capital, steps, time, cost, and for MOIC to publish this information. This option will improve information collection and dissemination, which will improve the consistency and availability of information given to investors, reducing unnecessary delays for enterprise registration.</p> <p>4) There is confusion about which enterprises are required to register as a business with MOIC The recommended option is to amend the law to state that some business are not required to register and provide more detail in specific regulations. This provides flexibility to change which businesses are not required to register with MOIC, while not imposing any additional requirements on small enterprises or government.</p> <p>5) Businesses are commencing operations without meeting specific standards/ requirements of certain sectors The recommended option is to amend the law to clarify that businesses must meet the minimum requirements/standards as provided under relevant laws before operation as it achieves the objective of reducing the risks while not imposing any additional requirements on enterprises or government.</p> <p>6) There is a lack of detail on changing from an unlimited liability enterprise to a limited liability enterprise The recommended option is to amend the law to allow unlimited liability enterprises to change to a limited liability enterprise but only once the enterprise has cleared all its debt. This option makes it clear for investors and MOIC officials and maximises the benefits – allowing flexibility and growth, while providing protection for creditors. (Subject to advice from Ministry of Justice)</p>
5.2 Estimated compliance and administrative costs of the preferred option	<p>The proposed options are intended to reduce compliance impacts on business in the enterprise registration process.</p> <p>For each of the issues, the selected options are expected to reduce or maintain the compliance costs on business.</p> <p>Minor administrative impacts are expected from the proposed options.</p>
5.4 Small Business Lens	<p>The process and requirements have been streamlined to lessen the cost and time to comply for all businesses including small businesses. Government service standards (maximum approval times) have been set.</p>
SECTION 6 – KEY STAKEHOLDERS AND CONSULTATION	
6.1 Stakeholder views of regulatory proposal	<p>The Department of Enterprise Registration Management has ongoing informal discussions with the private sector and Enterprise Registration Offices about problems experienced with the enterprise registration process.</p> <p>Consultation has been held with the Ministry of Public Security on the first issue – delays are experienced starting a business due to the requirement for a company seal. The Ministry of Public Security agrees that the current process to issue the company seal is too long and agreed that it should be issued within 5 days.</p>

	<p>Consultation has been held with the Tax Department (Ministry of Finance). The Department agrees that steps need to be taken to issue enterprise certificates with the taxpayer number. The Department however advised that it can't issue tax numbers in advance due to their current computer system and that they need time to revise their system to link with MOIC and Ministry of Planning and Investment.</p> <p>The Lao-Japan Business Forum has also discussed this issue. Comments were made that there is no improvement in the enterprise registration process despite establishing the MOIC One-Stop-Service, as the investor has to separately go to the Ministry of Finance to get a taxpayer number. It was requested that MOIC issues the taxpayer number at the same time with the enterprise registration certificate to follow Article 19 of the Investment Promotion Law.</p>
SECTION 7 – OVERALL ASSESSMENT	
7.1 Significance of regulatory proposal	The proposal will affect a large number of enterprises, however the proposed options are not expected to impose significant costs on business.
7.2 Regulatory Impact Statement (RIS)	Due to the large number of businesses affected, it may be necessary to complete a RIS.
7.3 Other Information	Due to the urgency in introducing the revised Enterprise Law, it was not possible to do full analysis of the impacts from this proposal.
SECTION 8 – COMPLIANCE SUPPORT	
8.1 Compliance Awareness and Support	MOIC officials will speak with businesses (particularly those owned by women) to promote the changes and raise awareness that the registration process is easier and simpler, when the new Enterprise Law is disseminated.
SECTION 9 – REVIEW	
9.1 Post implementation review	It is proposed that a review is conducted within 24 months of the introduction of the new Enterprise Law.