



Lao National Chamber of Commerce and Industry

**Financial Sector Working Group
Banking and Financial Services Regulations
Issues for consideration at the 2019 Lao Business Forum**

Policy note on

Registration of credit documentation and loan security agreements

Dated: 21 May 2019



Introduction and background

The Lao Business Forum (LBF) is a platform to facilitate dialogue between the public and private sector aimed at promoting consistent enforcement of laws & regulations and remove barriers that businesses face.

The latest LBF 11 was held in July 2018 and was widely recognized by both government and private sector as one of the most effective high level policy dialogue to address specific issues affecting private sector in Laos. The next LBF is scheduled to take place in October 2019.

Through discussions within the LBF financial sector working group, the LBF secretariat has collected issues for further discussion. These issues were investigated and prioritized after a round of interview meetings with banks and financial sector stakeholders during the week of April 22.

One of the key issues raised by the business and the banking community is related to the fees, collateral standards and registration requirements of credit documentation and security agreements. The registration process is perceived as cumbersome and the fees are considered high.

A draft policy proposal was discussed in a workshop held on May 15 at the offices of the LNCCI to seek feedback from the banking sector on the proposed recommendations to make the registration process more efficient and less costly.

The workshop agreed on a number of policy recommendations and requests the financial sector working group to take forward these next steps toward the LBF Steering Committee¹ for further consideration in order to finalize the forum agenda and agree on key forum inputs.

¹ The LBF Steering Committee consists of representatives from line Ministries/agencies (department management level) and heads of private sector working groups. The committee is chaired by the MoIC Minister and co-chaired by LNCCI President.

Current situation

The majority of lending in Lao is secured on the basis of “hard asset collateral” owned by the borrower. This typically involves land titles, which are the most readily available collateral, and sometimes moveable assets such as cars and motorcycles. There is some unsecured lending in the personal loan/microfinance space and clean lending under corporate guarantee to multinational corporations.

Land title registration

An official land register is maintained by the Land Management Division of the Ministry of Natural Resources and Environment, which has provincial and district offices. Systematic land registration and titling in Lao started in 2001 with first pilot activities and reached a total of 806,000 land titles (2014). Land titles are issued under systematic and sporadic registration schemes. The vast majority of the land title deeds (“golden border”) have been issued in urban and peri-urban areas, while rural areas have more limited coverage in terms of formal land titles². A recent survey conducted by one bank showed that in urban areas, around 70% - 80% of land titles owned by individuals/families are formally registered, while in rural areas only 20% - 30% of land titles are formalized.

Obtaining a formally registered and official land title is a lengthy process, involving different parties and significant cost. Sporadic registration is not affordable for the general population in rural areas.

Use of land titles as loan collateral

Secured lending is done based on official land titles as collateral, but because of the limited (or lack of) formal land titling in rural areas, a practice was also established to lend based on land titles deeds certified by the Village Head, the so-called “white border” land certificates. In this form of “soft title” based lending, the security interest is not perfected to the same standard as is the case with “hard collateral”.

In November 2017, the Bank of Laos issued Notice 818 (see Annex) requiring that commercial banks and financial institutions shall only accept official land titles (“golden border”) and that the security interest must be registered at the Division of Land Management to prevent duplicate use of land titles as collateral.

² Source: Systematic Land Registration in Rural Areas of Lao PDR. Concept Document for countrywide application. Based on experiences gained in the GIZ supported Programmes (2015)

Requirement to notarize and register a security interest and loan agreement

Under Lao Contract Law and the Law on Notary Offices³, loan and security agreement documents (pledges, mortgages) need to be notarized/certified for these to be accepted as evidence by the People's Court should a dispute arise.

Furthermore, security agreements are subject to registration requirements under the Law on Secured Transactions (2005) and the Decree on the Implementation of the Secured Transaction Law (2011)⁴.

Under the Law on Secured Transactions and the related Decree, security interest agreements in which one party acquires a security interest in the immoveable property of another must be registered with the Division of Land Management of the Ministry of National Resources and Environment and (under the Decree on Document Registration No. 52/PM of 1993) at the State Asset Management Department under the Ministry of Finance in order to have preferential rights of priority.

Security agreements over moveable assets must be registered at the Registry Office for Security Interests in Movable Property at the State Asset Management Department of the Ministry of Finance.

Registration procedure for secured lending based on official land title collateral

The following six steps need to be taken to register the loan agreement and security interest and make the necessary authentications before the loan can be disbursed. The procedural steps are usually completed by the borrower and the bank jointly, except step 6 which can be done by the bank. Sometimes the official registration procedure is provided as a service by the bank to its customer. All third-party fees and out-of-pocket fees are borne by the borrower.

STEP	Action	Where	Fees	Time
1	Confirmation letters are obtained from the Land Management Office confirming that: 1. The authenticity of the land title deed, as a prerequisite for registration of security over such title, 2. There are no encumbrances over the	Provincial Land Management Office	LAK 50k per land title	1 day** to 1 week

³ Law on Notary Offices:

<https://www.most.gov.la/images/stories/law%20of%20laos/Laws%20in%20English/17.%20Law%20on%20Notary%20Offices%20%281992%29%20Eng.pdf>

⁴ Secured Transactions Law (2005): <https://stlrp.files.wordpress.com/2017/10/laos-law-on-secured-transaction-decree-2005-eng.pdf> and Decree on the Implementation of the Secured Transaction Law No.178/PM, dated 20 June 2011: <http://www.lshorizon.com/upload/publication/1443182358.pdf>

STEP	Action	Where	Fees	Time
	land title, 3. There isn't a Government project whereby the land may be expropriated			
2	The loan and security agreements are drawn-up and signed. Valuation assessment of the land is performed ⁵	Bank	Bank loan fees and assessment fee	-
3	The signed loan- and security agreements are co-signed and sealed as witness by the Village Head for authentication in case of disputes later on. The agreements are recorded in the Village Head books	Village Head Authority, where the land is located	Varies between LAK 100k - 300k, sometimes % of loan amount	Same day** (if Head is present)
4	Loan- and security agreements are notarized (seal stamped on the last page of each agreement copy). One set of copies is kept at the Notary Office	Notary Office in provinces (under LAK 200 mil loan), or Vientiane for larger loans	LAK 5,000 per page of each copy (Lao and English language version)	1** to 2 days
5	Registration of the security interest ⁶ , whereby the land title document is endorsed by the Land Office which also keeps one set of copies of the loan- and security agreement	Provincial Land Management Office	0.2% of the loan value***, plus registration fee of LAK 50k, plus stamp fee of LAK 80k	3 days** to 1 week
6	Registration of an original copy of the loan and security agreement and any sub-agreements. Some fees are to be paid up front via bank transfers, other fees paid at cashier	Department of State Assets Management, Vientiane	LAK 100k / contract, plus LAK 50k /sub-agreement, + stamping fee = total of around LAK 500k	3 to 5 days

⁵ Some banks have internal teams, others use one of the three valuation agents approved by the Lao Securities Commission Office (LSCO)

⁶ Most countries have systems for the registration of security relating to land, aircraft, ships and intellectual property rights. The advantage of a register relating to the asset is that if the debtor wishes to provide an asset as collateral, the lender can swiftly check definitively whether the asset is encumbered or not.



A full set of executed documents is then shared with the customer. The original copy of the endorsed land title deed is kept by the bank. Loan disbursement can take place.

Remark: As part of the preparatory steps, a lender will often make preliminary enquiries to ensure the validity of the land title deed presented by the borrower. If the bank is confident that it will obtain the step 1 confirmation letters from the Land Management Office, it may decide to combine steps 1 and 5 into one office visit, saving one trip to the Land Management Office.

**= usually implies the payment of a supplementary “express fee”

*** Note that the security agreement registration fee charged by the Land Management Office has been subject to discussion at the 10th Lao Business Forum in 2017, where the private sector working group proposed to cap these fees at a maximum level of LAK 1,000,000 per loan item. A proposal along these lines has been submitted by the Ministry of Justice to the National Assembly for consideration and promulgation through Presidential Decree.

The revised fee schedule as per the current draft of presidential decree 003 would be based on a fixed charge depending on the loan amount, with a maximum fee of LAK 2,000,000, as follows:

- Loan amount below LAK 100m: LAK 200,000
- Loan amount between LAK 100m-500m: LAK 300,000
- Loan amount between LAK 500m-1b: LAK 500,000
- Loan amount between LAK 1b-5b: LAK 1,000,000
- Loan amount over LAK 5bn: LAK 2,000,000

Problem statement

Time consuming and costly process

- **Total time to complete the entire process: between 2 and 4 weeks**
(Not counting any time for step 2 between the bank and the customer)
- **Total number of Government office visits involved: between 7 and 11**
(Some office visits involve regional travel and/or waiting time at the office)
- **Total third-party fees payable: range of LAK 2 to 4 million**
(Excluding out-of-pocket expenses, own time, travel costs and bank fees)
- **Number of Government bodies involved: 4**

It can take between 2 and 4 weeks to complete the process and involves 7 to 11 trips to the authorities. This may involve travel to the area of the country where the land collateral is located, or in the case of rural population, to have to travel a long distance to the provincial capital.

Turn-around times are not guaranteed and long waiting periods may be involved and “express processing fees” may be charged to get done.

Total Government third-party fees amount to between LAK 2 and 4 million, which for smaller loans (< LAK 100 million) is 2 to 4% of the loan amount. This is not counting customer out-of-pocket expenses and own time.

Four different Government bodies are involved in the registration and authentication process.

Lack of substance or added value

Questionable added value of Notary Office stamping, when checks and verifications of agreement correctness, authentication of signatories, verification of IDs, encumbrances of the title deed or Court proceedings against the borrower are not performed. Authentication has already been performed by the Village Chief Authority.

Registration (perfection) of security interest over immovable asset at two different Government authorities: The Land Management Office and then the Department of State Asset Management.

Transparency on fees / official unified fees rate scales



It is difficult for a potential borrowers to know in advance all the third-party fees charged and the out-of-pocket expenses involved. There is a lack of transparency on fees charged and no official unified fee scales are used across the country. Regional fee variations are for example observed for Village Head authentication and registration services.

Some fee payments are required to be made via bank transfer but then other supplementary fees need to be paid in cash at the cashier's office.

Access to information

Preliminary checks of land title ownership involves travel to the region where the land is located. It is not possible to perform preliminary checks online to verify the land title ownership or any encumbrances placed on it.

An online or public register of Court judgments does not exist at this point in time in Lao.

Limitations placed on access to finance in rural areas

Access to finance is constrained since Notice 818 was issued by the Bank of Laos in 2017, as it is hard to use land outside the cities as loan collateral because either formal land titles are not available and /or because of the prohibitively high fees and lengthy process to have an official land title issued.

Proposed solution

Registration process simplification

Certain actions or steps could be completed online, via email, post or at Post Offices, for example:

- Electronic copies of the necessary forms should be available online at no charge
- Request for authentication of land title, encumbrances and pending Government land projects affecting the land title should be done online and/or in any office of the Land Management Department

The notarization requirement of loan and security agreements should be eliminated and/or online filing should be possible, unless the Notary Office actually provides some services like authentication of land titles, court judgements and encumbrances

The need to register documents and security interest in immovable assets at the Department of State Asset Management, Vientiane should be eliminated as it does not add any value.

A single window and Government contact center for the entire process should be established.

Service level targets (turn-around times) for each process step should be established and published.

Digital Government: Online access to land title register and encumbrances

Providing banks and private citizens with the possibility to make online enquiries on land title ownership records, would allow banks to perform preliminary checks on the validity of the title instead of having to travel to regional Land Management Offices. This will facilitate the use of land titles across the country as collateral for borrowing.

Standard and published fee scales

Standard fee scales should be published and used across the country.

Fixed amount or capped fees should be applied in case entire sets of document copies are processed. Administrative fees should be independent of the loan amount involved not be charged based on number of document pages, if pages are not individually checked.

Where possible, fee payments should be made via bank transfer or accepted at via a Point-of-Sales (POS) terminal only.

Banks should publish a customer information leaflet on all 3rd party fees and bank loan application fees involved.



Use of Village Head certified land titles for “soft title” lending

For loans up to LAK 50 million, allow the use of Village Head certified land titles in areas of the country with low rates of formal land registration and titling, provided:

- The security interest is pledged (mortgage not being allowed under Notice 818/BoL from the Bank of Laos from 27 November 2017),
- The loan agreement and pledge agreement are authenticated and registered by the Village Head,
- The loan and security interest are reported by the lender to the Credit Information Center.



Agreed next steps

The workshop agreed that the loan registration process requirements and related fees present an issue for both the financial sector and its borrowing customers. Access to finance is limited because of long processing and waiting times, high cost and lost business opportunities for the financial sector, pushing clients towards use of informal providers. This is especially true for SME clients, rural customers and for smaller loan amounts.

Land titles

Improvements in land titling and formal land registration are needed, but this is a broader problem going beyond the financial sector only. A new land law is being contemplated by the Government and corrupt practices with land registration in some regions need to be addressed.

Formal land titling is seen as important to avoid the use of duplicate (counterfeit) Village Head certified land titles and at the same time provide the basis for a central register of land title encumbrances. However, the notice issued by the BoL in 2017 on the use of official land title collateral is restricting access to finance, especially in rural areas and for smaller loan amounts. Participants asked if the BoL could consider to permit “soft title” lending based on Village Head certified land titles, if the banks are commercially comfortable in doing so.

Fees

The Microfinance Association presented the results from a survey they conducted last week on fees charged by Village Head Authorities for loan agreement registration. Some 47 microfinance institutions throughout Lao responded to the survey and reported that there are indeed large variations observed in these fees charged, ranging from LAK 5,000 to LAK 300,000 per contract in some regions. For a typical loan amount of LAK 11 million, these fees on average represent around 1% of the loan amount. Consistency and transparency of fees across all villages is seen as important.

Similar large variations were reported also for the notary registration fees charged in different regions of the country. As an example, for a loan agreement that has land title collateral located in different provinces, it is extremely difficult to agree on a single standard rate of notary fees charged by each provincial office.

The security agreement registration fees charged by the Land Management Office was already raised as an issue at the 10th Lao Business Forum in 2017. The LNCCI confirmed that the National Assembly is considering a proposal from the Ministry of Justice to reduce and cap these fees. The LNCCI hopes that the new fees will soon be promulgated through Presidential Decree nr. 003.

Process improvements

The workshop suggested the establishment of a “single Government window” (coupled with service time standards) for all loan agreement and security interest registration and certification, instead of the 4 (sometimes even 5) different Government bodies involved now. The Government is moving towards a central treasury and this would help in having one set of standard official fees for all Government agencies involved. This could also promote the use of bank transfer payments instead of cash.

The other proposed process simplification/improvements related to use of notary offices and the double registration of security interest, were referred to further technical discussions in the LBF financial sector working group before these should be submitted to the LBF. Consultations should first take place with the public sector to assess the legal implications and any changes in the Laws that may be required. Recommendations should then be proposed to the LBF Steering Committee.

Items to be actioned

Summary of recommendations to be take forward by the financial sector working group for discussion with the public sector and submission to the LBF Steering Committee:

Recommendation	Addressed to
<ul style="list-style-type: none"> • Create online forms and online process to perform query of land title database • Online notarization of loan and security agreements • Single Government service window • Introduce online and digital payment of fees instead of cash 	eGovernment Department of the Ministry of Post and Telecom and the Land Management Division of the Ministry of Natural Resources and Environment
<ul style="list-style-type: none"> • Reconsider the notarization requirement of loan and security agreements • Standardize the fee schedule for notarization of loan and security agreements • Create a central database of Court judgments 	Ministry of Justice
<ul style="list-style-type: none"> • Unify and standardize the fee scales across the country for Village Head authentication of loan and security agreements 	Ministry of Home Affairs
<ul style="list-style-type: none"> • Reconsider the requirement to register loan and security agreements over <u>immovable</u> assets at the Department of State Asset Management 	Ministry of Finance
<ul style="list-style-type: none"> • Issue clarification in relation to Notice 818/BoL, that pledging of Village Head authenticated land titles is allowed under specific circumstances 	Bank of Laos



ANNEX

References

Secured Transactions Law (2005): <https://stlrp.files.wordpress.com/2017/10/laos-law-on-secured-transaction-decree-2005-eng.pdf>

Decree on the Implementation of the Secured Transaction Law No.178/PM, dated 20 June 2011: <http://www.lshorizon.com/upload/publication/1443182358.pdf>

Law on Notary Offices:

<https://www.most.gov.la/images/stories/law%20of%20laos/Laws%20in%20English/17.%20Law%20on%20Notary%20Offices%20%281992%29%20Eng.pdf>

Decree on Document Registration No. 52/PM, dated 13 March 1993:

<http://laoservicesportal.gov.la/index.php?r=site%2Fdisplaylegal&id=278>

Systematic Land Registration in Rural Areas of Lao PDR. Concept Document for countrywide application. Based on experiences gained in the GIZ supported Programmes NU-IRDP, LM-RED and LMDP (2015). <https://landportal.org/es/library/resources/systematic-land-registration-rural-areas-lao-pdr-concept-document-countrywide>



Notice 818/BoL from the Bank of Laos, dated 27 November 2017:

Lao People's Democratic Republic
Peace Independence Democracy Unity Prosperity

Bank of the Lao PDR
Office

NO. 818/ຫກ

Vientiane Capital, November 27th, 2017

Notice

To – commercial banks
- Micro-finances Institution.

Subject: land documents for using in borrowing loan from commercial banks and MFI

- Reference to letter of Ministry of Natural Resources and Environment No5304/ກຊສ, dated November 15th, 2017;
- Reference to advice of Governor of BOL dated November 20th, 2017;

Bank of the Lao PDR office have a notice about land documents for using guarantee for borrowing money from commercial banks and micro-finances institution must be used land title (Golden border) Accurate according to law only and must be register with land office properly in order to avoid overlap of land title. Besides have to review other type document of collateral that accepted to be collateral exclude land certificate for paying tax then report to BOL for consolidation not over 11th December, 2017.

Please implement following this notice accordingly.

Manager of BOL office

Phetsathaporn KEOVOUNGVICHITH



Overview of the Lao Business Forum⁷

The Lao Business Forum was launched in March 2005 as a joint initiative between the International Finance Corporation (IFC) and the Ministry of Planning and Investment (MPI). The IFC staffed the LBF Secretariat from 2005 until its exit in 2010. Since then, LNCCI performs Secretariat functions for the LBF and is responsible for overall coordination and facilitation. In mid-2015, the Ministry of Industry and Commerce (MOIC) was assigned to act as coordinating body for the public sector to facilitate dialogue process on behalf of the government by taking over the role from MPI. Since May 2016, the Lao Business Forum received technical support from the Second Trade Development Facility – TDF II to resume the public private dialogue process with a full functional secretariat set up under LNCCI and a Focal Point for the public sector established under the Department of Planning and Cooperation at the Ministry of Industry and Commerce responsible for overall oversight and follow-up.

The objectives of the LBF are to: 1) facilitate public and private sector dialogue, including participation by the broadest range of private sector companies, from domestic SMEs to foreign investors; 2) ensure consistent enforcement and transparent interpretation of laws and regulations; 3) remove the bureaucratic impediments that businesses encounter in entry and exit processes and provide feedback on business-related policies, laws and regulations that impact the private sector ; and 4) provide feedback on draft government laws and regulations that could potentially impact the business community and assist the Lao government in private sector-related policy development.

The LBF is organized at four levels:

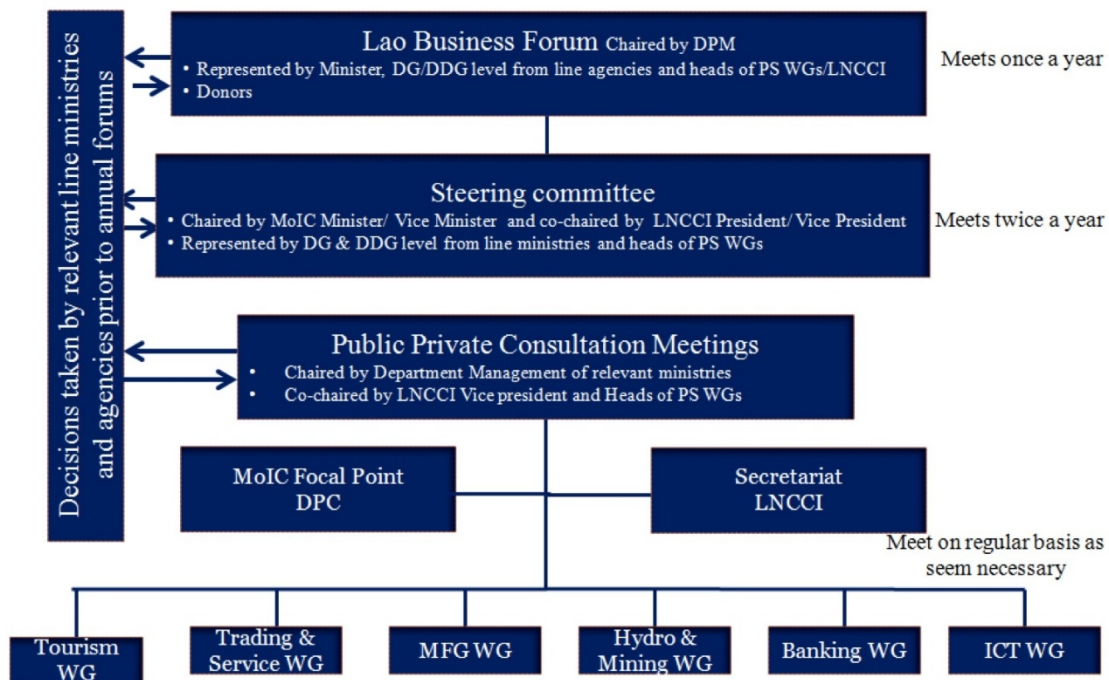
- Annual Forum. The Annual Lao Business Forum is held once annually and is chaired by the Prime Minister or Deputy Prime Minister in charge of economic affairs. The forum provides an opportunity for Private Sector Working Groups and key business associations in Lao PDR to inform top-level government officials about their achievements during their regular meetings and to identify unresolved issues.
- Steering Committee (SC). SC meetings are convened twice a year in advance of the Annual Forum in order to review progress, finalize the forum agenda and agree on key forum inputs. Membership of the SC consists of representatives from line Ministries/agencies (department management level) and heads of private sector working groups. The committee is chaired by MoIC Minister and co-chaired by LNCCI President. Based on the advice of the Secretariat, the SC meeting will consider priority business reforms and decide on remedial measures or refer issues to relevant government entities. These steps ensure that priority actions are fully vetted prior to presentation during the Forum
- Public Private Consultation (PPC). PPC meetings occur prior to the bi-annual SC meetings. PPC meetings for specific Working Groups occur as regularly as required between the six-month period between SC meetings. Each meeting is co-chaired by

⁷ Source: <https://lncci.la/about-lbf/>

LNCCI Vice President and DG/DDG of relevant department of government Ministries and participated by key members of respected PS WGs.

- Private Sector Working Groups (PSWG). There are currently 16 Private Sector Working Groups (PSWG) in the LBF. Meetings are open to private sector members of the PSWG as well as any other companies that are interested in attending. The LBF Secretariat assists the PSWGs in formulating their policy ideas prior to PPC meetings. Sectoral working groups: ICT, Manufacturing, Trade, Services, Agro-processing; Handicrafts; Transportation & Logistics; Construction; Mining; Tourism; Banking & Insurance; Hydropower. Other working groups: Cross-Cutting, State-owned Enterprises (SoEs), SMEs, Businesswomen.

LBF Structure chart:



PS WGs are primarily formed based on existing BMOs on voluntary basis. They only participate at the dialogue when they have specific policy related issues that affect competitiveness of their sector.